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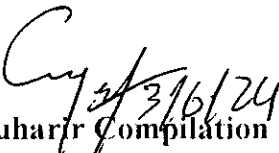
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

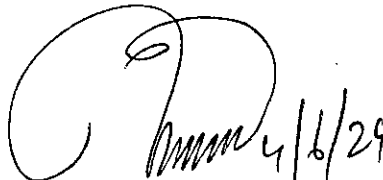
APPEAL NO	INSTITUTION	ORIGINAL INSTITUTION	DECISION	PAGES
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Jehandad Khan vs Police Department

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Muharrir Compilation


Incharge Judicial Branch

To The Director Higher Education
Khyber Pakhtunkhwa Peshawar
Subject: Provision of Seniority List BPS-20
for the years 2020^{and} 2021

Memo In Pursuance to the directions
of the honorable Court, vide order No.
563/23 Dated, 01.02.2024, (copy attached)
the documents mentioned in the
above subject are required for
submission to the honorable Service
tribunal. An early action shall be
highly appreciated.

Dated 16.02.2024

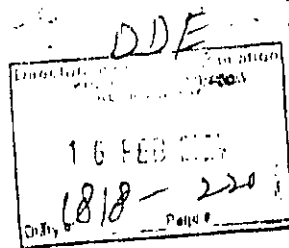
Regards

(A) John
16.02.2024

Prof. Abdull Jabbar (Retired)

AND

Prof. Sharif Gul (Retired)



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1956/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER(E)

Jehandad Khan (Ex-Constable Belt No. 2127) S/O Imdad Khan R/o Suliman
Khel, Badh Bair, Tehsil and District Peshawar.....(*Appellant*)

Versus

1. The Provincial Police Officer (PPO) Government of Khyber Pakhtunkhwa.
2. Capital City Police Officer (CCPO), Peshawar.
3. Superintendent of Police (SP) Headquarter, Peshawar.....(*Respondents*)

Mr. Kabirullah Khattak,
Advocate ... For appellant

Mr. Asif Masood Ali Shah, ... For respondents
Deputy District Attorney

Date of Institution..... 26.09.2023
 Date of Hearing..... 06.03.2024
 Date of Decision..... 06.03.2024

JUDGEMENT

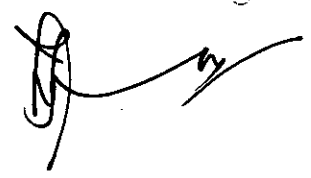
FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 16.11.2022 whereby the appellant has been removed from service against which he filed departmental appeal on 28.04.2023 which was rejected on 23.08.2023. Against the said rejection order he filed revision petition which was also rejected on 05.09.2023. It has been prayed that on acceptance of the appeal, the impugned orders dated 16.11.2022, 23.08.2023, 05.09.2023 passed by respondents might be set aside and the appellant might be reinstated into service with all back benefits, alongwith any other remedy which the Tribunal deemed appropriate.

CC-2023-1956
KP
Peshawar

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the service of the Police Department as Constable in the year 2007. He was falsely implicated in a criminal case vide F.I.R No. 125, dated 12.12.2021, u/s 9D CNSA, 2019, Police Station Levy Post, District Malakand. He was arrested on the spot and sent to judicial lockup. After the registration of F.I.R, the appellant was dismissed from service on 16.11.2022. He was convicted by the learned Sessions Judge/Judge Special Court Malakand at Batkhela vide order dated 03.09.2022 and sentenced to life imprisonment. Aggrieved by the said order, he invoked the jurisdiction of Hon'ble Peshawar High Court Mingora Bench by way of filing Criminal Appeal, No. 243/2022. The Hon'ble High Court Mingora Bench vide judgment dated 15.03.2023 accepted the appeal; the judgment dated 03.09.2022 was set aside and the appellant was acquitted from the charges leveled against him. After acquittal, he filed departmental appeal on 28.04.2023 before the respondent No. 2 which was rejected on 23.08.2023. He filed Revision Petition against the appellate order dated 23.08.2023 which was rejected on 05.09.2023, hence the service appeal.

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that respondents had not treated the appellant in accordance with law, rules and policy on the subject. No charge sheet and statement of allegations



had been served upon the appellant. No regular departmental inquiry was conducted by the respondents and no chance of personal hearing was provided to him. He further argued that no final show cause notice was issued and communicated to the appellant before imposing the major penalty. According to him, when the conviction of the appellant was set-aside by the Hon'ble Peshawar High Court Mingora Bench, no ground remained for the punishment awarded to him by the respondent No. 3. It was the settled principle of law that where the criminal charges were not proved against the accused civil servant before the Competent Court of jurisdiction and he was acquitted on those charges, then the departmental proceedings, based on the same charges, would be wholly irrelevant. He placed his reliance on judgment of the august Supreme Court of Pakistan reported in 2001-PLC-(SC)-Page-316 (Citation-d). He argued that the respondent department should have waited for the decision of the criminal case but they did not do so which was a clear violation of CSR 194-A. He further argued that the appellant was condemned unheard as no opportunity of cross examination was provided to him. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant had not a clean service record as it contained 02 bad entries and 01 minor punishment. The performance of the appellant during service was neither satisfactory nor up to the mark. He was involved in a criminal case and a huge quantity of 11 KG & 340 grams Chars spoke volume of his inefficiency. He was issued charge sheet with statement of allegations and to dig out the real facts a regular inquiry was

conducted, wherein the charges were proved. The inquiry officer, during the course of enquiry, had fulfilled all the requirements and after receipt of the findings, final show cause notice was served upon the appellant on 18.02.2022 and delivered on his home address but he failed to appear and defend himself. The learned DDA contended that court proceedings and departmental proceedings were two different entities and could be run side by side. Acquittal in a criminal case would not lead to exoneration of a civil servant in departmental proceedings. His act brought a bad name for the entire police force. Learned DDA requested that the appeal might be dismissed.

6. Arguments and record presented before us shows that the appellant, while serving as Constable in the provincial police, was charged in FIR No. 125 dated 12.12.2021 u/s 9 D CNSA, 2019, P.S Levy Post, District Malakand. He was arrested on the spot, sent to judicial lockup and later convicted by the Learned Sessions Judge/Judge Special Court Malakand at Batkhela vide judgment dated 03.09.2022 and sentenced to life imprisonment. The conviction was set aside by the Hon'ble Peshawar High Court, Mingora Bench vide judgment dated 15.03.2023. During that period, the appellant was awarded the major punishment of dismissal from service vide an order of the Superintendent of Police, HQ, Peshawar dated 16.11.2022. His departmental appeal as well as revision petition were dismissed by the competent authorities.

7. As argued by the learned counsel for the appellant, no departmental inquiry was conducted and major punishment was awarded without following the procedure under the rules. On the other hand, the learned Deputy District Attorney stated that charge sheet and statement of allegation was issued, after



which a formal inquiry was conducted and when the charges were proved, show cause notice was issued on 18.02.2022 but the appellant did not bother to appear before the competent authority and hence major punishment was awarded to him. The respondents have annexed an inquiry report dated 19.01.2022 with the reply. There is a charge sheet and statement of allegations dated 27.12.2021 also, annexed with the reply. According to the inquiry report, the Inquiry Officer called the appellant through a summon/parwana but he did not appear before him. Then there is a statement of MASI Police Lines, according to whom the appellant was contacted time and again on his cell phone but it was found switched off, therefore his brother was contacted and he was informed about the inquiry. When the appellant did not appear before the Inquiry officer, he recommended for ex-parte proceedings against him. Here a point to be noted is that when the charge sheet and statement of allegations was issued, the appellant was behind the bar. The question is whether simply stating that the charge sheet was issued is enough or had it to be served upon him in the Judicial Lockup. The lack of knowledge of the Inquiry Officer is also to be noted here. It seems strange that he did not know that the appellant was behind the bar, despite the fact that he was the Deputy Superintendent of Police Complaint and Enquiry, Capital City Police, Peshawar, whom we think is a well informed officer. Similarly the issuance of show cause notice on 18.02.2022 and simply stating that the appellant did not respond to it is also not understandable.

8. The appellant was involved in a criminal case and was behind the bar. The respondents were required to place him under suspension till the final





decision of the court of law. Instead of doing that, they resorted to departmental proceedings and without fulfilling the requirements of rules, awarded him major punishment on the basis of his involvement in criminal case. It has been noted that no opportunity of defence was provided to him which is a breach of principles of fair trial. Record shows that the criminal case against him culminated in honourable acquittal by the court of law which makes him re-emerge as a fit and proper person entitled to continue his service.

9. In view of the above discussion, the appeal is allowed by setting aside the impugned orders and the appellant is reinstated into service with all back benefits. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 06th day of March, 2024.*

SCANNED
KPST
Peshawar


(FAXHRIA PAUL)
Member (I)


(RASHIDA BANO)
Member(J)

SA 1956/2023

06th Mar. 2024 01. Mr. Kabirullah Khattak, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the appeal is allowed by setting aside the impugned orders and the appellant is reinstated into service with all back benefits. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 06th day of March, 2024.*

SCANNED
K.P.S.T
Peshawar



(FARIHA PAUL)
Member (E)



(RASHIDA BANO)
Member(J)

Fiscal Subhan PS

8


26.01.2024

Clerk of learned counsel for the appellant present.
Mr. Zahoor Khan, S.I (Legal) alongwith Mr. Habib Anwar,
Additional Advocate General for the respondents present.

Written reply on behalf of respondents received through
office. Copy of the same handed over to clerk of learned
counsel for the appellant. Adjourned. To come up for
arguments on 06.03.2024 before the D.B. Parcha Peshi given
to the parties.

SCANNED
K-5T
Peshawar

Naeem Amin


(Salah-ud-Din)
Member (J)

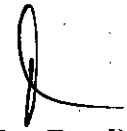
SA 1956/23

1st Dec. 2023


01. Appellant present in person. Mr. Habib Anwar, Addl. AG alongwith Zahoor Khan, S.I (Legal) for the respondents present.

SCANNED
KPST
Peshawar

02. Reply/comments on behalf of the respondents not submitted. Representative of the respondents requested for further time. Granted. To come up for written reply/comments 28.12.2023 before the S.B.. Parcha Peshi given to the parties.


(Farecha Paul)
Member(E)

Fazle Subhan, P.S


28-12-2023 Due to winter vacations
therefore case is adjourned
to 17-1-2024

Reader

17.01.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Mr. Zahoor Khan, S.I (Legal) for the respondents present.

2. Reply/comments on behalf of respondents not submitted. Representative of the respondents requested for time to submit reply/comments. Granted. To come up for reply/comments on 26.01.2024 before S.B. P.P given to the parties.


