FORM OF ORDER SHEET

Court of _____

Appeal No. 2391/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	06/11/2024	The appeal of Mr. Gul Shah Ali resubmitted today by Mr. Astaghfir Ullah Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 15/11.2024. Parcha Peshi given to counsel for the appellant. By order of the Chairman REGISTRAR

The appeal of Mr. Gul Shah Ali received today i.e on 04.11.2024 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- According to sub-rule-4 of rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974 respondent nos. 1, 2 & 4 are un-necessary/improper parties, in light of the rules ibid and on the written direction of the Worthy Chairman the above mentioned respondent number be deleted/struck out from the list of respondents.
2- Address of appellant is incomplete be completed according to rule-6 of Khyber Pakhtunkhwa Service Tribunal rules 1974.
3- Memorandum of appeal is not signed by the appellant.
4- Copy of revision petition is not attached with the appeal be placed on it.
5- Annexure-D (impugned order) is illegible be replaced by legible/better one.

No. 1022 /Inst./2024/KPST,

Dt. 4/11 /2024.

ADDITIONAL REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Astaghfir Ullah Adv.
Supreme Court at Peshawar.

Respected Sir,
That all the above objections are removed & the case may please be fixed before the Hon'ble chairman/Judge S.T.P.

Usman Ullah Adv
6/11/24

BEFORE THE SERVICE TRIBUNAL K.P.K. PESHAWAR

Service Appeal No. 9391 /2024

Gul Shah Ali

.....Appellant

Versus

IGP of KPK, & Others

..... Respondents

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Appellant

Through:

Astaghfir Ullah (ASC)
&
Usman Ullah
Advocate High Court, Peshawar
taxusmanullah@gmail.com
0334-9205211

Dated: 06.11.2024

BEFORE THE SERVICE TRIBUNAL K.P.K. PESHAWAR

Service Appeal No. 2391 /2024

Gul Shah Ali S/o Kimkhab,(Ex-Constable Belt No.2195, EkkaghundDistrict Mohmand)R/O Karari Machini P.O. Banda District Mohmand.....**Appellant**

Versus

1. **Inspector General of Police**, KPK, Peshawar.
2. The Regional police Office Khyber Pakhtunkhwa District Mardan.
3. District Police Officer District Momand Khyber Pakhtunkhwa.

.....**Respondents**

APPEAL U/S 4 KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER OF RESPONDENT NO. 2 (RPO) DATED: 23.08.2024, WHEREBY THE APPEAL OF THE APPELLANT AGAINST THE IMPUGNED ORDER OF RESPONDENT NO. 1 DATED: 17/10/2024, HAS BEEN REJECTED AND DISMISSAL ORDER OF APPELLANT ISSUED BY RESPONDENT NO.3 DATED: 13.6.2022 WAS MAINTAINED.

PRAYER IN APPEAL:

ON ACCEPTANCE OF THIS APPEAL THE ORDER OF RESPONDENT NO. 2 DATED: 23.08.2024, WHEREBY THE APPEAL OF THE APPELLANT AGAINST THE IMPUGNED ORDER OF RESPONDENT NO.1 DATED: 17.10.2024, HAS BEEN REJECTED AGAINST DISMISSAL FROM SERVICE MAY KINDLY BE REVERSED AND RESULTANTLY THE DISMISSAL ORDER OF APPELLANT ISSUED BY RESPONDENT NO. 3 AND THE ORDER OF THE RESPONDENT NO. 3 DATED: 13.6.2022, MAY KINDLY BE SET ASIDE AND THE APPELLANT

MAY BE REINSTATED IN SERVICE WITH ALL BACK BENEFITS.

Respectfully Sheweth:

1. That the appellant was serving in Police Department as Constable Belt No.178 Police, Mohmand. **(copy is attached as annexure-A)**
2. That on 25.07.2021 wherein the appellant availing EID holydays /leave he was fire at effectively by Haji Rafiq and others, got seriously injured he made report which was reduce in to writing vide Naqal Mad No. 20 D.D. on 25.07.2021 it is pertinent to mention that on the same day in the same occurrence he stood charged u/s 302,3204,427,34 PPC police station Ekkaghund Mohmand and he was arrested in injured condition in Khyber Teaching Hospital (KTH) Peshawar and the appellant has been charged in case FIR No.68 U/S-302,324,427,34 PPC in Police Station Ekkaghund District Mohmand. Since the appellant was in critical condition due to fire arm injuries he remind admitted in the hospital for sufficient time and was also under arrest due to his injured condition, judicial custody had also been granted by the learned judicial Magistrate tell his recovery **(Copy of Naqal Mad No.20 FIR is attached as annexure-B& C)**

3. That the appellant due to harassment at the hands of the police office took abode and due to his arrest/judicial lock up the appellant did not join the enquiry and the respondents' started proceedings against the appellant in his absentia and passed the impugned order of dismissal from service has been passed on **13.6.2022**. **(Copy of dismissal order is attached as Annexure-'E)**

4. That the appellant had been in custody since his arrest and convicted and sentenced by the learned sessions judge Mohmand on 12.05.2023, u/s: 302,324,427,34 PPC to life imprisonment and the appellant assailed his conviction and sentence before the august court Peshawar High Court Peshawar vide Cr. Appeal No. 942-P/2023 which has been

allowed on 16/05/2024, released on 21/05/2024, in honorable and he was acquittal of the appellant. **(Copy of Acquittal order is attached as Annexure-F)**

5. That the appellant approached to respondent No.3 and without hearing and affording opportunity to defend himself straight away refused to hear and informed him that he has been dismissed by respondent No. 3 (DPO) vide impugned order dated: 13.62022. The appellant after getting knowledge of the above illegal dismissal, there after the appellant filed departmental appeal against the above impugned order to Respondent No.2 (RPO) which was entertained and decided on 23.8.2024, vide impugned Order and which order was not communicated to appellant in time when the appellant approached to respondent No. 1 (IGP) the appellant got knowledge of the impugned Order dated: 17.10.2024 on 18.10.2024.

   (Departmental Appeals& impugned Orders dated: 17.10.2024, 23.08.2024,).

6. That the appellant now approaches this Honorable Tribunal against the said orders on the following grounds amongst the others.

Grounds:

a) That the aforementioned orders of dismissal of the appellant are illegal unlawful without authority/jurisdiction and being based surmises, conjecture, hence not tenable.

b) That no inquiry proceedings, as prescribed under the prevailing laws was ever conducted, still on the findings, the major punishment was awarded to appellant, hence the orders referred to above need reversal.

c) That the punishment awarded to the appellant by not fulfill the legal requirement for the service of notice and

passed the impugned order in his absentia, which have no value in the eyes of law.

d) That no process/procedure as prescribed in the service laws has ever been adopted by the respondents/ department.

e) That no legal requirement has ever been fulfilled in the appellant case and this factum is clear from the impugned orders, hence, the orders were passed in haphazard manner and liable to be set aside

f) That the dismissal order of the appellant was not in accordance/in-proportionate with the allegations leveled against the appellant and it was a harsh punishment as against the mis-conduct whatsoever mentioned in the proceedings.

g) That the appellant has been acquitted from the charges leveled against him and every acquittal in the eye of law is honorable acquittal, hence the impugned order of dismissal from service on this ground is nullity in the eye of law.

h) That the impugned dismissal order is issued without giving any opportunity of hearing to appellant and passed the impugned orders without fulfilling the legal requirements in slipshod manner, such practice adversely effects efficiency of incumbents and also reduces their confidence and faith in public.

i) That the appellant has not been given an opportunity to cross examine any of the witnesses neither the statement of witnesses has been recorded in presence of appellant and never supplied a copy of so called enquiry report which is clear-cut violation of the Government Servant (Efficiency and Discipline) Rules

2011 and are against fundamental rights enshrined in the constitution of Islamic Republic of Pakistan, 1973.

j) That any other ground, with leave of this honorable tribunal, will be raised at the time of fixed arguments.

IT IS, THEREFORE, HUMBLY PRAYED THAT ON ACCEPTANCE OF THIS APPEAL THE ORDER OF DISMISSAL FROM SERVICE PASSED BY THE RESPONDENTS MAY PLEASE BE SET-ASIDE AND THE APPELLANT MAY BE REINSTATED BACK TO HIS SERVICE WITH ALL BACK BENEFITS.

ANY OTHER RELIEF WHICH THIS HON'BLE TRIBUNAL DEEMS PROPERLY AND HAS NOT BEEN ASKED PROPERLY MAY ALSO BE GRANTED.

Appellant

Through:
ASTAHFIR ULLAH (ASC)
&
Usman Ullah
Advocate High Court, Peshawar

Dated: 06.11.2024

VERIFICATION:
It is verified that (as per information given me by my client) all the contents of the instant appeal are true and correct and nothing has been concealed intentionally from this Hon'ble Tribunal.

Advocate

Note:
That no such like petition / Appeal on this subject matter has earlier been filed before this Hon'ble Tribunal.

