


FORM OF ORDER SHEET

Court of _____

Appeal No. 1892/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	10/10/2024	<p>The appeal of Mr. Muhammad Naveed resubmitted today by Mr. Umar Farooq Mohmand Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 15.10.2024. Parcha Peshi given to counsel for the appellant.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

The appeal of Mr. Muhammad Naveed received today i.e on 02.10.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Index of the appeal is incomplete.
- 2- Appeal has not been flagged/marked with annexures marks.
- 3- Affidavit is not attested by the Oath Commissioner.
- 4- Annexures of the appeal are unattested.
- 5- Annexures-B & D of the appeal are illegible be replaced by legible/better one.
- 6- Four more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 859 /Inst./2024/KPST,

Dt. 9/10 /2024.

Amrullah
ADDITIONAL REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Umar Farooq Mohmand Adv.
High Court at Peshawar.

R → Sir,

All the above mentioned
objection were removed
and re-submitted

Umar Farooq
AHC

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1892 /2024

Muhammad Naveed

V/S

EDU: DEPTT:

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Dated: 24/09/2024

APPELLANT

MUHAMMAD NAVEED

Through:


UMAR FAROOQ MOHMAND


MUHAMMAD AYUB


WALEED ADNAN


MAHMOOD JAN
Advocates, Peshawar

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

APPEAL NO. 1892 /2024

Diary No. 16251

Dated 02-10-2024

Mr. Muhammad Naveed, PST (BPS-12)
GPS No 2, Mattani, Peshawar.

..... **APPELLANT**

VERSUS

- 1- The Director Elementary & Secondary Education Department,
Khyber Pakhtunkhwa Peshawar
- 2- The District Education Officer (M), Peshawar.

..... **RESPONDENTS**

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST
THE IMPUGNED APPELLATE ORDER DATED 11/07/2024
COMMUNICATED ON 25/08/2024, WHEREBY THE
APPELLANT HAS BEEN RE-INSTATED IN HIS SERVICE,
BUT THE INTERVENING PERIOD IS TREATED AS LEAVE
WITHOUT PAY.**

PRAYER:

That on acceptance of this appeal the impugned appellate
order dated 11/07/2024 may very kindly be rectified/modified to
the extent that the intervening period may kindly be treated as
period on duty. Any other remedy which this august Tribunal
deems fit that may also be awarded in favor of the appellant.

R/SWETH:

ON FACTS:

- 1. That appellant was initially appointed as PST vide order dated 21/05/2016 and performing his duty with full zeal & zest and up to the entire satisfaction of his high ups. Copy of appointment order is attached as annexure.....**A**
- 2. That the appellant while performing his duty was charged in a criminal case vide FIR No. 838 dated 14/11/2022 under section 13-2cxx of AO, 2015 in Police Station Kot Chutta D.G Khan and arrested by the local police in the captioned FIR. Copy of FIR is attached as annexure.....**B**

3. That the appellant remained in the judicial lockup, while the respondent removed the appellant from service on the ground of absence through order dated 02/10/2023. (copy of order dt 2/10/23 is enclosed as Annex B/1)
4. That after conclusion of trial in the aforementioned FIR, the trial court through judgment dated 26/10/2023 convicted the appellant, feeling aggrieved the appellant preferred an appeal before the Sessions Court and through judgment dated 13/02/2024 acquitted the appellant from the charges levelled against him. Copies of both the judgments are attached as annexure.....C&D
5. That after acquittal from above FIR, the appellant preferred a departmental appeal against his removal order before the appellate authority vide dated 26/02/2024. Copy of departmental appeal is attached as annexure..... E
6. That the respondent No 2 through impugned appellate order dated 11/07/2024 accepted the departmental appeal of the appellant, re-instated the appellant into service, but astonishingly the intervening period has been treated as leave without pay, despite that the appellant was acquitted from the charges by the competent court and the impugned absence period of the appellant is not willful absence, but due to the aforementioned false FIR lodged against the appellant. Copy of the appellate order dated 11/07/2024 is attached as annexure.....F
7. That feeling aggrieved and having no other remedy filed the instant appeal on the following grounds amongst the others.

GROUND:

- A- That impugned appellate order dated 11/07/2024 passed by the respondent No 2 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be rectified/modified to the extent that intervening period may kindly be treated as period on duty.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

(3)

- C- That it is too heartburning that when the competent court of law has acquitted the appellant for the criminal charges, then there is no plausible ground or justification to proceed and punish the appellant for one and the same charges. The act of respondents is tantamount to double jeopardy which is strictly forbidden by the constitution of Islamic Republic of Pakistan 1973.
- D- That no regular inquiry has been conducted in to the matter, hence the appellant has been condemned unheard.
- E- That no right of personal hearing and personal defense has been provided to the appellant.
- F- That, the treatment meted out to the appellant clearly based on discrimination and mala fide and as such the respondents violated the Principle of Natural Justice.
- G- That the absence period of the appellant is not wilful absence, but due to the above captioned FIR falsely registered against the appellant and the appellant lastly acquitted by the competent court of law.
- H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may very graciously be accepted as prayed for, please.

Dated: 24/09/2024

APPELLANT 
MUHAMMAD NAVEED

Through:


UMAR FAROOQ MOHMAND


MUHAMMAD AYUB


WALEED ADNAN
Advocates, Peshawar

CERTIFICATE:

No such like appeal is pending or filed between the parties on the subject matter before this Honorable Tribunal.


Advocate

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2024

Muhammad Naveed

V/S

EDU: DEPTT:

AFFIDAVIT

I, Mr. Muhammad Naveed, Ex-Constable No: 2881, District Police, District Mohmand, do hereby solemnly affirm and declare on oath that the contents of this **Service Appeal** are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble tribunal.


DEPONENT

"A" (5)

District Education Officer (Male) Peshawar

PH No. 091-9331337, 9331336

Fax 091-9331337

E-mail emispeshawar@gmail.com



APPOINTMENT.

Consequent upon recommendation of the District Selection Committee, appointment of the following candidates is hereby ordered against the post of Primary School Teacher (PST) 2015 School based in BPS-12 (Rs.11140-800-35140) @ Rs. 11140/- fixed plus usual allowances as admissible under the rules on adhoc basis on Contract under the existing policy of the Provincial Government, in Teaching Cadre on the terms and conditions given below with effect from the date of their taking over charge:

S#	Union Council Name	Name of Candidate	CNIC#	Total Score	Name of School	Remarks
1	Achini Bala	MUHAMMAD RAWAIL	17301-1267880-3	110.15	GPS Sangu Landi Bala	AGAINST VACANT POST
2	Akhunabad	TARIQ ALI	17301-8252562-7	116.8	GPS Haider Colony	AGAINST VACANT POST
3	Akhunabad	MUHAMMAD RIAZ	17301-8625231-1	112.71	GPS Akhoon Abad	AGAINST VACANT POST
4	Akhunabad	UMAR HAYAT	17301-3211081-7	100.51	GPS Akhoon Abad	AGAINST VACANT POST
5	Akhunabad	MUHAMMAD TAHIR	17301-1268983-9	97.12	GPS Akhoon Abad	AGAINST VACANT POST
6	Akhunabad	NASIR GUL	17103-0350180-9	90.09	GPS Haider Colony	AGAINST VACANT POST
7	Akhunabad	ABU BAKAR SIDDIQUE	17301-9398426-7	81.19	GPS Beri Bagh	AGAINST VACANT POST
8	Akhunabad	HASSAN ZAIB	17301-1602739-7	72.9	GPS Akhoon Abad	AGAINST VACANT POST
9	Akhunabad	ZUBAIR GUL	17101-0111368-3	69.27	GPS Haider Colony	AGAINST VACANT POST
10	Akhunabad	MUHAMMAD ISHAQ	17301-2011563-9	61.26	GPS Beri Bagh	AGAINST VACANT POST
11	Asia	SHAKEEL AHMAD	17301-2334603-5	93.61	GPS No.2 Asia Park	AGAINST VACANT POST
12	Asia	NADEEM BAIG	17301-3103612-5	86.29	GPS Jogan Shah	AGAINST VACANT POST
13	Asia	RIZWAN ULLAH	17301-3994302-7	63.47	GPS Asia Gate	AGAINST VACANT POST
14	Asia	SALMAN NAWAZ	17301-0188293-9	60.08	GPS Asia Gate	AGAINST VACANT POST
15	Aza Khel	AMIN ULLAH	17301-1085294-7	119.58	GPS Aza Khel No.1	AGAINST VACANT POST
16	Aza Khel	KHAIR ULLAH	17301-6372223-1	115.63	GPS No.2 Azakhel	AGAINST VACANT POST
17	Aza Khel	ABDUL ALI KHAN	17301-2761848-5	98.11	GPS Khandad Killi	AGAINST VACANT POST
18	Aza Khel	MUHAMMAD RAFIQUE	17301-7564675-3	94.45	GPS Sher Mir Killi	AGAINST VACANT POST
19	Aza Khel	SHABEER AHMAD	17301-8260045-5	83.45	GPS Teta Band No.1	AGAINST VACANT POST
20	Badaber Horizai	ISRAR UD DIN	17301-4724341-3	102.76	GPS MERA MAMA KHEL	AGAINST VACANT POST
21	Badaber Horizai	MUHAMMAD SAEED SHAH	17301-4478641-5	93.75	GPS GHARI HASHIM	AGAINST VACANT POST

(6)