SCANNED
KPST
Peshawar


(Muhammad Akbar Khan)
Member (E)

27.10.2023

Learned counsel for the appellant present and argued that appellant was dismissed from service vide impugned order dated 16.11.2022 on the allegation of involvement in a criminal case without providing proper opportunity of being heard and self-defense by conducting regular enquiry. He further argued that appellant was arrested on the spot on 12.12.2021 and was acquitted from the charges on 15.03.2023. After acquittal appellant filed departmental appeal on 28.04.2023 which was rejected vide order dated 23.08.2023 and revision filed by appellant also met the same fate vide order dated 05.04.2023, hence the instant service appeal. Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. Appellant is directed to deposit security fee within 10 days. Thereafter, notices be issued to respondents for submission of written reply/comments. Respondents be summoned through TCS the expenses of which be deposited by the appellant within 3 days. Adjournd. To come up for written reply/comments on 01.12.2023 before S.B. P.P given to the parties.

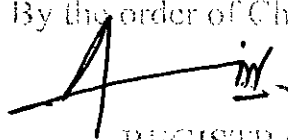

SCANNED
K.P.S.T
Peshawar


(RashidaBano)
Member (J)

(11)
FORM OF ORDER SHEET

Court of _____

Appeal No. 1956/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/09/2023	<p>The appeal of Mr. Jehandad Khan presented today by Mr. Kabir Ullah Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on <u>28-09-2023</u>.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p> <p>01. Learned counsel for the appellant present and sought adjournment in order to complete the documents including inquiry report. To come up for preliminary hearing on 27.11.2023 before the S.B. Parcha Peshi given to learned counsel for the appellant.</p> <p style="text-align: right;"> (FAREEHA PAUL) Member (E)</p>
	28 th Sept. 2023	

SCANNED
KPST
Peshawar

SCANNED
KPST
Peshawar

Fazle Subhan, P.S

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

CHECK LIST

1.	Case title <u>Schandaal 10th May 2023</u>		
2.	Case is duly signed.	<u>Yes</u>	No
3.	The law under which the case is preferred has been mentioned.	<u>Yes</u>	No
4.	Approved file cover is used.	Yes	No
5.	Affidavit is duly attested and appended.	<u>Yes</u>	No
6.	Case and annexure are property paged and numbered according to index.	<u>Yes</u>	No
7.	Copies of annexure are legible and attested. If not, then better copies duly attested have annexed.	<u>Yes</u>	No
8.	Certified copies of all requisite documents have been filed.	<u>Yes</u>	No
9.	Certificate specifying that no case on similar grounds was earlier submitted in this court, filed.	Yes	No
10.	Case is within time.	<u>Yes</u>	No
11.	The value for the purpose of court fee and jurisdiction has been mentioned in the relevant column.	<u>Yes</u>	No
12.	Court fee in shape of stamp papers affixed. For writ Rs. 500, for other as required}	Yes	No
13.	Power of attorney is in proper form.	Yes	No
14.	Memo of addressed filed.	Yes	No
15.	List of books mentioned in the petition.	<u>Yes</u>	No
16.	The requisite number of spare copies-attached { Write petition- 3, Civil appeal(SB-2) Civil Revision (SB-1, DB-2)	Yes	No
17.	Case (Revision /appeal/petition etc) is filled on a prescribed form.	<u>Yes</u>	No
18.	Power of attorney is attested by jail authority (for jail prisoner only)	Yes	No

It is certified that formalities /documentations as required in column 2 to 18 above, have been fulfilled.

Name:-

Signature Leabta Wajid Khan

Dated: 26-9-23

FOR OFFICE USE ONLY

Case: - _____

Case received on _____

Complete in all respect: Yes/No, (If NO, the grounds) _____

Signature _____

(Reader)

Dated: - _____

Countersigned: - _____

(Deputy Registrar)



1870

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1870

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER

PAKHTUNKHWA, PESHAWAR.

**SCANNED
KPST
Peshawar**

Service Appeal No. 1956/2023

Jehandad Khan(Appellant)

VERSUS

The Provincial Police Officer (PPO) and others.....(Respondents)

I N D E X

S.No	Description of Documents		Pages
1.	Service Appeal		1-7
2.	Affidavit		8
3.	Addresses of the parties		9
4.	Application for condonation of delay with affidavit		9-A to 9-C
5.	Copy of dismissal order	A	10
6.	Copy of judgment dated 15/03/2023	B	11-41
7.	Copies of departmental appeal and order dated 23/08/2023	C & D	42-44
8.	Copies of revision petition and rejection order dated 05/09/2023	E & F	45-46
9.	Wakalat Nama		47

Jehandad Khan
Appellant

Through

Dated: 25/09/2023

Kabir Ullah Khattak
Kabir Ullah Khattak
Cell No. 0300-5842247

Roeeda Khan
Roeeda Khan
Advocates High Court,
Peshawar.

(17) (14)

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER

PAKHTUNKHWA, PESHAWAR.

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. **1956**/2023

Diary No. **7919**

Dated **26-09-23**

Jehandad Khan (Ex-Constable Belt No. 2127) S/o Imdad Khan
R/o Suliman Khel, Badh Bair, Tehsil and District
Peshawar.....(Appellant)

VERSUS

1. The Provincial Police Officer (PPO) Government of Khyber Pakhtunkhwa.
2. Capital City Police Officer (CCPO), Peshawar.
3. Superintendent of Police (SP) Headquarter, Peshawar.....(Respondents)

APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT
1974, AGAINST IMPUGNED ORDER DATED
16/11/2022 WHEREBY THE APPELLANT
HAS BEEN REMOVED FROM SERVICE
AGAINST WHICH THE APPELLANT FILED
DEPARTMENTAL APPEAL ON 28/04/2023
WHICH WAS REJECTED ON 23/08/2023
AGAINST THE SAID REJECTION ORDER
THE APPELLANT FILED REVISION
PETITION WHICH WAS ALSO REJECTED ON
05/09/2023 ON NO GOOD GROUNDS.

Filed to Day
Registrar
36/09/23

12-12-2021
FIR
Arrest: - 14/12/21
15-3-2023
ACW



(2) (15)

PRAYER:

On acceptance of this appeal, the impugned orders dated 16/11/2022, 23/08/2023, 05/09/2023 passed by respondents may very graciously be set aside and the appellant may kindly be reinstated in service along with all back benefits.

Any other relief not specifically asked for may also graciously be extended in favour of appellant.

Respectfully Sheweth:

1. That the appellant joined the service of the Police Department as Constable in the year 2007 he was performing his duty with great zeal, zest and devotion but unfortunately he was falsely involved in criminal case F.I.R No. 125, dated 12/12/2021, u/s 9D CNSA, 2019, Police Station Levy Post, District Malakand, he is arrested on the spot and sent to judicial lockup.
2. That after the registration of F.I.R the appellant was dismissed from service on 16/11/2022. (Copy of dismissal order is attached as annexure "A").
3. That the appellant was convicted by the learned Sessions Judge/ Judge Special Court Malakand at

Batkhela dated 03/09/2022 whereby the appellant was convicted and sentenced for life imprisonment.

4. That the appellant felt aggrieved by said order involved the jurisdiction of Peshawar High Court Mingora Bench by way of filing Criminal Appeal No. 243/2022 praying therein that the instant appeal may please be allowed and the impugned judgment may kindly be set aside and the appellant may very graciously be acquitted of the charges leveled against him so as to need the ends of justice.

5. That the Hon'ble High Court Mingora Bench vide judgment dated 15/03/2023 accepted the appeal, conviction and sentence by the learned Trial Court/ Judge Special Court vide judgment dated 03/09/2022 was set aside and the appellant was acquitted from the charges leveled against him forthwith. (Copy of judgment dated 15/03/2023 is attached as annexure "B").

6. That after acquittal the appellant filed Departmental Appeal/ Representation on 28/04/2023 before the respondent No. 2 which was rejected on _____

(4) (17)

23/08/2023. (Copies of departmental appeal and order dated 23/08/2023 is attached as annexure "C" & "D").

7. That the appellant filed Revision Petition against the appellate order dated 23/08/2023 which was rejected on 05/09/2023. (Copies of revision petition and rejection order dated 05/09/2023 are attached as annexure "E" & "F").

8. That feeling aggrieved the appellant prefers the instant Service Appeal before this Hon'ble Tribunal, inter-alia on the following grounds:

GROUND:

A. That respondents have not treated the appellant in accordance with law, rules and policy on the subject and acted in violation Article 4 of the Constitution of Islamic Republic of Pakistan, 1973m therefore, the impugned orders are not sustainable in the eye of law.

B. That no charge sheet and statement of allegations has been served or communicated to the appellant in this respect the appellant relied upon a judgment reported on "2009 SCMR Page-615".

C. That no regular or departmental inquiry has been conducted by the respondent department against the appellant and no chance of personal hearing has been provided to the appellant in this respect the appellant relied upon the judgment reported on "2008 SCMR Page-1369".

D. That no final Show Cause Notice has been issued and communicated to the appellant by the respondents department before imposing the major penalty in this respect the appellant relief upon a judgment reported on "2009 PLC (CS) 176".

E. That when the conviction of appellant was set-aside by the Hon'ble Peshawar High Court Mingora Bench, thereafter, no ground exists to remain the punishment awarded to him by the respondent No. 3. It is well settled law that where the criminal charges were not proved against the accused Civil

8 19

Servant before the Competent Court of jurisdiction
and the civil servant was acquitted on these charges
then the Departmental Proceedings exactly based
on the same charges, would be wholly irrelevant
and undusted. Reliance can be placed on judgment
of against Supreme Court of Pakistan reported in
2001-PLC-(SC)-Page-316 (Citation-d).

F. That the respondent department should waited for
the decision of the criminal cases above which is a
clear cut violation of CSR 194-A.

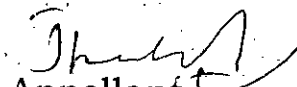
G. That is a well settled maxim no one can be
condemned unheard because it is against the
natural justice of law in this respect the appellant
relied upon a judgment reported on "2008 SCMR
Page: 678".

H. That no opportunity of cross examination has been
provided to the appellant.

I. That any other ground not raised here may
graciously be allowed to be raised at the time of full
arguments on the instant Service Appeal.

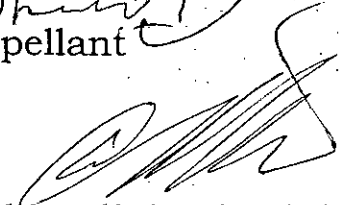
It is, therefore, most humbly prayed that on acceptance of this appeal, the impugned orders dated 16/11/2022, 23/08/2023, 05/09/2023 passed by respondents may very graciously be set aside and the appellant may kindly be reinstated in service along with all back benefits.


Any other relief not specifically asked for may also graciously be extended in favour of appellant.


Appellant

Through

Dated: 25/09/2023


Kabir Ullah Khattak

& 
Roeda Khan
Advocates High Court,
Peshawar.

NOTE:

As per information furnished by my client, no such like appeal for the same appellant, upon the same subject matter has earlier been filed, prior to the instant one, before this Hon'ble Tribunal.



ADVOCATE

8

21

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR.