Advocate

BEFORE THE SERVICE TRIBUNAL K.P.K. PESHAWAR

Service Appeal No._____/2024

Gul Shah ALi

.....Appellant

Versus

Government of KPK,.& Others

..... Respondents

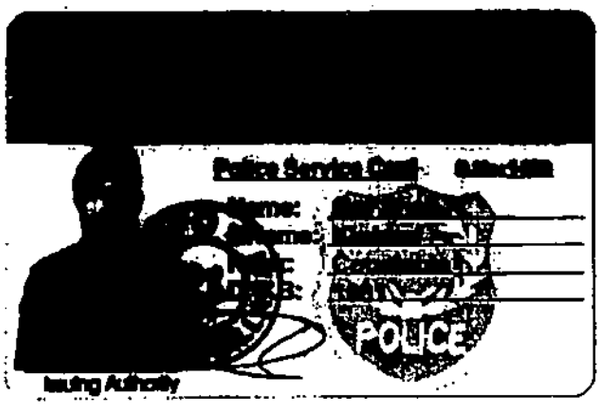
Affidavit

It is hereby solemnly affirm and declare on oath that all the contents of the instant appeal are true and correct to the best of my Knowledge and belief and nothing has been concealed intentionally from this Honourable Court.

Further is solemnly affirm that I got knowledge of the impugned order on 02/07/2024, when I visited the office, I have not intimated about the impugned before.

Deponent

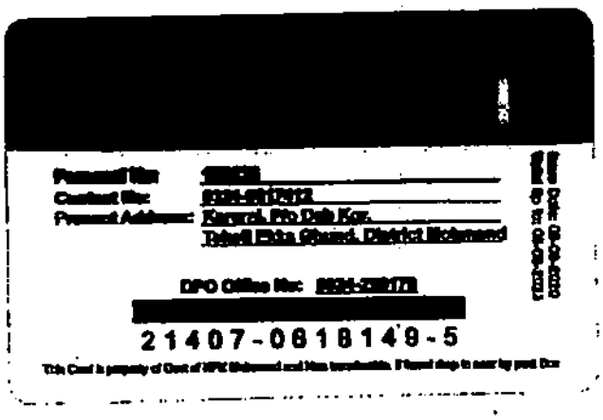
Gul Daraz Khan
Oath Commissioner
Advocate
High Court Peshawar
01-11-24



(7)

Annex A

ATTESTED



Annexure B 8

نقل مراسلہ 20 روزنامچہ 25/7/021

20 رپورٹ عمومی اندراج روزنامچہ تھانہ MHC مورخہ 25/7/021 وقت 17:40 بجے اپنے وقت آمد تحریر ہوئی
رپورٹ عمومی اندراج روزنامچہ منجانب عبداللہ خان ASI بدست کنسٹیبل عامر 86 موصول ہو کر جو کہ
مضمون ذیل ہے۔ رپورٹ عمومی اندراج روزنامچہ تاریخ وقت وقوعہ 25/7/021 وقت 14:00 بجے تاریخ وقت رپورٹ
25/7/021 وقت 16:10 بجے جائے وقوعہ میں روڈ بھائی کور مدرم 324-34 خدمت آفیسر SHO صاحب تھانہ کلیر غلام
صاحب اطلاع KTH ہسپتال پشاور آیا KTH سرجیکل D وارڈ بیڈ نمبر 2 میں پیشنٹ پاکستانی مسمی گل شاہ ولد
ملک کنواب عمر 40 سال ساکن کمر پڑی چینی مخالف مجروح حالت درست خوش و ہوش ہے۔ گل شاہ
بیان رپورٹ کرتا ہے کہ میں اپنے موٹر سائیکل از قسم 70 یونائیٹڈ مارکہ دیہہ خود سے سفر پر بمشیرہ
مسماۃ زوجہ عبداللہ سکنہ بھائی کور سے کے گھر واقع لنڈی کور جا رہے تھے۔ میں سلحہ بہ کلاشنکوف تھا جو
وقوعہ بالا پر پہنچے تو جانب بھائی کور سے ملزمان عادل ولد نور سنت شاہ اپنے موٹر سائیکل پر جس پر
پر تنظیم اللہ ولد سیال خان اور دوسری موٹر سائیکل پر مسمی محمد عمران ولد سخر گل اور موٹر سائیکل کے پیچھے
حاجی رفیق ولد سیال خان ساکنان بنگلو نما مسلح بہ اسلحہ آتشیں اکر اور آتے ہی مجھ پر اسلحہ آتشیں سے
شروع کرتے فائرنگ سے میں دائیں طرف کے پیچھے ناف تک زخمی ہوا ہوں۔ میں نے بھی اسلحہ آتشیں سے
فائرنگ کی وجہ عناد سابقہ دشمنی ہے۔ اور مسمیان بالا نے مجھ پر قتل کرنے کی غرض سے رقم کی تھی۔ وقوعہ
میرے علاوہ وہاں پر موجودگان کا چشمدید ہے۔ میں اپنے آپ پر بارادہ قتل فائرنگ کرنے سے لگنے کا
تنظیم اللہ حاجی رفیق اور محمد عمران اور عادل و عمومیان الشخص دیگر نامعلوم مسمی ضابطہ خان ولد سلام خان
عمر بعمر 30 سال ساکن بنگلو نما نے رپورٹ بالا کی تائید کی۔ الشخص دیگر اردو کارروائی پولیس حسب گفتہ
کی رپورٹ درج بالا پڑھ کر سنایا یا سمجھایا گیا۔ درست تسلیم کرتے ہوئے رپورٹ جو دیر اپنا دستخط ثبت
جبکہ تائید کنندہ نے اپنے تائیدی دستخط ثبت کی۔ مجروح کا نقشہ ضمیمہ کیجولٹی ہسپتال KTH ارجاع نے تحریر
جو کہ مدعی گل شاہ کی کے خلاف مقدمہ علت 68 مورخہ 25/7/021 جرم 302-324-427/34 تھانہ کلیر غلام میں
ہوئی۔ اس مقدمہ میں حسب ضابطہ گرفتار میں کر چیز نکلے گل شاہ کی اپنے رپورٹ میں برخلاف حاجی رفیق
عادل ولد نور سنت شاہ کیجولٹی KTH ہسپتال عمر 34 سال اپنے حقیقی وارڈ میں داخل ہسپتال ہے
SHO صاحب تھانہ کلیر غلام کے ساتھ موبائل فون سے رابطہ کرکے ملزمان بالا کے گرفتاری کا پابند و پابند کیا جائے
رپورٹ سے صورت جرم بالا کا پایا جاتا ہے اور رپورٹ مقدمہ نمبر 68 مورخہ 25/7/021 جرم 302-324-427/34
مد مقابل رپورٹ ہے۔ بدست کنسٹیبل عامر 86 ارسال تھانہ ہے۔ رپورٹ درج روزنامچہ کرتے
بعد من کراسنا درج رجسٹر خلاف قبضہ تفتیش کی جائے۔ دستخط اردو عبداللہ خان ASI تھانہ کلیر غلام
کارروائی تھانہ آمد تحریر رپورٹ عمومی اندراج روزنامچہ حرف بہ حرف درج بالا میں درج ہے
روزنامچہ اور نقل نقل روزنامچہ کے ساتھ لف کیا گیا۔ مقدمہ علیحدہ مرتب کرتے بعد من تفتیش
شعبہ تفتیش کیا گیا جاتا ہے

ATTESTED

ضیاء خان
نقل بمطابق اصل ہے
MHC-PS-EG
25-7-021

Better Copy of the page No.

