


FORM OF ORDER SHEET

Court of _____

Appeal No. 1378/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	20-Aug-24	<p>The appeal of Mr. ZAWAR HUSSAIN presented today by Mr. Javed Iqbal Gulbela Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 23-Sep-24. Parcha Peshi given to counsel for the appellant.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR.

1378
SERVICE APPEAL NO. ___/2024

Zawar Hussain (Ex-DHC No-1065)

VERSUS

AIGP KPK & Others

I N D E X

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Dated : 20.08.2024

Zawar Hussain
Appellant

Through

Javed Iqbal Gulbela
JAVED IQBAL GULBELA

Advocate, Supreme Court

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

1378
SERVICE APPEAL NO. ___/2024

**Zawar Hussain (Ex-DHC No-1065) S/o Nasrullah Khan R/o Mohallah Jandar
Paar, Gujar Ghari, Tehsil Takhtabi, District Mardan.**

...**APPELLANT**

VERSUS

- 1. Additional Inspector General of Police, HQrs Khyber Pakhtunkhwa,
Peshawar**
- 2. Deputy Inspector General of Police, Telecommunication & Transport
Khyber Pakhtunkhwa, Peshawar.**
- 3. Superintendent of Police, Telecommunication & Transport. Khyber
Pakhtunkhwa, Peshawar.**

...**RESPONDENTS**

**Service appeal under section - 4 of the Khyber Pakhtunkhwa
Services Tribunal Act - 1974, against the Impugned Office Order
No.9220-28/Tele/OASI, Peshawar, dated 13-07-2023, whereby the
Appellant had been removed from service and against the impugned
Appellate Order No.10541-44/Tele/OASI, Peshawar, dated 29-08-
2023, whereby The Departmental appeal of the Appellant had been
dismissed and against impugned Revisional Order No.S/1950-54/24,
Peshawar, dated 06-08-2024, whereby the Revision Petition of the
Appellant Under Rule 11-A of the Khyber Pakhtunkhwa Police**

Rules 1975 (amended in 2014) has been rejected, in a classical cursory and whimsical manner.

Respectfully Sheweth,

1. That the Appellant is a naturally born bona-fide citizen of Islamic Republic of Pakistan and hails from a respectable family.
2. That initially the Appellant was appointed and inducted onto the rolls of the Respondent Police Department as Constable Driver, whereby the Appellant started rendering his services, and being devoted and pragmatic towards his duty the appellant got promoted to the post of DHC Peshawar.
3. The appellant was falsely booked in case FIR No. 77 Dated: 23/01/2023 U/S-9D of the KP CNSA of police station sadder Mardan.
4. That thereafter, the respondent issued statement of allegations and Charge sheet to the appellant, wherein the Appellant was charged for allegation of, *"That while traveling by a motor car white color from ring road, who were stopped by local police Mardan and recovered 1952 grams charas from your car. You were hereafter arrested and lodged FIR No. 77 dated 23/01/2023 U/S-9D KP CNSA against you at police station sadder Mardan"*. **(Copies of statement of allegation and charge sheet is annexed as annexure "A & B")**
5. That thereafter, Departmental Inquiry was initiated and a Final Show Cause Notice was issued to the appellant, which was followed by the impugned order No. 9220-28 Tele/OASI, Peshawar, Dated: 13/07/2023 of The Office of Superintendent of Police Telecommunication and Transport Khyber Pakhtunkhwa, Peshawar, wherein the appellant has been illegally and unlawfully removed from the service. **(Copies of Final Show Cause Notice No. 6170-74/Tele/OASI, Peshawar, Dated: 19/05/2023 and impugned Removal from Service Order No. 9220-28/Tele/OASI, Peshawar, Dated: 13/07/2023 are annexed as annexure "C & D")**
6. That being aggrieved from the impugned removal from service Order the Appellant preferred Departmental Appeal Under Rule-11 of Khyber Pakhtunkhwa

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Police Rules 1975 (Amended in 2014) to The Office of Deputy Inspector General of Police Telecommunication and Transport Khyber Pakhtunkhwa, Peshawar. The Departmental Appeal of the Appellant had been dismissed vide impugned Order No. 10541-44/ Tele/OASI, Peshawar, Dated: 29/08/2023. (Copies of Departmental Appeal and impugned Appellate Order No. 10541-44/ Tele/OASI, Peshawar, Dated: 29/08/2023 is annexed as annexure "E & E/I").

7. That thereafter being aggrieved, the appellant moved a Revision Petition Under Rule 11-A, of Khyber Pakhtunkhwa, Police Rules 1975 (Amended in 2014) for setting aside both the Impugned removal from service order and impugned Departmental Appeal Rejection Order to the Office of Additional Inspector General of Police, HQrs, Khyber Pakhtunkhwa, Peshawar, but the prayer of the Appellant has been rejected, which is unwarranted in the eye of law vide impugned Revisional Order No. S/1950-54/24, Peshawar, Dated: 06/08/2024. (Copies of Revision Petition and impugned Revisional Order No. S/1950-54/24, Peshawar, Dated: 06/08/2024 is annexed as annexure "F & F/I")
8. That it is pertinent to mention here, that the Appellant faced trial in case FIR No. 77, U/S: 9-D of KPK CNSA, Police station: Sadder/Mardan, in the Court of competent jurisdiction. The Learned Court of Additional Session Judge-II/ Judge Special Court, Mardan, acquitted the Appellant from the charges on merit, therefore, the impugned Orders are not maintainable in the eye of law and thus the Appellant is entitled to be re-instated into service with all back benefits, vide order & Judgment dated 06/04/2024 of ASJ-II/Judge Special Court, Mardan. (Copy of judgment dated 06/04/2024 of the Learned Additional Sessions Judge-II / Special Court, Mardan, is annexed as Annexure "G")
9. That it is too important to mention here, that The Appellant has been suffering from Spinal cord disease, for which the appellant remained under treatment due to which the appellant did not performed his duties for short period (few days), but it is to be noted that the absence of the appellant was not deliberative and was due to the illness of the Spinal cord, therefore, the impugned orders are unwarranted in the eye of law and thus are liable to be turn down. (Copies of medical documents are annexed as Annexure "H")

10. That from the above cited story, the grievances, that comes into existence, having no other adequate remedy available, and forum to be addressed at, the Appellant approaches this Hon'ble Tribunal for setting aside the Impugned Dismissal Orders, and for his re-instatement into service, upon the following grounds, inter-alia:-

GROUNDS:

- A. That no proper inquiry was ever conducted in case of the Appellant, nor the Appellant was ever heard in person, nor was ever allowed to cross examine any witness and thus the Appellant was condemned unheard.
- B. That even the Departmental Appeal of the Appellant has been simply shelved without any rem or reason, and thus was turned down by the respondents, which is not sustainable in the eye of law.
- C. That the Appellant was not extended the opportunity by the Appellate Authority sanctioned under Appeal Rules 1986, and thus was never summoned to explain his position. Therefore both the impugned orders are illegal, unlawful and void ab initio.
- D. That it is a cherished Principle of Law that where a law requires a thing to be done in a particular manner, the same is to be done in that manner and not otherwise.
- E. That the impugned removal order as well as the impugned appellate & revisional orders are illegal, unlawful and void ab initio and liable to be struck down.
- F. That the impugned removal order is unwarranted, illogical and against the Rules so therefore, not maintainable at all.
- G. That the appellant was innocent and all the allegations in the FIR has been falsely booked against the appellant. Therefore the learned Trial Court acquitted the appellant on merits of the case; therefore, the appellant has got right to be reinstated in to service with all back.

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- H. That the appellant has been Honourably Acquitted by competent Court of Jurisdiction, therefore, the impugned orders are not sustainable in the eye of law. Hence the appellant is entitled to be reinstated in to the services with all back benefits.
- I. That under Rule 16.3 the appellant is entitled to be re-instated in to service after his honourably acquittal from criminal charges by the court of Additional Session Judge-II/Judge Special Court, Mardan.
- J. That the appellant is suffering from serious illness of spinal cord, due to which the Appellant was even unable to walk, and thus the Appellant was not in position to do his daily/ routine work. The appellant was under regular medical treatment, wherein the Doctors advised him complete bed rest and strictly prohibited the appellant from walking. Therefore the appellant was not in a position to perform his duties, due to which the appellant remained absent for some days due to the above mentioned medical reason, besides the above mentioned Absence the Appellant never ever remained absent for a single day and regularly performed his duties under the law. Therefore the appellant is entitled to be reinstated in to service with all back benefits.
- K. That from every angle the appellant is liable to be re-instated into service with all back benefits.
- L. That any other ground not raised here may graciously be allowed to be raised at the time of arguments.

It is therefore most humbly prayed that on acceptance of the instant service appeal, the Impugned Office Order No.9220-28/Tele/OASI, Peshawar, Dated: 13-07-2023 of the office of Superintendent of Police, Telecommunication & Transport, Khyber Pakhtunkhwa, Peshawar, whereby the Appellant had been removed from service and the impugned Appellate Order No.10541-44 /Tele/OASI, Peshawar, dated 29-08-2023 of the office of Deputy Inspector General of Police, Telecommunication & Transport Khyber Pakhtunkhwa, Peshawar, whereby The Departmental appeal of the Appellant had been rejected and impugned Revisional Order No. S/1950-

(6)

54/24, Peshawar, Dated: 06-08-2024 of the office of Additional Inspector General of Police, HQrs Khyber Pakhtunkhwa, Peshawar, whereby the Revision Petition of the Appellant Under Rule 11-A of the Khyber Pakhtunkhwa Police Rules 1975 (amended in 2014) were rejected, may kindly be set aside and by doing so, the Appellant may kindly be re-instated in to service with all back benefits in the best interest of justice.

Any other relief not specifically ask for may also graciously be extended in favor of the Appellant in the circumstances of the case.

Dated :19.08.2024

2nd - Aug/19
APPELLANT

THROUGH

Javed
JAVED IQBAL GULBELA
Advocate Supreme Court
of Pakistan

Saghir
Saghir Iqbal Gulbela
Advocate High Court,
Peshawar

Alamzeb Khan
Advocate, Peshawar.

&
Muhammad Arif Mohmand
Advocate, Peshawar.

NOTE:

No such like service appeal for the same appellant upon the same subject matter had earlier been filed by me.

Javed
ADVOCATE

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Zawar Hussain
VERSUS
IGP

AFFIDAVIT

I, Zawar Hussain S/o Nasrullah Khan R/o Mohallah Jandar Par P.O Gujjar Garhi Mardan), do hereby solemnly affirm and declare on oath that the contents of accompanied Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Zawar Hussain

DEPONENT

CNIC # 16102-7407800-1

Cell No. 0312-8033379

Identified by:
Javid Iqbal Gulbela
ASC

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. ___/2024

Zawar Hussain (Ex-DHC No-1065)

VERSUS

AIGP KPK & Others

ADDRESSES OF PARTIES

Address of Appellant:

Zawar Hussain (Ex-DHC No-1065) S/o Nasrullah Khan R/o Mohallah Jandar
Paar, Gujar Ghari, Tehsil Takhtabi, District Mardan.

Addresses of Respondents:

1. **Additional Inspector General of Police, HQrs Khyber Pakhtunkhwa, Peshawar**
2. **Deputy Inspector General of Police, Telecommunication & Transport Khyber Pakhtunkhwa, Peshawar.**
3. **Superintendent of Police, Telecommunication & Transport Khyber Pakhtunkhwa, Peshawar.**

Dated :20.08.2024

(Signature)
Appellant

Through

(Signature)
Javed Iqbal Gulbela
Advocate, Supreme Court of
Pakistan.

ORDER IN CHARGE

I, Sher Wazir, Superintendent of Police, Telecommunication, Khyber Pakhtunkhwa, Peshawar as Competent Authority, in the opinion of Driver Constable Zawar Hussain No.1065 has rendered himself liable to be proceeded against for having committed the following act of omission/commission, within the meaning of Khyber Pakhtunkhwa Police Rules 1975 (Amended 2014).

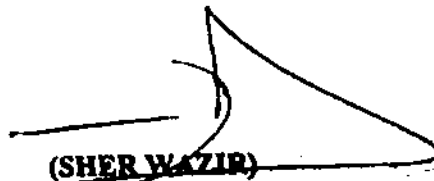
STATEMENT OF ALLEGATIONS

That while travelling by Motor Car white Color from ring road, you were stopped by local Police Mardan, and recovered 1952g Chars from your Car. You were thereafter, arrested and lodged FIR No.77 dated 023.01.2023 u/s 9.D KP/CNSA against you at Police Station Saddar Mardan.

By reason of the above, you appear to be guilty of misconduct under the Khyber Pakhtunkhwa Police Rules 1975 (Amended 2014) and have rendered yourself liable to all or any of the penalties specified in the said Rules.

