


FORM OF ORDER SHEET

Court of _____

Appeal No. 1138/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	09/08/2024	<p>The appeal of Mr. Riaz ur Rehman presented today by Mr. Fazal Shah Mohmand Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 13.08.2024. Parcha Peshi given to counsel for the appellant.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

CM No _____/2024

in

Service Appeal No 1128/2024

Riaz Ur RehmanAppellant

V E R S U S

RPO & othersRespondents

APPLICATION FOR FIXATION OF TITLED SERVICE APPEAL AT PRINCIPLE SEAT OF THIS HONORABLE TRIBUNAL AT PESHAWAR.

Respectfully Submitted:-

1. That the above titled service appeal is being filed today i.e 02.08.2024 in which no date of hearing is fixed.
2. That the counsel of the appellant are seated at Peshawar hence the applicant requests for fixation of the titled Service Appeal at principal seat of this honorable Tribunal at Peshawar.
3. That the rules on the subject are also very much clear which favors fixation of Service Appeals at the convenience of the parties.
4. That there is no legal bar on fixation of titled Service Appeal at principal seat of this honorable Tribunal which would rather cause convenience to the parties.

It is therefore most humbly prayed, that on acceptance of this application, the titled Service Appeal, may kindly be fixed at the principal seat of this honorable Tribunal at Peshawar.

Dated:--09-08-2024

Riaz
Appellant

Through

Fazal Shah
Fazal Shah Mohmand
Advocate Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No 1128/2024

Riaz Ur RehmanAppellant

V E R S U S

RPO & othersRespondents

I N D E X

S. No	Description of documents	Annexure	Pages
1.	Service Appeal with Affidavit	***	1-4
2.	Application for condonation of delay with Affidavit	***	5-6
3.	Copy of FIR	A	7
4	Copy of Order dated 03-07-2017	B	8
5.	Copy of Judgment dated 08-05-2024	C	9-32
6.	Copies of Departmental Appeal & Order Dated 05-07-2024	D & E	33-34
7.	Wakalnama		35

Dated:-09-08-2024

Appellant

Through


Fazal Shah Mohmand ASC,

Baseer Shah

&


Ibad Ur Rehman Khalil

Advocates High Court

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841

Email:- fazalshahmohmand@gmail.com

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No 1128 /2024

Riaz Ur Rehman Ex Head constable No 536, District Police Buner.

.....Appellant

V E R S U S

1. Regional Police Officer, Malakand at Saidu Sharif, Swat.
2. District Police Officer Buner.

.....Respondents

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 05-07-2024 PASSED BY RESPONDENT NO,1 WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT FILED AGAINST THE ORDER DATED 03-07-2017 HAS BEEN REJECTED.

PRAYER:-

On acceptance of this appeal the impugned Order dated 05-07-2024 and 03-07-2017 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Respectfully Submitted:-

1. That the appellant was initially enlisted as constable on 26-07-2007 and promoted to Head constable in the year 2014 and since appointment he performed his duties with honesty and full devotion and to entire satisfaction of the high ups.
2. That the appellant while lastly posted as reader circle DSP Daggar, the appellant was falsely involved in a criminal case vide FIR NO 824 dated 21-05-2017 U/S 302/PPC & 15AA of Police Station Gagra District Bunir, and was suspended on the same ground. **(Copy of FIR is enclosed as annexure A)**.
3. That in the meanwhile the appellant was dismissed from service vide order dated 03-07-2017..**(Copy of order dated 03-07-2017 is enclosed as Annexure B)**
4. That the appellant was convicted by the court of Additional Session Judge 1/Izafi Zila Qazi, Bunir at Daggar, dated 27-01-202, in respect of case FIR No 824 dated 21-05-2017 U/S 302 PPC read with section 15 AA , P.S, Gagra, District, Bunir for life imprisonment with the fine of two lack rupees.

5. That there after the appellant filed criminal appeal No 31-M/2022 before the honourable Peshawar high court which was allowed and the appellant was acquitted from the charge leveled against him vide judgment dated 08-05-2024.. **(Copy of judgment dated 08-05-2024 is enclosed as Annexure C).**
6. That after acquittal, the appellant preferred departmental appeal which was filed by respondent No 1 vide order dated 05-07-2024, Copy of which was obtained by the appellant on 12-07-2024. **(Copy of Departmental Appeal & Order dated 05-07-2024 are enclosed as annexure D & E).**
7. That the impugned orders dated 05-07-2024 & order dated 03-07-2017 are against the law, facts and principles of natural justice on the grounds inter-alia as follows:-

GROUND:

- A. That both the impugned Orders are illegal, unlawful, without lawful authority and void.
- B. That the appellant is not treated in accordance with law and rules which being his fundamental right as per Article 4 & 25 of the constitution of Islamic Republic of Pakistan 1973 and law of the land.
- C. That as the appellant was dismissed from service on the charge of being involved in criminal case, so the department was required to have waited till the decision of criminal case.
- D. That the appellant has falsely been implicated in criminal case and he has been dismissed from service before the conclusion of trial in violation of law on the subject, and even the appellant has been acquitted of the same by the Court of competent jurisdiction.
- E. That no charge sheet and show cause notice were Communicated to the appellant.
- F. That even the appellant was not proceeded under Rule 9 E & D Rules 2011.
- G. That no inquiry is conducted in the matter to have found out the true facts and circumstances, as the appellant was never associated with any inquiry.

- H. That the charge was never substantiated as no evidence of any sort was collected in its support, thus the impugned order is liable to be set at naught.
- I. That the appellant was not provided opportunity of personal hearing .
- J. That the appellant has been condemned unheard in violation of principles of natural justice.
- K. That the appellant has about 17 years of service with unblemished record with no complaint during his entire service career.
- L. That any other ground not raised specifically here may kindly be allowed to be raised at the time of arguments.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Any other relief deemed appropriate in the circumstances of the case and not specifically asked for may also be granted in favor of the appellant.