9

نقلمد 20 روزنامچہ 25/07/2021

مد 20 رپورٹ بمنزل اندراج روزنامچہ مبارس MHC مورخہ 25/07/2021 وقت 17:40 بجے اس وقت ایک تحریری رپورٹ بمنزل اندراج روزنامچہ منجانب عبداللہ خان ASI بدست کانسٹیبل عامر FC موصول ہوکر جو کہ بہ مضمون ذیل ہے' رپورٹ بمنزل اندراج روزنامچہ تاریخ وقت وقوعہ 25/07/2021 وقت 14:30 بجے تاریخ وقت رپورٹ 25/07/2021 وقت 16:10 بجے جائے وقوعہ مین روڈ بھائی کور جرم 324/34 بخدمت آفیسر SHo تھانہ یکہ غنڈ حسب اطلاع KTH ہسپتال پشاور آیا KTH سرجیکل D وارڈ بیڈ نمبر 9 میں پڑی پاکر مسمی گل شالی ولد کیتو اب بعمر 40 سال ساکن کریڑی مچھلئی بحالت مجروحیت درست ہوش وحواص میں ہے' گل شالی یوں رپورٹ کرتا ہے کہ میں اپنے موٹر سائیکل از قسم 70 CC یونائیٹڈ مارکہ پر دیہہ خود سے بطرف ہمشیرہ ام وڑہ زوجہ عبداللہ سکنہ بھائی کور کے گھر واقع بھائی کور جارہے تھے میں مسلح بہ کلاشنکوف تھا جونہی جائے وقوعہ بالا پر پہنچے تو جانب بھائی کور سے مسمیان عادل ولد سنت خان اپنے موٹر سائیکل پر جبکہ ان کے پیچھے سیٹ پر تنظیم اللہ ولد سیال جان اور دوسری موٹر سائیکل پر مسمی محمد عمران ولد سحر گل اور موٹر سائیکل کے پیچھے سیٹ پر حاجی رفیق ولد سیال جان ساکنان بنگلو نمبر 1 مسلح بہ اسلحہ آتشین آکر اور آتے ہی مجھ پر اسلحہ آتشین سے فائرنگ شروع کر کے جن کے فائرنگ سے میں دائیں طرف ناف کے نیچے لگ کر زخمی ہوا ہوں میں نے بھی اسلحہ آتشین سے جوابی فائرنگ کی' وجہ عناد سابقہ دشمنی ہیا ور مسمیان بالا نے مجھ پر قتل کرنے کی غرض سے رقم لی تھی' وقوعہ ہذا میرے علاوہ وہاں پر موجودگان کا چشم دید ہے' میں اپنے آپ پر بہ ارادہ قتل فائرنگ کرنے سے لگنے کا برخلاف تنظیم اللہ' حاجی رفیق' محمد عمران اور عادل دعویدار ہوں' العبد دستخط انگریزی' مسمی ضابطہ خان ولد سلام قوم مہمند بعمر 29 سال ساکن بنگلو نمبر 1 نے رپورٹ بالا کی تائید کی العبد دستخط اُردو کارروائی پولیس حسب گفتہ سائل رپورٹ درج بالا ہوکر پڑھ کر سنایا سمجھایا گیا' درست تسلیم کر کے زیر رپورٹ خود پر اپنا دستخط ثبت کی جبکہ تائید کنندہ نے اپنے تائیدی دستخط ثبت کیا' مجروح کا نقشہ ضرر کیجولٹی ہسپتال RTC انچارج نے تحریر کیا چونکہ مدعی گل شالی کے خلاف مقدمہ علت نمبر 68' مورخہ 25/07/2021 جرم 302/324/427/34 تھانہ یکہ غنڈ میں دعویداری ہوئی اس مقدمہ حسب ضابطہ گرفتار ہوکر چونکہ گل شالی اپنے رپورٹ میں برخلاف حاجی رفیق تنظیم اللہ عادل ولد نور منت شاہ کیجولٹی LRH ہسپتال بعمر 38/39 سال ایمرجنسی وارڈ میں داخل ہسپتال زیر علاج ہے' SHO صاحب یکہ غنڈ کے ساتھ موبائل فون سے رابطہ کر کے ملزمان بالا کیلئے گارڈ کا بندوبست کیا جائے' مضمون رپورٹ سے صورت جرم بالا کا پائی جا کر رپورٹ ہذا مقدمہ 68 مورخہ 25/07/2021 جرم 302/324/427/34 کا مد مقابل رپورٹ ہے' بدست کانسٹیبل عامر FC ارسال تھانہ ہے' رپورٹ درج روزنامچہ کر کے نقلمد بغرض کراس ورژن حوالہ شعبہ تفتیش کی جائے' دستخط اُردو' عبداللہ جان ASI تھانہ یکہ غنڈ' مورخہ 25/07/2021 کارروائی تھانہ آمدہ تحریری رپورٹ اندراج روزنامچہ حرف بہ حرف درج بالا ہوکر اصل روزنامچہ اور نقل روزنامچہ کے ساتھ لف کیا گیا' نقلمد علیحدہ مرتب کر کے بغرض تفتیش حوالہ شعبہ تفتیش کیا جاتا ہے۔

ATTESTED

جناب عالی!

نقل بمطابق اصل ہے۔

MHC-PS-EG

25/07/2021

Annexure "C" 10

گورنمنٹ پولیس پشاور جاب نمبر 2286/13 فارم نمبر تعداد ایک ہزار منظور شدہ 2011/21.08.2011 فارم نمبر (24.15) ۔ گلہ پشاور

ترمیم پولیس صوبہ سرحد فارم نمبر 25

(1)15 فارم نمبر

0324 9817412

0301-8922815

2407-5542322-5

ابتدائی اطلاع رپورٹ

25

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 مجموعہ ضابطہ فوجداری

تھانہ مکیہ مبارک ضلع مہمند

تاریخ وقت وقوعہ 25-07-2021 وقت 2:14:30

علاقہ 68

تاریخ و وقت رپورٹ	25-07-021 وقت 2:15:30
نام و سکونت اطلاع دہندہ مستغیث	حاجی رفیق ولد سیال جان سکنہ بھائی کور مہمند
مختصر کیفیت جرم (معہ دفعہ) حال اگر کچھ لیا گیا ہو۔	302-324-34-427 PPC
جائے وقوعہ فاصلہ تھانہ سے اور سمت	بھائی کور مہمند روڈ جانب شمال تقریباً 10/12 کلومیٹر از تھانہ
نام و سکونت ملزم	① گل شاہی ② یاوس علی ③ حسین پسران کنجاب ساکنان بھائی کور مہمند
کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	مراسلہ مدعی تحریری مراسلہ پر مقدمہ قائم کیا جاتا ہے
تھانہ سے روانگی کی تاریخ و وقت	

ابتدائی اطلاع نیچے درج کرو۔ بوقت صدور مراسلہ تحریری مراسلہ تھانہ
عبداللہ جان خان ASI بدست کنسٹیبل رحمت اللہ خان 2180 موصول ہو کر جو کہ بطور ذیل ہے۔ بخدمت
SHO صاحب تھانہ مکیہ مبارک۔ معلوم ہو کہ میں مع کنسٹیبلان احمد عامر۔ مع جسٹیبل LRH گشت
پر گشت پر تھا میں مخبر خاص ① حاجی رفیق ولد سیال جان ② تنظیم اللہ ولد سیال جان ③ عادل
ولد سنت شاہ ساکنان بھائی کور نے اطلاع دی کہ تنظیم اللہ ولد حاجی رفیق ٹیوب ویل
درست حوض و حواص میں پوں رپورٹ کرتے ہیں کہ آج مورخہ میں مع برادرم تنظیم اللہ اور دوست
آم عادل اور محمد عمران ولد سحر گل سکنہ بھائی کور مہمند
سائیکل از قسم ہنڈا 70 کے پیچھے سوار تھا۔ اور برادرم تنظیم اللہ کے ملکیتی موٹر سائیکل
عادل کیساتھ پیچھے بیٹھ سوار تھا۔ لیکن عید تعطیلات شاہی خیبر پولیس ٹریننگ سنٹر جا
جب ہم چلے تو ٹیوب ویل پر پہنچے تو پہلے سے مسمیان گل شاہی۔ یاوس علی
حسین پسران کنجاب ساکنان بھائی کور مہمند کے ساتھ مسلح اسلحہ آتشیں موجود تھے۔ ہمیں دیکھ
ہم پر بہ ارادہ قتل فائرنگ کر دی جو ہمیں لگی طرف ہم گر زخمی ہو گئے۔ جبکہ محمد عمران پر
لگ کر راستہ میں جان بحق ہوا۔ وجہ فساد ملزمان کیساتھ پرانی عداوت ہے۔ واقعہ
علاوہ یا بے گواہ چشم دید ہے۔ میرے موٹر سائیکل پر بھی فائرنگ سے لگ کر نقصان
ہوا ہے۔ میں اپنے زخم پر برادرم تنظیم اللہ اور عادل اور محمد عمران پر بہ ارادہ قتل فائرنگ
سے زخمی ہونے کا جبکہ محمد عمران ملزمان یا ان کے فائرنگ سے لگ کر راستہ میں جان بحق
ہونے کا مقدمہ علیہ ملزمان کے خلاف دفعہ 302-324-34-427 PPC کی کارروائی
کارروائی پولیس حسب گفتہ مراسلہ مدعی درج کر کے مراسلہ مدعی کا بیان تحریری
تسلیم کر کے اگلی کارروائی کی جائے وقوعہ پر جا کر کی جائے وقوعہ کی جستجو میں
سوئے وقوعہ روانہ ہوا

ATTESTED

RHC بکہ تھانہ فین کیا جائے۔ مجروحین کے نقشہ جات پائے ترتیب کئے گئے ہیں
لیکن ڈاکٹر صاحب نے بتایا کہ نقشہ جات پائے پر حتمی رائے متعلقہ
ڈاکٹر سے حاصل کرے۔ سرجیکل ملزمان رسورٹ سے صورتحال کا پتا
چلا کر مراسلہ برائے کنسٹیبل واحد خان 2180 ارسال تھانہ کیا
دیا جائے کہ کسی ایس ایچ او افسر کو مامور تعینات کیا جائے۔ دعوا اردو
عبداللہ خان خان AG تھانہ بکہ تھانہ 25-07-2021 کو کارروائی تھانہ آمدہ درج
مراسلہ صرف درج پائے پر کر کے پرچہ پر درج کیا جائے کیا جا کر قبول
FIR یعنی اصل مراسلہ لیرین تعینات حوالہ شعبہ تعینات کیا جاتا ہے۔ پرچہ مقدمہ
سیشن رسورٹ کے کارروائی

MHC
MHC-RS-EG
25-07-2021

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13

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 مجموعہ ضابطہ فوجداری

تھانہ: یکہ غنڈ ضلع: مہمند

علت: 68 تاریخ: 25/07/2021 وقت 14:30 بجے

1	تاریخ ووقت رپورٹ: 25/07/2021 وقت 15:30 بجے	چاکیدگی 25/03/2021 وقت 16:30 بجے
2	نام وسکونت اطلاع دہندہ مستغیث	حاجی رفیق ولد سیال جان سکنہ بھائی کور مچیئی
3	مختصر کیفیت جرم (معہ دفعہ) اگر کچھ لیا گیا ہو۔	PPC 302/324/34/427
4	جائے وقوعہ فاصلہ تھانہ سے اور سمت	بھائی کور مین روڈ جانب شمال بفاصلہ 10/11 کلومیٹر از تھانہ
5	نام وسکونت ملزم	(1) گل شالی (2) ہاوس علی (3) حسین پسران کینخاب ساکنان مچیئی کریڑی کلے
6	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	بہ رسیدگی تحریری مراسلہ پر مقدمہ قائم کیا جاتا ہے
7	تھانہ سے روانگی کی تاریخ ووقت	بطور سپیشل رپورٹ