For the purpose of scrutinizing the conduct of the said officer with reference to the above allegations, Muhammad Saeed DSP T& is hereby nominated as Enquiry Officer under Khyber Pakhtunkhwa Police Rules 1975 (amended 2014).

The Enquiry Officer shall, in accordance with the provision of the said Rules, provide reasonable opportunity of hearing to the accused Driver Constable, record and submit its finding within 15 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused constable.


(SHER WAZIR)
Superintendent of Police,
Telecommunication & Transport,
Khyber Pakhtunkhwa, Peshawar.

MAJED IQBAL GULBERA
Advocate
Supreme Court of Pakistan
(ASC 1001)

CHARGE SHEET

1. Sher Wazir, Superintendent of Police, Telecommunication Khyber Pakhtunkhwa, Gilgit Baltistan, Peshawar, F-76, Islamabad, Pakistan, is hereby charged with the following allegations/charges as follows:

That while travelling by Motor Car No. _____ from ring road, you were stopped by _____ on _____ at _____ from your _____ You were thereafter _____ by _____ and lodged FIR No. _____ dated 023/04/2014 under 91-D KP Act against you at Police Station _____

By the return of above, you appear to be guilty of misconduct under Khyber Pakhtunkhwa Service Rules 1953 (Amended -2014) and have rendered yourself liable to all or any of the following provisions of said Rules:

You are hereby directed to submit your written defence within _____ days of _____ to the _____ to which you are attached for the benefit of _____

Your written defence, if any, should reach to the Enquiry Officer within the specified time and it shall be presumed that you have no defence to put in and is that case ex-parte proceedings will be taken against you.

You are directed to identify what or who does refer to you as a person or reference

A copy of _____ of _____

SHER-WAZIR
Superintendent of Police
Telecommunication & Transport
Khyber Pakhtunkhwa, Peshawar

207-76
20 1 2014

Copy of the above is forwarded to the _____

Mr. Mohammad Saad Mehdi (Officer)
Assistant Police Officer
1. _____
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Signature of Officer: _____
Date: _____

Signature of _____
Date: _____

FINAL SHOW CAUSE NOTICE

1. Nisar Muhammad Superintendent of Police Telecommunication & Transport, Khayber Pakhtunkhwa Peshawar as competent authority under the Police Rules 1975 (Amended-2014) do hereby serve upon you Driver Constable Zavar Hussain No.1065 as follows:
That a FIR No.77 dated 02.01.2023 w/s 9DKP/CNSA lodged against you at Police Station Sadar Mardan. Proper Departmental Enquiry was initiated against you and your statement, Progress Report of SP Investigation Mardan and other relevant enquiry papers were thoroughly examined and the Enquiry Officer recommended Major Punishment under Khayber Pakhtunkhwa Police Rules 1975 (Amended-2014)

in going through the findings and recommendation of the enquiry officer, the material on record and other connected papers before the Enquiry officer;

I am satisfied that you have committed the following acts/omissions specified in the rules of the said rules: That while travelling by Motor Car white Color from ring road, you were stopped by local Police Mardan, and recovered 1952g churs from your Car. You were thereafter arrested and lodged a FIR No.77 dated 02.01.2023 w/s 9.D KP/CNSA against you at Police Station Sadar Mardan.

As a result thereof, I, Nisar Muhammad Khan Superintendent of Police Telecommunication & Transport Khayber Pakhtunkhwa Peshawar as competent authority, have tentatively decided to impose upon you the penalty of Minor/Minor punishment under Police Rules 1975.

You are thereof, required to show cause as to why the aforesaid penalties should not be imposed upon you and also intimate whether you desire to be heard in person.

You are thereof directed to submit your written defence within seven (07) days of the receipt of this Final Show Cause Notice failing which it shall be presumed that you have nothing to offer in your defence to put in and in that case an ex-parte action shall be taken against you.

(NISAR MUHAMMAD)
Superintendent of Police,
Telecommunication & Transport,
Khayber Pakhtunkhwa, Peshawar.

19/5/2023
Tele/OAS: dated Peshawar the

6170-74

- 1. copy of the above forwarded to the:-
- 2. UIC Tele Control Mardan with the direction to deliver the said Final Show Cause Notice upon official concerned and returned one spare copy duly signed by him for further proceeding.
- 3. Line Officer Tele Peshawar.
- 4. Accountant Tele Peshawar.
- 5. ATTO Tele Peshawar.
- 6. Official concerned.

جواب ایمان صحت زوار صحت نمبر 1065

میں صرف بیان کیا کہ علی سال 2008 میں

میں لکھی ہوئی ہے اور باقاعدگی سے اور ایمان کے لئے اس

ڈیوٹی سرانجام دے رہی ہوں۔ اور کبھی بھی غیر قانونی سرکاری

میں ملوث نہیں رہا ہے۔ کچھ عرصہ قبل صدر کھائی عمارت

کے گریجویٹوں کو صرف سے سمجھیں عمارت کی سہارا میں سارا

باز کر کے اپنی بیٹی کو درغلا لے کر لہجہ کی کوشش کی جس

پر جھگڑا ہوا اور جمع ہی میں عمارت کے کوریئر ملوث کیا

گیا اور یہی سب کچھ ان کے لئے کوریئر میں ہوا

میں کوریئر میں ہوا اور عمارت کے کوریئر میں کوریئر آدھی

میں کوریئر میں ہوا اور عمارت کے کوریئر میں کوریئر آدھی

میں کوریئر میں ہوا اور عمارت کے کوریئر میں کوریئر آدھی

کیا وہ سارا سارا کر کے فون پر اطلاع دی کہ عمارت کا کوریئر

آ رہا ہوں اسکو ضروری ملوث کرو جس میں کوریئر میں

میں کوریئر میں ہوا اور عمارت کے کوریئر میں کوریئر آدھی

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JAVED IQBAL GULBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

ORDER

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Ann-D

This order will dispose of the departmental enquiry initiated against Driver Head Constable Zawar Hussain No.1065 of Police Telecommunication unit.

The allegations are as under:

That while travelling by Motor Car white Color from ring road, he was stopped by local Police Mardan for the purpose of checking and recovered two packets Chars beneath driver seat one was of 1002 grams and another was of 950 grams total 1952grams. He was thereafter, arrested and FIR No.77 dated 023.01.2023 u/s 9.D KP/CNSA was lodged against him at Police Station Saddar Mardan.