231	Masho Gaggar	SHUKRIA KHAN	17301-5547341-7	90.81	GPS MUHAMMAD ALI KILLI	AGAINST VACANT POST
232	Masho Gaggar	ASAD ULLAH	17301-3803173-9	88.06	GPS BALARZAI NO.1	AGAINST VACANT POST
233	Masho Gaggar	ZIKRIYA KHAN	17301-4270409-1	86.11	GPS QAZI ABAD	AGAINST VACANT POST
234	Masho Gaggar	MOHSIN KHAN	17301-8325421-5	84.76	GPS HAJI KHEL LALMA	AGAINST VACANT POST
235	Masho Gaggar	MALIK NOOR	17301-7015936-9	82.7	GPS QAZI ABAD	AGAINST VACANT POST
236	Mathra	MUHAMMAD SHAHSAWAR	17301-8054100-5	128.64	GPS PATWAR PAYAN	AGAINST VACANT POST
237	Mathra	MUHAMMAD JAMIL	17301-1558879-7	123.45	GPS GHALJI KANDAR KHEL	AGAINST VACANT POST
238	Mathra	TASBEEH UR REHMAN	17301-2463261-7	121.73	GPS GARHI FAZLI HAQ	AGAINST VACANT POST
239	Mathra	SAFDAR HAYAT KHAN	17301-4978645-9	116.24	GPS PIR BALA	AGAINST VACANT POST
240	Mathra	MUHAMMAD ARIF KHAN	17301-5058890-7	113.21	GPS PIR BALA	AGAINST VACANT POST
241	Mathra	MUHAMMAD FAIZAN	17301-7115035-7	113.11	GPS YARI KORCONA	AGAINST VACANT POST
242	Mattari	WAJID KHAN	17301-2602379-3	109.61	GPS JANI GARHI	AGAINST VACANT POST
243	Mattani	MUHAMMAD NAVEED	17301-9155548-3	97.99	GPS MATTANI NO.2	AGAINST VACANT POST
244	Mattani	SAMIIN UL HAQ	17301-4341038-5	95.58	GPS JANI GARHI	AGAINST VACANT POST
245	Mattani	ALI BACHA	17301-8049707-3	92.36	GPS JANI GARHI	AGAINST VACANT POST
246	Mattani	TAHIR ALI	17301-7770299-3	90.48	GPS MATTANI NO.3	AGAINST VACANT POST
247	Mattani	JAVED IQBAL	17301-9283846-7	90.14	GPS MATTANI NO.3	AGAINST VACANT POST
248	Mattani	YOUNAS KHAN	17301-6821651-3	88.82	GPS MATTANI NO.3	AGAINST VACANT POST
249	Mattani	BABUGUL	17301-6070538-9	87.8	GPS MATTANI NO.3	AGAINST VACANT POST
250	Mattani	QADAR MUHAMMAD	17301-3622456-3	84.4	GPS MERA MATTANI	AGAINST VACANT POST
251	Mattani	FAZLI KHALIQ	17301-4122624-3	81.01	GPS SRA KHAWRA	AGAINST VACANT POST
252	Mattani	RIZWAN ULLAH	17301-3700294-1	80.16	GPS SRA KHAWRA	AGAINST VACANT POST
253	Mattani	NIAZ AKBAR	17301-1295519-5	80.02	GPS SRA KHAWRA	AGAINST VACANT POST
254	Mattani	IKRAM ULLAH	17301-1952088-7	79.47	GPS JANI GARHI	AGAINST VACANT POST
255	Mattani	SHARAFAT SHAH	17301-1798830-9	75.83	GPS JANI GARHI	AGAINST VACANT POST
256	Mattani	KAMRAN	17301-9687073-3	74.78	GPS MATTANI NO.3	AGAINST VACANT POST
257	Mera Kachori	MUHAMMAD WASEEM	17301-7887727-7	126	GPS QADEEM KALAY	AGAINST VACANT POST

7

Disable Qoute

S#	Name	CNIC	Total Score	Name of school	Remarks
1	SAJEED KHAN	17301-5273135-5	94.26	GPS NO.1 MERA BALARZAI	AGAINST VACANT POST
2	NISHAD WALI KHAN	17301-1340736-1	92.34	GPS NO.3 MARYAMZAI	AGAINST VACANT POST
3	IMTIAZ KHAN	17301-7288099-3	90.54	GPS KOCHIAN GULBELA	AGAINST VACANT POST
4	MUHAMMAD IDREES	17301-6987802-1	88.18	GPS ZIARAT KOROONA	AGAINST VACANT POST
5	SHARIF HUSSAIN	17301-5678683-9	87.45	GPS GARHI SHAHEEDAN	AGAINST VACANT POST
6	SHAFAT ULLAH	17301-2013179-5	86.32	GPS ANEEZAI MASHO KHEL	AGAINST VACANT POST
7	ZULFIQAR	17301-2590526-9	83.18	GPS KHAZANA PAYAN	AGAINST VACANT POST
8	MUHAMMAD ABRAR	17301-8011836-1	82.97	GPS SHIEKH ABAD	AGAINST VACANT POST
9	INAM ULLAH	17301-0703944-9	81.88	GPS NO.2 MUSAZAI	AGAINST VACANT POST
10	FAZAL NABI	17301-3114979-7	80.42	GPS NO.1 FATU ABDUR RAHIMA	AGAINST VACANT POST

Minority Qouta

S#	Name of Candidate	CNIC#	Total Score	Name of School	Remarks
1	TAHIR ISHAQ	17301-4079710-1	48.54	GPS LAHORI GATE	AGAINST VACANT POST
2	ARTHUR GEORGE	17301-1488174-5	48.31	GPS NO.2 ASIA PARK	AGAINST VACANT POST

TERMS & CONDITIONS

1. NO TA/DA etc is allowed.
2. Charge reports should be submitted to all concerned in duplicate.
3. Their appointment is purely on temporary & contract basis initially for one year.
4. Their appointment is subject to the condition that the certificates/documents must be verified from the concerned authorities by the SDEO (concerned). Candidate found producing fake/bogus/forged Certificates/Degrees will be reported to the law enforcing agencies for further action.
5. Pay will not be drawn until and unless a certificate to the effect by SDEO Male Peshawar is issued those thier certificates/Degrees, after comparing with the merit list, are verified.
6. Pay release order will be issued by this office after verification of all documents by the SDEO Male Peshawar.
7. Thier services are liable to termination on one month notice from either side. In case of resignation without notice thier one-month pay/allowances shall be forfeited to the Government.
8. They should join thier posts within one month of the issuance of this notification. In case of failure to join their posts within one month of the issuance of this notification, their appointment will expire automatically and no subsequent appeal shall be entertained.
9. Health and Age Certificate should be produced from the Medical Superintendent concerned before taking over charge.
10. Before handing over charge they will sign an agreement with the department, otherwise this order will not be valid.
11. They will be governed by such rules and regulations as may be issued from time to time by the Govt.

(8)


12. Their services shall be terminated at any time, in case their performance is found unsatisfactory during their contract period. In case of misconduct, they shall be proceeded under the rules framed from time to time.
13. Their appointment is made on School based, they will have to serve at the place of posting, and their services are not transferable to any other station.
14. Before handing over charge once again their documents may be checked if they have not the required qualifications they may not be handed over charge.

(Roz Wali Khan Khattak)
District Education Officer
Male Peshawar

Encls: No. 00364-764 Dated Peshawar the 21/5 /2016.

Copy forwarded for information and necessary action to the: -

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. PS to the Secretary to Govt. Khyber Pakhtunkhwa E&SE Department.
3. Deputy Commissioner Peshawar.
4. PS to District Nazim Peshawar
5. PA to the Director E&SE Khyber Pakhtunkhwa, Peshawar.
6. PA to District Education Officer Male Peshawar
7. Sub Divisional Education Officer (Male) Peshawar
8. Head Teacher Concerned
9. Official Concerned.
10. M/File


Deputy District Education Officer
Male Peshawar

9

B

پیس فورم نمبر 24-5(1)

بھارتی اسٹاک ایکسچین کے تحت رجسٹرڈ ایک ایف ڈی پی سی ہونے کی وجہ سے اس کا شمار اسٹاک میں ہوتا ہے۔

15-11-2022 07:10 ASI	6 گولڈ سے سٹاک کی خرید و فروخت	1	اسٹاک ایکسچین کے تحت رجسٹرڈ ایک ایف ڈی پی سی ہونے کی وجہ سے اس کا شمار اسٹاک میں ہوتا ہے۔
	اسٹاک ایکسچین کے تحت رجسٹرڈ ایک ایف ڈی پی سی ہونے کی وجہ سے اس کا شمار اسٹاک میں ہوتا ہے۔	2	اسٹاک ایکسچین کے تحت رجسٹرڈ ایک ایف ڈی پی سی ہونے کی وجہ سے اس کا شمار اسٹاک میں ہوتا ہے۔
	اسٹاک ایکسچین کے تحت رجسٹرڈ ایک ایف ڈی پی سی ہونے کی وجہ سے اس کا شمار اسٹاک میں ہوتا ہے۔	3	اسٹاک ایکسچین کے تحت رجسٹرڈ ایک ایف ڈی پی سی ہونے کی وجہ سے اس کا شمار اسٹاک میں ہوتا ہے۔
	اسٹاک ایکسچین کے تحت رجسٹرڈ ایک ایف ڈی پی سی ہونے کی وجہ سے اس کا شمار اسٹاک میں ہوتا ہے۔	4	اسٹاک ایکسچین کے تحت رجسٹرڈ ایک ایف ڈی پی سی ہونے کی وجہ سے اس کا شمار اسٹاک میں ہوتا ہے۔
	اسٹاک ایکسچین کے تحت رجسٹرڈ ایک ایف ڈی پی سی ہونے کی وجہ سے اس کا شمار اسٹاک میں ہوتا ہے۔	5	اسٹاک ایکسچین کے تحت رجسٹرڈ ایک ایف ڈی پی سی ہونے کی وجہ سے اس کا شمار اسٹاک میں ہوتا ہے۔

03318073131

HC (S)

43211C

محکمہ انیس

مضمون استنادی ہے خدمت چاہے S110 لٹرن کٹ پر۔ اسلام آباد چیمبر آف کمرس اسٹاک ایکسچین اور سی این سی کے تحت رجسٹرڈ ایک ایف ڈی پی سی ہونے کی وجہ سے اس کا شمار اسٹاک میں ہوتا ہے۔

1437 ASI اور 1874 ASI کے تحت رجسٹرڈ ایک ایف ڈی پی سی ہونے کی وجہ سے اس کا شمار اسٹاک میں ہوتا ہے۔

100 گولڈ سے سٹاک کی خرید و فروخت، اسٹاک ایکسچین کے تحت رجسٹرڈ ایک ایف ڈی پی سی ہونے کی وجہ سے اس کا شمار اسٹاک میں ہوتا ہے۔

اسٹاک ایکسچین کے تحت رجسٹرڈ ایک ایف ڈی پی سی ہونے کی وجہ سے اس کا شمار اسٹاک میں ہوتا ہے۔

اسٹاک ایکسچین کے تحت رجسٹرڈ ایک ایف ڈی پی سی ہونے کی وجہ سے اس کا شمار اسٹاک میں ہوتا ہے۔

محکمہ انیس 14-11-2022

Handwritten signature

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) PESHAWAR.

NOTIFICATION:

WHEREAS: Mr. Muhammad Naveed, PST GPS No.2 Mattani Peshawar was proceeded against under Khyber Pakhtunkhwa Government (Efficiency & Disciplinary) Rules 2011 for the charge of Absence from duty w.e.f. 15/11/2022 till date on the report of SDC (M) Town-IV Peshawar.

1. AND WHEREAS:- Absent Notice was served upon Mr. Muhammad Naveed, PST GPS No.2 Mattani Peshawar through SDC (M) Town-IV Peshawar on 24/01/2023 and 17/03/2023.

2. AND WHEREAS:- Absent Notice was served upon the accused Mr. Muhammad Naveed, PST GPS No.2 Mattani Peshawar through Daily "Aj" dated 14/08/2023 & daily "Iqbal" dated 16/08/2023 to attend the office and explain his absence but he has not attend the office.

3. AND WHEREAS:- The competent Authority, District Education Officer (Male) Peshawar after having considered the charges, evidence on record and facts of the case of the view that the charges of Government Servants (Efficiency and Discipline) Rules 2011, the competent Authority District Education Officer (Male) Peshawar is pleased to impose major penalty of "Removal from Service" upon Mr. Muhammad Naveed, PST GPS No.2 Mattani Peshawar with immediate effect. The period of his absence with effect from 15/11/2022 to till date is hereby treated as unauthorized absence from duty.

4. NOW THEREFORE:- In exercise of the Powers conferred under Rules-4 (b) ii of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, I the competent Authority District Education Officer (Male) Peshawar with the remarks that necessary entry to this effect should be made in his service book & recover any over payment made to the above named official and deposit into Govt. Treasury under intimation to this office.