Dated:-09-08-2024

Raza
Appellant

Through

Fazal
Fazal Shah Mohmand ASC,
Baseer Shah
& *Ibad*
Ibad Ur Rehman Khalil
Advocates High Court

CERTIFICATE:

Certified that as per instructions of my client, no other Service Appeal on the same subject and between the same parties has been filed previously or concurrently before this honorable Tribunal.

Advocate
ADVOCATE

4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No _____/2024

Riaz Ur Rehman **Appellant**

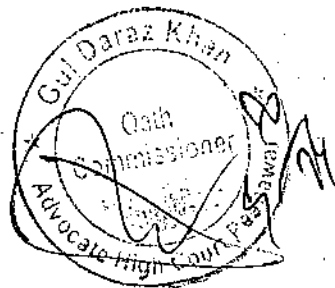
V E R S U S

RPO & others **Respondents**

AFFIDAVIT

I, Riaz Ur Rehman Ex Head constable No 536 R/O Kalpani District Buner, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Riaz
DEPONENT



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No _____/2024

Riaz Ur RehmanAppellant

V E R S U S

RPO & othersRespondents

Application for condonation of delay if any

Respectfully Submitted:-

1. That the accompanying appeal is being filed today in which no date of hearing has been fixed so far.
2. That the grounds of appeal may be considered as integral Part of this application.
3. That the applicant was dismissed from service due to involvement in criminal case from which he has been acquitted and he has filed departmental appeal within thirty days from the date of acquittal hence instant appeal is well within time.
4. That even otherwise no proceedings of any sort were conducted against the applicant nor he was afforded any sort of opportunity of hearing in violation of Article 10-A of the Constitution thus the impugned orders being in utter disregard of law is void and limitation as such has no adverse implications.
5. That the law as well as the dictums of the superior Courts also favours decision of cases on merit.

It is therefore prayed that on acceptance of this application, the delay if any in filing of appeal may kindly be condoned.

Dated:-09-08-2024

Appellant

Through

Fazal Shah Mohmand

Advocate,

Supreme Court of Pakistan

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No _____/2024

Riaz Ur Rehman **Appellant**

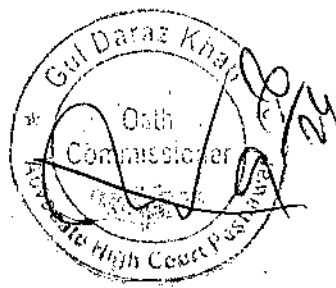
V E R S U S

RPO & others **Respondents**

AFFIDAVIT

I, Riaz Ur Rehman Ex Head constable No 536 R/O Kalpani District Buner, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Riaz
DEPONENT



رقابیل

ابتدائی اطلاعی رپورٹ

ATTESTED

فارم نمبر 24 (1)

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر رقم 1512 مجموعہ ضابطہ فوجداری

A. W. Inve. Action Wing

District: Bunde

06.09.2011

ضلع 5
017

824

تاریخی

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تاریخ و وقت رپورٹ	Chic- 15101- 8471 454-7 11005- 0341- 9333 400
نام و سکونت اطلاع دہندہ مستغنیث	ملیر صاحبہ علیہ بیاتہ شاہ قوم غلط داخلہ اشخان نمبر 29 30 ماکن کلہیان
مختصر کیفیت جرم (معدومہ) حال اگر کچھ لیا گیا ہو	مختصر طور پر کلہیان باجہ اشخان سے لیا گیا ہے۔
جائے وقوعہ فاصلہ تھانہ سے اور سمت	ماکن کلہیان
نام و سکونت ملزم	ماکن کلہیان
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا تو وجہ بیان کرو	مختصر طور پر کلہیان باجہ اشخان سے لیا گیا ہے۔
تھانہ سے روانگی کی تاریخ و وقت	ماکن کلہیان

بظور سیٹیل رپورٹ بدست ابتدائی اطلاع کے تحت مندرجہ ذیل حقائق معلوم ہوئے ہیں کہ:

ماکن کلہیان نے اپنے شوہر اشخان سے لیا گیا ہے۔

بظور سیٹیل رپورٹ بدست ابتدائی اطلاع کے تحت مندرجہ ذیل حقائق معلوم ہوئے ہیں کہ:

ماکن کلہیان نے اپنے شوہر اشخان سے لیا گیا ہے۔

بظور سیٹیل رپورٹ بدست ابتدائی اطلاع کے تحت مندرجہ ذیل حقائق معلوم ہوئے ہیں کہ:

ماکن کلہیان نے اپنے شوہر اشخان سے لیا گیا ہے۔

یہ جوہر علی اسٹیٹ 440 تقاضا گاگرہ فوراً 21/5/17 کا جوابی تقابلیں اور
صوبائی صرف حرف در P صدر پور پور مقدمہ جرم 11 قاعہ پور پور پور
معہ فراہم ہوا د تفتیش حرام افوش تفتیش ونگ سماجات کے آفرین 10
کو تفتیش پور پور پور پور پور پور پور پور پور پور پور پور
پور پور پور پور پور پور پور پور پور پور پور پور

AG. PS. Gagoo
21/5/17
شوکت علی خان

دیپنڈنٹ ایس ایس ڈی پور پور پور پور پور پور پور پور پور پور پور پور
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R.W. Buner
29/5/17

15 AA

دیپنڈنٹ ایس ایس ڈی پور پور پور پور پور پور پور پور پور پور پور پور
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13-11-030

ATTESTED

R.W. Investigation Wing
Distt: Buner.