The official concerned was placed under suspension vide this office order No.1756-69/Tele/OASI dated 10.02.2023 and proper departmental enquiry initiated against the official concerned. Charge Sheet with statement of Allegation was served upon official concerned vide this office order No. 2072-76//Tele/OASI dated 20.02.2023. The official remained absent w.e.f 09.03.2023 to 14.03.2023. The official concerned submitted written reply wherein he denied the allegation levelled against him in FIR. His reply was examined thoroughly and found unsatisfactory. Previously a FIR No.740 u/s 9CCNSA dated 30.11.2016 had been registered against him Police station Saddar District Mardan. After recording his written statement the official absented himself w.e.f 20.03.2023 to 08.06.2023. (Total absence: 2 months & 24 days up to 08.06.2023). The Enquiry Officer after fulfilling all codal formalities recommended major punishment for official concerned under Khyber Pakhtunkhwa Police Rules 1975(Amended-2014).

After that, Final Show Cause Notice was served upon official concerned vide this office Order No.6170-74/Tele/OASI dated 19.05.2023. In replying to Final Show Cause Notice the official concerned failed to defend himself against the allegation levelled against him FIR and to legitimize his absence the official presented medical documents and stated that he is suffering from spinal cord diseases. The reply so received was found unsatisfactory. The official concerned after recording his statement again absented himself w.e.f 08.06.2023 to till date.

Keeping in view of the recommendation of the enquiry officer and serious act of misconduct committed by Constable Driver Head Constable Zawar Hussain No.1065, I **NISAR MUHAMMAD KHAN** Superintendent of Police Telecommunication & Transport, Khyber Pakhtunkhwa hereby awarded him major punishment Removal from Service under Khyber Pakhtunkhwa Police Rules, 1975(amended-2014).

The cost of outstanding Govt. Kit and other dues if any should be recovered from him and credit to the Government Treasury under the relevant head of Account.

(NISAR MUHAMMAD KHAN)

Superintendent of Police,
Telecommunication & Transport,
Khyber Pakhtunkhwa, Peshawar.

No. 9220-28 Tele/OASI dated Peshawar the 13 / 07/2023.

Copies forwarded to following:-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. SP/ Telecomm & Motor Transport KP Peshawar.
3. DSP/Telecom: & MT Peshawar.
4. Accountant Tele Peshawar.
5. SRC/Tele Peshawar.
6. GSI/Tele Peshawar.
7. Line officer Tele.
8. Official Concerned.
9. OB/No 187/2023.

(MUHAMMAD NISAR KHAN)

Superintendent of Police,
Telecommunication & Transport,
Khyber Pakhtunkhwa, Peshawar.

JAVED IQBAL GULBELA
Advocate
Supreme Court of Pakistan
(ASO # 5317)

(14)

Ann - "E"

Before the Hon'able .I.G Khyber Pakhtunkhwa Peshawar

Zawar Hussain son of Nasrullah Khan R/o Mohallah Jandar
Paar, Gujar Garhi, Tehsil & District Mardan No. 1065,

.....Appellant

Subject:-

*Departmental representation/ appeal on behalf
of appellant Belt No.1065 against the order
No.9220-28 dated 13/07/2023 vide which, the
appeal of the appellant is dismissed without any
cogent reason hence, the order passed by the
S.P telecommunication and Transport KPK,
Peshawar is liable to be dismissed consequently
the order/ penalty regarding the removal from
service of appellant may also be cancelled.*

Prayer in appeal;

*On acceptance of the instant Departmental,
the order impugned passed by the S.P
Telecommunication & Transport KPK,
Peshawar may kindly be set aside, the appellant*

JAVED IQBAL CHLBR
Advocate
Supreme Court of P.
(ASC # 5317)

may kindly be set aside, the penalty awarded may please be cancelled, the appellant may kindly be re-instated on his post along with all back benefits. Any other remedy according to law may also be granted to the appellant in the circumstances.

Respectfully Sheweth:

The appellant humbly submits as under

1. That the appellant is the permanent resident of District Mardan and relating to a noble and poor family of Distt: Mardan. (Copy of CNIC is hereby attached)

2. That the appellant was appointed as constable in the police department and preformed his duty with honesty. (Copy of service record is attached)

3. That there was now complaint received to the high ups against the appellant, the record of the appellant is very well and crystal clear with the department of police which is also evident from the previous record of the appellant.

JAVED IZBAL GULBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

- 4. That the appellant has also performed his duty in this Hon'able office for a long period due to serious illness of spinal card and was under treatment and later on the local police has illegally and wrongly dragged him in a frivolous and bogus case and lodged an FIR NO.740 dated 30/11/2016 police station Saddar MPS Mardan and wrongly nominated him under section 9C CNSA.
- 5. That the learned competent court released him in the said very case and now the appellant on bail but an inquiry was conducted in this respect wherein the appellant too declared as accused and then removed him from his service through order impugned. (Copy of order is attached).
- 6. That, the inquiry officer has conducted all the proceedings in ex-parte, the appellant has not been requisitioned for participation in the proceedings while produced the same before the department.
- 7. That no show cause notice has prior to this given to the appellant regarding the running proceedings against the appellant hence, the order impugned is not fulfilling the ends of justice , liable to be set aside on this score.
- 8. That, the law of the land also demands that each and

JAVED IQBAL GULBELA
 Advocate
 Supreme Court of Pakistan
 (ASC # 5317)

every party be given a chance for hearing, pro and contra

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evidence but in the instant case, the appellant is completely condemned un-heard which is also against the norms of justice.

- A. That the appellant is the only source of his family, he has school going children, if he has not been re-instated on his previous service, the future of the children will be fall in the dark hence, the appellant may kindly be re-instated and the impugned order may be set aside.
- B. That the appellant was fully devoted to the duties assigned and had never remained delinquent.
- C. That the absence from the duty of the appellant was not willful but due to the above reasons i-e serious illness as the appellant is removed from his service only on the point of the said frivolous FIR rather the appellant was serious ill and that's why he was remained absence but with malafide intention, the appellant was dragged in the said frivolous FIR.
- D. That once again, the appellant is pray for re-instatement on his previous duty and will be performed the same regularly.
- E. That, prior to filing the instant representation, the appellant filed representation/ departmental appeal before the Hon'able S.P telecommunication & Transport KPK

JAVED IQBAL GULBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

Peshawar but the same was declined hence, the instant departmental appeal before your Honour.