Copy forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Sub Divisional Education Officer (Male) Town-IV Peshawar with the remarks that necessary entry to this effect should be made in his service book & recover any over payment made to the above named official and deposit into Govt. Treasury under intimation to this office.
3. ASDCO (Male) Circle concerned.
4. Official concerned.

Date: 07/10/2023.

(Sajjad Akhtar Iqbal)
District Education Officer
(Male) Peshawar

Dy: District Education Officer
(Male) Peshawar

(10)
(B1)

**IN THE COURT OF WAQAS AHMAD HASHMI
MAGISTRATE SECTION-30, DERA GHAZI KHAN**

The State through Muhammad Irfan Mustafa ASI, Police Station
Kot Chutta, Dera Ghazi Khan (Complainant)

Versus

1. Muhammad Naveed son of Shaukat Khan, Mehmmand by
caste, Resident of Mohallah Chaju Khel, Matni, Tehsil &
District Peshawar (In Custody)
2. Syed Waheed Shah son of Syed Humayun, Syed by caste,
Resident of Mohallah Allah Dad Khel, Matni, Tehsil & District
Peshawar (In Custody)

FIR No.838 of 2022
Offences u/s 13-2cXX of AO, 2015
Police Station: Kot Chutta, D.G.Khan
Date of Decision: 26-10-2023

Present:

Syed Qaisar Abbas Bukhari learned ADPP for state.
Muhammad Naveed and Syed Waheed Shah /Accused are
in police custody.
Malik Shiraz Arshad Advocate / learned counsel for the
accused persons

JUDGEMENT:

According to the First Information Report (FIR), on November
14, 2022, the complainant, Muhammad Irfan Mustafa ASI, along with
fellow police officials, was on patrol duty at Indus Road near Mandi Wala
Medari. During their watchful patrol, they observed the accused
individuals holding white-colored sacks, who promptly attempted to
retreat towards the East upon noticing the police presence.
Consequently, the suspects were apprehended. A search of their persons
revealed the following items: Naveed was found in possession of a silver-
colored pistol with a black plastic handle, engraved with the markings-
"CALL 30 MOUSER MADE CHINA BY NORINCO," and a second black-

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colored pistol with a corresponding black handle. Additionally, they recovered a black Kalashnikov with a close-butt Chobi shape, along with 100 live bullets for the 30 bore pistol, 40 live bullets for the Kalashnikov, and three magazines in total. Similarly, Waheed Shah was found in possession of two 30 bore pistols; one silver-colored with a black plastic handle, bearing the same engraving as Naveed's pistol; and the second one black-colored with a corresponding handle. He also had a black Kalashnikov with a close-butt Chobi shape, along with 100 live bullets for the 30 bore pistol, 60 live bullets for the Kalashnikov, and three magazines in total. All of these items were sealed for dispatching to PFSA. Since the accused individuals were unable to produce any necessary permits or licenses, a memorandum was prepared, which bore the signatures of witnesses and detailed the recovery. Subsequently, a formal complaint was submitted to initiate the process of registering a First Information Report.

2. Upon the registration of the case, the accused persons were found guilty and were committed to judicial custody. During the investigation conducted by the local police, they were found involved in the commission of offence.

3. Following the said investigation, the local police submitted the report under section 173 of the Code of Criminal Procedure, 1898 against the accused persons, for the offence under section 13-2cXX of Arms Ordinance (Amended), 2015.

4. Upon the submission of the report, the accused were duly summoned and thereafter charge sheeted on 05-01-2023 which was

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summed on 19-07-2023, to which they pleaded not guilty and elected for a trial.

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5. The prosecution sought to substantiate its case through the adduction of various forms of evidence, both oral and documentary, inclusive of:

ORAL EVIDENCE:

- PW-1 = Ghulam Qasim 1437 / HC
- PW-2 = Muhammad Abrar 1679 / C
- PW-3 = Muhammad Irfan Mustafa ASI
- PW-4 = Taqueem-ul-Hassan 432 / HC

DOCUMENTARY EVIDENCE

- i. = Recovery Memo of Arms and Ammunition from accused Naveed as Ex-P.A,
- ii. = Recovery Memo of Arms and Ammunition from accused Syed Waheed Shah as Ex-P.B
- iii. = Recovery memo of personal belongings of Naveed accused as Ex-P.C
- iv. = Recovery memo of personal belongings of Waheed Shah accused as Ex-P.D
- v. = Written complaint as Ex-P.E
- vi. = Unscaled site map as Ex-P.F
- vii. = Report of PFSA bearing No.0000987696 as Ex-P.G
- viii. = Pistol 30 Bore as P.1,
- ix. = Pistol 30 Bore as P.2,
- x. = 1x Kalashnikov as P.3
- xi. = 100x live bullets of 30 Bore pistol as P.4 (1-100)
- xii. = 40x live bullets of Kalashnikov as P.5 (1-40)
- xiii. = 2x magazines of pistol 30 Bore as P.6 (1-2)
- xiv. = 1x magazine of Kalashnikov as P.7
- xv. = White coloured bagas P.8
- xvi. = Pistol 30 Bore as P.9
- xvii. = Black coloured pistol 30 Bore as P.10
- xviii. = 1x Kalashnikov as P.11
- xix. = 100x live bullets of 30 Bore pistol as P.12 (1-100)
- xx. = 60x live bullets of Kalashnikov as P.13 (1-60)
- xxi. = 2x magazines of pistol 30 Bore as P.14 (1-2)
- xxii. = 1x magazine of Kalashnikov as P.15
- xxiii. = white coloured bagas P.16
- xxiv. = One mobile phone as P.17
- xxv. = cash amount Rs.3000/- (3x currency notes of Rs.1,000/-) as P.18 (1-3)
- xxvi. = Coloured copy of CNIC as P.19
- xxvii. = One mobile phone as P.20
- xxviii. = Cash amount Rs.2500/- (2x currency notes of Rs.1,000/- and 1x of Rs.500/-) as P.21 (1-3)

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6.. Post the presentation of the prosecution's evidence, the accused's statements were taken down in accordance with Section 342 of the Criminal Procedure Code, in which they unequivocally proclaimed their absolute innocence and vehemently asserted as under:

*"It is incorrect. The recovery is planted one.
PWs are subordinate to complainant and on the asking of the complainant, PWs have deposed falsely.
All the recovery memos are fake and prepared while sitting in the police station.*

I (Waheed Shah) along with co-accused was going to Lahore for medical treatment. I and Naveed were having our one licenses pistol 30 bore and Rs.3,00,000/- which was forcibly taken by Irfan Mustafa and on our protest, we were taken to police station and police case of offence u/s 13-2aXX of AO, 2015 was registered against us. Later on, one Fahad was arrested by Irfan Mustafa with some weapons of pistols 30 bore and Kalashnikov. The heirs of said Fahad reached there and after taking bribe, the said Fahad was booked in case FIR No.839 of 2022 u/s 13-2aXX of AO, 2015 PS Kot Chutta while his arms and ammunition were planted on us and a new complaint was drafted and after preparing, all the recovery memos in police station, the said FIR was registered against us."

Moreover, the accused persons, in their evidence, produced the following documents:

- i. Copy of statement of Ghulam Qasim 1437 / C u/s 161 Cr.P.C as Ex-D.A
- ii. Copy of FIR No.839 of 2022, PS Kot Chutta as Ex-D.B.
- iii. Copy of FIR No.837 of 2022 as Ex-D.C.
- iv. Rapat Departure No.02/23 dated 14-11-2022 as Ex-D.C.

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- v. Rapat Arrival No.02/41 dated 14-11-2022 as Ex-D.D.
- vi. Copy of statement of Muhammad Abrar 1679 / C u/s 161 Cr.P.C as Ex-D.E.

7. Pursuant to Section 342(2) of the Code of Criminal Procedure, the accused elected to abstain from presenting exculpatory evidence and declined to testify on his own behalf.

8. The defense counsel representing the accused has put forth several compelling arguments. He asserts that the complaint or the initial statement (Ex-P.E) lacks crucial information concerning the times of the complainant's departure from and arrival at the police station. Additionally, he highlights the omission of statements under Section 161 of the Criminal Procedure Code from Muhammad Is'haq 1874/C and Driver Fazal Abbas. Moreover, the defense contends that the location where the incident occurred is densely populated, yet no witness from the locality was involved in the recovery proceedings. The complaint fails to specify the numbers inscribed on weapons, and the complainant did not mention conducting a personal search of the accused individuals in the initial complaint. Furthermore, the complaint only references the creation of one sealed parcel, whereas the recovery memos and un-scaled map indicate the preparation of two sealed parcels, leading to a significant contradiction. The defense underscores a notable inconsistency in the statements of prosecution witnesses regarding the creation of one or two sealed parcels containing the recovered ammunition. Additionally, Muharrir Taqweem Ahsan 432/C testified that he received the case property between 7.00 PM and 7.30 PM, while the investigating officer (IO) states that he returned to the police station at 8.35 PM, a timeline corroborated by the record of arrival (Ex-D.D).

Another pivotal point of contention raised by the defense is the delay in

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sending the alleged recovered ammunitions to the Punjab Forensic Science Agency (PFSA), which took approximately nine days and remains unexplained. Consequently, based on these compelling reasons, it is argued that the prosecution has failed to establish the charges against the accused individuals beyond a reasonable doubt. Thus, the defense argues that the accused individuals should be acquitted.

9. On the contrary, the informed ADPP representing the state contends that the Prosecution Witnesses (PWs) have maintained consistency regarding the time, date, location, and retrieval of weapons from the accused individuals. There were only minor discrepancies discovered in the PWs' statements, which are considered customary. It is emphasized that there exists no animosity or prior grudge on the part of the police against the accused parties. Furthermore, it was established during the questioning by the defense's learned counsel and in their examinations under Section 342 of the Cr.P.C that the accused individuals admitted to possessing 30-bore pistols recovered from them. While they assert that the recovery of the other accused, Fahad, was planted on them, this admission indicates their presence at the scene with firearms. Substantial incriminating evidence is at hand, warranting the conviction of the accused individuals.

10. Prudent attention has been accorded to the arguments on behalf of the accused and the learned ADPP's representing the state, alongside a scrupulous examination of the case record.

