


Form-A

FORM OF ORDER SHEET

Court of _____

Restoration Application No. 1307 /2024

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1.	2	3
1	29.10.2024	<p>The application for restoration of Service appeal No.4837/2021 submitted today by Mr. Mir Zaman Safi Advocate. It is fixed for hearing before Division Bench at Peshawar on 04.11.2024. Original file be requisitioned. Paracha Peshi given to counsel for the applicant.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

R-A
C.M NO. 1307 /2024
IN
APPEAL NO.4837/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 17307

Dated 29/10/24

Mr. Kamal Jalal, Ex-Warder (BPS-05),
Circle Headquarter Prison, Mardan.....APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Secretary Home Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
- 3- The Superintendent Circle Headquarter Prison, Mardan.

.....RESPONDENTS

APPLICATION FOR FIXATION OF THE ABOVE MENTIONED
APPEAL FOR HEARING

R/SHEWETH:

- 1- That the above mentioned appeal was fixed for hearing on 07.02.2024 for hearing before this august Tribunal.
- 2- That the appellant filed the above mentioned appeal against the impugned order dated 31.12.2020 whereby major penalty of removal from service has been imposed upon the appellant.
- 3- That during pendency of the above titled appeal the appellant was charged in criminal case FIR No. 956, dated 22.10.2021, Under Section-302/324/338-C/34 PPC and as such the appellant was arrested by the local police and kept him-behind the bar till 02.10.2024.
- 4- That due to the above mentioned reason the above mentioned appeal was adjourned sendai through application dated 07.02.2024. Copy of the order sheet is attached as annexure.....A.
- 5- That the appellant has been Honourably acquitted in the above mentioned criminal case by the Honourable Peshawar High Court, Peshawar vide its judgment dated 02.10.2024, therefore, the above mentioned appeal needs to be fixed for hearing. Copy of the judgment is attached as annexure.....B.

It is, therefore, most humbly prayed that on acceptance of this application the above mentioned appeal may very kindly be fixed for hearing.

Dated: 17/10/2024

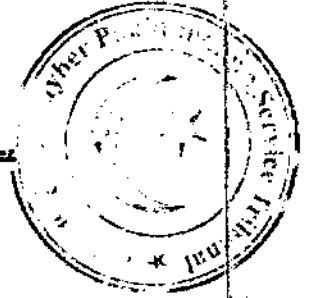
APPELLANT

THROUGH: 

MIR ZAMAN SAFI
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 4837 /2021



Mr. Kamal Jalal, Ex-Warder (BPS-05),
Circle Headquarter Prison, Mardan.....**APPELLANT**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Secretary Home Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
- 3- The Superintendent Circle Headquarter Prison, Mardan.

.....**RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDERS DATED 31.12.2020 COMMUNICATED TO THE APPELLANT ON 30.03.2021 WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST THE IMPUGNED APPELLATE ORDER DATED 08.04.2021 WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS

PRAYER:

That on acceptance of this service appeal the impugned orders dated 31.12.2020 and 08.04.2021 may very kindly be set aside and the appellant may be re-instated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be granted in favor of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That appellant was the employee of respondent department and was serving as warder at Central Prison, Peshawar quite efficiently and up to the entire satisfaction of his superior.
- 2- That during service the appellant was transferred from Central Prison, Peshawar to Circle Headquarter Prison, Mardan vide order dated 19.10.2020. That at the same time the appellant was seriously ill and after consultation with the Doctor at Services Hospital Peshawar about the said illness and after complete check up he advised some medicine with the instructions of complete bed rest till

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Secretary
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

29-10-24



SA No. 4837/2021

- 27.02.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Ghulam Mustafa, Law Officer for the respondents present.
2. Learned counsel for the appellant submitted an application for sine die adjournment on the ground that during pendency of the instant service appeal, appellant charged in criminal case under Section 302/324/34 PPC, FIR No. 956 dated 22.10.2021 in Police Station Machni Gate. As the appellant is behind bar in the above mentioned criminal case and he is now under trial, therefore, he requested for *sine-die* adjournment of the appeal in hand till the final decision of the trial pending before Trial Court. Request of learned counsel seems genuine, therefore, instant appeal is adjourned sine die accordingly. Appellant may restore this appeal by filing application for restoration after decision of said criminal trial of FIR NO. 956 mentioned above.