F. That, petitioner further requesting this Hon'able Tribunal, that the petitioner may kindly be allowed to appear before the lower quarter and chance for hearing and defence may kindly be provided as the law of land also demanding that chance for hearing be given to the parties.

It is therefore most humbly prayed On acceptance of the instant Departmental, the order impugned passed by the S.P Telecommunication & Transport KPK, Peshawar may kindly be set aside, the appellant may kindly be set aside, the penalty awarded may please be cancelled, the appellant may kindly be re-instated on his post along with all back benefits. Any other remedy according to law may also be granted to the appellant in the circumstances.

Zawar Hussain

Zawar Hussain son of Nasrullah Khan R/o Mohallah Jandar Paar, Gujar Garhi, Tehsil & District Mardan No. 1065

Dated 08/08/2023

Certificate/ Verification

It is hereby certified and verified that the instant departmental appeal/ representation is the first one against the impugned order, Moreover all the contents of the appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'able Authority.

JAVED IOBAL GULBELA
Advocate
Supreme Court of Pakistan
(ABC # 5317)

Deponent Zawar Hussain

(19) Ann - E/I

This order is hereby passed to dispose of Departmental Appeal under Rule-11 of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted by Ex-Driver Head Constable Zawar Hussain No. 1065. The appealant was removed from service by Superintendent of Police Telecommunication & Transport Khyber Pakhtunkhwa Peshawar vide Order No. 9220-28/Tele/OASI-dated 13.07.223.

The appealant was called in Orderly Room in the office of the Undersigned on 23.08.2023, heard in person, during the hearing, the appealant failed to prove himself innocent on the allegation levelled against him in the FIR No. 77 dated 23.01.2023 u/s 9.D KP/CNSA PS Saddar Mardan. Therefore, the Departmental Appeal of Ex-Driver Head Constable Zawar Hussain No. 1065 is hereby rejected.

~~(ABBAS MAJEED KHAN MARWAT)^{PSP}~~
Deputy Insepctor General of Police,
Telecommunication & Transport,
Khyber Pakhtunkhwa, Peshawar.

NO. 10541-44 /Tele/OASI, dated Peshawar the 29 / 08 /2023.

1. SP/Telecomm: & Transport Peshawar.
2. DSP/ Telecomm: & Transport Peshawar.
3. SRC Tele Peshawar.
4. Appealant concerned. (Zawar Hussain s/o Nasrullah Khan r/o Jandar Paar Village Gojar Garhi District Mardan)

JAVED IQBAL GULBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

0312-8033379
زوار

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Ann - "F"

Before the Honourable Inspector General, K.P.K. Peshawar

Subject: Revision/Mercy Petition against the order of worthy S.P. Telecommunication & Transport, KPK Peshawar dated 13.07.23 vide which the appellant was removed from service.

Respected Sir,

Facts:

The appellant was departmentally proceeded against on the allegations of involvement in case F.I.R. No: 77 dated 23.1.23 u/s 9D KP/CNSA P.S. Sedar Mardan and absence from duty w.e.f. 20.03.2023 to 08.06.2023 (total absence 2 months and 24 days). After departmental Enquiry the appellant was found guilty of the alleged mis-conduct. Subsequently removed from service vide O.B. No: 87/2023 by learned S.P. Telecommunication & Transport K.P. Peshawar. The appellant lodged an appeal before D.I.G. Police Telecommunication & Transport K.P. Peshawar but the same was rejected vide his letter No: 10541-44 dated 29.8.23 Hence, aggrieved this Revision/Mercy Petition against the said order.

Grounds: 1. That the order of the learned S.P. Telecommunication is against the law and facts on record.

2. That the departmental enquiry has been conducted in contrary to rules and regulations.
3. That the appellant has not given any opportunity to rebut the allegations.
4. That the whole departmental proceeding has been carried out in absence of appellant which is violation of Police rules 16.24.
5. That during departmental enquiry no evidence has been brought to sustain the charges.
6. That as far as the registration of criminal case is concerned it is a ~~fake~~ case and is the result of departmental personal rivalry.
7. That the said criminal case is still under trial in the Court of Law.
8. That the appellant is on bail in the criminal case and it is Pre-mature to determine the guilt of the appellant before the announcement the verdict of the Court.

JAVED IQBAL GULBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

on Page..

- 9. That similarly the allegations regarding the wilfull absence of duty is also not true. The appellat was ill and undertreatment in the Hospital.
- 10. That the appellat has informed his Superior about his illness and communicated the medical certificate to the concerned authority but the same was ignored without and reasons (medical certificate attached).
- 11. That the applicant has got 15 years service in credit and has performed all of his duties to the satisfaction of his superiors.
- 12. That there is no Previous & such like complaint against the appellat through out his career and the appellat is quite innocent in the matter.

In view of the above it is humbly requested that the appellat may kindly be reinstated in service in greater interest of justice. The appellat shall Pray for your long life, Prosperity and success in life.

Yours obediently

Zawar Hussain

Ex H.C. Driver Zawar Hussain

No: 1065

r/o Gujar Garhi, Mardan

Dated: 07.09.2023
Cell No: 0312-8033579

JAVED IQBAL GULBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)



AWW = F/I

ORDER

This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted by Ex-DIC Zawar Hussain No. 1065. The applicant was removed from service by SP Telecommunication & Transport vide Order No. 9220-28/Tel/OASI, dated 13-07-2023, on the allegation that while travelling by Motor Car white Color from ring road, he was stopped by local Police Mardan for the purpose of checking and received two packets Chars beneath driver seat one was of 1002 grams and another was of 950 grams total 1952 grams. He was thereafter, arrested and FIR No. 77 dated 23.01.2023, u/s 9.D KP/CNSA was lodged against him at Police Station Saddar Mardan. Moreover, the official remained absent w.e.f. 09.03.2023 to 14.03.2023 (Total 06 days). Previously a FIR No. 740 u/s 9CCBSA dated 30.11.2016 had been registered against him Police Station Saddar District Mardan. After recording his written Statement, the official absented himself w.e.f. 20.03.2023 to 08.06.2023 (Total absence: 02 months & 24 days).

The Appellate Authority i.e. DIG Telecommunication & Transport rejected his appeal vide order No. 10541-44-Tel/OASI, dated 29.08.2023.

Meeting of Appellate Board was held on 25.07.2024 wherein petitioner was heard in person. The petitioner contended that the criminal case is fake and is the result of departmental personal rivalry. Besides, the absence was due to his illness.