ابتدائی اطلاع نیچے درج کرو۔ بوقت صدر بجہ ایک تحریری مراسلہ منجانب عبداللہ جان خان ASI بدست کانسٹیبل راعد خان 2180 موصول ہو کر جو کہ بہ مضمون ذیل ہے' بخدمت جناب SHO صاحب تھانہ یکہ غنڈ دوران ڈیوٹی میں معہ کانسٹیبلان اسد' عامر' سمیع ہسپتال LRH ٹراما روم آ کر ٹراما روم میں مجروحین (1) حاجی رفیق ولد سیال جان (2) تنظیم اللہ ولد سیال جان (3) عادل ولد نور سنت شاہ ساکنان مچیئی مینگو نمبر 1 موجود پا کر تنظیم اللہ بے ہوش' حاجی رفیق بشمول عادل بقائمی درست ہوش وحواص میں یوں رپورٹ کرتا ہے کہ امروز میں معہ برادرام تنظیم اللہ اور رشتہ داران ام عادل اور محمد عمران ولد سحر گل سکنہ بھائی کور مچیئی دیہہ خود سے مسمی عمران کی ملکیی موٹر سائیکل از قسم ہنڈا 125 پر پیچھے سوار تھا اور برادرام تنظیم اللہ کے ملکیتی موٹر سائیکل پر مسمی عادل کے ساتھ پیچھے سوار تھا بعد عید تعطیلات شاکس خیبر پولیس ٹریننگ سنٹر جا رہے تھے جونہی جائے وقوعہ بالا پر پہنچے تو پہلے سے سڑک کے کنارے مسمیان گل شالی' ہاوس علی' حسین پسران کینخاب ساکنان مچیئی کریڑے کلے بہ مسلح اسلحہ آتشین موجود تھے' ہمیں دیکھتے ہی ہم پر بہ ارادہ قتل فائرنگ کر کے جو نتیجہ کے طور پر ہم لگ کر زخمی ہوئے جبکہ محمد عمران بھی شدید لگ کر راستہ میں جاں بحق ہوا' وجہ عناد ملزمان کے ساتھ ہمارا سابقہ دشمنی ہے' واقع ہذا میرے علاوہ بالا مجروحین کا چشم دید ہے' موٹر سائیکل بھی فائرنگ سے لگ کر نقصان رسیدہ ہوا ہے' میں اپنے آپ پر برادرام تنظیم اللہ اور عادل اور محمد عمران پر بہ ارادہ قتل فائرنگ کرنے سے زخمی ہونے کا جبکہ محمد عمران ملزمان بالا کے فائرنگ سے لگ کر راستہ میں جاں بحق ہونے کا برخلاف دعویدار ہوں' العبد انگوٹھا مسمی عادل مجروح بالا نے رپورٹ بالا کی تائید کی العبد انوٹھا کارروائی پولیس حسب گفتہ سائل رپورٹ درج بالا ہو کر پڑھ کر سنایا سمجھایا گیا' زیر بیان جو درست تسلیم کر کے انگوٹھا ثبت کی جبکہ تائید کنندہ نے تائیدی انگوٹھا ثبت کی جس کی میں تصدیق کرتا ہوں SHO صاحب یکہ غنڈ کو بذریعہ موبائل فون اطلاع دی کہ مقتول محمد عمران کا پوسٹمارٹم

ATTESTED

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RHC یکہ غنڈ میں کیا جائے' مجرحین کے نقشہ ضرر ہائے مرتب کئے گئے ہیں لیکن ڈاکٹر صاحب نے بتلایا کہ نشہ ضرر ہائے پر حتمی رائے مقامی ضلع کے ہسپتال سے حاصل کر کے سریدست مضمون رپورٹ سے صورت جرم بالا کا پائی جا کر مراسلہ بدست کانسٹیبل راعد خان 2180 ارسال تھانہ پرچہ دیا جا کر کسی انوسٹی گیشن آفیسر کو مامور تفتیش کیا جائے' دستخط اُردو عبداللہ جان خان ASI تھانہ یکہ غنڈ 25/07/2021 کارروائی تھانہ آمدہ تحریری مراسلہ حرف بہ حرف درج بالا ہو کر پرچہ بجرم بالا چاک کیا جا کر نقول FIR معہ اصل مراسلہ بغرض تفتیش حوالہ شعبہ تفتیش کیا جاتا ہے' پرچہ بطور سپیشل رپورٹ گزارش ہے' دستخط انگریزی

MHC-PS-EG

25/07/2021

ATTESTED

OFFICE OF THE
DISTRICT POLICE OFFICER
MOHMAND TRIBAL DISTRICT GHALLANAI
Email: [illegible]@gmail.com
Cell: 0924-290139 Fax: 0924-290[illegible]

Approved 15

This order will dispose off the inquiry proceeding against **FC Gul Shah Ali** [illegible] with the allegations that he was charged vide FIR No. 68, dated 25-07-[illegible] Police Station Ekka Ghund.

To scrutinize the conduct of the delinquent official, he was issued charge sheet together with statement of allegation & inquiry was entrusted to Investigation Officer vide this office letter No. 1635-38/PA, dated 28.07.2021. The inquiry officer after fulfilling all legal and codal formalities, the alleged constable was found guilty, however recommended for **Major Punishment.**

In light of findings of the inquiry officer, the undersigned issued final show cause notice to the delinquent officials however, the said constable failed to [illegible] Final Show Cause.

Based on the above I **Sajjad Ahmad Sahibzada, District Police Officer,** Mohmand being the competent authority and exercise of power vested in me under the Khyber Pakhtunkhwa, Government Servant (Efficiency & Disciplinary) rules 2011, hereby awarded him **Major Punishment of Dismissal from the service with immediate effect.**

Attested

DSP Hqrs Mohmand

District Police Officer,
Mohmand Tribal District

[illegible] /08/2022

District Police Officer Mohmand

DSP (HQrs)
Mohmand

No. [illegible] /PA dated Mohmand the [illegible]/08/2022

Copy forwarded to the:

- Regional Police Officer Mardan for favor of kind information please.
- HC/EC/FMC/Pay Officer/Kot in charge

Legible Copy 15

OFFICE OF THE
DISTRICT POLICE OFFICER
MOHMAND TRIBAL DISTRICT GHALLANI

Order

This order will dis pose-off the inquiry proceedings against FC Gul Shah Ali No.2195 with the allegation that he was charged vide FIR No.68, dated 25.07.2021 U/S 302-34-148-149 PPC by the police station Ekka Ghund

To scrutinize the conduct of the delinquent official, he was issued charge sheet together with statement of allegation and inquiry was entrusted to investigation officer vide this office letter No.1635-38/PA, dated 28.07.2021. The inquiry officer after fulfilling all legal and codal formalities, the alleged constable was found at fault, however recommended for **major Punishment.**

In light of findings of the inquiry officer, the undersigned issued final Show Cause Notice to the delinquent officials however, the said constable failed to submit his reply in Final Show Cause.

Based on the above I Sajjad Ahmad Sahibzada, District Police Officer, Mohmand being the competent authority and exercise of power vested in me under the Khyber Pakhtunkhwa, Government Servant (Efficiency & Discipline) Rule 2011, hereby awarded him Major Punishment of Dismissal from the service with immediate effect.

Sd/-
District Police Officer,
Mohmand Tribal District

OB No.566
Dated 13/06/2023

No.1586-88/PA dated Mohmand the 13/06/2023

Copy forwarded to the;

- Regional Police Officer Mardan for favour of kind information please.
- HC/EC/FMC/Pay Officer/Kot Incharge

2704 (1) 16

عثمان اللہ

IN THE PESHAWAR HIGH COURT, PESHAWAR

Cr.A No. 942 P /2023

SEAL OF HIGH COURT PESHAWAR عدالت عالیہ پشاور

1. Gul Shah Ali
2. Ghous Ali Sons of Kimkhaf Resident of Karheri Michini District Mohmand

.....**Convict/Appellant**

VERSUS

1. The State
2. Haji Rafique Son of Sial Jan R/O Bhaikoo Michini District Mohmand

.....**Respondents**

Case FIR No.68 dated 25.07.2021, Charged u/s 302/324/34/427/337-(vi)/34/337-(vi)/34/336/34/337-Q PPC,
Police Station:- Yakaghund

---

i. **Appeal u/s 410 Cr.P.C against the order/ judgment dated 12.05.2023 of learned District & Sessions Judge-Mohmand whereby he convicted the appellants U/S 302-(b)/34 PPC to Life Imprisonment as Tazir. The convict is also ordered to pay Rs.5,00,000/- to the legal heirs of deceased Muhammad Imran in equal share as compensation u/s 544-A Cr.PC. In default of payments**

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EXAMINER
Peshawar High Court

whereof he shall further undergo simple imprisonment for six (06) months which shall run i.e after going the main sentence of life imprisonment.

ii. He is also convict u/s 324/34 PPC on three counts for a period of ten (10) years (RI) with fine of Rs.100,000/- each and in default thereof, to suffer simple imprisonment for three (03) months.

iii. He is also convicted u/s 337-F (vi)/34 PPC for a period of (05) years (RI) as Tazir and to pay Daman (100,000) to Haji Rafique.

iv. 337-F(vi)/34 five (05 years(R.I) as Tazir to pay 100,000/- to PW-Adil.

v. 336/34 (10) Years (R.I) as Tazir and pay Arsh equivalent to value of Diyat in the light of section 337-Q PPC.

vi. 427/34 PPC (One Month SI) with a fine of Rs.5000/- or in default 10 days.

vii. Benefit of Section 382-b Cr.PC extended to the appellants all the sentences were ordered to run concurrently.