11. The prosecution was burdened with the onus of establishing the accusation against the accused beyond any lingering uncertainty. To substantiate their claim, MUHAMMAD IRFAN MUSTAFA ASI appeared as PW-3 and recounted that on the 14th of November, 2022, he was

appeared at Kot Chutta Police Station. On that very day, he,

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accompanied by Ghulam Mustafa 1437 / C, Muhammad Is'haq 1874 / C, Muhammad Abrar 1679 / C was present at Indus Road near Ground of Mandiwala with regard to patrolling and checking of crimes on official vehicle with driver Fazal Abbas at about 5.00 PM when two person were present on the Eastern side of the road with white coloured bags (one each) in suspicion manner and tried to retreat on seeing the police party, so they were chased and arrested and during the ensuing interrogation, they disclosed their identity as Muhammad Naveed and Syed.Waheed Shah, residents of Peshawar. In the course of conducting a search of their respective sacks, ,arms and ammunition i.e. pistols 30 bore / 2x (one was silver coloured, plastic dasta of black coloured, engraved on body as CALL. 30 MOUSER MADE CHINA BY NORINCO & the second pistol was black coloured with black coloured dasta), 1x Kalashnikov (black coloured, Close Butt Chobi Shape), 100x live bullets of 30 Bore pistol. 40x live bullets of Kalashnikov and one magazine of each (total 3x) were recovered from the accused Naveed whereas, the accused Waheed Shah got recovered from a gattu (sack) the arms ammunition i.e. 2x pistols 30 bore (one pistol was silver coloured having plastic dasta of black cloured, engraved on body as CALL. 30 MOUSER MADE CHINA BY NORINCO & the second with black colour having plastic dasta), 1x Kalashnikov (black coloured, Close Butt Chobi Shape), 100x live bullets of 30 bore pistol, 60x live bullets of Kalashnikov and one magazine of each (total 3x). Upon unloading the pistols and Kalashnikov, one magazine of each (total 3x) weapon was also recovered. Upon inquiry, the accused persons could not produce any permit or license for keeping the weapons and ammunition in their possession. He took into possession the silver coloured Pistol 30 Bore / P.1, black coloured pistol 30 Bore / P.2, 1x Kalashnikov / P.3, 100x live bullets of 30 Bore pistol / P.4 / 1-100, 40x live bullets of

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Kalashnikov / P.5 / 1-40, 2x magazines of pistol 30 Bore / P.6 / 1-2, 1x magazine of Kalashnikov / P.7 and white coloured bag / P.9 from accused Naveed. He also prepared recovery memo as Ex-P.A of the weapons and ammunition recovered from accused Naveed upon which Ghulam Qasim 1437 / C along with Muhammad Abrar 1679 / C attested. I took into possession the silver coloured Pistol 30 Bore / P.9, black coloured pistol 30 Bore / P.10, 1x Kalashnikov / P.11, 100x live bullets of 30 Bore pistol / P.12 / 1-100, 60x live bullets of Kalashnikov / P.13 / 1-40, 2x magazines of pistol 30 Bore / P.14 / 1-2, 1x magazine of Kalashnikov / P.15 and white coloured bag / P.16 from accused Waheed Shah. He also prepared recovery memo as Ex-P.B of the weapons and ammunition recovered from accused Waheed Shah upon which Ghulam Qasim 1437 / C along with Muhammad Abrar 1679 / C attested. He sealed parcel of all the arms and ammunition duly stamped as MI. He recorded statements u/s 161 Cr.P.C. He further made personal search of the accused persons. During personal search of accused Naveed, one mobile phone / P.17, cash amount Rs.3000/- (3x currency notes of Rs.1,000/-) as P.18 / 1-3, Coloured copy of CNIC / P.19. He took into possession the personal belongings of the accused Naveed as Ex-P.C upon which Ghulam Qasim 1437 / C along with Muhammad Abrar 1679 / C attested. During personal search of accused Waheed Shah, one mobile phone / P.20 and cash amount Rs.2500/- (2x currency notes of Rs.1,000/- and 1x of Rs.500/-) as P.21 / 1-3. He took into possession the personal belongings of the accused Naveed as Ex-P.D upon which Ghulam Qasim 1437 / C along with Muhammad Abrar 1679 / C attested. He drafted written complaint / Ex-P.E and handed over to Ghulam Qasim 1437 / C for registration of FIR. He prepared un-scaled

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of place of occurrence as Ex-P.F. After registration of the FIR, he

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was handed over the file for investigation of the case. He recorded statements u/s 161 Cr.P.C. After that, on the same day, he returned to the police station, sent the accused to lock up and handed over the case property to the Muharrir. He also recorded statement of Muharrir u/s 161 Cr.P.C. On 15-11-2022, he obtained three days physical remand of the accused persons Muhammad Naveed and Syed Waheed Shah present in the court. On 17-11-2022, after disclosure of the accused during investigation, Asghar and Abdul Sattar were also nominated as accused persons in the case. On 18-11-2022, the accused persons were sent to judicial custody by learned Area Magistrate. He deposed that the accused persons were found involved in my investigation in this case. On 23-11-2022, he submitted the sample parcel of recovered arms and ammunition to PFSA and recorded statement of Muharrir u/s 161 Cr.P.C.

12. To bolster the version of prosecution, GHULAM QASIM 1437 / C while appearing as PW-1, testified that on 14-11-2022, he along with Irfan Mustafa ASI, Muhammad Is'haq 1874 / C, Muhammad Abrar 1679 / C was present at Indus Road near ground of Mandi Wala with regard to patrolling and checking of crimes on official vehicle with driver Fazal Abbas. Two persons were present on the Eastern side of the road with white coloured bags (one each) in suspicion manner who tried to go back to Eastern side on seeing them. They chased the suspects. They arrested the suspects. Upon inquiry, they told their particulars as Muhammad Naveed son of Shaukat Khan, caste Mahmand, resident of Muhallah Chajju Khail, Matni, Tehsil & District Peshawar and Syed Waheed Shah son of Syed Hamayun, caste Syed, resident of Mohallah Allah Dad Khail, Matni, Tehsil & District Peshawar. IO made search of the bag of Naveed upon which pistols 30 bore / 2x (one was silver coloured, plastic dasta of

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black coloured, engraved on body as CALL. 30 MOUSER MADE CHINA BY NORINCO & the second pistol was black coloured with black coloured dasta), 1x Kalashnikov (black coloured, Close Butt Chobi Shape), 100x live bullets of 30 Bore pistol. 40x live bullets of Kalashnikov. Upon unloading the pistols and Kalashnikov, one magazine of each (total 3x) weapon was also recovered. The IO also made search of bag carried by Syed Waheed Shah and recovered 2x pistols 30 bore (one pistol was silver coloured having plastic dasta of black coloured, engraved on body as CALL. 30 MOUSER MADE CHINA BY NORINCO & the second with black colour having plastic dasta), 1x Kalashnikov (black coloured, Close Butt Chobi Shape), 100x live bullets of 30 bore pistol, 60x live bullets of Kalashnikov. Upon unloading the pistols and Kalashnikov, one magazine of each (total 3x) weapon was also recovered. Upon inquiry, the accused persons could not produce any permit or license for keeping the weapons and ammunition in their possession. IO took into possession the silver coloured Pistol 30 Bore / P.1, black coloured pistol 30 Bore / P.2, 1x Kalashnikov / P.3, 100x live bullets of 30 Bore pistol / P.4 / 1-100, 40x live bullets of Kalashnikov / P.5 / 1-40, 2x magazines of pistol 30 Bore / P.6 / 1-2, 1x magazine of Kalashnikov / P.7 and white coloured bag / P.8 from accused Naveed. IO also prepared recovery memo as Ex-P.A of the weapons and ammunition recovered from accused Naveed upon which he along with Muhammad Abrar 1679 / C attested which he identified as Ex-P.A / 1. IO took into possession the silver coloured Pistol 30 Bore / P.9, black coloured pistol 30 Bore / P.10, 1x Kalashnikov / P.11, 100x live bullets of 30 Bore pistol / P.12 / 1-100, 60x live bullets of Kalashnikov / P.13 / 1-40, 2x magazines of pistol 30 Bore / P.14 / 1-

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1x magazine of Kalashnikov / P.15 and white coloured bag / P.16 from accused Waheed Shah. IO also prepared recovery memo as Ex-P.B

of the weapons and ammunition recovered from accused Waheed Shah upon which he along with Muhammad Abrar 1679 / C attested which he identified as Ex-P.B / 1. IO sealed parcel of all the arms and ammunition duly stamped as IM.IO further made personal search of the accused person. During personal search of accused Naveed, one mobile phone / P.17, cash amount Rs.3000/- (3x currency notes of Rs.1,000/-) as P.18 / 1-3, Coloured copy of CNIC / P.19. IO took into possession the personal belongings of the accused Naveed as Ex-P.C upon which he along with Muhammad Abrar 1679 / C attested which he identified as Ex-P.C / 1. During personal search of accused Waheed Shah, one mobile phone / P.20 and cash amount Rs.2500/- (2x currency notes of Rs.1,000/- and 1x of Rs.500/-) as P.21 / 1-3. IO took into possession the personal belongings of the accused Naveed as Ex-P.D upon which he along with Muhammad Abrar 1679 / C attested which he identified as Ex-P.D / 1. Likewise, the other recovery witness, MUHAMMAD ABRAR 1679 / C appeared as PW-2 and deposed in the same manner to corroborate the version of complainant as well as other recovery witness.

13. To fortify the prosecution's account, TAQEEM AHSAN while appearing as PW-4, testified that on November 14, 2022, he was stationed at PS Kot Chutta as Muharrir. On that day, he received a package containing 4x pistols (.30 bore), 2x Kalashnikovs, 4x magazines for the pistols, 2x magazines for the Kalashnikovs, 200x live bullets (.30 bore), and 100x Kalashnikov bullets. Additionally, he received a mobile phone (China make), 3x Rs.1,000/- currency notes, a colored copy of an ID for custody purposes, and items recovered during the personal search of the accused, Naveed. On the same day, the Investigating Officer (IO) recorded his statement under section 161 of the Cr.P.C. regarding this matter. TAQEEM AHSAN went on to state that on November 23, 2022, he

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handed over a sealed parcel containing the recovered ammunition from the aforementioned accused individuals to Muhammad Irfan Mustafa, an ASI, for onward transmission to the PFSA office. This parcel was subsequently submitted to the PFSA on the same day. In return, the PFSA provided a duplicate certificate and IO recorded his statement under section 161 of the Cr.P.C. regarding this transaction.

14. After the prosecution evidence was presented, the accused underwent examination under section 342 of the Cr.P.C. During this examination, they asserted that they were en route to Lahore for a critical operation involving accused Waheed Shah. Their defense rested on the claim that they possessed a licensed 30-bore pistol and a sum of Rs.3,00,000 in cash, both of which had been forcibly taken from them by Irfan Mustafa ASI. According to their account, when they voiced their protest, Irfan Mustafa ASI, allegedly influenced by a bribe from another accused, Fahad, planted the confiscated weapons on the accused individuals. This act led to their false booking under section 13-2cXX of the AO, 2015. Notably, Fahad himself had been implicated in a separate case, FIR No. 839 of 2022, related to an offense under section 13-2axx of the AO, 2015, further raising questions about the legitimacy of the entire proceedings.

15. The record reveals that the accused were provided a fair opportunity to cross-examine the prosecution witnesses. However, during this process, they were unable to cast doubt on the credibility of these witnesses. Taking into account this defense, it reflects that despite their efforts, the accused individuals failed to provide substantial evidence connecting their case to Fahad's, leaving the prosecution's

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all the prosecution witnesses (PWs) presented consistent and coherent

accounts regarding the time, date, place, and the recovery of the illegal arms and ammunition. Though, there were minor discrepancies, such as the preparation of the parcel, in the statements of the PWs, but no significant contradictions were found that could undermine the prosecution's narrative.

16. Furthermore, the record indicates that the recovered arms and ammunition were properly exhibited and examined in court. The report from PFSA (Exh.PG) regarding their functionality was also presented. The defense raised questions about the Arrival Rapt (Exh.DC) and Departure Rapt (Exh.DD) of the investigating officer from the police station. However, these records corroborate the version of the investigating officer, affirming that during that period, he was patrolling the area and was not present in the police station to fabricate any false case against the accused individuals. The time of arrival and departure mentioned in Raps is in line with the testimony given by the complainant Irfan Mustafa ASI.