Service Appeal No. ____/2023

Jehandad Khan(Appellant)

VERSUS

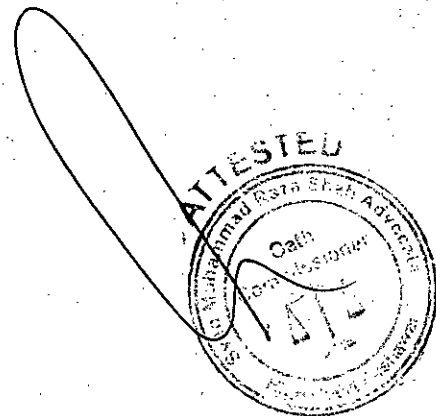
The Provincial Police Officer (PPO) and others....(Respondents)

AFFIDAVIT

I, Jehandad Khan (Ex-Constable Belt No. 2127) S/o Imdad Khan R/o Suliman Khel, Badh Bair, Tehsil and District Peshawar, do hereby solemnly affirm and declare, that all the contents of accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Tribunal.

Jehandad Khan

DEPONENT



12 6 SEP 2023

9 22

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR.

Service Appeal No. ____/2023

Jehandad Khan(Appellant)

VERSUS

The Provincial Police Officer (PPO) and others.....(Respondents)

ADDRESSES OF THE PARTIES

APPELLANT:

Jehandad Khan (Ex-Constable Belt No. 2127) S/o Imdad Khan
R/o Suliman Khel, Badh Bair, Tehsil and District Peshawar.

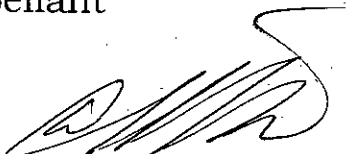
RESPONDENTS:


1. The Provincial Police Officer (PPO) Government of Khyber Pakhtunkhwa.
2. Capital City Police Officer (CCPO), Peshawar.
3. Superintendent of Police (SP) Headquarter, Peshawar.


Appellant

Through

Dated: 25/09/2023


Kabir Ullah Khattak


&
Roeda Khan
Advocates High Court,
Peshawar.

9A 23

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR.

C.M. No. _____/2023

In

Service Appeal No. _____/2023

Jehandad Khan(Appellant)

VERSUS

The Provincial Police Officer (PPO) and others.....(Respondents)

APPLICATION FOR CONDONATION
OF DELAY.

Respectfully submitted:

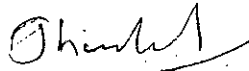
1. That the above tiled Service Appeal is being filed before this Hon'ble Tribunal in which no date of hearing has yet been fixed.
2. That the appellant was acquitted by the Hon'ble Peshawar High Court Mingora Bench on 15/03/2023 and the appellant filed departmental appeal after acquittal on 28/04/2023.
3. That there are so many judgments of Superior Courts that cases should be decided on merit rather technicalities.

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4. That if the any delay occurred in filing of the instant Service Appeal the same may kindly be condoned in the interest of justice.
5. That this Hon'ble Tribunal has got ample powers to condoned the delay "if any" in the filling of the instant Service Appeal.


It is, therefore, humbly prayed that on accepting this application, delay if any may kindly be condoned in the larger interest of justice.


Appellant

Through

Dated: 25/09/2023


Kabir Ullah Khattak

& 
Rozeeda Khan
Advocates High Court,
Peshawar.

90 (25)

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA, PESHAWAR.

C.M. No. _____/2023

In

Service Appeal No. ____/2023

Jehandad Khan(Appellant)

VERSUS

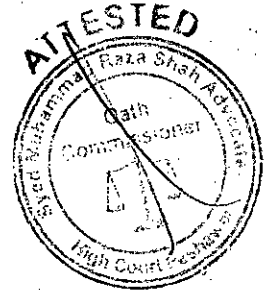
The Provincial Police Officer (PPO) and others....(Respondents)

AFFIDAVIT

I, Jehandad Khan (Ex-Constable Belt No. 2127) S/o Imdad Khan R/o Suliman Khel, Badh Bair, Tehsil and District Peshawar, do hereby solemnly affirm and declare, that all the contents of accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Tribunal.

Jehandad Khan
DEPONENT

26 SEP 2023



(26)

Ameeur

(A)

P (16)

ORDER

This office order relates to the disposal of formal departmental enquiry against **Constable Jehandad No.2127** on the allegation that he was arrested by Malakand Levies with illegal substance & FIR No.125 dated 11.12.2021 u/s 9(D)KPCNSA, Levy Post Thana was registered against him as reported by DC/Commandant Malakand Levies Malakand vide letter No.9487/LC dated 14.12.2021.

In this regard, he was placed under suspension & issued charge sheet & summary of allegations. DSP Complaints & Enquiry was appointed as E.O. He conducted the enquiry & submitted his report/findings that the alleged official did not attend the enquiry proceedings. The E.O further recommended for taking ex-parte decision against the alleged official vide Enquiry Report No.46/PA dated 19.01.2022.

Upon the findings of E.O, he was issued final show cause notice and delivered to him through local Police PS Badaber but he failed to submit reply of the said notice or appear before this office as yet.

The Enquiry papers were again referred to E.O for re-enquiry into the matter. The Enquiry Officer conducted re-enquiry & submitted his report/findings that the alleged official confessed the offence during interrogation. The E.O further recommended that the alleged official found guilty of the charges leveled against him dated 05.09.2022.

On receiving the findings of E.O, the alleged official has been called time & again through Parwanas. The Moharrir Staff (Police Lines) has returned all parawans with reports that defaulter official was called on Phone Cell No.0302-5582683 but he did not attend his phone. lastly he was forwarded message so many times for O.R but he failed as yet.

Keeping in view the recommendations of the E.O and circumstance of the entire case, I the undersigned, being competent authority do hereby impose major punishment against Constable Jehandad No.2127 and he is dismissed from service under Police Rules-1975 with immediate effect.

Case No.	0040
Date	16-11-2022
Signature	

**SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR**

No. 3521-27/PA/SP/dated Peshawar the 16/11/2022.

Copy of above is forwarded for information & n/action to:

1. The Capital City Police Officer, Peshawar.
2. DSP/HQrs, Peshawar.
3. PA to W/CCPO, Peshawar
5. Pay Officer;
6. OAST, CRC & FMC along-with complete departmental file.



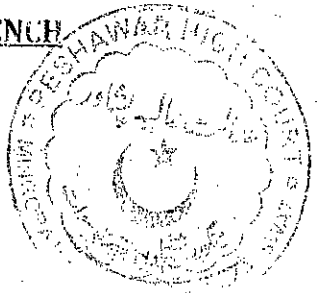
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**BEFORE THE HON'BLE PESHAWAR HIGH COURT MINGORA BENCH
DARULOAZA SWAT.**



Cr. Appeal No: 243-M/2022

Jehandad Khan S/O Imdad Khan R/O Mohallah, Allah Dad Khel, Suliman
Khel Badhbair Peshawar.

..... APPELLANT

VERSUS

The State through AAG..... RESPONDENT

APPEAL U/S 410 Cr.P.C R/W SECTION 24 OF KP- CNSA,
2019 AGAINST THE ORDER/JUDGMENT OF SESSIONS
JUDGE/ZILLA QAZI JSC MALAKAND AT BATKHELA VIDE
ORDER DATED: 03.09.2022, WHEREBY THE APPELLANT
WAS CONVICTED AND SENTENCED U/S 9-(D) R/W 17 KP
CNSA-2019 FOR LIFE ALONG WITH FINE OF RS. FIVE LACS
(500,000/-) OR IN DEFAULT OF PAYMENT OF FINE TO
UNDER GO FURTHER SIX MONTH S.I. AND U/S 171 , R/W
SECTION 34 PPC CONVICTED AND SENTENCED FOR SIX
MONTHS S.I AND U/S 420 R/W SECTION 34 PPC
CONVICTED AND SENTENCED FOR 5 YEARS R.I WITH FINE
OF RUPEES 50000/-, AND U/S 468 R/W SECTION 34 PPC
CONVICTED AND SENTENCED FOR 5 YEARS R.I WITH FINE
OF RUPEES 50000/-, AND U/S 471 R/W SECTION 34 PPC
CONVICTED AND SENTENCED FOR 2 YEARS R.I WITH FINE
OF RUPEES 5000/- IN DEFAULT OF PAYMENT OF FINE TO
UNDER GO FURTHER SIX MONTH S.I IN EACH BENEFIT OF
SECTION 382-B CR.P.C HAS ALSO GRANTED TO THE
APPELLANT.

FILED TODAY

06 SEP 2022

Additional Registrar



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JUDGMENT SHEET
PESHAWAR HIGH COURT
MINGORA BENCH
(Judicial Department)



✓ Cr.A No. 243-M/2022.

Jehandad Khan son of Imdad Khan

(Appellant)

Versus

The State through A.A.G.

(Respondent)

Present:

*M/S Kamran Ahmed and Noor Alam Khan
Advocates, for the appellant.*

Hafiz Ashfaq Ahmad, Astt. A.G. for the State.

&

Cr.A No: 259-M/2022.

Farhan Khan son of Sher Jan

(Appellant)

Versus

The State through A.A.G.

(Respondent)

Present:

Mr. Suid Hakim, Advocate, for the appellant.

Hafiz Ashfaq Ahmad, Astt. A.G. for the State.

Date of hearing: 15.03.2023

JUDGMENT

MUHAMMAD IJAZ KHAN, J.- Appellants

namely Jehandad Khan and Farhan Khan have

called in question the order/judgment passed

by the learned Sessions Judge/Judge Special

Court Malakand at Batkhela dated 03.09.2022,

vide which the appellants were convicted and

sentenced as follows;



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U/S 9 (d) R/W section 17 CNSA to life imprisonment along with fine of Rs. 500,000/- (five hundred thousand) each, or in default of the payment of fine they shall further undergo six months simple imprisonment.

U/S 171 R/W section 34 PPC to six months simple imprisonment.

U/S 420 R/W section 34 PPC to five years rigorous imprisonment along with fine of Rs.50,000/- (fifty thousand).

U/S 468 R/W section 34 PPC to five years rigorous imprisonment along with fine of Rs. 50,000/- (fifty thousand)

U/S 471 R/W section 34 PPC to two years rigorous imprisonment along with fine of Rs. 5,000/- each in default whereof they shall undergo six month simple imprisonment in each.

All the sentences awarded to both the appellants were ordered to concurrently.

Both the appellants were also extended the benefit of section 382-B Cr.P.C.