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Peshawar High Court

Prayer in Appeal:

On acceptance of this appeal, the impugned order/ judgment dated 12.05.2023 of the learned District & Sessions Judge-Mohmand may please be set aside and the appellants be acquitted from the charges levelled against them.

Respectfully Sheweth:

1. That the impugned order and judgment of the learned trial Court is against law on the subject and facts on the file hence "Untenable". **(Attested Copy of the impugned judgment is annexed as Annexure "A").**

2. That the learned Trial Court has not assessed/appreciated the prosecution evidence according to the golden principles of assessment/appreciation of evidence laid down by the Superior Courts which has caused grave miscarriage of justice.

3. That the appellants had no motive at all against the complainant party rather the complainant party had aggressed upon the appellant No.01 namely Gul Shah Ali and effectively fired at him which had also been recorded vide Mad No.20 dated:25.07.2021 which was considered as cross version.

4. That the alleged ocular account has materially contradicted and negated by the medical evidence, site plan and other physical circumstances available on the record.

5. That the prosecution evidence is not only discrepant, defective, suffering from inherent defects but is equally

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Peshawar High Court

pregnant with material contradictions, improvements and omissions.

6. That the evidence produced by both the parties i.e the appellants and complainant party was not devisable. The learned Trial court discarded evidence of the appellant Gul Shah Ali and acquitted the accused nominated therein while same evidence of the same occurrence believed to the extent of the appellants which is not warranted by law.

7. That the grounds prevailed with the learned Trial Court for conviction and sentences of the appellants are alien to the facts on the file and strange to the law on the subject which are devoid of merits.

8. That, the prosecution has abandoned and not examined material witnesses without any valid reason which casts serious doubts and adverse influence can be taken legitimately against the prosecution.

9. That carrying stump of injuries by PWs is no ground to believe their deposition as gospel truth. Moreover on the same yard stick them the deposition of Gul Shah Ali should have also been believed against the complainant party.

10. That the learned Trial Court based its judgment and order by taking probabilities moral view, presumptions which has no evidentiary value as per golden principles of criminal jurisdiction.

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Peshawar High Court

11. That the learned Trial Court did not appreciated the stance of the appellants in their favour which brew/stretch in favour of the prosecution which illegal.

12. That the learned Trial Court itself admitted what the part is concealed/suppressed material/real facts from the Court, in such eventuality the appellants must have also been acquitted as its benefit extend the complainant party.

13. That any other ground will be taken at the time of arguments, with the kind permission of this Honourable Court.

It is, therefore, most humbly prayed that on acceptance of this appeal, the impugned judgment & Order dated 12.05.2023 whereby the appellants convicted and sentenced to life imprisonment etc may graciously be set aside and they be acquitted to meet the ends of justice.

Appellants

Through

Astaghfirullah
Advocate,
Supreme Court of Pakistan

Yaseen Ullah
&
Nasrum Minallah
Usman Ullah
Advocates, High Court
Peshawar

Dated:19/05/2023

CERTIFICATE:

Certified that no such like criminal appeal has earlier been filed before this Honourable Court for the present accused/ appellant.

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ADVOCATE

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EXAMINER
Peshawar High Court

(6) 21

IN THE PESHAWAR HIGH COURT, PESHAWAR

Cr.M No. 310-P /2023
IN
Cr.A No. 942-P /2023

Gul Shah Ali & Another.....**Convict/Appellants**

VERSUS

The State & Another.....**Respondents**

Petition u/s 426 Cr.P.C for suspension of sentence of petitioners and their release on bail, till the decision of the main appeal.

Respectfully Sheweth:

1. That the titled criminal appeal is pending adjudication before this Hon'ble Court in which no date of hearing is fixed yet.

   Now the petitioners/appellants approaches this Hon'ble Court on the following grounds inter alia:-

Grounds:-

A- That the petitioners/appellant have assailed their conviction and sentenced before this Honourable Court.

B- That the grounds of the appeal may be considered part and parcel of this application.

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EXAMINER
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C- That the petitioners/appellants are behind the bars.

D- That the petitioners are quite sanguine about the success of their appeal.

E- That in case of not suspending sentence of the petitioners/appellants and their release on bail, they will suffer irreparable loss.

F- That the case of the petitioners/appellants is cross case.

It is, therefore, most humbly prayed that on acceptance of this petition, the sentence of petitioners/appellants may graciously be suspended and they be released on bail, till the decision of the main appeal.

Any other relief not specifically prayed for may also be granted if deemed proper by this Hon'ble Court in circumstances of the case.

Appellants

Through

Astaghfirullah
Advocate,
Supreme Court of Pakistan

Yaseen Ullah
&
Nasrum Minallah
,
Usman Ullah
Advocates, High Court
Peshawar

Dated:19/05/2023

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19 MAY 2023

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EXAMINER
Peshawar High Court

IN THE PESHAWAR HIGH COURT, PESHAWAR

CM No 310-P/2023
in
Cr.A No. 942-P/2023

Gul Shah Ali & Another.....**Convict/Appellants**

VERSUS

The State & Another.....**Respondents**

AFFIDAVIT

I, Mahir Khan S/O Kinkhaf R/O Dadu Khel, P/O Dekor, Karari, Tehsil Yakka Ghund, District Mohmand, do hereby solemnly affirm and declare oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

DEPONENT
CNIC#21407-7965532-9
Cell#0322-9187324

Identified by
Yaseen Ullah
Advocate, High Court
Peshawar

3844-4
Deponent [illegible] who verified an [illegible]
affirm[illegible]
day of May 23
s/o Kinkhaf
Mahir Khan
Mohmand
Yaseen Khan
[illegible] Commissioner 19/5/2023
Peshawar

FILED TODAY
Deputy Registrar
19 MAY 2023

CERTIFIED TO BE TRUE COPY
EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 87 of
the Qanoon-e-Shahadat Act 1984
31 OCT 2024

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JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(*Judicial Department*)

Cr. A No. 942-P/2023

Gul Shah Ali & another

Vs

The State &another

JUDGMENT

Date of hearing: **16.05.2024**

Appellants by: M/s. Astaghfirullah, Abid Hussain, Nasruminallah and Yaseen Ullah, Advocates.

The State by: Mr. Niaz Muhammad, Addl. AG.

Respondent No. 2/Complainant by: Mr.Mussawir Shah Mohmand, Advocate.

***

SAHIBZADA ASADULLAH, J.- Through this single judgment, this court shall also decide the connected **Cr.A No. 950-P/2023** titled ***"Gul Shah Ali vs Haji Rafiq & others"*** as both the matters are arising out of one and the same judgment dated 12.05.2023 passed by the learned Sessions Judge, Mohmand delivered in case FIR No. 68 dated 25.07.2021 under sections 302/324/34/427/337-F(vi)/34/337-F(vi)/34/336/34/337-Q PPC at police station Ekkaghund, District Mohmand, whereby the

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appellants Gul Shah Ali and Ghous Ali were convicted and sentenced as under:

> ***Under section 302(b) PPC to imprisonment for life and to pay compensation of Rs.5,00,000/- (five lac) each to be paid to the legal heirs of the deceased within the meaning of section 544-A Cr.PC and in default of payment, they shall further suffer six months simple imprisonment.***
>
> ***Under section 324/34 PPC (on three counts) for attempting at the lives of PW Haji Rafiq, Adil and Tanzeemullah to imprisonment for ten years and to pay a fine of Rs.1,00,000/- (one lac) each and in default of payment, they shall further suffer three months simple imprisonment.***
>
> ***Under section 337-F(vi)/34 PPC for causing jurh ghair-jaifah Munaqqilah to Haji Rafiq to imprisonment for five years as Tazir and to pay daman of Rs.1,00,000/- (one lac) each.***
>
> ***Under section 337-F(vi)/34 PPC for causing jurh ghair-jaifah***

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Munaqqilah to PW Adil to imprisonment for five years as Tazir and to pay daman of Rs.1,00,000/- (one lac) each.

Under section 336/34 PPC for causing itlaf-i-salahiyyat-ludw to PW Tanzeemullah to imprisonment for ten years as Tazir and to pay Arsh equivalent to the value of Diyat in light of section 337-Q PPC each.

Under section 427/34 to simple imprisonment for one month each and to pay a fine of Rs.5,000/- (five thousand) each. In default to suffer 10 days SI. Benefit of section 382-B Cr.PC was extended in favor of the appellants. All the sentences so awarded shall run concurrently.