17. Over and above, a substantial quantity of illegal arms and ammunition was seized, making it implausible that these were planted. Moreover, the accused individuals failed to provide any evidence of prior enmity or ill-will from the police concerning the registration of this case against them. Given that the accused are residents of Peshawar, their presence in Dera Ghazi Khan suggests no plausible explanation other than their involvement in the delivery of illegal arms to someone. The narrative put forth by the prosecution was substantiated by Irfan Mustafa ASI, whose testimony was duly corroborated by the recovery witnesses, all of whom affixed their signatures on recovery memos duly endorsed by them.

Accepted

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18. The defense counsel contends that the recovery proceedings, as required by provision 103 of the Criminal Procedure Code (Cr.P.C), lacked the presence of private witnesses. However, during the cross-examination of Investigating Officer PW-3, a satisfactory explanation was provided. It was explained that from 3:00 PM to 4:00 PM onward, the location of the incident became isolated due to the closure of activities in the Mandi i.e. place of occurrence, thus rendering the recovery proceedings in compliance with the prescribed formalities. It is worth noting that police officials can serve as credible witnesses, just like any other individuals.

19. Despite the strenuous efforts of the accused during cross-examination, they were unable to undermine the credibility of the Prosecution Witnesses. The evidence, presented by the prosecution remained steadfast, logically sound, and compelling. The defense was unable to present any corroborative evidence that could raise doubts about the recovery of the illicit weapon.

20. Upon careful deliberation of the aforementioned discussion, it is evident that the prosecution has successfully established the charge of the offense under section 13(2-c)/XX/65 of the Arms Ordinance against the accused individuals. This accomplishment has been achieved through the presentation of compelling, trustworthy, and mutually supportive evidence. As a result, the accused parties have been deemed culpable and have consequently been convicted under section 13(2-c)/XX/65 of the Arms Ordinance 2015.

21. Regarding the quantum of the sentence, it's important to note that the convicted individuals have no prior criminal record and are, in fact, first-time offenders. The Arms Ordinance prescribes a minimum


of four years' imprisonment for the offense under section 13(2-c)/XX/65 of the Arms Ordinance 2015.

c)/XX/65. It's noteworthy that the initial charge sheet against the accused was prepared by the Presiding Officer, who was designated as Magistrate Section-30. However, the accused persons submitted an application to have the charge re-framed by a Magistrate 1st Class. Initially, this request was denied, but upon filing a revision petition, the accused persons' plea was granted on July 13, 2023. Consequently, the charge was amended and re-framed by the Magistrate 1st Class. It's important to mention that a Magistrate 1st Class can impose a maximum sentence of three years' imprisonment, which falls short of the prescribed minimum sentence of five years under section 13(2-c)/XX/65 of the Arms Ordinance 2015. Given that I, also possess the authority to adjudicate as a Magistrate for all offenses not punishable by death under section 30 of the Cr.P.C. thus vested with sufficient powers to determine the appropriate sentence in this case.

22. Given that the accused individuals have been determined guilty in this case, it is imperative to weigh the aforementioned factors. Moreover, it is crucial to consider that they are first-time offenders. Therefore, in light of these circumstances, the sentence is as follows:

- a) The Convict Muhammad Naveed son of Shaukat Khan, is sentenced u/s 13(2-c)/20/65 AO to undergo five (5) years SI, and fine Rs. 20,000/; and in default of payment of fine convict will further undergo SI of twenty days;
- b) The Convict Syed Waheed Shah son of Syed Humayun, is sentenced u/s 13(2-c)/20/65 AO to undergo five (5) years SI, and fine Rs. 20,000/; and in

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default of payment of fine, convict will further undergo
SI of twenty days;

- c) The convicts shall have benefit of sec 382-B Cr.P.C;
d) The sentences shall run concurrently with any other
sentences awarded by any other court.


23. The case property be confiscated in favour of the state subject
to the expiry of period of appeal or revision, if any however the items
recovered during personal search of the convicts be handed over to them.
Robkar be issued in the name of Superintendent Central Jail, Dera Ghazi
Khan for execution of sentence. The copies of this judgment are delivered
to accused persons free of costs. File be consigned to the record room
after its due completion.

Announced:
26-10-2023


Waqas Ahmad Hashmi
Magistrate Section 30
Dera Ghazi Khan

CERTIFIED that this order consists of 16 pages which have
been dictated, read, corrected and signed by me

Announced:
26-10-2023


Magistrate Section 30
Dera Ghazi Khan





Muhammad Azeem Sheikh
Judge Model Criminal Trial Court
Addl. Sessions Judge
Dera Ghazi Khan

13/2/2023 dated 14.11.2022
FIR No. 838/2022 dated 14.11.2022
Office under sections 131/20/65 A.O
P.S Kot Chutta D.G. Khan

Whereas the appeal of the convict, namely MUHAMMAD
NAVEED S/O SHAUKAT KHAN, MEHMAND BY CASTE R/O
MOHALLAH CHAJU KHAN, MATNI TEHSIL & DISTRICT
PESHAWAR filed in case FIR NO. 838 OF 2022 UNDER SECTIONS
131/20/65 OF ARM. ORDINANCE 1965, POLICE STATION KOT
CHUTTA, DERA GHAZI KHAN, is accepted by the court and he is

acquitted in the mentioned case with a view to the benefit of the said
convict. This order requires and authorizes you, the said
Superintendent to release the said convict, namely MUHAMMAD
NAVEED S/O SHAUKAT KHAN, MEHMAND BY CASTE R/O
MOHALLAH CHAJU KHAN, MATNI TEHSIL & DISTRICT

PESHAWAR filed in case FIR NO. 838 OF 2022 UNDER SECTIONS
131/20/65 OF ARM. ORDINANCE 1965, POLICE STATION KOT
CHUTTA, DERA GHAZI KHAN, is accepted by the court and he is
acquitted in the mentioned case with a view to the benefit of the said
convict. This order requires and authorizes you, the said
Superintendent to release the said convict, namely MUHAMMAD
NAVEED S/O SHAUKAT KHAN, MEHMAND BY CASTE R/O
MOHALLAH CHAJU KHAN, MATNI TEHSIL & DISTRICT

The Superintendent, Central Jail,
Dera Ghazi Khan.

FIR No. 838/2022 dated 14.11.2022
Office under sections 131/20/65 A.O
P.S Kot Chutta D.G. Khan

Muhammad Naveed etc
Vs
The State

Criminal Appeal: 26 of 2023
Judge, Dera Ghazi Khan
Judge Model Criminal Trial Court/Addl. Sessions
In the court of MUHAMMAD AZEEM SHEIKH

RELEASE WARRANT

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RELEASE WARRANT

IN THE COURT OF MUHAMMAD AZEEM SHEIKH
JUDGE MODEL CRIMINAL TRIAL COURT/ADDL. SESSIONS
JUDGE DERA GHAZI KHAN.

Criminal Appeal 26 of 2023

Muhammad Naveed etc..... Vs..... The State

FIR No. 838/2022 dated 14.11 2022
Offence under Sections 13(2c)20/65 A.O
PS Kot Chutta, D.G. Khan

To

The Superintendent, Central Jail.
Dera Ghazi Khan

Whereas the appeal of the Muhammad Naveed S/o Shaukat Khan, Mehmmand by caste R/o Mohallah Chaju Khal Matni Tehsil & District Peshawar FIR N. 838 of -2022, under sections 13(2c)20/65 of arm ordinance, 1965, Police Station Kot Chutta Dera Ghazi Khan is accepted by this court and he is acquitted of above mentioned case while giving him benefits of doubt.

2. This is to require and authorized you the said Superintendent to release the said convict namely Muhammad Naveed S/o Shaukat Khan, Mehmmand by caste R/o Mohallah Chaju Khal Matni Tehsil & District Peshawar FIR N. 838 of 2022, under sections 13(2c)20/65 of arm ordinance, 1965, Police Station Kot Chutta Dera Ghazi Khan forthwith, if not required to be detained in any other case.

Given under my hands and the seal of this court on 13th day of February, 2024.

Muhammad Azeem Sheikh
Judge Model Criminal Trial Court
Addl. Sessions Judge
Dera Ghazi Khan.

**IN THE COURT OF MUHAMMAD AZEEM SHEIKH,
ADDL. SESSIONS JUDGE/
JUDGE CRIMINAL MODEL TRIAL COURT,
DERA GHAZI KHAN.**

Date of Judgment: 13/02/2023

Muhammad Naveed etc. Vs. The State

**FIR No. 838/2022 dated 14.11.2022
Under section 13(2)(c) XX of Arms Ordinance
Police Station Kot Chutta, D.G.Khan**

JUDGMENT:

Present: Mr. Muhammad Azam, Advocate for the appellants.
Mr. Muhammad Waheed, Advocate for the state.
This appeal was filed against the judgment and order passed by the learned trial court and the

~~names of appellants/convicts~~ (hereinafter called as appellants) and the learned trial court.

1. Appellant Muhammad Naveed S/O Shaukat Khan is sentenced under sections 13 (2c) XX of Arms Ordinance, 1965 and sentenced to undergo six (05) years Rigorous Imprisonment and fine of Rs.20,000/- and in default payment of fine, appellant will further undergo for twenty days S.I.

2. Appellant Waheed Shah S/O Syed Hamayun is sentenced under sections 13 (2c) XX of Arms Ordinance, 1965 and sentenced to undergo six (05) years Rigorous Imprisonment and fine of Rs.20,000/- and in default payment of fine, appellant will further undergo for twenty days S.I. Benefit of section 382-B of Cr.P.C was extended to the appellants. All the

MUHAMMAD AZEEM SHEIKH
Addl. District Sessions Judge
D.G.Khan
13/02/2023

RELEASE WARRANT
IN THE COURT OF MUHAMMAD AZEEM SHEIKH
JUDGE MODEL CRIMINAL TRIAL COURT/ADDL. SESSIONS
JUDGE DERA GHAZI KHAN.

Crl. Appeal No: 26 of 2023
 Date of institution:- 21/11/2022
 Date of decision:- 13/02/2024

Muhammad Naveed etc..... Vs..... The State

FIR No. 838/2022 dated 14.11 2022
Offence under Sections 13(2c)20/65 A.O
PS Kot Chutta, D.G. Khan

JUDGMENT

12/02/2024

Present

Mr. Muhamamad Ali Channar, Advocate, learned
 counsel for the appellants.

Mr. Muahmamd Ali Jatoi, learned DDPP for the state

This appeal has been directed against the judgment dated 26/10/2023, whereby the learned trial court convicted the appellants/convicts (herein after called as appellants) and sentenced them as under:-

1. Appellant Muhammad Naveed S/O Shaukat Khun is sentenced under sections 13 [2C] XX of Arms Ordinance, 1965 and sentenced to undergo six (05) years Rigorous Imprisonment and fine of Rs 20,000/ and in default payment of fine, appellant will further undergo for twenty days S.I.
2. Appellant Waheed Shah S/O Syed Hamuyun is sentenced under sections 13 (2c) XX of Arms Ordinance, 1965 and sentenced to undergo six (05) years Rigorous Imprisonment and fine of Rs. 20,000/ and in default payment of fine, appellant will further undergo for twenty days S.I. Benefit of section 382-Bof Cr.P.C was extended to the appellants All the

sentences shall run concurrently with any other sentences awarded by any other court.
 Benefit of section 382-B of Cr.P.C was extended to the appellants.