2. The appellants faced trial in a criminal case registered against them vide case FIR No. 125 dated 12.12.2021 under section 9 (d) of The Control of Narcotic Substances Act, 2019 R/W sections 171/420/468/471 PPC at levy post (Fazli Subhan Shaheed) Thana District Malakand. As per contents of the FIR, the complainant namely Ubaid Khan along with other police 'Nafri' during routine patrolling of the area, found a motorcar parked on the roadside with green official number plate bearing No.AA1018 Peshawar. On query, the

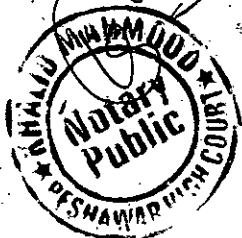
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person seated on the driving seat disclosed his name as Jehandad Khan and during search of the motorcar, the police recovered a plastic sack (بوری) bearing label "چیشل ٹائن میڈہ" "CHAND having 18 packets of Chars total weighing 11,340 grams, lying in the trunk (ڈبگی) of the said motorcar. Accused was arrested on the spot, samples were separated for the purpose of F.S.L and all the incriminating articles were taken into possession and sealed in the respective parcels. The motorcar was also taken in possession. Later on, during the course of investigation the appellant namely Farhan Khan was also arrayed as an accused in the instant case, hence, the *ibid* FIR was registered against the appellants at police station concerned.

3. The accused were summoned by the learned trial Court and charge was framed against them on 15.02.2022, to which they pleaded not guilty and claimed trial. The prosecution was invited to produce its evidence, who accordingly examined as many as five (05) witnesses in support of its case. Thereafter,



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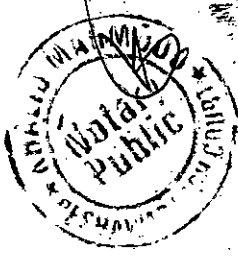
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statements of accused were recorded under section 342 Cr.P.C. On conclusion of the proceedings in trial, the accused/appellants were convicted and sentenced vide the impugned order/judgment dated 03.09.2022 of the Court of learned Sessions Judge/Judge Special Court Malakand at Batkhela, as stated hereinabove. The appellants have now challenged the aforesaid judgment by filing the instant criminal appeals bearing No. 243-M of 2022 and 259-M of 2022 before this Court.

4. Arguments of learned counsel for the appellants as well as learned Astt: A.G. appearing on behalf of the State were heard in considerable detail and the record perused with their able assistance.

5. It is the case of prosecution as reported by PW-5 namely Ubaid Khan through 'Murasila' Ex.PW-5/2 that on the relevant date and time of occurrence he along with other police personnel were busy in routine *Ghast* of the area when they found a motorcar standing aside on the road and in which the appellant namely Jehandad Khan was sitting on the

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(D.B) Hon'ble Mr. Justice Muhammad Naeem Anwar
Hon'ble Mr. Justice Muhammad Ijaz Khan

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driving seat and as such on search of the said motorcar, a white/red-colour polythene bag with the writing of "چشم نائن میدہ" *CHAND* was found in the trunk of the said motorcar and on search of the same 18 packets of Chars each weighing 630 grams total 11,340 grams were recovered and out of each packet 10/10 grams were separated for the chemical analysis of F.S.L and 18 samples were sealed in parcels No.1 to 18 whereas the remaining stuff was sealed in parcel No. 19 and the other materials i.e. two number plates and other belongings of the appellant were sealed in parcels No. 20 & 21 with monogram of "U.N". Subsequently, the co-appellant namely Farhan Khan was also nominated as an accused in the instant case.

6. It may be noted that in criminal cases in order to bring home charge against an accused person the prosecution is bound to prove their case beyond any shadow of doubt and as such in the narcotics cases too, in order to bring conviction or to maintain conviction they are bound to prove the safe custody of the



parcels containing samples and the contraband and in the process they have to prove that the parcels were safely transmitted from the spot to the police station, and that they remained safe and secure in the police station and the samples were transmitted from the police station to the FSL and vice-versa, however, in the present case it is PW-5 namely Ubaid Khan who is the seizing officer and as per the contents of the 'Murasila' after the recovery of the alleged contraband and separation of the samples/ parcels and arrest of the accused, he only sent the 'Murasila' to the police station through constable namely Noor Rehman and the 'Mursila' is completely silent that as to what happened to all the parcels which were allegedly prepared on the spot. The seizing officer not only remained mum in the 'Murasila' regarding the sending of samples to the police station but when he appeared in the Court as PW-5 there too, he has not uttered a single word that in-fact it was he who brought the parcels from the spot and deposited the same in the Mall Khana, therefore, on the available record, the



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prosecution has not been able to establish that as to who has brought the parcels of the samples as well as the contraband from the spot to police station. In the statement of the recovery witness namely Abu Zar Ghaffar Muharir, who appeared in Court as PW-2, he too has not uttered a single word that as to who took the parcels/samples containing contraband from the spot to the police station, therefore, in view of such lacuna in the case, the prosecution has not been able to prove that as to who brought the sample from the spot to the police station.

7. It is also relevant to mention here that though as per the 'Mursila' report the alleged recovery has been made on 11.12.2021 at 10:30 p.m., however, the extracts of register No. 19 which were exhibited as Ex.PW-2/1 does not show that as to when these parcels were deposited in the *Mall Khana*. The record further shows that as per the extracts of register No. 19 the case property was taken by the seizing officer-cum-Investigating Officer namely Ubaid Khan on 14.12.2021 for the purpose of producing the same in the Court.

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however, the record would show that the present appellant was produced before the local Magistrate on 12.12.2021 and then on 14.12.2021, however, the order sheets of the local Magistrate would show that on none of date, the case property was produced before him, therefore, the aforesaid entry in the register No. 19 goes a long way to doubt the safe custody of the contraband inside the police station, allegedly recovered from the appellant. In view of the above the prosecution has not been able to establish the safe transmission of the samples/ parcels from the spot to the police station and within the Police Station.

8. The record also shows that after the alleged recovery of the contraband, the Deputy Commissioner Malakand has held a press conference and the pictures of the same were uploaded on the official website of the D.C and the aforesaid picture and the extracts from the website were confronted to PW-2 namely Abdu Zar Ghaffar which were exhibited as Ex.PW-2/X-1 to Ex.PW-2/X-3, the aforesaid exhibits manifestly shows that in-fact a press

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conference has been held by the Deputy Commissioner along with the levy officials including the seizing officer, however, the foot notes on the aforesaid exhibits present a totally different story by stating therein that on the previous nights the In-charge namely Noor-ul-Hussain while acting on the information of D.S.P Malakand has found the motorcar on the roadside and from where the contraband has been recovered. These exhibits further show that the case property is lying on the table and the In-charge namely Noor-ul-Hussain are being awarding two honorary badges. It merits to mention here that the aforesaid movement of the case property all around to different offices cast a serious doubt on the safe custody of the same which also find support from the fact that it was

allegedly recovered on 11.12.2021 at 10:30 p.m. and as per the entries in register No.19 the same has been deposited in the *Mall Khana* but with no date mentioned therein, which non-mentioning of the date becomes more significance in view of the above holding of a

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press conference and producing the case property to the print and electronic media.

9. As discussed hereinabove that in narcotic cases the prosecution has to prove the recovery of the contraband, taking of samples from it, sending of parcels from spot to police station, inside the police station and from the police station to the FSL and then from the FSL to the police station and during this process its safe custody has to be established, otherwise benefit of any break in the chain has to be given to an accused person, however, in the present case prosecution has not been able to prove the same in a required manner as highlighted in the preceding Paras, therefore, the appellants are entitled for its benefits. In the case of "Javed Iqbal v/s The State"

reported as 2023 SCMR 139 it was held by the Apex Court that it is duty of the prosecution to establish each and every step from the stage of recovery, making of sample parcels, safe custody of sample parcels and transmission of the sample parcels to the concerned

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laboratory. Such chain has to be established by the prosecution and if any link is missing in such like offences the benefit must be extended to the accused. Similarly, in the case of "Muhammad Sohaib & another v/s The State" reported as 2022 SCMR 1006, the Hon'ble Apex Court has held that although Jahangir Khan, H.C. (PW-1) claimed that complainant had handed over the sample parcels to him which he further handed over to Moharrar Investigation for safe custody for sending them to Forensic Science Laboratory, Peshawar. The said Moharrar Investigation who according to Jahangir Khan, H.C. (PW-1) kept the sample parcels in safe custody was never produced by the prosecution. So the safety of sample parcels was not established by the prosecution. Ajmal Khan, Constable, who allegedly took the sample parcels to the concerned Laboratory was also not produced. In that eventuality, prosecution failed to establish safe custody and safe transmission of the sample parcels to the concerned quarter

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and the prosecution could not give any plausible explanation for not producing said important witnesses. The said defect in the prosecution case goes into the root of the case creating serious doubt regarding the narcotics and its recovery. Likewise, in the case of "Ishaq v/s The State" reported as 2022 SCMR 1422, the Hon'ble Supreme Court has held that the most important thing we observe is that neither the safe custody nor the safe transmission of the sealed sample parcels to the concerned laboratory was established by the prosecution because neither the Moharrar nor the Constable concerned (FC-3746) who deposited the said parcels in the concerned laboratory was produced. It is also a circumstance that recovery was effected on 17.07.2010 whereas the sample parcels were received in the said laboratory on 20.07.2010 and prosecution is silent as to where remained these sample parcels during this period, meaning thereby that the element of tampering with is quite apparent in this case. In the case

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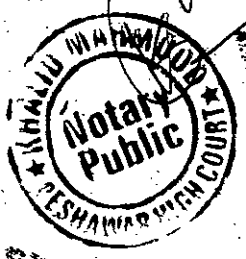
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of "Abdul Ghafoor v/s The State & another" reported as 2022 SCMR 819, the Hon'ble Apex Court has observed that heinousness of the charge and huge quantity of the alleged contraband, notwithstanding, the prosecution was under a bounden responsibility to drive home the charge by proving each limb of its case that essentially included production of the witness, tasked with the responsibility of transmitting the samples to the office of Chemical Examiner. Failure is devastatingly appalling with unredeemable consequences that cast away the entire case. Reliance could also be made on the following judgments;-

- (1) "Abdul Ghafoor v/s The State & another" reported as 2022 SCMR 819.
- (2) "Zafar Khan v/s The State" reported as 2022 SCMR 864.
- (3) "Dilawar Ali v/s The State" reported as 2022 SCMR 1066.
- (4) "Subhan Ullah v/s The State" reported as 2022 SCMR 1052.