The petitioner was heard in person. He was given reasonable opportunity to defend himself against the charges; however he failed to advance any justification. The Board sees no ground and reasons for acceptance of his petition, therefore, his petition is hereby rejected.

Sd/-
AWAL KHAN, PSP
Additional Inspector General of Police,
HQs: Khyber Pakhtunkhwa, Peshawar.

No. SI 1950-54/24, dated Peshawar, the 06-08-2024.

Copy of the above is forwarded to the:

1. Deputy Inspector General of Police, Telecommunication.
2. SP Telecommunication & Transport, Khyber Pakhtunkhwa Peshawar.
3. AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
4. PA to Addl: IGP/HQs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQs: Khyber Pakhtunkhwa, Peshawar.

JAVED IQBAL GULBELA
Advocate
Supreme Court of Pakistan
(ASC 5317)

(SONIA SHAMROZ KHAN)
PSP
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

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Ann - G

IN THE COURT OF ASIM RIAZ

ASJ-II/Judge Special Court, Mardan

Case File No. 117/SPL of 20.04.2023
The State ...VS... Zawar Hussain

ORDER
16.04.2024



4453
m

PRESENCE:

*Learned Dy;PP representing the State.
Accused is on bail*

1. Allegations against accused facing trial Zawar Hussain son of Nasrullah Khan are that the local police during patrolling stopped motorcar bearing registration BU-637/Islamabad driving by the accused facing trial for the purpose of checking and during search of motorcar two packet charass 1952 grams charass was recovered beneath the driving seat, hence the present FIR No.77 dated 23.01.2023 U/S 9-D KP CNSA of Police Station Saddar Mardan was registered.
2. Today learned Dy;PP for the State submitted application U/S 494 Cr.P.C. for withdrawal of the case against accused on the grounds mentioned therein.
3. In narcotic cases, the criminal liability of the accused is established only on the basis of alleged recovery irrespective of any other criminal cases but when the recovery is doubtful as pointed out by learned Dy;PP regarding non-association of private witnesses, no previous history and difference in weightment etc then conviction of the accused cannot be recorded. More so, putting the case for

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Session Court Mardan

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trial is futile exercise by subjecting the accused to agonies and misères, which is against the norms of criminal dispensation of justice.

4. It is noteworthy that under the **Control of Narcotics Substances Rules, 2001** the government analyst report must contain the protocols. In this respect Rule 5 ibid is directory in nature whereas Rule 6 is mandatory which provides that full protocols ought to be mentioned in the government analyst report. Though in the instant case protocols were complied but perusal of the Chemical Examiner Report reveals that Duquenois-Levine Test was applied and Expert expressed his opinion on its basis that the sample was charas. Whereas, Duquenois-Levine test is only used for detection of "drug" presence in sample but not nature or kind of "drug". For charas detection i.e. a resin of cannabis plant (cannabis saliva or cannabis indica), the Chemical Report showing Tetrahydrocannabinol (Charas) positive is required. Patent infirmity in the report of Chemical Examiner was found, which is fatal for the prosecution case. **Rel: Khalid Mehmood Vs The State and another, 2020 P Cr. L J 462 [Lahore].**

5. In view of Section 25 of the Act ibid, Section 103 Cr. PC does not apply, calling for 02 respectable inhabitants of the locality but when the occurrence was

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Session Court Mardan

16.4.24
M. RIAZ
Additional District & Sessions Judge-II
Mardan

allegedly happened in a busy place, in day light then the complainant was required to arrange the witnesses of locality, who might have seen the occurrence of having narcotics, but the same was not complied with. (Rel: **Muhammad Aslam v. The State 2011 SCMR 820, Mir Muhammad v. The State 2008 MLD 1333 Karachi**).

6. In the present case neither any criminal history of accused has been put forth by the prosecution nor proved that accused was involved in such transportation, selling or dealing with the business of narcotics.

7. It is worthwhile to mention here that the allegedly 1952 grams of charass has been recovered from the accused from which 5/5 gram charass was separated for FSL analysis, however during the time of its production before learned Judicial Magistrate, on weighment 1942 grams charass was found to be 1969 grams, which fact makes the case of the prosecution highly doubtful.

8. In narcotics cases, after arrest of the accused, his card of arrest was required to be prepared under section 62 Cr.P.C. followed by alleged recovery, if any where after the FIR would be lodged on the basis of Murasilla but in the present case, the card of arrest and recovery memo dated 23.01.2023 have already contained the FIR number, which simply suggests that all formalities had been complied at police station. This issue is discussed by Hon'ble Peshawar

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ABSHIRI
Additional District & Sessions Judge-II
Mardan

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High Court in reported case **Hanif v State 1996 P Cr.L.J**

706 that in such circumstances conviction cannot be maintained and the accused was accordingly acquitted.

9. Admittedly, it is for the prosecution to establish the criminal responsibility of accused beyond reasonable doubt and if there is one reasonable doubt, its benefit must go in favor of accused not as a matter of grace but right. The object of Section 265-K Cr.P.C. is to acquit the accused if the court considers that there is no probability of conviction and the court can exercise such power at any stage of the case. Section 265 ibid is self-explanatory where the court is equipped with powers to acquit the accused at any stage when there is no probability of the conviction of accused. (Rel: **Agha Imtiaz Ali Khan v. Muhammad Zia Ud Din 2015 P Cr.L.J 2005 Karachi High Court**). There is no need to record the evidence as it is not a condition before taking action under the said provision and use of expression at any stage, is indicative of the intention that any stage could be the very initial stage. (Rel: **State v. Gulfam Hussain 2018 YLR 1223, KH Zia Ahmed v. AJK Ehtisab Bureau 2017 PLD 100 Supreme Court Azad Kashmir**).

10. In view of above legal-discourse and facts apparent on record, as there is no chance of conviction of the accused **Zawar Hussain son of Nasrullah Khan** in the case in hand, accordingly he is hereby discharged/acquitted by exercising jurisdiction U/s 265-D read with section 265-K of the Code of Criminal Procedure, 1898 from the accusation

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11 MAY 2024

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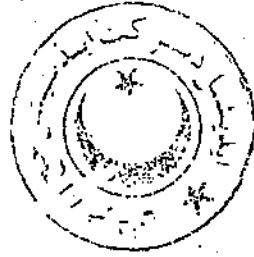
ASMA RIAZ
Additional District & Sessions Judge-II
Mardan

levelled against him. He is on bail, therefore, his sureties are relieved from the liabilities of surety bonds. Case property be dealt in accordance with law after expiry of period of appeal/revision.