06/07/2021

ان کے نیچے اطلاع دہندہ کا دستخط ہوگا یا اس کی پہچان نشان لگایا جائے گا۔ اور اس پر تحریر کنندہ کی اطلاع کا دستخط بطور تصدیق ہوگا۔ حروف الف با ب سرخ روشنی سے ناقابل نام پر

ORDER

8 - B

This order will dispose-off departmental enquiry against **Head Constable Riaz Ur Rahman No.536** of this district police vide this office No. 26/Enquiry, dated 22/05/2017.

Briefs are that:-

Head Constable Riaz Ur Rahman No.536 of this district police while posted as Reader to SDPO Daggur District Buner, has been found involved in Murder Case vide in case FIR No.824, dated 21.05.2017 u/s 302 PPC PS Gagra District Buner. After the commission of offence he escaped and also remained absent up-till now from his lawful duty vide DD No.09, dated 22/05/2017. He was suspended and closed to Police Lines Daggur vide this office OB No.61, dated 22/05/2017. He was proceed departmentally and served with charge sheet and statement of allegations under Police Disciplinary Rules-1975, and **Mr. Muhammad Naeem Khan SDPO Totalat** was appointed as Enquiry Officer. The Enquiry Officer has recommended the official concerned for dismissal from service. Consequently, final Show Cause Notice was issued against him under Rules 5 (3) of KPK Police Rules and served upon him vide this office No.29/Enquiry, dated 20/06/2017 but did not reply.

Therefore, **I Muhammad Irshad Khan District Police Officer Buner** as Competent Authority and in exercise of the power vested to me under Police Disciplinary Rules 1975, award Head Constable Riaz ur Rahman No.536 with major punishment i-e dismissal from service from the date of his absence i-e 22/05/2017, and absence period is treated as without pay.

Order announced.


DISTRICT POLICE OFFICER,
BUNER

OB No. 81

Dated: 03/07 /2017

No. 3600 /EC, dated Daggur the 03/07 /2017.

Copy to all concerned.


ATTESTED
TO BE TRUE COPY

Annex C (9)
C

JUDGMENT SHEET

**PESHAWAR HIGH COURT
MINGORA BENCH
(Judicial Department)**

Cr.A No. 31-M/2022

Riaz-ur-Rahman son of Said Bakhtaj.....(Appellant)

v/s

The State & another.....(Respondents)

Present: M/S Badi-uz-Zaman & Astaghfir Ullah, ASCs,
for the accused/appellant.

Mr. Naeem Khan, Astt: A.G, for the State.

Muhammad Riaz, AHC, for the respondent/
complainant.

Criminal Revision No. 14-M/2022

Amir Wahid son of Ziarat Shah.....(Petitioner)

v/s

Riaz-ur-Rehman & another.....(Respondents)

Present: Muhammad Riaz, AHC, for the
petitioner/complainant.

M/S Badi-uz-Zaman & Astaghfir Ullah, ASCs,
for the accused/respondent.

Mr. Naeem Khan, Astt: A.G, for the State.

Dates of hearing: 08.05.2024

JUDGMENT

SHAHID KHAN, J.- Through the subject

single judgment, the Court shall decide the

captioned criminal appeal No. 31-M of 2022

Titled "Riaz-ur-Rahman v/s The State &

others" coupled with the connected criminal

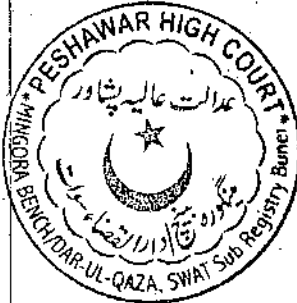
revision No. 14-M/2022 Titled "Amir Wahid

v/s Riaz-ur-Rehman & another", as both the

appeal & revision have been arising-out, from

one & the same impugned order/judgment

passed by the learned Additional Sessions



ATTESTED

[Signature]
EXAMINER
PESHAWAR HIGH COURT,
Mingora Bench/Dar-ul-Qaza Swat
Sub-Registry, Buner

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Judge 1st/ Izafi Zila Qazi, Buner at Daggar, dated 27.01.2022, in respect of case FIR No. 824 dated 21.05.2017, U/S 302 PPC, R/W Section 15-AA, P.S, Gagra, District, Buner.

2. Reportedly, the complainant, Amir Wahid reported the subject occurrence to the visiting party of police at emergency ward of *Daggar* hospital. It was stated by the complainant in his report that on the fateful day after offering of *Asar* prayers, his father, Ziarat Shah (deceased) went-out of the mosque and was on his way to village *Kalpani*. When father of the complainant reached to the venue of crime i.e. "*Canal road Kalpani Bajkata Mandaw Maira*, Riaz son of Bakhtaj (the appellant/accused herein) emerged from the opposite side and when he reached near his father, the appellant started firing upon him through his firearm. Due to firing of the appellant/accused, his father got hit and died on the spot. In addition to the complainant, the occurrence has been witnessed by his uncle, Said Zameen Shah. Motive for the commission of offence was disclosed an altercation (تکرار) which took place between the father of the



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ATTESTED

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EXAMINER
PESHAWAR HIGH COURT
Mingora Bench/Dar-ul-Qaza, Swat
Sub - Registry, Buner

appellant/accused and the deceased about a week ago during Jirga proceedings. The event was reduced into in writing in the shape of 'Murasila', (Ex. PA/1) followed by the *ibid* FIR, (Ex. PA) registered against the accused/ appellant at P.S concerned.



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3. Initially, the accused was avoiding his lawful arrest, therefore, proceedings U/S 512, Cr.P.C were initiated against him and upon conclusion of the same, he was declared proclaimed offender vide order dated 23.02.2018 of learned Additional Sessions Judge-II Buner and resultantly perpetual warrant of arrest has also been issued against him.