2. Succinctly, facts of the prosecution case as narrated by complainant Muhammad Shahzad Afzal are that 1. Akramullah Ghulam Qasim 1437/C, Muhammad Ishtaq 1874/C, Muhammad Akbar 1479/C was present at Indus Road near ground of Mandi Wala with regard to pouring and checking of petrol on official vehicle with driver Fazal Abbas at about 5.00 PM. Two persons were present on the Eastern side of the road with white coloured bags (one each) in suspicious manner who tried to go back to Eastern side on seeing us. We chased the suspects. We arrested the suspects. Upon inquiry, they told their names as Muhammad Nawaz son of Shaukat Khan, caste

Mahmud, Tehsil & District Peshawar. I made search of the bag of Nawaz upon which pistols 30 bore / 2x (one was silver coloured, 1x plastic dasta of black coloured, engraved on body as CALL. 30 ROUSER MADE CHINA BY MORINCO & the second pistol was black coloured with black coloured dasta), 1x Kalashnikov (black coloured, Close Butt Chobi Shape), 100x live bullets of 30 Bore pistol, 10x live bullets of Kalashnikov. Upon unloading the pistols from Kalashnikov, one magazine of each (total 3x) weapon was also recovered. I also made search of bag carried by Syed Wahed Syed, and recovered 2x pistols 30 bore (one pistol was silver

Handwritten stamp: District Peshawar, Tehsil & District Peshawar, Muhammad Ishtaq 1874/C, Muhammad Akbar 1479/C, Akramullah Ghulam Qasim 1437/C, Muhammad Ishtaq 1874/C.

sentences shall run concurrently with any other sentences awarded by any other court.

Benefits of section 382-B Cr.P.C was extended to the appellants.

3. Succinctly, the facts of the prosecution case as narrated by complainant Muhammad Shahzad Afzal ASI are that "I along with Ghualm Qasim 1437/C, Muhammad Ishaq 1874/C, Muhammad Abrar 1679/C was present at Indus Road near Grounds of Mandi Wala with regard to patrolling and checking of crimes on official vehicle with driver Fazal Abbas at about 05:00 PM. Two persons were present on the eastern side of the road with white coloured bags (One each) in suspicion manner who tried to go back to eastern side on seeing us. We chased the suspected. We arrested the suspects upon inquiry they told their particulars as Muhammad Naveed S/o Shaukat Khan, cast Mohmand resident of Mohalalh Ghujja Khel, Matani Tehsil & District Pesahwar and Syed Waheed Shah Son of Syed Hamayun caste Syed resident of Mohallah Allah Dad Khel Matani Tehsil & District Peshawar. I made search of the bag of Naveed upon which pistols 30 bore/2x (one was silver coloured plastic dasta of black coloured, engeved on body as Call 30 Mouser made china by norinco & the second pistol was black coloured with black coloured dasta) 1x Kalashnikov (black coloured, close Butt Chobi Shape, 100x live bullets of 30 bore pistol, 40x live bullets of Kalashnikov. Upon unloading the pistols and Kalashnikov, on magazine of each (total 3x) weapon was also recovered. I also made search by bag carried by Syed Waheed Shah and recovered 2x pistols 30 bore (one pistol was silver

coloured having plastic dasta of black coloured. engraved on body
as CALL 30 MOUSER MADE CHINA BY NORINCO & THE SERIAL

black colour having plastic dasta), 1x Kalashnikov (black
coloured, Close Butt Chobi Shape), 100x live bullets of 30 bore
pistol, 50x live bullets of Kalashnikov. Upon unloading the pistol
and Kalashnikov, one magazine of each (total 3x) weapon was

also recovered. Upon inquiry, the accused persons could not
produce any permit or license for keeping the weapons and

ammunition in their possession I took into possession the silver
coloured Pistol 30 Bore, black coloured pistol 30 Bore, 1x

Kalashnikov, 100x live bullets of 30 Bore pistol, 40x live bullets of
Kalashnikov, 2x magazines of pistol 30 Bore, 1x magazine of

Kalashnikov and white coloured bag from accused Naveed. I also
prepared recovery memo of the weapons and ammunition

recovered from accused Naveed upon which Ghulam Qasim
1437/C along with Muhammad Abrar 1679/C attested I took

into possession the silver coloured Pistol 30 Bore, black coloured
pistol 30 Bore, 1x Kalashnikov, 100x live bullets of 30 Bore pistol,

50x live bullets of Kalashnikov, 2x magazines of pistol 30 Bore,
1x magazine of Kalashnikov and white coloured bag from

accused Waheed Shah. I also prepared recovery memo as of the
weapons and ammunition recovered from accused Waheed Shah

upon which Ghulam Qasim 1437/C along with Muhammad Abrar
1679/C attested. I sealed parcel of all the arms and ammunition

recovered. MI-1 recorded statements w/s 161 Cr P.C I
made personal search of the accused persons. During

search of accused Naveed, one mobile phone, cash
of Rs. 3000/- (three currency notes of Rs. 1,000/-), Coloured

Coloured having plastic dasta of black coloured engraved on body as Call 30 Mouser made China by norinco and the second with black colour having plastic dasta) 1x Kalashnikov (black coloured, close Butt chobi Shape) 100x live bullets of 30 bore pistol; 60x live bullets of Kalashnikov. Upon unloading the pistols and Kalashnikov one magazine of each (total 30x) weapon was also recovered. Upon inquiry, the accused persons could not produce any permit or license for keeping the weapons and ammunition in their possession. I took into possession the silver coloured pistol 30 bore black coloured pistol 30 bore, 1x Kalashnikov, 100 live bullets of 30 bore pistol, 40 live bullets of Kalashnikov, 2x magazines of pistol 30 bore 1x magazine Kalashnikov and white coloured bag from accused Naveed. I also prepared recovery memo of weapons and ammunition recovered from accused Naveed upon which Ghulam Qasim 1437/c along with Muhammad Abrar 1679/c attested I took into possession the silver coloured pistol 30 bore, black coloured pistol 30 bore, 1x Kalashnikov, 100x live bullets of 30 bore pistol, 60x live bullets of Kalashnikov, 2x magazine of pistol 30 bore, 1x magazine of Kalashnikov and white coloured bag from accused Waheed Shah. I also prepared recovery memo as of the weapons and ammunition recovered from accused Waheed Shah, upon which Ghulam Qasim 1437/c alongwith Muhammad Abrar 1679/c attested I sealed parcal of all the arms and ammunition duly stamped as MI. I recovered statement u/s 161 Cr.P.C. I further made personal search Naveed, one mobile phone, cash amount Rs. 3000/- (3x currency notes of Rs. 1000) coloured

copy of CNIC took into possession the personal belongings of the accused Naweed upon which Chulim Qasim 1437-C was issued. Muhammad Abrar 1679-C arrested during period court of accused Waheed Shah, one mobile phone and cash amount Rs. 2500/- (2x currency notes of Rs. 1000/- and 1x of Rs. 500/-) took into possession the personal belongings of the accused Naweed as upon which Chulim Qasim 1437-C issued and Muhammad Abrar 1679-C arrested. The appellants have formally charge sheet submitted accordingly. The appellants were found level under section 13-2(a)(20/65 A.O. 1965 by the learned trial court which the appellants pleaded not guilty and claimed trial wherever the court was directed to hold the trial.

ORAL EVIDENCE:

- PW-1
- PW-2
- PW-3
- PW-4

DOCUMENTARY EVIDENCE

- Recovery memo of Arms and Ammunition from accused Naweed and Ex.P.A.
- Recovery memo of Arms and Ammunition from accused Syed Waheed Shah and Ex.P.B.
- Recovery memo of personal belongings of Naweed accused as Ex.P.C
- Recovery memo of personal belongings of Waheed Shah accused as Ex.P.D
- Written complaint and Ex.P.E
- Unscaled site map and Ex.P.F
- Report of PPSA bearing No. 000987696 as Ex.P.G
- PW-1 30 Bore asp. 1
- PW-2 30 Bore asp. 2

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Copy of CNIC, I took into possession the personal belongings of the accused Naveed upon which Ghulam Qasim 1437/C alongwith Muhammad Abrar 1679/C attested. During perusal search of accused Waheed Shah one mobile phone and cost amount Rs. 2500 (2x currency notes of Rs. 1000) and 1x of Rs. 500. I took into possession the personal belongings of the accused Naveed as upon which Ghulam Qasim 1437/C alongwith Muhammad Abrar 1679/c attested. I drafted written complaint and handed over to Ghulam Qasim 1437/C for registration of FIR.

4. After thorough investigation report under section 173 Cr.P.C was submitted accordingly. The appellants were formally charge sheeted under section 13-2(c)/20/65 AO, 1965 by the learned trial court to which the appellants pleaded not guilty and claimed trial.

Whereupon prosecution was directed to lead evidence.

5. During trial following witnesses were produced by the prosecution.

ORAL EVIDENCE

<u>PW-1</u>	:	Ghulam Qasim 1437/HC
<u>PW-2</u>	:	Muhammad Abrar 1679/C
<u>PW-3</u>	:	Muhammad Irfan Mustafa ASI
<u>PW-4</u>	:	Taqeem Ul Hassan 432/HC

DOCUMENTARY EVIDENCE

- i. Recovery Memo of Arms & Ammunition from accused Naveed as Ex. PA
- ii. Recovery Memo of Arms and ammunition from accused Syed Waheed Shah as Ex. PB
- iii. Recovery Memo of personal belongings of Naveed accused as Ex. P.C
- iv. Recovery Memo of personal belongings of Waheed Shah accused as Ex. P.D
- v. Written complaint as Ex. PE
- vi. Unsealed site map as Ex. PF
- vii. Report of PFSA bearing No 0000987696 as Ex. P.G
- viii. Pistol 30 bore as P.1
- ix. Pistol 30 boar as P.2

- x. = 1x Kalashnikov as P.3
- xi. = 100x live bullets of 30 Bore pistol as P.4 (1-100)
- xii. = 40x live bullets of Kalashnikov as P.5 (1-40)
- xiii. = 2x magazines of pistol 30 Bore as P.6 (1-2)
- xiv. = 1x magazine of Kalashnikov as P.7
- xv. = White coloured bag as P.8
- xvi. = Pistol 30 Bore as P.9
- xvii. = Black coloured pistol 30 Bore as P.10
- xviii. = 1x Kalashnikov as P.11
- xx. = 100x live bullets of 30 Bore pistol as P.12 (1-100)
- xxi. = 60x live bullets of Kalashnikov as P.13 (1-60)
- xxii. = 2x magazines of pistol 30 Bore as P.14 (1-2)
- xxiii. = 1x magazine of Kalashnikov as P.15
- xxiv. = white coloured bag as P.16
- xxv. = One mobile phone as P.17
- xxvi. = cash amount Rs.3000/- (3x currency notes of Rs.1,000/-) as P.18 (1-3)
- xxvii. = Coloured copy of CNIC as P.19
- xxviii. = One mobile phone as P.20
- xxix. = Cash amount Rs.2500/- (2x currency notes of Rs.1,000/- and 1x of Rs.500/-) as P.21 (1-3).