10. The record also shows that neither in the 'Murasila' nor in the recovery memo nor

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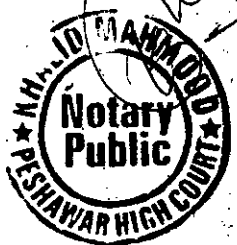
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in the application addressed to the F.S.L, the factum that three number of monograms of "U.N" were affixed on the samples are mentioned, however, in the application addressed to the F.S.L Ex. PW-5/1 only bears the entry of 1/1 monogram of "U.N" (جس میں ایک/ایک عدد نمونہ مہر سرہمپر) but when the same was received by the F.S.L authorities, they were carrying 3/3 monograms, which aspect of the case too cast a serious doubt over the authenticity of the FSL report. Under the Rules and as per the judgment of Apex Court in order to ensure the presence of the seizing officer on the spot and to ensure the fairness and impartiality it has been held that the seizing officer should inscribe the abbreviation of his own name and failure to do so the benefit of the same has to be extended to the accused. Such flaw was found fatal by the Hon'ble Apex Court in the case "Khtar Iqbal v/s The State"

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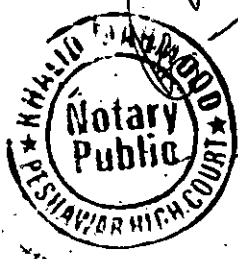


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reported as 2015 SCMR 291 by observing that the most important factor in that connection, which compounded all those doubts and raised a big question mark upon the veracity of the prosecution's case against the appellant, was that after allegedly recovering the contraband substance from the boot of the motorcar driven by the appellant the parcels of the recovered substance were sealed with a monogram reading as SJ and it had been disclosed by Mati-ur-Rehman (P.W.2) before the learned trial Court that the said monogram belonged to one Sameen Jan Inspector who was not even posted at the relevant Police Station at the time of the alleged recovery from the appellant and as a matter of fact at the said time the said Inspector was serving at a Police Station in Quetta. Mati-ur-Rehman (P.W.2) had not been able to advance any explanation whatsoever as to why the recovery officer namely Assistant Director

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Rehmat had not put his own monogram on the seals of the parcels prepared by him and as to why he had used the monogram of some other officer who was not even posted at the relevant Police Station at the relevant time. Similarly, this Court in the case of "Usman Shah v/s The State" reported as 2022 YLR 821 has also reiterated the same stance by holding that the seizing officer while appearing before the Court as PW-2, deposed in his Court's statement that after recovery of contraband, he separated samples for FSI purpose and sealed in parcels Nos.1 to 8 and remaining stuff in parcel No.9 with a monogram of "MK" which, he categorically admitted that same is not pertained to his name and in-fact the same stands for Mukhtiar Khan, S.I., who was stated to be present with the complainant. The alleged recovery seems to be doubtful, rather hints at something to be planted by complainant,

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because said Mukhtiar Khan SI was never cited as a witness during proceedings in the instant case. This witness, after few moments, in his cross-examination contradicted his own statement by deposing that "Mukhtiar Khan S.I. was present in the P.S. at that very time. The MK monogram was lying with me in the official van". Be that as it may, the Seizing Officer, pursuant to spy information, should have been required to have his own monogram with the letters "RK" in his possession to have strengthened and substantiated his version, but he disrupted the episode in a casual manner.

11. The record also shows that in this case it was PW-5 namely Ubaid Khan, the seizing officer who got the information regarding the motorcar and it was he who supervised the whole proceedings of the alleged recovery of contraband, however, the 'Murasila' would show that he acted in dual capacity i.e. as complainant of the instant case

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(D.B) Hon'ble Mr. Justice Muhammad Naeem Anwar
 Hon'ble Mr. Justice Muhammad Ijaz Khan


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as well as an Investigating Officer. It has been an admitted part of the evidence that he has never been authorized by the competent authority to investigate the instant case and thus he after the preliminary proceedings of the recovery of the contraband, separated and prepared the samples on the spot, also proceeded to prepare the site plan, drafted the application for the purpose of F.S.L and produced accused before the Court, taking case property from the *Mall Khana* and not producing the same before the Court as discussed above, therefore, his this self-assigning investigation goes a long way to defeat the very spirit of a fair and honest investigation. Under the law a complainant and an accused person are considered to be two opponents/rivals and as such they are contesting parties, supporting their respective pleas whereas the role of an Investigating Officer is to unearth the truth. An Investigating Officer cannot be expected to be a party in the case and that is what the relevant law on subject speaks. Rule No. 25.2 (3) of

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The Police Rules, 1934 as well as Article 18 of The Police Order, 2002 being relevant for the present controversy the same are reproduced below;-

25.2 (3) Within the limits of his charge he is the chief investigating officer, and as such he shall conduct all investigations in persons, so far as circumstances permit. His responsibility in this matter must be carefully maintained. Should it be necessary, owing to the absence of the sub-inspector or any other cause, for a subordinate to undertake an investigation, the sub-inspector shall satisfy himself by perusing the case diary and questioning the investigating officer that the investigation has been fully and properly conducted, shall remedy what is defective, and take over the investigation as soon as he is free to do so, except in a case originally investigated by an assistant sub-inspector where he will be guided by rule.

Article 18. Separation of investigation function.-

(1) There shall be separation of investigation from other functions of the Police.

(2) Subject to clause (3), the District Investigation Branch shall investigate, under the supervision of the Head of District Investigation Branch, all cases registered in the District.

(3) The Provincial Police Officer may notify the offences which shall be investigated by the investigation officer in the police station under the supervision of the officer-in-charge of the police station and if an offence in a case is required to be investigated by the District Investigation Branch then the entire case shall be investigated by the District Investigation Branch.

(4) The District Investigation Branch, other than in the Capital City District or a City District, shall be headed by a police officer not below the rank of a Superintendent of Police and shall consist of such other police officers as the Provincial Police Officer may determine.

The aforesaid rule unmistakably

requires an Investigating Officer to dig-out the

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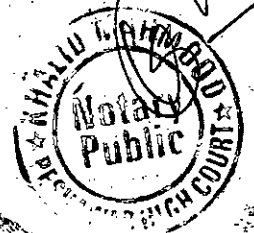


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truth and actual facts of the case and he should not be guilty of a partisan approach. In view of the above legal aspect of the case if applied to the case of the appellants, it is established that the complainant by acting as an Investigating Officer could not be expected fairness and transparency especially when the appellants in their statements recorded under section 342 Cr.P.C have alleged a specific plea of *malafide* involvement by the local levy officials. It is also relevant to mention here that in the recent past the trend of acting by the complainant as an Investigating Officer in narcotics cases have been deprecated by this Court as well as by various Courts of the country and it has been seriously observed that a complainant could not be an Investigating Officer as such practice goes a long way to defeat the object of a fair, honest

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(D.B) Hon'ble Mr. Justice Muhammad Naeem Anwar
Hon'ble Mr. Justice Muhammad Ijaz Khan

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and transparent investigation. In the case of "State through Advocate General, Sindh v/s Bashir and others" reported as PLD 1997 Supreme Court 408 it was held by the Apex Court that the Investigating Officer is as important witness for the defence also and in case the head of the police party also becomes the Investigating Officer, he may not be able to discharge his duties as required of him under the Police Rules. In the case of "Fahad v/s The State" reported as 2022 P Cr.LJ 279 it was held the Sindh High Court that it is also pertinent to mention here that in this case complainant/ SIP Muhammad Khan had not only lodged FIR but also conducted investigation of the case himself as well as he himself took the case property for Chemical Examination. In our view it is/was not appropriate that the person who is

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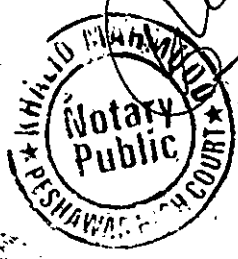
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complainant of a case could investigate the same case and took the narcotic item for report because in order to keep all fairness of thing the rule of propriety demands that it must be investigated by an independent officer but not by the complainant himself. In the case of "Zeenat Ali v/s The State" reported as 2021 P Cr. LJ 1294 it was held by the Islamabad High Court that in the present case the complainant had himself conducted the investigation of the case, however, the person who was complainant of the case in order to keep all fairness of thing could not investigate the same case, which must be investigated by an independent officer but not by the complainant himself. Investigation by complainant while functioning as Investigating Officer is a biased investigation.

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12. It is also relevant to mention here that it is the case of prosecution that a motorcar

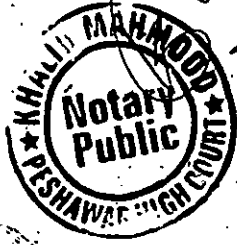
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was found parked on the roadside and on search of the trunk of the said motorcar the alleged recovery of contraband has been made, however, this story by itself appears to be unreasonable and does not appeal to sanity that as to why the appellant would be on the driving seat of the motorcar and that too at odd hours of a cool winter night, without having any justified reason for his presence on the spot. It is also relevant mention here that it is not the case of prosecution that the said motorcar belongs to the appellant namely Jehandad Khan and it is also the case of prosecution that the contraband was not recovered from a visible place rather it was lying in the trunk (ڈبگی) of the said motorcar and thus the prosecution has not been able to prove with reasonable and considerable piece of evidence the presence of the appellant on the spot as well as his conscious knowledge

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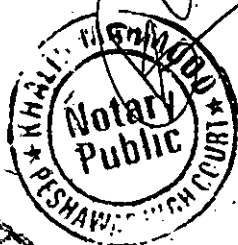
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about the alleged contraband lying in the trunk of the motorcar.

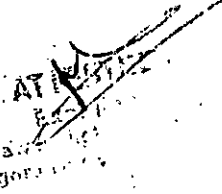
13. As far as the case of co-appellant namely Farhan Khan is concerned; admittedly he was neither arrested on the spot nor any recovery of contraband was made from his personal possession or on his pointation and since while discussing the case of the co-appellant namely Jehandad Khan, it has been held that the prosecution has not been able to prove, the safe transmission of the parcels/samples containing contraband from the spot to the police station and its safe custody inside the police station as well as conscious knowledge of the contraband on his part, therefore, on the basis of the aforesaid lacunas in the case of prosecution as well as the ground exclusively attracted to the case of present appellant namely Farhan Khan, he is entitled for its benefit in shape of his acquittal.

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A circular notary seal for a Notary Public in Peshawar, High Court. The seal contains the text 'KHAN', 'Notary Public', and 'PESHAWAR HIGH COURT'.

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14. As far as conviction of appellant under sections 171/471/420/34 PPC is concerned, suffice it say that the appellant is employee of police department and as per the report of Excise & Taxation Officer Ex.PW5/19 placed on file the in-signed number plat was allotted to the squad of the Chief Secretary of Khyber Pakhtunkhwa, however, the prosecution has not been able to brought on record an iota of evidence that as to who is the owner of the motor car or as to whether the motor car is the ownership of a private person or is the property of a government department or of police department. As far as the recovery of two green number plates from the trunk of the motor car is concerned, suffice it to say that it is not the case of prosecution that subject motor car is the ownership of the appellant

2023
 Notary Public
 PESHAWAR HIGH COURT


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Jehandad and as in the case of recovery of contraband from a place in the motorcar, which is not visible, it has been held that it was the duty of the prosecution to prove the conscious knowledge of the appellant, the aforesaid principal fully attracts to the case of two green number plates, as to this extent too prosecution was duty bound to prove those green number plates which were recovered from an invisible place of the motorcar were laying with the knowledge of the appellant, however, the prosecution has not made any appreciable efforts to prove the conscious knowledge of the appellant, therefore, legally sentence under these heads too are not sustainable.

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A circular notary seal for a Notary Public in Bahawalpur, High Court. The seal contains the text "Notary Public" and "BAHAWALPUR HIGH COURT".