ATTESTED

Handwritten signature of the Examiner.
EXAMINER
PESHAWAR HIGH COURT,
Mingora Bench/Dar-ul-Qaza, Swat
Sub - Registry, Buner

4. Upon arrest of the accused/ appellant followed by completion of the investigation, supplementary *challan* was drawn and was sent-up for trial to the learned trial Court. Accused/ appellant was confronted with the statement of allegations through a formal charge to which he pleaded not guilty and claimed trial.

5. To substantiate the guilt of the accused/appellant, the prosecution furnished its account consist of the statements of fourteen (14) witnesses. The accused was confronted with the evidence so furnished through statement of accused within the meaning of section 342 Cr.P.C.



6. On conclusion of the proceedings/ trial, in view of the evidence so recorded and the assistance so rendered by the learned counsel for the appellant/accused and learned counsel for the complainant/learned State counsel, the learned trial Court arrived at the conclusion that the prosecution has successfully brought home charge against the appellant/ accused through cogent & worth reliable evidence, as such, the accused was convicted & sentenced as follows:-

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ATTESTED

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EXAMINER
PESHAWAR HIGH COURT,
Mingora Bench/Dar-ul-Qaza, Swat
Suh - Registry, Buner

U/S 302 (b), PPC to life imprisonment, with compensation of Rs. 200,000/- (two hundred thousand), U/S, 544-A, Cr.P.C, payable to the legal heirs of the deceased, or in default thereof to suffer six months imprisonment.

U/S 15-AA to one-year simple imprisonment, with fine of Rs. 5,000/-, or in default thereof to undergo one-month, simple imprisonment.

Both the aforesaid sentence were ordered to run concurrently, however, the appellant/accused has been extended the benefit of section 382-B, Cr.P.C.

7. It obliged the appellant/accused to approach this Court through the subject criminal appeal, whereas, the petitioner/complainant has also filed the connected criminal revision for the enhancement of sentence awarded to the accused/respondent.



8. Learned counsel for the parties as well as the learned Astt: A.G appearing on behalf of the State have been heard at a length and the record gone through with their valuable assistance.

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9. At first & foremost instance, it shall be kept in mind that in the subject event a single accused has been nominated by the respondent/complainant for committing the murder of his father, Ziarat Shah, therefore, the standard of evidence of prosecution would be such a caliber & quality which would exclude the possibility of any substitution, on all counts. This Court in a situation akin to the present one, in case Titled "Mir Alam v/s Amroz Khan & another" reported as PLD 2015 Peshawar 125, has held that "*case was of single accused, who was charged for*

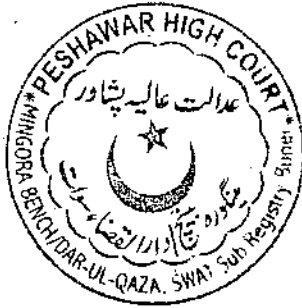
ATTESTED

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EXAMINER
PESHAWAR HIGH COURT,
Mingora Bench/Dar-ul-Qaza Swat
Sub-Registry, Buner

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murder of the deceased. Substitution of single accused in murder charge, though was a rare phenomenon, but for recording conviction of accused charged singularly for murder, there must be ocular account of unimpeachable character, trustworthy and confidence inspiring, corroborated by other material circumstantial evidence”.



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ATTESTED

Handwritten signature of the Examiner.

EXAMINER
PESHAWAR HIGH COURT,
Mingora Bench/Dar-ul-Qaza, Swat
Sub - Registry, Buner.

10. In the subject case, the ocular-account has been furnished by the complainant, Amir Wahid, PW-12 and the other eyewitness of the occurrence Said Zamin Shah, PW-13. Both the aforesaid eyewitnesses were closely related to the deceased. Amir Wahid was the real son of the deceased, whereas, Said Zamin Shah was his real brother. In his Court statement, the complainant (PW-12) has narrated the subject occurrence in terms that on the fateful day after offering of *Asar* prayers, he (complainant) in the company of his deceased father, Ziarat Shan and uncle Said Zamin Shah (PW-13) were going to village *Kalpani* and when they reached the place of

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occurrence, the appellant/accused, Riaz-ur-Rehman emerged from the opposite side and as soon as he reached near his father, the appellant resorted to firing upon his father with his firearm. Due to firing of the accused his father got hit and died on the spot. The complainant has also advanced a specific motive qua commission of the offence which was stated to be an altercation which took place between the deceased and father of the appellant/accused during the Jirga proceedings over an issue of amount of *Shamilat*. In his examination-in-cross, the complainant (PW-12) has made the following admissions, qua the actual mode & manner of the occurrence;-



صوفی

ATTESTED

EXAMINER
PESHAWAR HIGH COURT,
Mingora Bench/Dar-ul-Qaza, Swat
Sub - Registry, Buner

" At the time of report I was in full senses. I have stated in my report that on the day of occurrence after offering of congregation *Asar* prayers I along with my deceased father Ziarat Shah and my uncle Said Zamin Shah were going towards *Kalpani*, confronted omitted. I have stated to the police when we reached half-way near house of Said Kamil Shah the accused facing trial coming from opposite side, confronted not so recorded. I and Said Zamin Shah PW are residing in different houses.