2. Facts forming the background of the instant case FIR No. 68 are that on 25.07.2021 complainant Haji Rafiq son of Siyal Jan reported the matter in the causality Lady Reading Hospital, Peshawar to the effect that he alongwith his brother Tanzeemullah and relative Adil and Muhammad Imran were proceeding on their motorcycles towards

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Shahkas Khyber Police Training Center, the complainant was present alongwith the deceased on his 125 Honda motorcycle whereas, his brother Tanzeemullah was present on his motorcycle driven by Adil; that when they reached to the place of occurrence, accused Gul Shah Ali, Ghous Ali and Hussain, were present on the road side duly armed with deadly weapons; that the accused on seeing them, started firing at them as a result of which the complainant party received firearm injuries; that Imran succumbed to his injuries while on the way to the hospital; that motive behind the occurrence is previous blood feud; that the occurrence was witnessed by the complainant and other injured; that from the firing of accused, the motorcycle was also damaged; that the accused petitioners were charged for the commission of the offence hence, the present FIR.

3. Facts in brief of the **Cr.A No. 950-P/2023** titled ***"Gul Shah Ali vs Haji Rafiq & others"*** are that in the incident the appellant Gul Shah Ali also received firearm injuries therefore, Abdullah Jan ASI alongwith another police official went to Khyber Teaching

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Hospital, Peshawar where the appellant Gul Shah Ali reported the matter to the effect that he was proceeding on his 70 CC motorcycle from his village towards the house of his sister Mst. Wara wife of Abdullah situated at Bai Kor; that he was duly armed with Kalashnikov; that when he reached to the place of occurrence, Haji Rafiq boarding a motorcycle with Imran and Tanzeemullah with Adil, all duly armed with their respective firearms, came there and started firing at him as a result of which he received firearm injuries on his body; that he also resorted to firing; that motive behind the occurrence is previous blood feud; that the accused have received money for his killing; that the occurrence was witnessed by other persons present at the place of occurrence; that the accused were charged for the commission of offence hence, the daily diary No. 20 dated 25.07.2021.

4. After completion of investigation, complete challan was put in court. Provisions of section 265-C CrPC were complied with. As there are two set of accused one i.e. Gul Shah Ali and Ghous Ali and the other i.e. Adil, Haji Rafiq and Tanzeemullah therefore, the learned

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trial court charge sheeted them separately to which both set of accused pleaded not guilty and claimed trial. In order to prove its claim, the prosecution produced and examined as many as 18 witnesses. After closure of prosecution evidence, statements of both set of accused were recorded under section 342 CrPC, wherein both set of accused posed innocence, however, neither they wished to be examined on Oath as required under section 340 (2) Cr.PC, nor wanted to produce evidence in defence. The learned trial Court, after full-fledged trial acquitted one set of accused i.e. Haji Rafiq, Adil and Tanzeemullah whereas, the other set of accused i.e. Gul Shah Ali and Ghous Ali were convicted and sentenced vide the impugned judgment, hence, these appeals.

5. Arguments of learned counsel for the parties and learned AAG representing the State were heard and record scanned through with their valuable assistance.

6. The heart wrenching incident claimed the life of one, leaving behind three injured from the side of the complainant, whereas, the appellant himself received a firearm injury. The injured were collected from

the spot and were hurriedly shifted to the hospitals. The complainant and the injured of the instant case were taken to Lady Reading Hospital, Peshawar whereas, the appellant being injured was brought to Khyber Teaching Hospital (KTH), Peshawar. The complainant reported the matter to one Abdullah Jan ASI, who dictated the same to Sajjad Khan ASI. The injury sheets of the injured were prepared and the injured were examined by the doctor. After medical examination the doctor prepared the medico-legal certificates of the injured. Though the deceased Muhammad Imran was brought to the hospital where he was found dead, but the concerned police officials shifted his dead body to RHC Ekka Ghund, his injury sheet and inquest report were prepared. The dead body was shifted for postmortem examination.

7. As in the incident the appellant also received a firearm injury, so he reported the matter in the hospital to the same police officials, to whom report of the instant case was made. The information of the appellant was collected in the shape of daily diary No. 20. As the appellant was injured, so his injury sheet was prepared, was examined by the doctor and

his medico-legal certificate was prepared. The appellant while reporting the matter explained the manner in which the incident occurred and he charged the complainant of the instant case, the injured eye witnesses and the deceased for firing at him. The investigating officer after receiving copies of both the reports, visited the spot and prepared the site plan. While inspecting spot in the instant case, the investigating officer collected blood through cotton from the respective places of the injured and the deceased. During spot inspection, 07 empties of 7.62 bore were collected from the spot. The same were sent to the firearms expert to ascertain that from how many weapons the same were fired. A report was received telling that the same were fired from different weapons.

8. As the appellant had also reported the matter in shape of DD No. 20, so the investigating officer also prepared another site plan and he also collected blood from a place where the appellant was shown lying in injured condition. During investigation brother of deceased Muhammad Imran, produced a motorcycle belonging to the deceased and the

same was taken into possession on 27.07.2021. As the injured appellant was also riding on motorcycle at the time of incident, so the same was also taken into possession. The appellant was arrested in the hospital whereas, his co-accused went into hiding. As one of the co-accused i.e. Ghous Ali was undergoing his training in Shahkas Training Center, so he was arrested by the police from the place of his training and in that respect his card of arrest was prepared. The custody of the appellant was requested by the local police, but as the appellant had received a firearm injury, so he could not be shifted from hospital to the police station, so his custody was declined, however, directions were issued, by the learned judicial magistrate, to place him in the hospital, under detention, till he recovers. When the condition of the appellant improved, he was produced before the judicial magistrate, but the appellant could not be remanded in police custody, as he was not fully recovered. The appellant was sent to the judicial lock-up. As the complainant and the injured eye witnesses were arrested in DD No. 20, so the accused from both sides faced the trial and on conclusion of the trial the

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learned trial court was pleased to acquit the accused charged for the injuries caused to the appellant whereas, the appellant alongwith his co-accused were convicted and sentenced vide the impugned judgment.

9. The learned trial court on conclusion of the trial held the appellants responsible for the tragic incident, whereas, the accused charged for the injuries caused to the appellant earned acquittal. This court is to see as to what led the trial court to conclude the matter in that manner and that whether the reasons given find support from record of the case and that whether the learned judge succeeded in appreciating the collected evidence and the statements of the witnesses. As admittedly, the appellant also received a firearm injury in the same episode, so this court is to see that whether the learned trial court was justified to acquit one set of accused and to convict the appellants, but on what basis. Record tells that the injured of both the cases were hurriedly shifted to the hospitals and both the sides reported the matter to the local police who visited the hospitals. As the time of occurrence, the place of occurrence and the

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time of report are one and the same, so this court is to see as to who was responsible for the tragic incident, who initiated and that who is the worst sufferer. Though the impugned judgment contains the detailed reasons, but in our understanding it failed to appreciate the attending circumstances of the present case and it failed to give plausible reasons for the acquittal of the accused charged by the appellant. In order to appreciate the individual liability of both the parties we deem it essential to scan through the record and we deem it appropriate to re-assess the evidence on file, so in that eventuality we would be in a position to fix the liabilities and we would be in a position to appreciate the approach of the learned trial court. We are confident in holding that the appellant received a firearm injury in the same transaction, so his presence on the spot at the stated time is neither doubtful nor disputed. Even the report of the appellant leaves no ambiguity that the appellant accepted his part in the incident, but in a different manner. We are anxious to know that how the incident occurred and that in what manner. Had the appellant suppressed the

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firing he made, then the matter was easy to appreciate and it was more easy for the courts to fix the liabilities but, as the appellant did not suppress the damage caused to the opponents, so the complexity of the case has dramatically changed and in the changed circumstances the approach must be dynamic and pragmatic. We are intending to re-appreciate the record of the case and we are inclined to re-consider the role played by the either side, so that the guilty could be punished and the innocent could be rescued.

10. The points for determination before this court are as to whether the incident occurred in the mode, manner and at the stated time; as to whether the witnesses were present on the spot and, that they did not conceal the material facts; as to whether the witnesses remained consistent in respect of the incident and, that the matter was reported at the stated time and in the stated manner; as to whether the report of the appellant in the shape of daily diary No. 20 is sufficient to hold the injured witnesses responsible for the injuries caused to him; as to who was the aggressor and who was aggressed upon; as to whether

the appellant was left with the only choice to retaliate for saving his life; as to whether the appellant acted in self defence, if so, what benefit would accrue to him and, as to whether the prosecution succeeded in bringing home guilt against the appellants.