15. It is settled since long that for giving benefit to an accused, it is not essential that there should be many grounds for the same, even a single doubt is sufficient to

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extend its benefit to an accused person as it is the cardinal principle of criminal administration of justice that let hundred guilty persons be acquitted but one innocent person should not be convicted. In the case of "Bashir Muhammad Khan v/s The State" reported as 2022 SCMR 986, the Hon'ble Apex Court has held that single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a matter of grace and concession but as a matter of right. The conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution's case is to be resolved in favour of the accused and burden of proof is always on prosecution to prove its case beyond reasonable shadow of doubt. Similarly, in the case of "Khalid Mahmood alias Khaloo v/s The State" reported as 2022 SCMR 1148, the Hon'ble Apex Court has reiterated the same rational by observing that in these circumstances, a dent in the

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 Khalid Mahmood
 Notary Public
 Peshawar High Court



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prosecution's case has been created, benefit of which must be given to the appellant. It is a settled law that single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a matter of grace and concession but as a matter of right. The conviction must be based on unimpeachable, trustworthy and reliable evidence. In the case of "Muhammad Mansha v/s The State" reported as 2018 SCMR 772, the Hon'ble Apex Court has also held that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be

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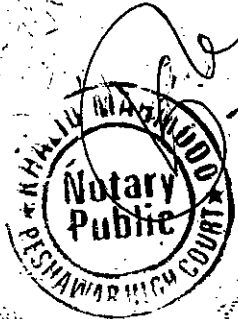


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convicted". In the case of "Tariq Pervaiz v/s
The State" reported as 1995 SCMR 1345 ,
the Hon'ble Apex Court has held that the
concept of benefit of doubt to an accused
person is deep-rooted in our country. For
giving him benefit of doubt, it is not
necessary that there should be many
circumstances creating doubts. If there is a
circumstance which creates reasonable doubt
in a prudent mind about the guilt of the
accused, then the accused will be entitled to
the benefit not as a matter of grace and
concession but as a matter of right. Reliance
in this behalf can be made upon the cases of
Tariq Pervez v. The State (1995 SCMR
1345), Ghulam Qadir and 2 others v. The
State (2008 SCMR 1221), Muhammad
Akram v. The State (2009 SCMR 230) and
Muhammad Zaman v. The State (2014
SCMR 749).

16. For what has been discussed
above, this Court is of the firm view that the



prosecution has failed to prove its case against the appellants beyond reasonable doubt, therefore, their conviction cannot be maintained. Resultantly, while extending them the benefit of the doubt both these connected criminal appeals bearing No. 243-M & 259-M of 2022 are allowed and the impugned order/judgment of conviction and sentence dated 03.09.2022 recorded by the learned trial Court is set aside and consequently the appellants namely Jehandad Khan and Farhan Khan are acquitted of the charges levelled against them. They be released forthwith from the jail, if not required in any other case.

17. These are reasons for our short orders of even dated.

Announced
DI. 15.03.2023

[Signature]
JUDGE

Certified to be true Copy

[Signature]
JUDGE

EXAMINER
Peshawar High Court Bench
Mingora/Dar-ul-Qaza, Swat

S.No. *55*
Name of Applicant *Jehandad Khan*
Date of Presentation of Applicant *26/9/23*
Date of Completion of Copies *26/9/23*
No of Copies *20*
Urgent Fee *1500/-*
Fee Charged *1500/-*
Date of Delivery of Copies *26/9/23*



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17/04/2023
W/R

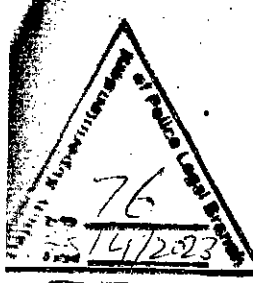
خدمت جناب۔ کیشل سٹی پولیس افسیر صاحب پشاور

مخوف :- حکیمانہ اپیل برائے بحالی ملازمت و بر خلاف

ارڈر نمبر 3521-27/PA مورخہ 11/16/2022 جکی

بہاؤ پر سائل کو ملازمت سے برخواست کیا گیا ہے۔

595
22/04/2023
East



جناب عالی! سائل حسب ذیل عرض رساں ہے :-

1۔ یہ کہ سائل سال 2007ء کو بطور کنسٹیبل بھرتی ہو کر ریکروٹ

ہوا۔ چند وقت سے پاس کیا ہے۔

2۔ یہ کہ سائل نے حکم پولیس میں تقریباً 15 سال بے داغ ملازمت

انجام دی ہے۔ اور کبھی افسران مالدار کو شکایت کا موقع نہیں دیا ہے۔

3۔ یہ کہ مورخہ 12/11/2021 کو میرے دوست فرحان نے سفید ڈھیری کے

من سائل کو ہیکر لگانے کا جھانڈہ دیکر سائل اس کے ساتھ

دوستی کی بناء پر گاڑی میں بیٹھ کر ہیکر لگانے کی خاطر اس کے

ساتھ اس کے گاڑی میں روانہ ہوا۔

4۔ یہ کہ سائل کو کوئی علم نہیں تھا کہ گاڑی میں کیا ہے۔ لیکن سبھی

فرحان نے سائل سے چھپ کر منشیات رکھ رکھی تھی۔

5۔ جب سائل جائے وقوع پر پہنچا تو جونہی مالدار کنڈلیوں والوں نے

اشارہ دیکر گاڑی فرحان رکوائی اور تلاشی لینے پر بھروسہ

برآمد ہوا تو سبھی فرحان موقع سے فرار ہو کر جبکہ سائل باورس

حقیقت سے بے خبر ہو کر لہو لہو پولیس اہلکاروں نے سائل کو

گرفتار کر کے سائل کے خلاف مقدمہ عد 125 مورخہ 11/12/2021

جرم DykP CNISA-9 لہو لہو پولیس و تھانہ درج رہبر ہو کر بعد فرحان

سے نافذ کیا گیا۔

FMC

For ready

N



DSP/L

For Commr

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6 یہ کہ چونکہ سائل نے قصور اور لہذا عدالت محترمہ میں مقدمہ کی پیروی کرنے کے آخر کار عدالت عالیہ دارالقضاء سوات منگورم نے بحوالہ فیصلہ مورخہ 15/3/2023 کو بری کر دیا گیا۔

7 یہ کہ اس دوران سائل نے خلاف حکیمانہ ماروائی شروع ہو کر حسین سائل کو سماعت کا موقع نہیں دیا گیا۔ اور نہ ہی سائل کی شنوائی ہوئی۔

8 یہ کہ سائل نے خلاف یکطرفہ ماروائی ہو کر سائل کو ملزومت سے بہر خواست لیا گیا۔

9 یہ کہ سائل نے گناہ ہے۔ ایک طرف خود کار و مقدمہ سے کھینچا گیا جبکہ دوسری طرف ملزومت سے بہر خواست لیا گیا ہے۔

10 یہ کہ سائل باطل حکم دار ہے۔ اور سب سے زیادہ گناہی و معاشی بدعالی کا شکار ہے۔

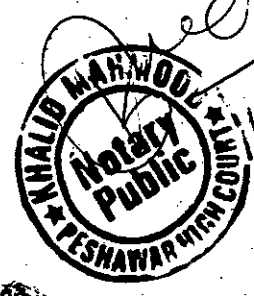
اس لئے درخواست حضور العزیز کے رحم و کرم سے عدالت کو مد نظر رکھ کر سائل کو ملزومت پر دوبارہ بحال و فاکر مشکور فرمائیں۔ دعا ہے کہ سائل کو نقل منسلح عدالت عالیہ سے ہمراہ لے جائیں۔

عقربہ

ریکا تانہدار جہانزاد سابقہ منشی نمبر 2127 حال ڈرہن

Contact: No. 0315-9016004.

0300-9010423 (مقامی صاف)



15-9-23



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OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

ORDER.

This order will dispose of the departmental appeal preferred by **Ex-Constable Jehan Dad Khan No. 2127**, who was awarded the major punishment of “dismissal from service” under KP PR-1975 (amended 2014) by SP/HQr: Peshawar vide OB No. 3045, dated 16.11.2022.

2- Brief facts leading to the instant appeal are that the defaulter Constable was proceeded against departmentally on the charges of his involvement in a criminal case vide FIR No. 125, dated 11.12.2021, u/s 9(D) KPCNSA, PS Levy Post Malakand.

3- He was issued Charge Sheet and Summary of Allegations by SP/HQr: Peshawar. DSP Complaint & Enquiry, Peshawar was appointed as Enquiry Officer to scrutinize the conduct of the accused official. The Enquiry Officer after conducting departmental enquiry submitted his findings in which he was found guilty. The competent authority in light of the findings of the Enquiry Officer awarded him the major punishment of dismissal from service.

4- He was heard in person in Orderly Room. During personal hearing, he was given an opportunity to prove his innocence. However, he failed to submit any plausible explanation in his defense. Therefore, his appeal for setting aside the punishment awarded to him by SP/HQr: Peshawar vide OB No. 3045, dated 16.11.2022 is hereby **rejected/filed being also time barred for 04 months and 12 days.**

“Order is announced”

CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 2204-30 /PA, dated Peshawar the 23/ 08/2023

Copies for information and necessary action to the:-

1. SSP/Investigation Peshawar.
2. AD/IT CCP Peshawar.
3. EC-II, AS & PO.
4. FMC along with complete Fouji Missal.
5. Official concerned.



Annexure (61) E P 45

12402/SB

BEFORE THE WORTHY INSPECTOR GENERAL OF POLICE KHYBER PAKHTUNKHWA PESHAWAR

REVISION PETITION UNDER RULE 11-A OF KHYBER PAKHTUNKHWA POLICE RULES, 1975 (AMENDED 2014) AGAINST ORDERS DATED 2824-30/PA DATED 23.08.2023 OF CAPITAL CITY POLICE OFFICER PESHAWAR

Respected Sir,

1. That the applicant was appointed as Constable in year 2007.
2. That the applicant served Police Department for 16 years and performed duties with full zeal, zest to the entire satisfaction of Competent Authority.
3. That, on 11.12.2021, the applicant was accompanying his friends in a vehicle and was unaware of narcotics in it, when Police halted us and after recovering narcotics, charged him along with his friend in Criminal case vide FIR No. 125 dated 11.12.2021 u/s 9(D)KPCNSA PS Levy Post Malakand.
4. That, the applicant after enquiry was awarded major punishment of dismissal from service vide order dated 16.11.2022, issued by the SP/ HQrs: Peshawar at a time when the applicant was behind bars and hence could not file departmental appeal in time.
5. That, the applicant was acquitted vide Hon'ble Peshawar High Court, Darul Qaza, Swat Order dated 15.03.2023 and thereafter filed departmental appeal. However same was rejected for being time barred for 04 months and 14 days.
6. That, as per Rule 11 of Police Rules, 1975 limitation of time for filing appeal shall be one month from the date of receipt of impugned order.
7. That, once the applicant falsely and mistakenly charged in the FIR was acquitted by the Hon'ble High Court, he is entitled for all back benefits legally. Reference is placed on Circular Order No. 01/2020.
8. That the applicant was erroneously charged in FIR which damaged his reputation. Also the applicant belongs to poor family background and is the sole source of livelihood of his family.