As highlighted in the proceeding
Para of this judgment with a minute detailed
& clarity that the complainant in his initial

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report in the form of 'Murasila' followed by the *ibid* FIR has neither his own presence in the company of his deceased father nor that of the other alleged eyewitness, his uncle, Said Zamin Shah. For the sake of arguments, if, both the aforesaid eyewitnesses have accompanied the deceased at the relevant time, then the complainant should have mentioned this fact with clarity in his initial report, therefore, a doubt arises qua the actual mode & manner of the occurrence as well as presence of the eyewitnesses on the spot. The complainant has also admitted in his examination-in-cross that he is serving as constable in police department, therefore, being an employee of police department he must have a fair idea how to lodge a report in a criminal as compared to an ordinary citizen. The complainant also stated in his examination-in-cross that the complainant-party had left for *Kalpiani* from the mosque in question at about 05:45/06:00 PM, however, in the 'Murasila' (Ex. PA) a general term of *Mazigar Vela* (مازیگر ویلہ) has been used by

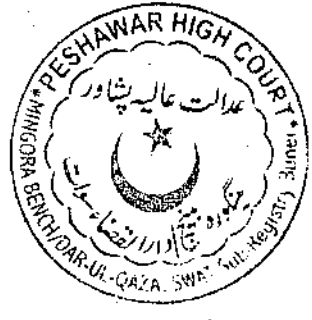


29/1

ATTESTED

EXAMINER
PESHAWAR HIGH COURT,
Mingora Bench/Dar-ul-Qaza Swat
Sub-Registry, Buner

the complainant instead of specifying the exact time of the occurrence, therefore, this element also cast a serious doubt about the actual mode & manner of the occurrence. Further ahead in his cross-examination, the complainant (PW-12) has deposed as follows:-



“ I was the first one who reached near the dead body. I have not touched the body of my father. I (complainant), my uncle Said Zamin Shah and other person put the dead body in the motorcar of Dost Muhammad Khan, who is our neighbor. The hands and clothes of my uncle Said Zamin was smeared with blood while putting the deceased in the car while my clothes was not smeared as I had picked my father from legs.

(underline supplied)

95
X

ATTESTED

EXAMINER
PESHAWAR HIGH COURT,
Mingora Bench/Dar-ul-Qaza, Swat
Sub - Registry, Buner

The aforesaid deposition of the complainant was contradicted by the other eyewitness of the occurrence, Said Zamin Shah (PW-13), while deposing in his cross-examination that he had not touched the dead body of the deceased because the locals have picked him up already, as such, on score too, both the PWs were not in consonance with each other qua picking & shifting of the dead body of the deceased to the hospital. The complainant also stated in his cross-examination that at the time of firing Said

Zamin Shah (PW-13) was behind the complainant at a distance of 10-feet and at the same breath he has also shown a complete ignorance about depth of canal, which is in existence in-and-around the place of occurrence. During the cross-examination of the complainant, the learned counsel for the defence has been able to bring on record the previous criminal history of the deceased, Ziarat Shah, whereby, several criminal cases in the form of FIR No. 139, FIR No. 97 and FIR No. 149 have previously been registered against the deceased Ziarat Shah under different sections of law at different police stations. Copies of previous FIRs have also been exhibited and placed on case file as Ex. PW-9/D-2 to Ex. PW-9/D-4, therefore, there was no denial of the fact that the deceased was prima facie not an ordinary individual, rather, his previous track-record suggest that he was involved in multiple episodes of criminal nature.



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11. Same was the case with other eyewitness of the occurrence, Said Zamin

Shah (PW-13). He almost reiterated the facts as advanced by the complainant in his examination-in-chief. First of all, it shall be kept in mind that PW-13 has specifically stated in his Court statement that he had informed Sadi Wali Shah and Muslim to come to the hospital qua identification of the dead body of the deceased. The inquest report, Ex. PW-8/2 do figure the names of the aforesaid two person as identifiers of the dead body of the deceased, however, both the aforesaid PWs have not been examined by the prosecution during the course of trial in order to further boost & authenticate their case qua arrival of the dead body of the deceased in the hospital. PW-13 in his cross-examination deposed that he did not remember the time when the complainant-party reached to the hospital along with the dead body of the deceased. He has also shown a complete ignorance about the time spent in the hospital by the complainant-party. He also did not recollect the names of those persons/local inhabitants, who have shifted the dead body



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of the deceased to the hospital. Thus, the presence of these alleged eyewitness at the relevant time & place appears to be highly unreasonable and unnatural, as such, the prosecution has not been able to prove the presence of these PWs at the scene of occurrence at the relevant time, hence, their evidence could not be relied upon for the purpose of conviction of the appellant/ accused. In a situation, akin to the present one, in case titled "Sarfaraz & another v/s



The State" reported as 2023 SCMR 670, the Apex Court has held as under;-

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Not a single person from the inmates of the house where occurrence took place or from surrounding inhabitants appeared in support of the prosecution version and the whole prosecution case was silent about this aspect of the matter. Record clearly reflected that the prosecution witnesses were not present at the place of occurrence, rather they managed to appear as witnesses after due consultation and deliberation. Record further showed that the complainant was inimical towards the deceased. In such circumstances, it seemed impossible that deceased would have invited an inimical person for his help before his death. Prosecution had failed to prove its case beyond any reasonable shadow of doubt

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Similarly, in case Titled "Liaqat

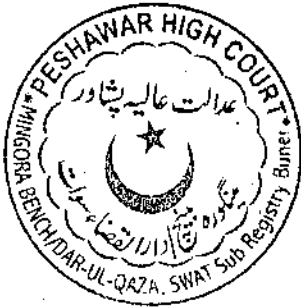
Ali and another v/s The State and others"

reported as 2021 SCMR 780, the Apex Court has recorded a somewhat similar observations by holding that;-

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All the circumstances highlighted above lead us to a definite conclusion that presence of eye-witnesses at the place of occurrence at the relevant time is not free from doubts and the prosecution has failed to prove its case against the appellant beyond reasonable doubt.

Likewise, in case Titled "Muhammad Khan v/s The State" reported as 1999 SCMR 1220, it was held by the Apex Court that "presence of eye-witnesses at the spot at the relevant time and their accompanying the deceased to the Court on the day of occurrence was doubtful".