11. In order to appreciate the essence of the matter we deem it essential to take into consideration the reports of the parties and the statements of the witnesses of both the cases. As admittedly, the presence of the appellant is established on record and as the eye witnesses received injuries in the episode, so their presence on the spot is neither disputed nor doubtful. Once this court comes to the conclusion that both the parties i.e. appellant and the injured of the instant case were present on the spot, then it is obligatory for this court to determine the manner in which the incident occurred and to determine the manner in which the appellant also received the firearm injury. In order to resolve the controversy, we deem it essential to go through the statements of the complainant, the injured eye witness, the scribe alongwith the investigating officer. The complainant was examined as PW-12, who

explained that how they reached to the place of incident and that how the incident occurred. The complainant did not disclose that in the episode the appellant also received a firearm injury, collected from the spot and was shifted to the hospital. In order to appreciate the conduct of the complainant we deem it essential to take into consideration both the reports. It is interesting to note that the complainant suppressed the injuries caused to the appellant and instead, while reporting the matter, he charged the appellant alongwith two others for the commission of the offence whereas, on the other hand the appellant in his report disclosed that on reaching to the place of incident he was fired at by the complainant and others and to save his life, he also resorted to firing. He further explained that after receiving firearm injury he fell on the ground, and was shifted to the hospital by the people of locality. The appellant explained the circumstances, he did not conceal the injuries caused to the other side and he disclosed that the tragic incident occurred because of previous blood feud between the parties. Both the reports left no ambiguity that soon after the

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incident the injured from both the sides were shifted to the hospital and initially, the complainant reported the matter, their injury sheets were prepared, but the same police officials also visited the hospital where the appellant was admitted. It was one hour after the report of the complainant that the report of the appellant was penned down, and no ambiguity is left, that the delay of one hour between the two reports was explained by the witnesses. As after the report was made by the complainant, the injury sheets were prepared, so it took time to complete, and thereafter the same police officials visited the appellant in Khyber Teaching Hospital. The arrival of the injured appellant to the hospital was duly entered in the relevant register, the doctor who examined the appellant and the Incharge casualty Khyber Teaching Hospital also recorded their statements. The doctor was examined as PW- 9 who disclosed the time of arrival of the injured appellant and the time of his examination. She also disclosed that appellant received an entry wound on his right iliac fossa (RIF) with its exit on his buttock. Similarly, the police official who initially

prepared the injury sheet was examined as PW-11 who explained that on arrival of the injured, his initial injury sheet was prepared by him. The statements of these witnesses have confirmed the injury caused to the appellant and they also confirmed that the appellant was brought to the hospital within the shortest possible time. The quick succession of events leave no ambiguity in holding that the appellant had no time to consult and there was no consultation and deliberation on his part. It is pertinent to mention that after the complainant charged the appellant, the officials who visited the hospital arrested the appellant and prepared his card of arrest. At the same time when the appellant reported the matter, the complainant and injured of the present case were arrested and their cards of arrest were prepared. The appellant, Ghous Ali was arrested from Police Training Center, Shahkas, on the next day of the incident. The investigating officer visited the hospitals and collected record regarding treatment of the parties and the same was placed on file.

12. The nature of injury of the appellant can be assessed from the fact that

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his physical custody was refused on the day of his arrest and even on the subsequent dates, when he got a little recovered. The order of judicial magistrate is placed on file which tells that the request of the investigating officer for the grant of custody was lastly declined, and the appellant was remanded to judicial lock-up because of his injury. As the deceased lost his life while enroute to the hospital, so he was brought to Lady Reading Hospital and from there was shifted to the concerned hospital for postmortem examination. The record tells that the matter was reported by both the parties without loss of time, so the factor of consultation and deliberation can easily be excluded. The moot question for determination for this court is that how the incident occurred, who was responsible for initiating the tragedy and that what role was played by the appellant. As both the parties reached to the place of incident and as both the parties received firearm injuries, so no ambiguity is left that both the parties were equally responsible for the tragic incident. As one of the party suppressed the injuries caused to the other, so the conduct of the complainant and all related, is not above

board. Had the appellant not received an injury that too on the most vital part of his body then the report of the complainant and the death of the deceased would have easily determined the fate of the appellant, but as while reporting the matter in the shape of DD No. 20 the appellant did not conceal the material facts and he admitted that as he was fired at, so to save his life, he also resorted to firing. The investigating officer while preparing the site plans also collected blood from the place away from the places of the injured of the instant case and he also explained that the place of the appellant was pointed by the people of locality. When the witness was questioned regarding the distance of the appellant from the complainant, he disclosed that the blood was recovered 100 meter away, from the places of the injured witnesses. If, the statement of the investigating officer is taken to be correct, then at the same time we would accept the statement of the appellant regarding the firing made at him, by the complainant party. As the respective places were pointed out by the people, more particularly, the place of the appellant, so no ambiguity is left that the

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incident was witnessed by the villagers, but their statements could not be recorded for the reasons best known to the investigating officer. When admittedly, the appellant received a serious injury, and when the matter was promptly reported, so we are confident in holding that the appellant told the whole truth, but the complainant suppressed the material facts. The injury of the appellant is the determining factor and that would determine the role played by the appellant. There is no denial to this fact that both of the parties were not residing near the place of incident, but their arrival to the spot is a circumstance which has increased the anxiety of this court and we are anxious to resolve the same. The appellant in his report stated that he left for the house of his sister and that he was armed with a Kalashnikov. He also admitted that on reaching to the place of incident, the complainant party came on two motorcycles and started firing at him. In the same breath the appellant admitted his role of firing and in our understanding he reported what he observed and he disclosed the roles played by both the parties. When the place was not common to the parties, then this

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court is to see that who was the aggressor and who was aggressed upon. As record is silent that who was present on the spot and who arrived thereafter, so the factum of aggression cannot be determined and even the witnesses failed to convince. When such is the state of affairs, then this court is under the obligation to assess the roles played by both the parties, on the basis of available record, and on the basis of injuries caused and received. The motorcycles of the deceased and the complainant were produced after few days of the incident and the same also confirmed the manner in which the incident occurred. Though the learned trial court burdened the appellants with the injuries caused to the complainant and his companions, yet, it failed to give justiciable reasons for the same. The learned trial court was highly swayed with the damage caused to the complainant party, but it failed to appreciate the injuries received by the appellant and it failed to take into consideration the report of the appellant. Had the learned trial court appreciated the evidence of both the parties, then in our understanding instead of rushing to acquit and rushing to convict, it would have

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done complete justice to the parties. We could not come across the reasons which distinguished the case of the appellants from that of the complainant and even while acquitting the complainant and others the learned trial court failed to advance sufficient and necessary reasons. The suppression of facts by the complainant in his report is a circumstance which cannot be ignored and it by itself is sufficient to question the credibility of the complainant and others.

13. The attending circumstances of the present case invite the attention of this court to sections 96, 97, 100 and 102 of the Pakistan Penal Code, 1860 ('The Act'). We cannot ignore the intent of the legislature while making these sections part of the book. As the legislature was conscious of the like circumstances, so it took measures to protect the one, who faces the like situation. The wisdom behind was to extend the right to protect one's self from an act of aggression and from an activity which towards the end would claim his life. Section 97 of the Act, is unambiguous and it explains that to act in self defence would not be an offence. For ease of

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reference, the relevant section is reproduced, which reads as follows:

> **97. Right of private defence of the body and of property:** - *Every person has a right, subject to the restrictions contained in Section 99, to defend; First: His own body, and the body of any other person, against any offence affecting the human body;*
>
> *Secondly: The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.*

The matter does not end here, rather the Code has further explained in section 100, the limits to act in self defence, so for ease of reference section 100 is reproduced, which reads as follows:

> **"When the right of private defence of the body extends to causing death:** *The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other*

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harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely: -

First: Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly: Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly: An assault with the intention of committing rape;

Fourthly: An assault with the intention of gratifying unnatural lust.

Fifthly: An assault with the intention of kidnapping or abduction.

Sixthly: An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

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The combined reading of the above sections leave no ambiguity that the appellant acted in self defence and the injury caused to him was on the vital part of his body, so in our understanding the appellant was deserving the extended concession, but the learned trial court failed to consider the most essential, and the most crucial aspect of this case. Similar circumstances came before the apex court and the same were answered, in case titled **titled Abdul Rashid Vs Nazir Hussain and 5 OTHERS (1971 S C M R 284), in the following manner: -**

> *"Although, the injuries on the persons of Nazir Hussain and Noor Muhammad were suppressed by the prosecution, this came to light because they had voluntarily appeared for examination before the same doctor who had held the post-mortem examination of the dead body of Mehraj Din. However, the injury No. 1 which was a contused wound " x1/8" x1" deep extending upwards under the skin on the back of the head sustained by Nazir Hussain is on a vital part of the body, although it did not cause any grievous hurt. Such injury on the vital part of the body must have*

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caused a reason able apprehension in the mind of Nazir Hussain that his life was in danger *or his body in risk of grievous hurt. Accordingly, he had the right of private defence of his person which, under section 100 of the Penal Code, extended to the causing of death of Mehraj Din."*

14. Though the attention of this court was invited to the statement of accused recorded under section 342 Cr.PC where, the appellant denied to have fired over the complainant party, but that alone will not be sufficient, as on the very day of the occurrence the appellant reported the matter and he explained the circumstances in which the incident occurred. The appellant from the very beginning accepted the firing over the complainant and others, but at the same time he explained the circumstances which compelled him to retaliate, if not then he would have been killed. In our understanding the appellant travelled with honesty and he did not suppress the injuries caused to the opponents. As in this case, right from the beginning the appellant accepted the firing made by him, but he also explained the circumstances which put

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him in the situation. In our understanding the courts of law, even by itself, can deduce the circumstances which put an accused to fire and from those circumstances the courts can presume that had he not fired, then his death was certain. As in this particular case, the appellant in his report explained the circumstances and even the investigating officer confirmed the same while preparing the site plans, so we are confident in holding that the appellant faced a situation where the only option left was to fire. This view is further substantiated by a celebrated judgment from the Indian jurisdiction reported as ***"Munshi Ram and others Vs. Delhi Administration*** **(AIR 1968 SC 702).** The question whether an accused can get benefit of the circumstances showing that he acted in his defence, though he did not take that plea specifically, the august Supreme Court of India held that:

> ***"It is well settled that even an accused, does not plead self defence' it is open to the court to consider such a plead the same arises from the material on record..., The burden of establishing that plea is on the***

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accused and that burden can be discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record."