11. File be consigned to Record Room after necessary completion and compilation.

Announced.
16.04.2024

(Asim Riaz)
ASJ-II/Judge Special Court,
Mardan.



Name of Application: قید سے رہائی
No. of Application: 7868
Date of presentation of application: 9-5-24
Date of preparation of copies: 11-5-24
Number of Pages: 04
Court Fees: _____
Urgent Fees: _____
Signed of copyist/Examiner: _____
Date of Delivery: 11/5/24

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11 MAY 2024

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Session Court Mardan

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Ann - H

NEURO SURGEON



Assistant Professor

DR. ADNAN AHMAD

MBBS, FCPS, MPH, CHPE, ASDC

Chairman Neurosurgery Deptt:

Gajju Khan Medical College

Bacha Khan Medical Complex Swabi

GKMCS



Name Zawar Hussain Age _____ Sex _____ Date 09-03-2023

Bachache

Difficulty in walking

Lower limbs weakness

Rx:

Tab: Bonyon 20mg

Tab: P/10 - 100

Tab: Toufear

- 100 - 3 = 1.0

Tab: Metf

Tab: 10

Cap: Lygl 20mg

Tab: P. 10

Cap: Riving 40mg

Tab: 10

SLR: 20°

BLK

MRI:

L4-L5 PID.

Conservative tx

Adv bed rest for 10 days



Assistant Professor
Dr. Adnan Ahmed
MBBS (KMC Peshawar) FCPS (Neurosurgery)
MPH (KMU) ASDC-CHPE
Chairman Neurosurgery Department
Bacha Khan Medical Complex
Gajju Khan Medical College Swabi

اسٹنٹ پروفیسر

ڈاکٹر عدنان احمد

JAVEED GULBELA Advocate
Supreme Court of Pakistan
(ASC # 5317)

Mob: 0336-5969974



59
P

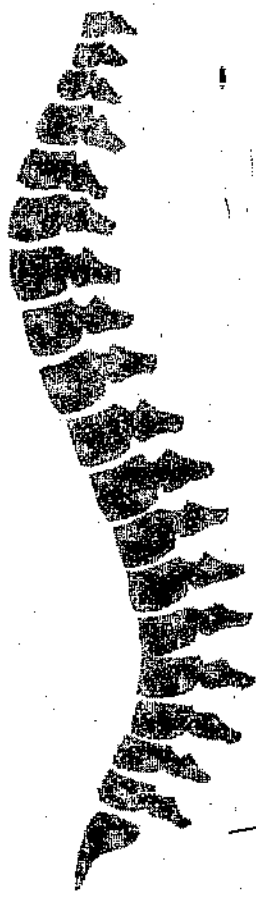
Assistant Professor
DR. ADNAN AHMED
MBBS, FCPS, MPH, CHPE, ASDC
Chairman Neurosurgery Deptt:
Gujju Khan Medical College
Bacha Khan Medical Complex Swabi



Name Zawa Humain Date 19/03/23

Backache (Sene)

Rx



Unable to walk/
stand / Run

SLR: 20° Bx

At strict bed
rest

Dist. Rapiant - SF

Cx 12 - 100

Cep. Ruling 4p

3 - 100

Cep. Nerve of

10 - 5 - 100

Dist. Lome 8p

Cx 10 - 100

JAVED OBAL GULBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

Assistant Professor
Dr. Adnan Ahmed
MBBS (KMC Peshawar) FCPS (Neurosurgery)
MPH (KNU) ASDC-ICHPE
Chairman Neurosurgery Department
Bacha Khan Medical Complex
Gujju Khan Medical College Swabi

اسٹنٹ پروفیسر

ڈاکٹر عدنان احمد

Mob: 0336-5969974

NEURO SURGEON



Assistant Professor
DR. ADNAN AHMED

MBBS, FCPS, MPH, CHPE, ASDC
Chairman Neurosurgery Deptt:
Gujju Khan Medical College
Bacha Khan Medical Complex Swabi

GKMCS



30

Name

Zawar Humain

Date

01-04-23

Backache

Rx

Pain ds leg.

Tab. Lomex 8-9

جیو-پ / ۱۵/۱۰ - ۱۴۶

Tab. LMC

۰۶.۶ - ۶

Cap. Sepil ۳۰۰

۳ - ۱ - ۶

Tab. Genpram ۱۰mg

۰۶.۶ - ۳ - ۱ - ۶

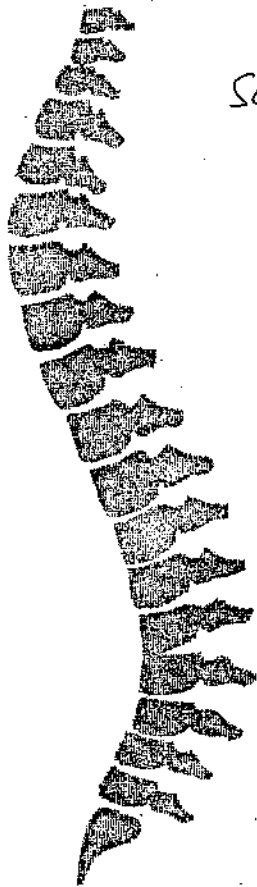
Cap. Stomdex ۳۰۰

۳ - ۱ - ۶

SLR: (N)

Act bed rest

for 01 month



Assistant Professor
Dr. Adnan Ahmed
MBBS (KMC Peshawar) FCPS (Neurosurgery)
MPH (KPMU) ASDC (CHPE)
Chairman Neurosurgery Department
Bacha Khan Medical Complex
Gujju Khan Medical College Swabi

Supreme Council of Pakistan
(ASC # 5317)

استاذ پروفیسر
ڈاکٹر عدنان احمد

Mob: 0336-5969974

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NEURO SURGEON



Assistant Professor
DR. ADNAN AHMED

MBBS, FCPS, MPH, CHPE, ASDC
Chairman Neurosurgery Deptt:
Gujju Khan Medical College
Bacha Khan Medical Complex Swabi

(H)