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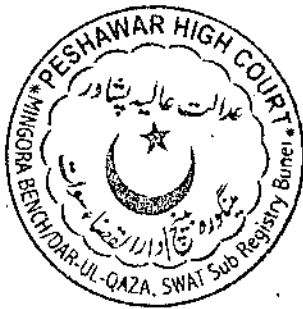
12. It is part of the record that the other alleged eyewitness of the occurrence, Said Zamin Shah (PW-13) failed to offer any explanation qua his presence on the spot and he is prima facie seems to be a chance witness, especially, when it was deposed by the complainant that he (complainant) and Said Zamin Shah (PW-13) have been residing in different houses. This Court in case Titled "Johar Ali v/s The State & another" reported as 2022 P Cr. LJ 1177 has held that "though, evidence of complainant could not be discarded on the sole ground that he was close relative and interested witness, but

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necessary caution had to be observed in accepting his evidence because it was generally approved proposition that in case of rivalries and enmities, there was general tendency that a person from victim side would pose himself as eye-witness of the occurrence and would rope in the influential members of rival side for participating in the assault with a particular designed role. Veracity of said witness had to be examined with utmost care and caution, particularly, with regard to his presence at the spot at the time of occurrence when he had not disclosed the purpose of his visit to the spot. In the initial report the complainant had not stated a single word as to when and how he met the deceased and they both reached the spot. Complainant had also not disclosed the purpose of his visit to the spot. Complainant was also a chance witness. Circumstances established that the prosecution had failed to prove the guilt of the accused beyond shadow of doubt."



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13. The ocular-account furnished in the case in hand by the aforesaid two

eyewitnesses of the occurrence is not confidence inspiring qua the guilt of the appellant/accused, as referred to above, and the case of the prosecution against the appellant/accused is wholly-sully based on the circumstantial evidence i.e. the recovery of the alleged weapon of offence i.e. a 30 bore pistol, vide recovery memo, Ex. PW-5/2 dated 02.11.2020. It is evident from the record, in particular, recovery memo, Ex. PW-4/2 dated 21.05.2017 that two crime empties were shown recovered from the spot way back in the year 2017, however, the weapon of offence i.e. 30 bore pistol, on the pointation of the appellant has been recovered on 02.11.2020. Even otherwise, the FSL report, Ex. PZ would reveal that the two crime empties of 30 bore marked as C1 & C2 were not fired from the pistol in question bearing No.H82842, therefore, evidentiary value of the same qua guilt of the appellant/accused would be of no worth for the prosecution.



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14. There is no second opinion at all that the circumstantial alone cannot be made

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basis for conviction of an accused person especially when the ocular-account is gone bagging out of the window in the subject case. In cases like the present one that rests entirely on circumstantial evidence, it is imperative that the circumstances should be assessed with due care & caution so as to arrive at the correct conclusion of the case. A high quality of evidence is, therefore, required to prove the facts & circumstances from which the inference of the guilt of the accused person is to be drawn. The circumstantial evidence, in a murder case, should be like an unbroken chain, one end of it shall touch the dead body of the deceased while the other neck of the accused. Chain of such facts and circumstances has to be well-connected to establish the guilt of the accused person beyond reasonable doubt and to make the plea of his being innocent incompatible with the weight of evidence against him. Any link missing from the chain breaks the whole chain and renders the same unreliable for the subject event, conviction cannot be safely recorded,

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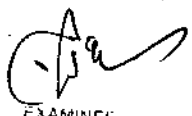


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especially on a capital charge. It is otherwise well settled that when substantive evidence fails to connect the accused person with the commission of offence or is disbelieved, corroborative evidence is of no help to the prosecution as the corroborative evidence cannot by itself prove the prosecution's case. Hon'ble Supreme Court of Pakistan while rendering its judgment in case Titled "Muhammad Afzal alias Abdullah and others vs. The State and others" reported as 2009 SCMR 639 has also expressed almost a similar view in para-12 of its judgment, which is reproduced hereunder for ready reference;



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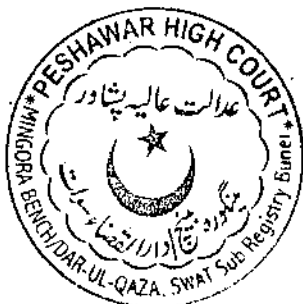
"After taking out from consideration the ocular evidence, the evidence of identification and the medical evidence, we are left with the evidence of recoveries only, which being purely corroboratory in nature, in our view, alone is not capable to bring home charge against the appellant in the absence of any direct evidence because it is well-settled that unless direct or substantive evidence is available conviction cannot be recorded on the basis of any other type of evidence howsoever, convincing it may be."

Hon'ble Supreme Court of Pakistan in its judgment rendered in case Titled "Imran Ashraf & 7 others v/s The State" reported as 2001 SCMR 424, has also observed;

"Recovery of incriminating articles is used for the purpose of providing corroboration to the ocular testimony. Ocular evidence and

recoveries, therefore, are to be considered simultaneously in order to reach for a just conclusion."

In support of same ratio, further reliance may also be placed on the judgment reported as 2007 SCMR 1427.



15. So far as the medical evidence is concerned, needless to highlight that the medical evidence may confirm the direct or ocular account, if any, with regard to the set of injuries, kind of weapon allegedly used in the commission of offence and at least the nature

of injuries, however, in the subject case when the ocular-account is not of an impeachable character then evidentiary value of medical evidence qua the guilt of the appellant as a sole piece of corroboratory evidence cannot be given much weight. Reliance in this

regard is placed on the case titled "Abdul Rashid v/s The State" reported as 2019 P Cr. LJ 1456, whereby it has been held that;-

"The medical evidence in this case has been furnished by PW-4 Dr. Nasreen Ahmad Tareen, Medical Officer, who has confirmed the unnatural death of deceased. However, the fact remain that medical evidence is only used for confirmation of ocular evidence regarding seat of injury, time of occurrence and weapon of offence used, etc. but medical evidence itself does not constitute any corroboration qua the identity of accused person to prove their culpability. Reliance in this regard can be placed on the case of "Muhammad Sharif & another v/s The State" (1997 SCMR 866).