PRAYER:-

Keeping in view the above, it is therefore, requested that above mentioned dismissal orders dated 16.11.2022 & 23.08.2023 may kindly be set aside and applicant may kindly be reinstated in service, please.

Your's obediently,

Jehan Dad

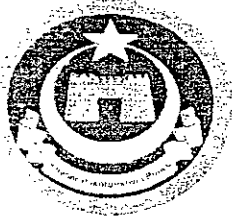
Jehan Dad
Ex- FC No. 2127/ CCP
Mob: 0315-9016004
0300-9010425

Inspector General of Police Khyber Pakhtunkhwa	
<input type="checkbox"/> Addl. IGP Hqrs	<input type="checkbox"/> AIG Training
<input type="checkbox"/> Addl. IGP (Ops)	<input type="checkbox"/> AIG OPS
<input type="checkbox"/> Addl. IGP (Inv)	<input type="checkbox"/> AIG MMS
<input type="checkbox"/> DIG IAP	<input type="checkbox"/> AIG Logistics
<input type="checkbox"/> DIG Hqs.	<input type="checkbox"/> AIG Welfare
<input type="checkbox"/> DIG (PES)	<input type="checkbox"/> SP Admin
<input type="checkbox"/> Commr. PSU	<input type="checkbox"/> IGP
<input type="checkbox"/> Commr. Pesh. Force	<input type="checkbox"/> Dir. PS
<input type="checkbox"/> DIG FRP	<input type="checkbox"/> DSP PAS
<input type="checkbox"/> DG PSH	<input type="checkbox"/> DSP to IGP
<input type="checkbox"/> DIG Training	<input type="checkbox"/> Eng. Officer CPO
<input type="checkbox"/> DIG (Inv. Admin)	<input type="checkbox"/> Audit Officer
<input type="checkbox"/> DIG SOI	<input type="checkbox"/> IGP Secy
<input type="checkbox"/> DIG T-MS	<input type="checkbox"/> IGP Secy
<input type="checkbox"/> DIG C & A	<input type="checkbox"/> IGP Secy
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Signature _____	
Date 09/06/2023	



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Annexure (62) (F) P-46



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar.

No. SI/ 2283 /23, dated Peshawar the 05/09/2023.

To: The Capital City Police Officer,
Peshawar.

Subject: REVISION PETITION.

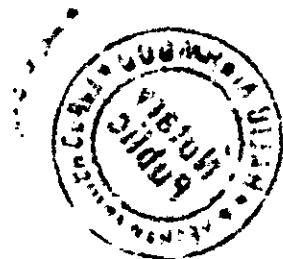
Memo:

The Competent Authority has examined and filed the revision petition submitted by Ex-FC Jehan Dad Khan No: 2127 of CCP Peshawar, against the punishment of dismissal from service awarded by SP HQrs vide Order Endst: No. 3521-27/PA/SP dated 16.11.2022, being badly time barred.

The applicant may please be informed accordingly

(Signature)
3.19/23
(AFSAR JAN)
Registrar,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar





(62)

SCANNED
KPST
Peshawar

25/1/24

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.1956/2023.

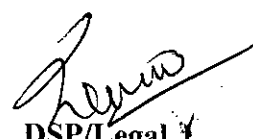
Ex-Constable Jehandad Khan No.2127 of CCP Peshawar..... Appellant.

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others..... Respondents.

I-n-d-e-x

S.NO	DOCUMENTS	ANNEXURE	PAGES
1	Reply		1 to 4
2	Authority		5
3	Affidavit		6
4	Charge Sheet	A	7
5	Statement of allegations	B	8
6	Enquiry Report	C	9
7	FSCN	D	10


DSP/Legal,
CCP, Peshawar.

① 63

SCANNED
KPST
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

25/1/24

Service Appeal No.1956/2023.

Ex-Constable Jehandad Khan No.2127 of CCP Peshawar..... **Appellant.**

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others.....**Respondents.**

REPLY BY RESPONDENTS NO. 1, 2&3.

Khyber Pakhtunkhwa
Service Tribunal

Respectfully Sheweth:-

Diary No. 10764

PRELIMINARY OBJECTIONS:-

Dated 25/1/24

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
3. That the appellant has not come to Hon'ble Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi to file the instant appeal.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Hon'ble Tribunal.
7. That the appeal is not maintainable being devoid of any merit.

REPLY ON FACTS:-

1. Incorrect. The appellant was appointed as constable in the year 2007 in the respondent department. He has not a clean service record and contains 02 bad entries and 01 Minor punishment on different occasions during his service. The performance of the appellant during service was neither satisfactory nor up to the mark and his involvement in a criminal case vide FIR No.125 dated 12.12.2021 u/s 9(D) KPCNSA PS Levy Post Malakand with a huge quantity of 11 KG & 340 grams Chars speaks volume of his inefficiency. In this regard, he was issued charge sheet with statement of allegations and to dig out the real facts a regular inquiry was conducted, wherein the charges were proved. The appellant also admitted in the instant para that he was arrested on the spot by the police after the commission of the offence meaning thereby that the appellant was actively involved in the offence of moral turpitude.
2. Incorrect. The appellant was proceeded against departmentally on the charges of his involvement in a criminal case vide FIR No.125 dated 12.12.2021 u/s 9 (D) KPCNSA PS Levy Post Malakand. Besides commission of Criminal Offence, the appellant being member of a disciplined department committed professional misconduct aliened with criminality which falls under moral turpitude as such the above act of the appellant is a bad stigma for the entire Police Force, which is against the norms of disciplined force resultantly, departmental proceedings were initiated against the appellant and DSP Complaint & Enquiry Peshawar was appointed as E.O to probe into the matter. The charge sheet with statement of allegations was issued to him vide No.312/E/PA dated 27.12.2021. The enquiry officer during the course of enquiry, had fulfilled the departmental proceedings and after receipt of

the findings, Final Show Cause Notice was issued vide No.312-E/PA, SP/HQrs: dated 18.02.2022 and delivered on his home address which was received by his cousin, but he failed to appear and defend himself. After fulfilling all codal formalities, the charges leveled against him were proved; hence he was awarded major punishment of dismissal from service vide OB No. 3045, dated 16.11.2022 under Police Rules 1975 (amended 2014). (Copy of charge sheets, statement of allegations, enquiry report and FSCN are attached as A, B ,C& D).

3. Correct to the extent that the appellant was convicted and sentenced for life imprisonment by the learned Sessions Judge Malakand.
4. Para pertains to record of court, hence needs no comments. Furthermore, the prime duty of police is to protect life, property and liberty of citizens, preserve and promote public peace. Instead the appellant committed gross misconduct by indulging himself in moral turpitude offences which speaks volume of his misconduct and unlikely of becoming a good police officer.
5. Para pertains to record. Furthermore, Court proceedings and departmental proceedings are two different entities and can run side by side. Acquittal in a criminal case would not lead to exoneration of a civil servant in departmental proceedings. His act brought a bad name for the entire force. Similarly, the august Supreme Court of Pakistan in its judgment reported Dr. Sohail Hassan Khan and others vs. Director General (Research), Livestock and Dairy Development Department. Punjab, Lahore and others (2020 SCMR 1708), held that a civil servant cannot escape from departmental proceedings or consequences thereof on account of his acquittal/exoneration in a criminal charge arising out of the same impugned transaction; these two are entirely different jurisdictions with different standards of proof as well as procedures; criminal prosecution requires strict proof through a narrowly jacketed procedure and, thus, State's failure on criminal plane does not provide shield of double jeopardy to a delinquent officer. In the case of District Police Officer Mianwali and 2 others vs. Amir Abdul Majid 2021 SCMR 420 the august apex Court again held that a civil servant facing expulsive proceedings on departmental side on account of his indictment in criminal charge may not save his job in the event of acquittal as the department still may have reasons/material, to conscionably consider his stay in the service as inexpedient; there are additional reasons to disregard his acquittal inasmuch as criminal dispensation of justice involving corporeal consequences, comparatively, requires a higher standard of proof so as to drive home the charge beyond doubt, an exercise to be routed through a procedure stringently adversarial, therefore, factuality of the charge notwithstanding, procedural loopholes or absence of evidence, sufficient enough to sustain the charge, at times occasion in failures essentially to maintain safe administration of criminal justice out of abundant caution. Departmental jurisdiction, on the other hand, can assess the suitability of a civil servant, confronted with a charge through a fact finding method, somewhat inquisitorial in nature without heavier procedural riders, otherwise required in criminal jurisdiction to eliminate any potential risk of error, therefore, the Tribunal has undoubtedly misdirected itself in reinstating

the respondent, considering his acquittal as the sole criterion in isolation to the totality of circumstances where under he had succeeded to vindicate his position.

6. Incorrect. The appellant filed time barred departmental appeal, which was thoroughly processed and an ample opportunity of hearing was provided to the appellant by appellate authority but the appellant failed to defend himself with plausible/justifiable grounds, hence his appeal was rejected/filed on facts and limitation vide order No.2824-30/PA dated 23.08.2023.
7. Incorrect. The appellant then preferred revision petition before the Revision Board, which after due consideration was also filed/rejected because the charges leveled against him were proved beyond any shadow of doubt and it was also badly time barred vide No. S/2283/23 dated 05.09.2023.
8. The appellant being a member of a disciplined force committed gross misconduct by involving himself in a heinous offence. Moreover, appeal of the appellant being devoid of merits and limitation may be dismissed on the following grounds.

REPLY ON GROUNDS:-

- A. Incorrect. The appellant was treated as per law/rules. Furthermore, no violation of the Constitution of Pakistan 1973 has been done by the respondents and the punishment was in consonance with the gravity of misconduct. As per Khyber Pakhtunkhwa ESTA code, appellant shall be reprimanded as per quantum of misconduct committed by him and he was rightly punished as per his guilt.
- B. Para is totally incorrect and misleading as the appellant was issued charge sheet with statement of allegations due to involvement in the above mentioned allegations.
- C. Incorrect. Detailed departmental enquiry was conducted against him in accordance with law/rules. Enquiry officer after detailed probe into the matter reported that the charges against the appellant were proved. The appellant was provided full opportunity of defense to prove himself innocent, but he failed to prove himself innocent. Hence he was rightly awarded the major punishment.
- D. Incorrect. The appellant was issued Final Show Cause notice No.312-E/PA, SP/HQrs: dated 18.02.2022 and delivered on his home address which was received by his cousin, but he failed to appear and defend himself.
- E. Incorrect. The charges leveled against him got proved. The appellant being a member of a disciplined force, committed gross misconduct. Acquittal in a criminal case would not ipso facto lead to exonerate Civil Servant in departmental proceedings. Involvement in a criminal case of 9(D) KPCNSA is a heinous offence comes under the ambit of moral turpitude.
- F. Incorrect. Court proceedings and departmental proceedings are two different entities which can parallel as per dicta of august court of Supreme Court of Pakistan.
- G. Incorrect. The appellant availed the opportunity of personal hearing however, he failed to advance any plausible explanation in his defense.