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EX. MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar
29-10-24

Kalccmullah

(Fareeha Paul)
Member (E)

(Rashida Bano)
Member (J)

Khyber Pakhtunkhwa

Application No.	382
Name of Applicant	Jawaid
Number of Pages	29-10-24
Copying Fee	2/-
Urgent/Ordinary	10/-
Total	8/-
Name & Signature	29-10-24
Date of Filing	29-10-24

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IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department]



Cr.A. No.1709-P/2023

1. Kamal Jalal s/o Said Jalal;
2. Bilal s/o Bacha Gul; and
3. Farhad s/o Banaras,
Residents of Ghari Fazail, Faqir Kalay
And Charpariza,
District, Peshawar, respectively.

Appellant (s)

VERSUS

The State etc

Respondent (s)

For Appellant (s) :-
For State :-
For Respondent No.2
Date of hearing:

Syed Abdul Fayaz, Advocate
Mr. Amir Zeb, AAG
Mr. Sajid Khan, Advocate
02.10.2024

JUDGMENT

ISHTIAQ IBRAHIM, CJ.- Tried by learned Additional Sessions Judge-XVII, Peshawar ("Trial Court"), in case FIR No.956 dated 22.10.2021, registered under Sections 302, 324, 338-C and 34 PPC, at Police Station Michni Gate, Peshawar, (1) Kamal Jalal (2) Bilal and (3) Farhad, the appellants, having been found guilty of committing murder of Mst. Hameeda deceased and an unborn child in her womb as well as attempting at the lives of the complainant party, have been convicted and sentenced vide judgment dated 18.12.2023 ("impugned judgment"), as under:-

Under Section 302(b)/34 PPC:-To undergo imprisonment for life as Ta'azir each and to pay rupees two lacs collectively to legal heirs of the deceased in terms of Section 544-A Cr.P.C. and

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Peshawar High Court

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in default thereof to further undergo six months simple imprisonment, each.

Under Section 338-C/34 PPC:- To pay 1/20th of Diyat to legal heirs of the deceased.

Benefit of Section 382-B Cr.P.C. has been extended to the appellants.

2. Through the instant appeal, the appellants have questioned their conviction and sentences.

3. The prosecution's case as unfolded in First Information Report ("FIR") Exh.PW.3/1 is that on 22.10.2021 at 1550 hours, complainant Sher Dil Khan (PW.9), in company of dead body of his wife Mst. Hameeda deceased, in trauma room of Lady Reading Hospital ("LRH") Peshawar, reported to Gul Nabi Shah SI (PW.2) to the effect that on the fateful day he along with his deceased wife was present in his house, situated in *Faqir Kalay Garhi Fazil*; that on commotion of children, when he along with the deceased came out of their house, appellants along with co-accused Faisal, duly armed with firearms present there opened fire at them, as a result, his wife Mst. Hameeda deceased got hit and succumbed to injuries on the way when she was being shifted to hospital, while he luckily remained unscathed. Besides him, the occurrence is stated to have been witnessed by his nephew Sabir Umar (PW.10). No motive was advanced by him behind the occurrence. Report of the complainant was reduced into writing in the shape of Murasila Exh.PW.2/1 by Gul Nabi Shah SI, who also prepared injury sheet Exh.sPW.2/2 and inquest report

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Peshawar High Court

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Exh.PW.2/3 of the deceased and shifted her dead body to KMC through constable Farman for postmortem examination. On the same day, Gul Nabi Shah SI, also arrested appellant Kamal Jalal vide arrest Card Exh.PW.2/4. On 11.12.2021 he also arrested appellant Bilal vide arrest Card Exh.PW.2/5 and from his possession recovered one 30 bore pistol along with bandolier containing 10 live rounds of the same bore vide recovery memo Exh.PW.2/6. A separate FIR No.1061 dated 11.12.2021 under section 15 KP Arms Act was registered against appellant Bilal.

4. On 22.10.2021 at 1526 hours, lady doctor Mustajab Begum conducted postmortem examination on the dead body of deceased and found the following injuries on her person.