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In context of the subject case, the medical evidence has been furnished by Karim-ur-Rahman, PW-10. He deposed in his cross-examination that there were three entry wounds on the body of deceased, however, he has not mentioned the size of any entry wound. In the same breath, he also stated that in his report he has not mentioned the probable duration between receipt of injury and death. His report is also bereft in a sense that there was no mention of duration of death and medical examination nor in his report he has mentioned the name of identifier of the dead body of the deceased, therefore, the medical evidence, if any, is of no use for the prosecution qua the guilt of the appellant/accused. Same was the case with other circumstantial evidence produced in the case in hand.



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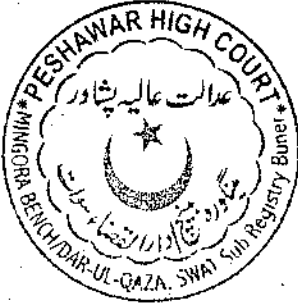
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16. So far as the abscondence of the convict/appellant is concerned, in this part of the country people do abscond not because they are guilty, but because of fear and torture of the police. Even otherwise, absconsion is not substantive piece of evidence, it is a corroborative piece of evidence and in cases

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where direct evidence fails, corroborative piece of evidence is of no avail, as in the subject case, where the evidence of eyewitnesses have been disbelieved. Needless to say, abscondence can neither cure the inherent defect of the ocular account nor by itself is sufficient to sustain conviction. In this respect, reference can be made to case law "Islam Badshah and two others Vs. The State" (PLD 1993 Peshawar 7). This Court in case Titled "Zain-ud-Din V/S Noor Muhammad & others" reported as 2022 P Cr. LJ Note 26, has held that "*abscondence by itself is not sufficient to prove an accused guilty rather it is a circumstance which can favour the prosecution, provided the prosecution succeeds in providing its case through confidence inspiring evidence*".

17. In the subject case, the prosecution has not been able to substantiate the alleged motive which was stated to be an altercation which took place between the father of the appellant/accused and the deceased about a week ago during the Jirga proceedings. Even the testimonies of both the alleged eyewitness of the

occurrence are not in line with the version of the prosecution that why the appellant/accused was all-out to kill the deceased in a busy canal road when the alleged exchange of hot words had taken place with his father, therefore, a strong inference can be gathered that the prosecution has no motive in the field to implicate the appellant/accused for the commission of the subject offence. In case titled "Khalid Mehmood & another v/s The State" reported as 2021 SCMR 810 it was held by the Apex Court that;-



A specific motive was set out by the prosecution in the FIR inasmuch as hot words were being exchanged between Khalid Party and Sarwar Party in front of house of Javaid. There is no detail whatsoever why Khalid Party and Sarwar Party were quarrelling with each other; why both the parties at once started firing at the deceased; why and in which capacity deceased Muhammad Aslam intervened to pacify both the parties. The answers to these questions are not available on record. In these circumstances, the learned High Court has rightly not believed the motive set out by the prosecution in Para 12 of the impugned judgment.

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Similarly, in case titled "Pathan v/s The State" reported 2015 SCMR 315, the Apex Court about relevancy of motive has held as under;-

Motive in legal parlance was ordinarily not considered as a principle of primary evidence in a murder case, however, in rare cases, motive did play a very vital and decisive role for committing murder.

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18. In view of the above, when neither any direct nor any circumstantial evidence is available on the face of the record, as such, the case of prosecution is full of doubt all-around; therefore, the appellant/accused has to be extended its benefit.



19. It is well settled, it is not essential at all to place reliance on multiple doubts coupled with multiple grounds to extend the benefit of doubt to an accused, even a single worth reliable doubt is sufficient enough to 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

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"Tariq Pervaiz v/s The State" reported as 1995 SCMR 1345, the Apex Court has held as under;-

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.

Further reliance is placed on the case law cited as "Daniel boyd (Muslim name Saifullah) vs the State" reported as

1992 SCMR 196", where the following

observations were recorded by the Apex

Court;-

Nobody is to be punished unless proved guilty on the basis of reliable or true evidence. Benefit of every reasonable doubt is to go to the accused.



This view also reflects in the judgment of the apex Court titled as

"Ghulam Qadir and 2 others vs the State"

reported as 2008 SCMR 1221, wherein it

was observed that:-

"Benefit of doubt: Principle of applicability. For the purpose of benefit of doubt to an accused, more than one infirmity is not required. Single infirmity creates reasonable doubt in the mind of a reasonable and prudent person regarding the truth of charge, makes the whole case doubtful. "

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In support of the same rational,

further reliance is placed on the judgment of the

august Supreme Court of Pakistan cited as

"Muhammad Zaman vs. the State" (2014

SCMR 749), wherein it was held that;-

Even a single doubt if found reasonable, was enough to warrant acquittal of the accused.

20. For what has been discussed

above, this Court is of the firm view that the

prosecution has failed to prove its case against

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the appellant/accused, Riaz-ur-Rahman beyond reasonable doubt, as such, his conviction cannot be maintained. Resultantly, while extending him the benefit of the doubt the subject criminal appeal is allowed and the impugned order/judgment of conviction and sentence dated 27.01.2022 recorded by the learned trial Court is set aside and consequently the appellant named above is acquitted of the charges leveled against him. He be released forthwith from the Jail, if not required in any other case.



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PESHAWAR HIGH COURT
Mingora Bench/Dar-ul-Qaza, Swat
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EXAMINER
Peshawar High Court, Mingora Bench/Dar-ul-Qaza, Swat
Sub-Registry, Buner
Authorized Under Article 67 of Qanoun-e-Shahadat Order, 1984

21. Since we have allowed the appeal filed by the appellant/accused against his conviction & sentence, therefore, the connected criminal revision No. 14-M/2022, filed by the petitioner/complainant has become infructuous; hence, the same is also dismissed.