(4)

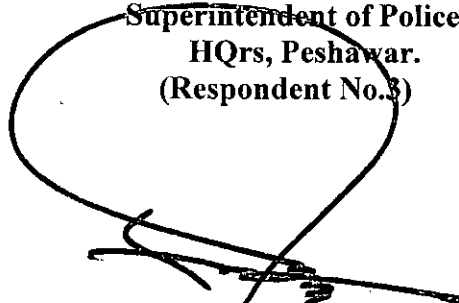
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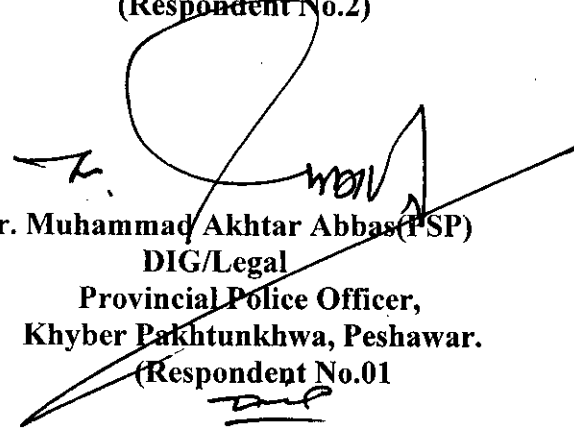
- H. Incorrect. Detailed departmental enquiry was conducted against him in accordance with law/rules. Enquiry officer after detailed probe into the matter reported that the charges against the appellant were proved. The appellant was provided full opportunity of defense to prove himself innocent, but he failed to prove himself innocent. The appellant defamed the image of police department in the eyes of general public.
- I. Respondents also seek permission of this Hon'ble Tribunal to raise additional grounds at the time of arguments.

Prayers:-

Keeping in view the above stated facts & reasons it is, most humbly prayed that the appeal of the appellant being devoid of merits and limitation, may kindly be dismissed with costs please.


(Raham Hussain)
Superintendent of Police,
HQrs, Peshawar.
(Respondent No.3)


(Syed Ashfaq Anwar)PSP
Capital City Police Officer,
Peshawar.
(Respondent No.2)


Dr. Muhammad Akhtar Abbas (PSP)
DIG/Legal
Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.01)

5

67

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.1956/2023.

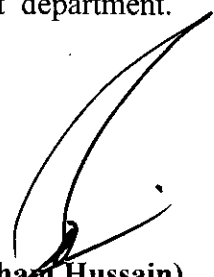
Ex-Constable Jehandad Khan No.2127 of CCP Peshawar..... **Appellant.**

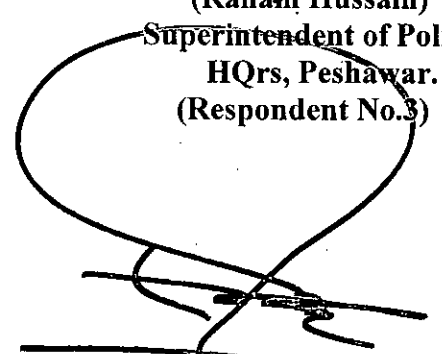
VERSUS

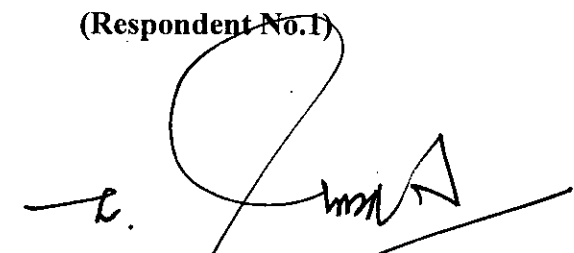
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others.....**Respondents.**

AUTHORITY.

We respondents are hereby authorize Mr.Inam Ullah DSP legal of Capital City Police, Peshawar to attend the Hon'ble Court and submit written reply, statement and affidavit required for the defense of above service appeal on behalf of respondent department.


(Raham Hussain)
Superintendent of Police,
HQrs, Peshawar.
(Respondent No.3)


(Syed Ashfaq Anwar)PSP
Capital City Police Officer,
Peshawar.
(Respondent No.1)


Dr. Muhammad Akhtar Abbas(PSP)
DIG/Legal, CPO
For Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.02)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.1956/2023.

Ex-Constable Jehandad Khan No.2127 of CCP Peshawar..... **Appellant.**

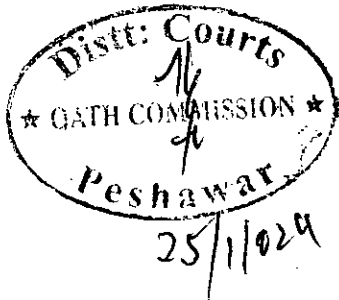
VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others.....**Respondents.**

AFFIDAVIT.

We respondents do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense have been struck off. /cost

ATTESTED



(Raham Hussain)
Superintendent of Police,
HQrs, Peshawar.
(Respondent No.3)

(Syed Ashfaq Anwar)PSP
Capital City Police Officer,
Peshawar.
(Respondent No.1)

① ② ③ ④ ⑤ ⑥ ⑦ ⑧ ⑨ ⑩ ⑪ ⑫ ⑬ ⑭ ⑮ ⑯ ⑰ ⑱ ⑲ ⑳

7

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, do hereby, charge you Constable Jehandad Khan No.2127 of Capital City Police Peshawar with the following allegation.


"It has been reported by DC/Commandant Malakand Levies Malakand vide letter No.9487/LC dated 14.12.2021 that you Constable Jehandad Khan No.2127 were arrested by Malakand Levies with illegal substance & FIR No.125 dated 11.12.2021 u/s 9(D)KPCNSA, Levy Post Thana were registered against you. This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit to this office or the Enquiry Officer your written reply within 07-days of the receipt of this charge sheet.

Your written defence, if any, should reach this office or the Enquiry Officer within the specified period, failing which it shall be presumed that you have nothing to put in your defence and in that case an ex-parte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

Attested


Tue

(70) 8 (PP)

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DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Jehandad No. 2127 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

STATEMENT OF ALLEGATION

"It has been reported by DC/Commandant Malakand Levies Malakand vide letter No.9487/LC dated 14.12.2021 that Constable Jehandad Khan No.2127 was arrested by Malakand Levies with illegal substance & FIR No.125 dated 11.12.2021 u/s 9(D)KPCNSA, Levy Post Thana were registered against him. This amounts to gross misconduct on his part and is against the discipline of the force."

For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and DSP-Complaints is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Police Disciplinary Rules, 1975, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.

3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.

*Attested
Law*

SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 312 /E/PA, dated Peshawar the 27/12 /2021

1 DSP-Complaints is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.

2. Official concerned



OFFICE OF THE
DEPUTY SUPERINTENDANT OF POLICE
COMPLAINTS & ENQUIRY
CCP, PESHAWAR



NO. 46 /PA,

DATE: 19/01 /2022

To: The Superintendent of Police HQrs,
Peshawar.

Subject:- ENQUIRY AGAINST CONSTABLE JEHANDAD KHAN NO. 2127

Memo:

Kindly refer to your office Dy: No. 312/E/PA, dated 27/12/2021 on the subject cited above.

No. 312-2

1321-1-21

ALLEGATIONS:-

"It has been reported by DC/Commandant Malakand Levies Malakand vide letter No. 9487/LC dated 14.12.2021 that constable Jehandad Khan No. 2127 was arrested by Malakand Levies with illegal substance & FIR No. 125 dated 11.12.2021 u/s 9(D) KPCNSA, Levy Post Thana were registered against him. This amounts to gross misconduct on his part and is against the discipline of the force".

PROCEEDINGS:-

To dig out the real facts, the alleged Constable Jehandad Khan No. 2127 was called through summon/parwana but he did not appear to the office of undersigned for hearing and failed to submit written statement in his defense.

STATEMENT OF MASI POLICE LINES:-

MASI Police Lines stated that alleged constable Jehandad No. 2127 was contacted time by time on his cell No. 0315-9016004 but switched off and then his brother namely Shihriyar was contacted on his cell No. 0302-5582683 and informed about the enquiry and in response that he will be inform him.

RECOMMENDATION:-

Keeping in view of the above facts, figure, it came to light that alleged FC Jehandad No. 2127 was contacted time and again but he didn't appear the before the undersigned for hearing. His Brother Shahriyar was contacted by his cell No. 0302-5582683 from this office land line and informed about the enquiry and he replied that he will inform him but till date he not appeared before the undersigned for hearing. It is therefore, the undersigned is of the opinion that alleged FC Jehandad No. 2127 may kindly be recommended for ex-parte proceedings, if agreed please.

Submitted Please.

Encl: (15 pages)

Sajjad

DEPUTY SUPERINTENDENT OF POLICE
COMPLAINT & ENQUIRY
CAPITAL CITY POLICE PESHAWAR

*Call him in
DSP/SS use P.S CN.*

*B.O
Is the accused
released from
custody?*

For opinion

*Sp. Hqrs.
As per telephonically
conversation FC Jehandad
Khan 2127 released with
in one month after the registration
of FIR*

Superintendent of Police
HQrs: CCP Peshawar

*Arrested
Lahore*

2022

(72) (10) (3)

FINAL SHOW CAUSE NOTICE


I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Jehandad Khan No.2127 the final show cause notice.

The Enquiry Officer, DSP Complaint & Enquiry, after completion of departmental proceedings, has recommended you for ex-parte decision for the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you Constable Jehandad Khan No.2127 deserve the punishment in the light of the above said enquiry report.

And as competent authority, has decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975.

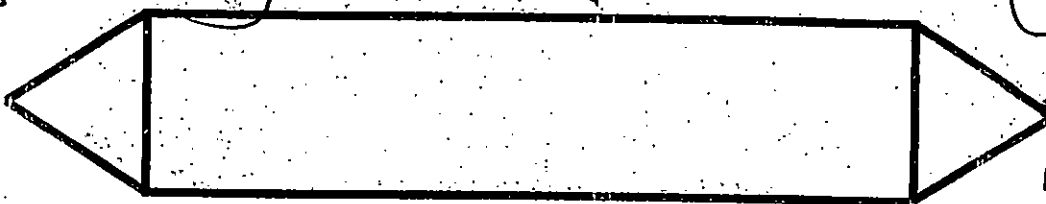
1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 312-E/PA, SP/HQrs: dated Peshawar the 18/2 2022.

Copy to official concerned

Attested
Rana



SCANNED
KPST
Peshawar

2023 منجانب اللہ

صائب الحق نام لکھی

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ

آں مقام کے لیے لکھو اللہ صلیب لکھی

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ تیز وکیل صاحب کو راضی نامہ کرنے ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ار عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخنتہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ کہذا وکالت نامہ لکھدیا کہ سندر ہے۔

صائب الحق

2023

مئی

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المرقوم

Acceptance واہ العبد