1. A firearm entry wound 3x2 cm in size on top of skull on left side 3 cm away from midline and 13 cm above forehead.
2. A firearm exit wound on left lateral side of head. 05 cm below left ear and 20 cm away from midline of 2x2 cm in size.

Scalp, skull, membranes, brain. Injured.

Gravid uterus contains male fetus of four months POG 150 gram weight.

Opinion: According to her opinion the deceased died due to firearm injury to her brain and its associated blood vessels due to firearm.

5. After registration of the FIR, Safdar Khan Inspector (PW.11), proceeded to the spot and prepared site plan Exh.PB on the pointation of the complainant, recorded statements of the PWs under section 161 Cr.P.C. During spot inspection, he secured blood through cotton from the place of

M. Qureshi
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the deceased, 05 empties of 7.62 bore from the places of appellant Bilal and Faisal and one empty of 30 bore from the place of appellant Kamal Jalal vide recovery memo Exh.PW.1/1. Vide recovery memo Exh.PW.1/2, he took into possession bloodstained garments of the deceased. He obtained physical remand of the appellants from the Court of learned Judicial Magistrate, interrogated them and recorded their statements under section 161 Cr.P.C., initiated proceedings under section 204 and 87 Cr.P.C. against the absconding co-accused Faisal, sent the bloodstained Articles, empties and pistol to the FSL, reports whereof are Exh.PZ and Exh.PZ/1, respectively. Vide recovery memo Exh.PW.11/19 he took into possession 30 bore pistol along with 10 live rounds recovered from appellant Bilal, produced by Moharrir. On completion of investigation he handed over case file to the SHO, who submitted challan against the appellants before the learned trial Court.

6. On receipt of challan, the appellants were summoned by the learned trial Court and formally charge sheeted under sections 302, 324, 338-C and 34 PPC to which they pleaded not guilty and claimed trial. To prove guilt of the appellants, the prosecution's examined as many as twelve witnesses. After closure of the prosecution's evidence, statements of the appellants were recorded under section 342 Cr.P.C., wherein they denied the prosecution's allegations and professed their innocence. They, however, neither wished to be examined on

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case of Attaullah and others Vs. The State (PLD 1990 Peshawar-10), that the crime empties should be immediately dispatched to Arms Expert and should not be kept by the Investigating Officer because in that case objection regarding manipulation of recovery will hold good. Similarly, it is by now well established proposition of law that if the crime empty is sent to the Forensic Science Laboratory after the arrest of the accused or together with the crime weapon, the positive report of the said Laboratory loses its evidentiary value. Reliance in this respect is placed on the case of "Jehangir vs. Nazar Farid and another" (2002 SCMR 1986), "Israr Ali vs. The State" (2007 SCMR 525) and "Ali Sher and others vs. The State" (2008 SCMR 707).

18. On reappraisal of the evidence available on record, we are firm in our view to hold that the prosecution case is pregnant with doubts, benefit of which is to be extended to the appellants not as matter of grace or concession but as a matter of right. This cardinal principle of criminal administration of justice is based on the concept of justice in Islam which is to be observed more consciously and carefully. Benefit of doubt features appearing in the case invariably are required to be given full effect while deciding a criminal case. Benefit of doubt, if any favourable to the accused cannot be withheld in the exercise of discretion of the Court at any stage. It is an axiomatic principle of law that the benefit of doubt is always extended in favour of the

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19. Placing reliance on the judgments (supra), we allow this appeal, set-aside the conviction and sentences of the appellants recorded by the learned trial Court through the impugned judgment and hereby acquit them from the charges levelled against them in the instant case. They be set at liberty forthwith, if not confined in any other case.

Announced:
02.10.2024

M.Siraj APM CS

[Handwritten Signature]
CHIEF JUSTICE

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JUDGE

DB of Mr. Justice Ishtiaq Ibrahim Hon'ble the Chief Justice
And Hon'ble Mr. Justice Wiqar Ahmad.

CERTIFIED TO BE TRUE COPY
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EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 8, 7 of
the Qanoon-e-Shahadat Act 1984
11 OCT 2024

13218

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Approved By

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