22. These are reasons for our short order of even date.

Date of announcement
Dt. 08.05.2024

JUDGE

JUDGE

CU No. 161 (17)
Date of Application 05-07-24
Date of Receipt of File -
Date of Preparation 05-07-24
Date of Notice -
Words 249
Fees 96/-
Urgent Fees -
Date of Delivery 05-07-24
Signature [Signature]

Office
07/08/2024
W/R

بخدمت جناب ریجنل پولیس آفیسر صاحب ملاکنڈ ریج سوات

عنوان: درخواست برآمد اور سی بحالی دوبارہ سروس محکمہ پولیس سابقہ ہیڈ کانسٹیبل ریاض احمد بلٹ نمبر 536

جناب عالی!

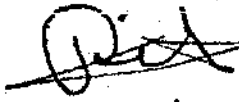
مؤدبانہ گزارش کی جاتی ہے کہ سائل محکمہ پولیس ضلع ہڈا میں بحیثیت ہیڈ کانسٹیبل اپنے فرائض انجام دے رہا تھا کہ

مورخہ 21-05-2017 کو عدالت نمبری 824 مورخہ 21-05-2017 انڈر سیکشن 302 پی پی سی تھانہ گاگرہ چارج ہو کر بعد
تھانہ کاروانی سائل کو بحوالہ آرڈر بک نمبری 81 مورخہ 03-07-2017 ملازمت سے درخواست کر دیا تھا۔ مذکورہ عدالت میں معزز
عدالت ایڈیشنل سیشن جج صاحب بوئیر نے فیصلہ دیتے ہوئے سائل کو عمر قید اور دو لاکھ روپے مخالف فریق کو دینے کا حکم صادر ہوا
اور دو لاکھ روپے نہ دینے کی صورت میں 06 ماہ کا مذید سزا بجھانے کا حکم صادر فرمایا۔

سائل نے مذکورہ سزا کے خلاف پشاور ہائی کورٹ میں کریمنل اپیل مورخہ 31-05-2022 کو دائر کی

مورخہ 08-05-2024 کو معزز عدالت نے فیصلہ سناتے ہوئے پیر نمبر 21 کے رول سے سائل کو بری عظمہ قرار دیا گیا ہے۔ معزز
عدالت پشاور ہائی کورٹ کا فیصلہ مورخہ 08-05-2024 بطور ثبوت منسلک ہے۔

لہذا آپ صاحبان سے مؤدبانہ استدعا کی جاتی ہے کہ سائل کے غربت کو پیش نظر رکھتے ہوئے دوبارہ سروس پر بحال کرنے،
بر طرف شدہ عرصہ کو سروس میں شمار کرنے اور بقایا جات سائل کو ادائیگی کا حکم صادر فرمائیں تو سائل تاحیات دعا گو رہے گا۔

آپ کا تابعدار

ریاض احمد سابقہ ہیڈ کانسٹیبل نمبر 536


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**OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND
AT SAIDU SHARIF SWAT.
Ph: 0946-9240388 & Fax No. 0946-9240390
Email: ebmalakandregion@gmail.com**

ORDER

This order will dispose of appeal of Ex-Head Constable Riaz-ur-Rahman No.536 of Buner District in connection with major punishment awarded by the District Police Officer, Buner vide OB: No.81, dated 03-07-2017 i.e. "Dismissal from service".

Brief of the case are that the above named Head Constable was found involved in a criminal case vide FIR No.824 dated 21-05-2017 U/S 302-PPC PS Gagra District Buner. The appellant was proceeded against departmentally for his aforementioned act and Charge Sheet/ Summary of allegations were issued against him vide DPO/Buner office No.824 dated 22-05-2017. The then SDPO Totalai Muhammad Naeem Khan was appointed as Enquiry Officer. The Enquiry Officer in its finding stated that the delinquent HC while posted as Reader to the then SDPO Daggar was charged in the above mentioned case, escaped after the commission of offence, avoiding his legal arrest and neither appeared before the Court nor Police to prove his innocence. The delinquent Head Constable also remained absent from duty since 22-05-2017. Therefore, the Enquiry Officer recommended him for awarding major punishment. He was served with a Final Show Cause Notice vide his office No.29 dated 20-07-2017 but no response was received. Therefore, the District Police Officer, Buner awarded him major punishment of "Dismissal from service" vide his office OB No.81 dated 03-07-2017.

He was called in Orderly Room held in this office on 03-07-2024 and heard him in person, but he could not produce any cogent reason to defend the charges leveled against him, moreover, his appeal is also badly time-barred, therefore, his appeal is hereby filed.

Regional Police Officer,
Malakand at Saidu Sharif, Swat

No. 7882 /E,
Dated 05-07-2024.

Copy to the District Police Officer, Buner for information with reference to his office Memo: No.2892/PA, dated 26-06-2024. Service Roll and Fuji Missal containing enquiry file of above-named appellant, received with your memo: under reference, are returned herewith for record in your office.

Encls = S. Roll + F. Missal *****

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بعد الت

خیبر پختونخوا کروٹس لٹرائٹنگ سروس

Appellau 2024 منجانب

ریاضی الشہان بیام لیولیس

Service Appeal

مورخہ

مقدمہ

دعویٰ

جرم

BC-10-5543

باعث تحریر آنکے

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

کیلئے حفیظ نذیر احمد مندرجہ، عباد خلیل صاحب

آن مقام صادر

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز 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 ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں 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 انٹرنٹائی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی 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 داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ مندر ہے۔

2024

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الرقوم

Attested
Accepted

واہ العبد

Handwritten signature

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ریاض الشہان علیہ صحت وکلیاتی جلیل

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