All the incriminating material came on file in the prosecution

was put to the accused persons during recording of their

u/s 342 Cr.P.C. In a question why the case against them and

deposed against you, the appellants replied as under:

I (Muhammad Naveed) along with co-accused was going to Lahore for medical treatment. I and Naveed were having our one licenses pistol 30 bore and Rs.3,00,000/- which was forcibly taken by Irfan Mustafa and on our protest, we were taken to police station and police case of offence u/s 13-2aXX of AO, 2015 was registered against us. Later on, one Fahad was arrested by Irfan Mustafa with some weapons of pistols 30 bore and Kalashnikov. The heirs of said Fahad reached there and after taking bribe, the said Fahad was booked in case FIR No.839 of 2022 u/s

- x. 1x Kalashnikov as P.3
- xi. 100 live bullets of 30 bore pistol as P.4 (1-100)
- xii. 40x live bullets of Kalashnikov as P.5 (1-40)
- xiii. 2x magazines of pistol 30 bore as P.6 (1-2)
- xiv. 1x magazine of Kalashnikov as P.7
- xv. White Coloured bag as P.8
- xvi. Pistol 30 bore as P.9
- xvii. ~~Black coloured pistol 30 bores~~ P.10
- xviii. 1x Kalashnikov as P.11
- xix. 100x live bullets of 30 bore pistol as P.12 (1-100)
- xx. 60x live bullets of Kalashnikov as P.13 (1-60)
- xxi. 2x magazines of pistol 30 bore as P.14 (1-2)
- xxii. 1x magazine of Kalashnikov as P.15
- xxiii. White coloured bag as P.16
- xxiv. One mobile Phone as P.17
- xxv. Cash amount Rs. 3000/- (3x currency) notes of Rs. 1000/- as P.18 (1-3)
- xxvi. Coloured copy of CNIC as P.19
- xxvii. One mobile phone as P.20
- xxviii. Cash amount Rs. 2500/- (2x currency notes of Rs. 1000/- as 1x of Rs. 500/- as P.21 (1-3)

6. All the incriminating material came on file in prosecution evidence was put to the accused persons during recording of their statement u/s 342 Cr.P.C. In a question why the case against them and why PWs depose against you the appellant replied as under:-

"I (Muhammad Naveed) along with co-accused was going to Lahore for medical treatment. I and Naveed were having our one licenses pistol 30 bore and Rs. 3,00,000/- which was forcibly taken by Irfan Mustafa and on our protest, we were taken to police station and police case of offence u/s 13-2aXX of AO, 2015 was registered against us. Later on, one Fahad was arrested by Irfan Mustafa with some weapons of pistols 30 bore and Kalashnikov. The heirs of said Fahad reached there and after taking bribe, the said Fahad was booked in case FIR No. 839 of 2022 u/s

13-2aXX of AO, 2015 PS Kot Chutta while his arms and ammunition were planted on us and a new complaint was drafted and after preparing, all the recovery memos in police station, the said FIR was registered against us."

"I (Waheed Shah) along with co-accused was going to Lahore for medical treatment. I and Naveed were having our one licenses pistol 30 bore and Rs.3,00,000/- which was forcibly taken by Irfan Mustafa and on our protest, we were taken to police station and police case of offence u/s 13-2aXX of AO, 2015 was registered against us.

Later on, one Fahad was arrested by Irfan Mustafa with some weapons of pistols 30 bore and Kalashnikov. The heirs of said Fahad reached there and after taking bribe, the said Fahad was booked in case FIR No.839 of 2022 u/s 13-2aXX of AO, 2015 PS Kot Chutta while his arms and ammunition were planted on us and a new complaint was drafted and after preparing, all the recovery memos in police station, the said FIR was registered against us."

Mahomed Waheed Shah
13-2aXX of AO, 2015 PS Kot Chutta
FIR No. 839 of 2022

8. Appellants neither opted to record their statements on oath U/S 340(2) Cr P C nor opted to produce defence evidence

9. After conclusion of the trial, learned trial court convicted and sentenced the appellants as mentioned in para No 1 supra

10. Being dis-satisfied with the conviction and sentence awarded to the present appellants, through the impugned judgment instant appeal has been preferred.

Learned counsel for the appellants has contended that learned trial court while passing conviction and awarding sentence did not consult the record properly, that the conviction and sentence were of his reading and non reading of evidence and was passed in a

13-2aXX of 40, 2015 PS Kot Chutta while his arms and ammunition were planted on us and a new complaint was drafted and after preparing, all the recovery memos in police station, the said FIR was registered against us."

"I (Waheed Shah) along with co-accused was going to Lahore for medical treatment. I and Naveed were having our one licenses pistol 30 bore and Rs. 3,00,000/- which was forcibly taken by Irfan Mustafa and on our protest, we were taken to police station and police case of offence u/s 13-2aXX of AO, 2015 was registered against us. Later on, one Fahad was arrested by Irfan Mustafa with some weapons of pistols 30 bore and Kalashnikov. The heirs of said Fahad reached there and after taking bribe, the said Fahad was booked in case FIR No: 839 of 2022 u/s 13-2aXX of AO, 2015 PS Kot Chutta while his arms and ammunition were planted on us and a new complaint was drafted and after preparing, all the recovery memos in police station, the said FIR was registered against us."

7. Appellants neither opted to record their statements on oath u/s 340(2) Cr.P.C nor opted to produce defence evidence.
8. After conclusion of the trial, learned trial court convicted and sentenced the appellants as mentioned in Para no 1 Supra.
9. Being dis-satisfied with the conviction and sentence awarded to the present appellants, through the impugned judgment instant appeal has been preferred.
10. Learned counsel for the appellants has contended that learned trial court while passing conviction and awarding sentence did not consult the record properly, that the conviction and sentence is result of mis-reading and non-reading of evidence and was passed in a slip.

shod manner, without applying judicial mind; that the prosecution miserably failed to prove the charge against the appellants beyond shadow of reasonable doubt; that there are many contradictions in the statements of prosecution witnesses as well as the contents of the FIR, that the same is not sustainable in the eyes of law. Lastly learned counsel for the appellants prayed for acceptance of appeal and for setting aside conviction and sentence.

12. Conversely learned DDPP fully defended the conviction but as far as sentence awarded by the learned trial court is concerned, that ~~the learned trial court after recording conviction while finding the~~ appellants guilty of offence were under legal obligation to award maximum punishment provided for the offence; that the prosecution successfully established the guilt of the appellants beyond shadow of reasonable doubt. Lastly learned counsel for the complainant prayed for dismissal of appeal thereof.

13. Arguments heard, record perused:

As per contents of the FIR and statement of PW-3/complainant, one sealed parcel of all the arms and ammunition recovered from the accused persons was prepared. Even the complainant/PW-3 denied the suggestion that he made separate parcels of recovery of armed and ammunition from accused Waheed Shah and Muhammad Naveed. The statement of PW-3/complainant also shows that he submitted one sample parcel of recovered arms ammunition to office of PRSA on 23.11.2022. The statement of PW-4/Moharrir also depicts that he received one parcel of the recovered arms and ammunition from the PW-3/complainant on 14.11.2022 which he handed over to him on 23.11.2022 for its transmission to the office of PRSA. But the complainant/PW-3 admitted during cross examination

Adil Ahmad Aslam Sheikh
Judge Magistrate & Sessions Judge
12/10/2022

Shod manner, without applying judicial mind that the prosecution miserably failed to prove the charge against the appellants beyond shadow of reasonable doubt, that there are many contradictions in the statements of prosecution witness as well as the contentions of the FIR, that the same is not sustainable in the eyes of law. Lastly learned counsel for the appellants prayed for acceptance of appeal and for setting aside conviction and sentence.

11. Conversely learned DDPP fully defended the conviction but as for as sentence awarded by the learned trial court is concerned that the learned trial court after recording conviction while finding the appellants guilty of offence were under legal obligation to award maximum punishment provided by the offence; that the prosecution successfully established the guilty of the appellants beyond shadow of reasonable doubt. Lastly learned counsel for the complainant prayed for dismissal of appeal thereof.
12. Arguments heard, record perused.
13. As per contents of the FIR and statement of PW-3/complainant one sealed parcel of the arms and ammunition recovered from the accused persons. Even the complainant/PW-3 denied the suggestion that he made separate parcels of recovery of armed and ammunition from accused Waheed Shah and Muhammad Naveed. The statement of PW-3/complainant also shows that he submitted one sample parcel of recovered arms ammunition to office of PFSA on 23/11/2022. The statement of PW-4/Moharrior also depicts that he received one parcel of the recovered arms and ammunition from the PW-3/complainant on 14/11/2022 which he handed over to him on 23/11/2022 for its transmission to the office of PFSA. But the complainant/PW-3 admitted during cross examination

that two parcels of arms and ammunition were mentioned in the statements of attesting witnesses PW-1 and PW-2 i.e. Ex.D.A and Ex.D.B. The complainant also conceded during cross examination that as is mentioned in Ex.P.F rough site plan that two separate parcels were prepared and sealed. PW-1 and PW-2 attesting witnesses of recovery memos also contradicted the complainant and deposed during cross examination that weapons recovered from both the accused persons were sealed in separate bags. Learned trial court also observed during cross examination of PW-1 that case properties were in two GATTUS which were placed in one bag. The outer sack is not sealed. In view of this observation of the trial court, possibility of tempering with the case property cannot be ruled out. The perusal of Ex.P.A and Ex.P.B also controverts the statement of the complainant which suggests that two parcels of arms and ammunition were prepared. Moreover, PW-3/Maharaj stated during cross examination that the case property was handed over to him by PW-3/Complainant /I.O at about 07:00 PM to 07:30 PM whereas the statement of PW-2 during cross examination and Ex.D.D postulate that PW-3/complainant/I.O returned to police station at 08:35 PM. Furthermore, there is no mention in Ex.D.D that PW-3/complainant/I.O came to the police station alongwith the case property of this case. This discrepancy also raises concerns about the chain of custody of case property. One other aspect of the case is also noteworthy that the discrepancies between the items listed in recovery memos Ex.P.A and Ex.P.B and report of PFSA Ex.P.G such as missing magazines of Kalashnikovs and number of bullets of pistol suggest possible tempering or mishandling of the case property. In the aforesaid mentioned contradictions, inconsistencies, and omissions.