Name

Zawa Hussain

Date

02/05/23

Backache

Pain both Legs

Dy. Tawall 30P

Dy. Deedee 1W

Rx

Lumbar Belt

Tas. Ropient 5P

U 3 — 3P3

" — 2P2

" — 1P1

" — 1

Caps. Ruling 4P

Tas. derma 8P

U 10 — 4P

Tas. Dimpensi 4P

U 3 — 4P

Tas. Maef

U 2 — 4P

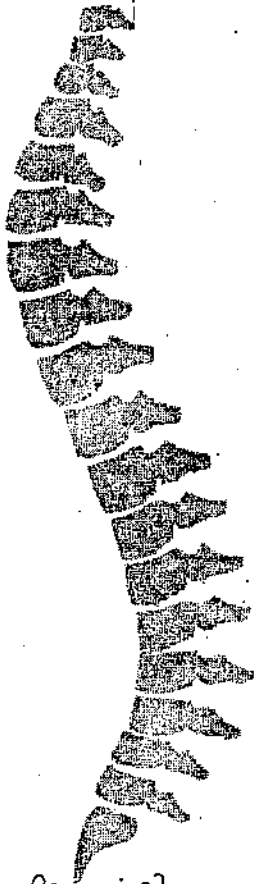
Tas. Muscare 4P

U 10 — 4P

SLR: (N)

Act:

MRI L4s Spine



Physio 3

needs bed rest
for 01 month

DR. ADNAN AHMED

CHPE

Chairman Neurosurgery Deptt

Dr. Adnan Ahmed
MBBS (KMC, Peshawar) FCPS (Neurosurgery)
MPH (KUM) ASDC-CHPE
Chairman Neurosurgery Department
Bacha Khan Medical Complex

ڈاکٹر عدنان احمد

اکٹر عدنان احمد

Mob: 0336-5969974

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NEURO SURGEON



Assistant Professor

DR. ADNAN AHMAD

MBBS, FCPS, MPH, CHPE, ASDC

Chairman Neurosurgery Deptt:

Gajju Khan Medical College

Bacha Khan Medical Complex Swabi



Name Zawar Hussain Age Sex Date 03-6-23

Fup

LSP

L4-L5 P10

Impression

Rx:

Cap. Pyrex 20mg

- S.P. / 10/10 - 10/10

Cap. Linc.

- S.P. 10

Cap. Dexam 20mg

- S.P. 10

Cap. Stomdex 30T

10/10



Signature

Assistant Professor
Dr. Adnan Ahmed
MBBS (KMC Peshawar) FCPS (Neurosurgery)
MPH (KMU) ASDC-CHPE
Chairman Neurosurgery Department
Bacha Khan Medical Complex
Gajju Khan Medical College Swabi

JAVED IQBAL GULBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

اسٹنٹ پروفیسر

ڈاکٹر عدنان احمد

Mob: 0336-5969974

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Ann - I

TELE-COMMUNICATION ORDER

As recommended by the Departmental Selection Committee, Candidate Zawar Hussain

NO Nasrullah Khan R/O Mohr Jander Par Gujar Ghari

PS Saddar Mardan Tehsil Takht-Bal & District Mardan. is

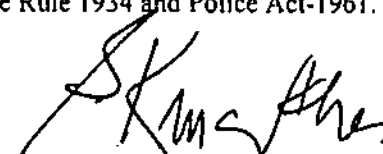
appointed as temporary Driver Constable against the existing vacancy with effect from

24.6.2008 in the National pay Scale of Rs. (EPS-5) 2780-135-6830 plus usual

allowances as may be admissible under the Rules. He is allotted Constabulary No. 1065 and posted

at Line HQRS: Peshawar.


The appointment of the above candidate is purely temporary and he is likely to be discharged any time on any misconduct or any deviation from the provision of Police Rule 1934 and Police Act-1961.


Assistant Inspector General of Police,
Tele-Communication, NWFP, Peshawar.

9399-9406

No. Tele/OASI, dated Peshawar the 26/6/2008.
Copies forwarded for information and necessary action to the:-

1. Accountant General NWFP, Peshawar.
2. Accountant Tele, Peshawar.
3. ~~SPI/MT~~ Peshawar.
4. DSP/HQRs, Peshawar.
5. SRC/Tele, Peshawar.
6. GSI/Tele, Peshawar.
7. LO/Tele, Peshawar.
8. OS/OB No. 302 /2008.


Assistant Inspector General of Police,
Tele-Communication, NWFP, Peshawar.

00405917 ZAWAR HUSSAIN CNIC: 1610274078001 Desig: CONSTABLE DRIVER (80382536) Grade: 07 NTN: Buckle No.: 1065 Gazetted/Non-Gazetted: N

PAYMENTS	AMOUNT	DEDUCTIONS	AMOUNT	LOAN/FUND	PRINCIPAL	REPAID	BALANCE
0001 Basic Pay	27,230.00	6173 CM Flood Relief Fund	3,266.00-				
1004 House Rent Allow 45%	4,968.00	3530 Police wel:Fud BS-1 t	545.00-				
1210 Convey Allowance 20	1,932.00	4004 R. Benefits & Death C	450.00-				
1300 Medical Allowance	1,500.00	3609 Income Tax	10.00-				
		Accounts Office Muzaffarabad					
		PAYROLL REGISTER					
		For the month of September ,2022					
					INCOME TAX 96.60	10.00	86.94

Page : 235
Date : 29.09.2022

DDO : PR4092 A.INSPECTOR GENERAL OF POLICE TELECOMMU Payroll Section : 006 Payroll 6

Position: Non Gazetted

1547 Ration Allowance	681.00						
1567 Washing Allowance	150.00						
1646 Constabulary R Allow	300.00						
1902 Special Incentive AI	775.00						
2148 15% Adhoc Relief All	348.00						
2168 Fixed Daily Allowanc	2,730.00						
2199 Adhoc Relief Allow @	243.00						
2314 Risk Allow Police -	7,400.00						
2347 Adhoc Rel AI 15% 22(2,746.00						
5879 Adj Risk Allowance(Po	3,292.00	3007 GPF Subscription	1,010.00-				

PAYMENTS 54,295.00 DEDUCTIONS 5,281.00- NET PAY 49,014.00 01.09.2022 30.09.2022
 Branch Code:220898 POLICE ROAD, PESHAWAR. HABIB BANK LIMITED POLICE ROAD, PESHAWAR. PESHAWAR Accnt.No: 08987927303003

JAVED QBAL GULBEELA
 Supreme Advocate
 Supreme Court of Pakistan
 (ASC # 5317)

AWM
 34

93-6484

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Vertical handwritten text on the far left side of the page.

Handwritten notes or signatures on the right side, partially overlapping the main text.

Administrative information including dates and names: 20/08/2024, 2024, and other identifiers.

کالج جامعہ (College Name)