Amal K. Sharma
 Director of Sessions Judge
 Mor & Criminal Trial Court
 13/11/2018

that two parcels of arms and ammunition were mentioned in the statement of attesting witness PW-1 & PW-2 i.e. Ex. DA and Ex. D.B. the complainant also conceded during cross examination that it is mentioned in Ex. PF rough site plant that two separate parcels were prepared and sealed, PW-1 & PW-2 attesting witness of recovery memo also contradicted the complainant and depose during cross examination that weapons recovered from both the accused persons were sealed in separate bags. Learned trial court also observed during cross examination of PW-1 that case properties were in to Gattus which were placed in one bag. The outer sack is not sealed. In view of this observation of the trial court, possibility of tempering with the case property cannot be ruled out. The perusal of Ex. PW & Ex. PB also controverts the statement of the complainant which suggests that two parcels of arms and ammunition were prepared. Moreover, PW-4/Moharrior stated during cross examination that the case property was handed over to him by PW-3/complainant/IO at about 07:00 PM to 07:30 PM, whereas the statement of PW-2 during cross examination and Ex. DD postulate that PW-3/complainant/IO returned to police station at 08:35 PM. Furthermore there is no mention in Ex. DD that PW-3/complainant/IO came to the police station alongwith the case property of this case. This discrepancy also raises concerns about the chain of custody of case property. One other aspect of the case is also noteworthy that the discrepancies between the items listed in recovery memo Ex. PA and Ex. PB and report of PFSA Ex. PG such as missing magazines of Kalashnikov and number of bullets of pistol suggest possible tempering or mishandling of the case property. All the aforementioned contradictions, inconsistencies and omissions raised

significant doubt about the integrity of the evidence and the prosecution

17. In view of the above discussion, it is held that the prosecution failed to prove its case against the appellants beyond any shadow of doubt. Hence, the instant appeal is accepted and the judgment of the learned trial Magistrate dated: 26.10.2023 is hereby set-aside resulting into acquittal of appellants Muhammad Naveed and Wahid Shah from the charge of this case. Ahmad is directed to issue release order of the appellants that they be immediately

released from this case if not required in any other case. Copy of this judgment and record of learned trial court be sent back to the learned trial court. File of the instant criminal appeal be consigned to the record room after due completion

Announced:
13/10/2024.

[Signature]
Muhammad Azeem Sheikh,
Judge Model Criminal Trial Court/
Addl. Sessions Judge, D.G. Khan.

Certificate that this judgment consists of (09) pages and each page has been dictated, corrected and signed by me.

[Signature]
Muhammad Azeem Sheikh,
Judge Model Criminal Trial Court/
Addl. Sessions Judge, D.G. Khan.



significant doubt about the integrity of the evidence and the prosecution.

14. In view of the above discussion, it is held that the prosecution failed to prove its case against the appellants beyond any shadow of doubt. Hence the instant appeal is accepted and the Judgment of the learned trial Magistrate dated 26/10/2023 is hereby set aside resulting into acquittal of appellants Muhammad Naveed and Waheed Shah from the charge of this case. Ahlmad is directed issue release of the appellants that they be immediately released from this case if not required in any other case. Copy of this judgment alongwith record of learned trial court be sent back to the learned trial court. File of the instant criminal appeal be consigned to the record room after due completion.

Announced
13/02/2024

Muhammad Azeem Sheikh,
Judge Model Criminal Trial
Court/ Addl: Sessions Judge,
D.G. Khan

Certificate that this judgment consists of (09) pages and each page has been dictated, corrected and signed by me.

Muhammad Azeem Sheikh,
Judge Model Criminal Trial
Court/ Addl: Sessions Judge,
D.G. Khan

The Worthy Director,
E&SE Khyber Pakhtunkhwa Peshawar.

Subject: DEPARTMENTAL APPEAL U/S 22 OF CIVIL SERVANTS ACT, 1973 FOR REINSTATEMENT
IN SERVICE OF THE APPELLANT AGAINST THE PST (M) BPS-12 POST IN COMPLIANCE
OF THE JUDGMENT DATED 12-02-2024 IN APPEAL NO. 26/2023 UNDER CASE TITLED
MUHAMMAD NAVEED VS THE STATE.

Respected Madam:

The appellant submits as under:

1. That the appellant as PST (M) in BPS-12 in the year of 2016 after due process of Law, Rules & policy & consequent upon the same appointment the appellant was further adjusted at GPS No. 2 Mastani, Town-IV, District Peshawar.
2. That while surviving the Department against the PST post till 13-11-2022, in the said school, an FIR No. 838/2022 dated 14-11-2022 was registered against the appellant under Sections-13/2c/20/65 AO at PS Court Chuita District DG Khan Punjab attached as Annex-A.
3. That in view of the afore-said FIR, the appellant was arrested by the local police on dated 14-11-2022 (same day) was jailed in the said FIR along with putting the case of the appellant for regular trail before the learned Trial Court & resultantly, the appellant was convicted vide Judgment dated 26-10-2023 for five years imprisonment with a fine of Rs. 20000/-.
4. That aggrieved from the Judgment dated 26-10-2023, the appellant has filed a criminal appeal No. 26/2023 under the above said case titled before the learned Session Judge DG Khan & who vide his Judgment dated 13-02-2024 was pleased to allow & accept the appeal of the appellant by setting aside the Judgment dated 26-10-2023 of the trail court in favor of the appellant attached as Annex-B.
5. That in the meantime, the learned DEO (M) Peshawar has proceeded the appellant under the relevant provision of E&D Rules 2011 by showing the as absent from duty as PST w.e.f 15-11-2022 as per report of the SDEO (M) Town-IV Peshawar. hence an absence Notice was served upon the appellant in Daily Aaj dated 14-08-2023 & in Daily Hewad dated 16-08-2023 which could not be honored due to the custody of the appellant in District jail DG Khan in the said FIR.
6. That finally, vide Notification No. 5074-77 dated 02-10-2023, major penalty of removal from service against the PST post was imposed upon the appellant in view of Rule-4(b)(ii) of KP E&SD Rules, 2011 along with treating the absence period from duty w.e.f 15-11-2022 as an authorized absence from duty attached as Annex-C.

Therefore, in view of the above mentioned facts of the titled case, it is humbly prayed that on the acceptance of this Departmental Appeal, your honor may kindly be pleased to reinstate the appellant in service against the PST (M) BPS-12 post along with all consequential service benefits by re-calling the Notification 02-10-2023 of the District Education Officer (M) Peshawar in the light of the Judgment dated 13-02-2024 passed by the learned ASJ DG Khan in favor of the appellant in the interest of justice please.

Dated 26-02-2024

APPELLANT,

MUHAMMAD NAVEED,
Ex-PST (BPS-12) GPS No. 2
Circle Mastani, Town-IV, Peshawar
Mobile No: 03139009724
CNIC: 17301-9155548-3

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P/E 26/2/2024

DIRECTORATE OF ELEMENTARY AND SECONDARY EDUCATION
KHYBER PAKHTUNKHWA PESHAWAR

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NOTIFICATION

1. WHEREAS, District Education Officer (Male) Peshawar proceeded Muhammad Naveed Ex-PST (BPS-12) GPS No. 2 Mattani Peshawar under Rules-9 of Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011, on account of willful absence from official duties and imposed major penalty of "Removal from Service" upon him vide Notification bearing Endst: No. 5074-77 dated 02-10-2023.
2. AND WHEREAS, Muhammad Naveed Ex-PST (BPS-12) GPS No. 2 Mattani Peshawar lodged an appeal before the Worthy Director Elementary & Secondary Education Khyber Pakhtunkhwa on 26-02-2024 seeking for his re-instatement in Service.
3. AND WHEREAS, as per his plea, he was not willful absent but charged in FIR and arrested by Local Police on 14-11-2022. He was sentenced five years imprisonment by Magistrate Section-30 Dera Ghazi Khan vide Judgment dated 26-10-2023. Therefore, he could not inform the office of DEC (M) Peshawar for circumstances beyond his natural control.
4. AND WHEREAS, feeling aggrieved from the Judgment Dated 26-10-2023, the appellant filed a criminal appeal No. 26/2023 under the case titled Muhammad Naveed Vs The State before the learned Session Judge D.G. Khan which was decided vide Judgment Dated 13-02-2024, whereby, the appellant has been acquitted of charges leveled against the accused teacher in FIR No. 838 of 2022 Dated 14-11-2022 in PS Kot Chutta, D.G. Khan with the Order that "In view of the discussion, it is held that prosecution failed to prove its case against the appellants beyond only shadow of doubt. Hence, the instant appeal is accepted and the Judgment of the learned trial Magistrate dated: 26-10-2023 is hereby set-aside resulting into acquittal of appellants Muhammad Naveed and Waheed Shah from the charge of this case".
5. AND WHEREAS, this office asked detail report from DEO (M) Peshawar vide No. 6081 Dated 04-03-2024.
6. AND WHEREAS, DEO (M) Peshawar has submitted detail report vide No. 12072 Dated 03-04-2024.
7. AND WHEREAS, this Directorate called appellate committee meeting regarding personal hearing in respect of Muhammad Naveed Ex-PST (BPS-12) GPS No. 2 Mattani Peshawar vide No. 2108-13 Dated 30-04-2024 which was held on 02-05-2024 wherein, the committee unanimously decided:

- That, Muhammad Naveed Ex-PST (BPS-12) GPS No. 2 Mattani District Peshawar may be re-instated into service on the analogy of Guidance letter received from Section Officer (Primary-Male) Elementary & Secondary Education Department Khyber Pakhtunkhwa bearing No. SO(Primary-M)/E&SED/5-19/Re-instatement/Muhammad Shakir/PST/Kohat/2022 Dated 14-09-2023 reproduced below and all his absence/intervening period may be treated as leave without pay (EOL) under provision of revised leave Rules, 981.

CSR: A servant of Government committed to prison either by Debt or a criminal charge should be considered as under suspension from the date of his arrest and not allowed to draw any pay until termination of proceedings

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against him, when an adjustment of allowance shall be made according to the circumstances of the case,

the full amount being given only in the event of the officer being acquitted of blame or (if the imprisonment was for debt), of its being proved that the officer's liability arose from the circumstances beyond his control".

Removal of Muhammad Shakir Ex-PST by the DEO (M) Kohat merely on arrest/FIR against him is illegal in view of CSR-194 mentioned above. After acquittal from criminal charges, Muhammad Shakir Ex-PST is required to be re-instated into Govt. Service from the Date of his suspension. The absence period from duty shall be Extra Ordinary Leave without pay".

NOW, THEREFORE, having gone through the whole case record including judgment dated 13-02-2024 of the learned Session Judge D.G. Khan, report of DEO (M) Peshawar, letter of Section Officer (Primary-Male) E&SE Department Khyber Pakhtunkhwa Peshawar I, Samina Altaf, being the Appellate Authority (Director, Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar), is pleased to re-instate Muhammad Naveed PST (BPS-12) GPS No. 2 Mattani Peshawar into service against the post of PST (BPS-12) with immediate effect under Rule 17(1)(2)(c) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and treat the intervening period/absence period as leave without pay (EOL) under Rule-12(2) of Khyber Pakhtunkhwa Revised Leave Rules, 1981 in the best interest of Public.

(Samina Altaf)
DIRECTOR

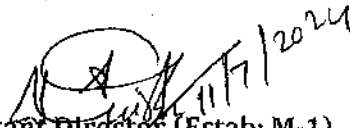
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

Endst.No: 5387-90 /F.No./12/Appeals/Estab-I

Dated Pesh: the 11/07/2024.

Copy forwarded for information to the: -

1. Registrar Additional learned Session Judge D.G. Khan.
2. District Education Officer (Male) Peshawar.
3. Accountant General Khyber Pakhtunkhwa Peshawar.
4. Muhammad Naveed PST (BPS-12) GPS No. 2 Mattani Peshawar.
5. P.A to Director Elementary & Secondary Education, Local Directorate, Peshawar.


Assistant Director (Estab: M-1)
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

g-i-p