15. The learned trial court fell into error while fixing the liabilities. Had it appreciated the essence of the matter, then there was hardly an occasion to reach to such a conclusion, the conclusion which is in conflict with the law on the subject. As the complainant and others were equally responsible for the tragic incident and, as many as four persons chased the appellant Gul Shah Ali, fired at him, so there was no option but to retaliate. The appellant succeeded in rescuing himself, but he could not succeed to avoid the danger and, as such, he received an injury on the most vital part of the body. Though his seat of injury confirms his presence on the spot, but it explains that what he did, was done only to exercise his right of self defence. We are confident in holding that the learned trial court failed to appreciate this essential aspect of the case, so while appreciating the same, this court holds that the appellants deserve the same

concession as was extended to the respondents. The instant criminal is allowed, the impugned is set aside and the appellants are acquitted of the charge levelled against them. They be released forthwith, if not required to be detained in any other criminal case.

16. Now diverting to **Cr.A No. 950-P/2023** titled ***"Gul Shah Ali vs Haji Rafiq & others"*** through which the appellant Gul Shah Ali has impugned before us the judgment of the learned trial court to the extent of acquittal of respondents/accused Haji Rafiq, Tanzeemullah and Adil, suffice it to say that both the parties received firearm injuries, both the parties were hurriedly shifted to the hospital in injured condition, more particularly, the deceased Muhammad Imran lost his life in the same episode, so no ambiguity is left that the presence of the injured witnesses and the injured appellant is established on record, that too when the appellant reported the matter in the shape of daily diary No. 20 on the same day. As the injured appellant i.e. Gul Shah Ali reported the matter and did not conceal the material facts, so no ambiguity is left that these

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were the respondents, who concealed the material facts from the investigating agency and from the learned trial court, as well. As the appellant received a fire arm injury on the vital part of his body and as from the other side one lost his life and three received serious injuries, so this is the uncertainty of events which led the learned trial court to decide the matter in that manner. As the appellant Gul Shah Ali and Ghous Ali are acquitted of the charge, that too, on the basis of suppression of facts and that there remained an uncertainty as to who was the aggressor and who was aggressed upon, so the benefit of the same has rightly been extended to the respondents. The instant criminal appeal is lacking substance, the same is dismissed as such.

Above are the detailed reasons of our short order of even date.

Announced
16.05.2024

Chief Justice

JUDGE

"Muhammad Fiaz" "D.B" Hon'ble Mr. Justice Ishtiaq Ibrahim, HCJ
Hon'ble Mr. Justice Sahibzada Asadullah, J

بخدمت جناب D.I.G. صاحب
مردان ڈویژن

Annexure F 53

2645/ES
22/7/24

درخواست برائے بحالی کرنے ملازمت جلد نمبر 2195 کانسٹیبل

جناب عالی! گزارش ہے کہ

۱۔ سائل بطور کانسٹیبل 2195 ضلع مہمند تھانہ پکے غاز 7/2019 میں بھرتی ہو کر ڈیوٹی سرانجام دے رہا تھا۔

۲۔ سائل مقدمہ علت 68 مورخہ 25/7/21 جرم 302/324/34/427 337(ii)/34/337(vi)/34 336/34/337-E تھانہ پکے غاز میں درج ہے کہ سائل کو عدالت عالیہ نے مورخہ 16/5/24 کو بری کیا گیا۔ نقل لف ہے۔

۳۔ سائل بے گناہ تھا۔ اور دشمنی کی وجہ سے سائل پر مقدمہ درج کیا گیا تھا جس میں سائل باعزت طور پر بری ہوا۔

۴۔ سائل دوبارہ اپنی ملازمت پر بحالی کرنا مطلوب ہے۔

لہٰذا استدعا ہے کہ منظوری درخواست سائل کو اپنی ملازمت پر بحالی کرنے کے احکامات جاری فرمائیں۔

22/7/24

سائل شاہ عالم ولد کیخاب محکمہ کرم حسین
ضلع مہمند
جلد نمبر 2195 کانسٹیبل
0324 9817412

ATTESTED

ORDER.

This order will dispose-off the departmental appeal preferred by **Ex-Constable Gul Shah Ali No. 2195** of Mohmand District Police against the order of the then District Police Officer, Mohmand, whereby he was awarded major punishment of dismissal from service vide OB: No. 1566 dated: 13.06.2022. The appellant was proceeded against departmentally on the allegations that he while posted at Police Station Ekkaghund was charged in a case vide FIR No. 302/34/148/149-PPC Police Station Ekkaghund District Mohmand.

Therefore, proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and the then Investigation Officer, Mohmand Muhammad Riaz Inspector was nominated as Enquiry Officer. The Enquiry Officer after fulfilling codal formalities submitted his findings to the then District Police Officer, Mohmand, wherein he has recommended the delinquent Officer for major punishment.

He was served with Final Show Cause Notice but failed to submit his reply.

In the light of above, the delinquent Officer was awarded major punishment of dismissal from service vide OB: No. 1566 dated 13.06.2022 by the then District Police Officer, Mohmand.

Feeling aggrieved from the order of the then District Police Officer, Mohmand, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 21.08.2024.

From the perusal of the enquiry file and service record of the appellant, it has been found that allegations leveled against the appellant have been proved beyond any shadow of doubt. Moreover, the involvement of appellant in this heinous criminal case is clearly a stigma on his conduct. Hence, the retention of appellant in Police Department will stigmatize the prestige of entire Police Force as instead of fighting crime, he has himself indulged in criminal activities. Hence, order passed by the competent authority does not warrant any interference. Besides the above, the appellant approached this forum at a belated stage by filing the instant appeal which is

ATTESTED

...ly time barred for 02 years and 09 days without advancing any cogent reason regarding the delay.

Keeping in view the above, I, **Najeeb-Ur-Rehman Bugvi, PSP Regional Police Officer, Mardan,** being the appellate authority, find no substance in the appeal, therefore, the same is rejected and filed, being devoid of merit as well as badly time barred for 02 years and 09 days.

Order Announced.

(Najeeb-Ur-Rehman Bugvi) PSP
Regional Police Officer,
Mardan.

No. 2473 **/ES, Dated Mardan the** 23/08 **/2024.**

Copy forwarded to District Police, Mohmand for information and necessary action w/r to his office Memo: No. 186/Legal dated 31.07.2024. His Service Record is returned herewith.

(*****)

PA/PO/EC/OSI/Legal/
For n/action.

DPO-MMD
28-8-24

3397
28-08-024

بخدمت جناب انسپکٹر جنرل صاحب آف پولیس K.P.K پشاور

عنوان:- درخواست برائے بحالی کی ملازمت بلحاظ 2195

کنسٹیبل تھانہ یکہ غونڈ

جناب عالی!

حسب ذیل عرض ہے

(1) یہ کہ سائل بطور کنسٹیبل بیلٹ نمبر 2195 ضلع مہمند تھانہ یکہ غونڈ 7/2019 میں بطور ڈیوٹی سر انجام دے رہا تھا۔ 302/324/34/427 تھانہ یکہ غونڈ 337(H1)34/337(V1) 34 337-Q

(2) یہ کہ مقدمہ علت نمبر 68 مورخہ 25-7-2021 جرم 336/34/337 درج ہو کر سائل کو عدالت عالیہ نے مورخہ 16-5-2024 کو بری کیا تھا نقل لف ہے

(3) یہ کہ سائل بے گناہ تھا۔ اور دشمنی کی وجہ سے سائل پر مقدمہ درج کیا گیا تھا جس میں سائل بعزت طور پر بری ہوا۔

(4) یہ کہ اب سائل دوبارہ اپنی ملازمت پر بحالی کا خواہاں ہے

اسلئے استدعا ہے کہ عنایت طور پر درخواست سائل کو اپنی ملازمت پر بحالی کرنے کے احکامات جاری فرمادیں

العبد

گل شاہ

گل شاہ علی ولد گنجاب سکنہ کرمڑی پختی بیلٹ نمبر 2195

موبائل نمبر 0324-9817412 ضلع مہمند

No.:

To:

Subje

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

No. S/ 2765 /24, dated Peshawar the 18 / 10 /2024

To: The Regional Police Officer,
Mardan.

Subject: **REVISION PETITION.**

Memo:

The Competent Authority has examined and filed the revision petition submitted by Ex-FC Gul Shah Ali No. 2195 of district Mohmand, against the punishment of dismissal from service awarded by DPO Mohmand vide OB No. 1566, dated 13.06.2022 being badly time barred.

The applicant may please be informed accordingly.

17/10/24

(AFSAR JAN)
Registrar
For Inspector General of Police,
Khyber Pakhtunkhwa Peshawar

[redacted]

Dy: No. Sd. 1765
03/09/024

OFFICE OF THE
DISTRICT POLICE OFFICER,
MOHMAND TRIBAL DISTRICT AT HQ GHALLANAI
Email: dpomohmand@gmail.com
Phone No: 0924-290179 Fax: 0924-290056

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No. 186 /Legal
Dated 31 /07/2024

To: The Regional Police Officer,
Mardan

Subject; **APPEAL FOR RE-INSTATEMENT OF SERVICE IN RESPECT OF FC GUL SHAH ALI NO.2195**

Memo: -

Please refer to Endst: letter No.2025/ES dated 22.07.2024 on the subject noted above.

The requisite comments as asked vide above cited litter is as under please.

It is submitted that FC Gul Shah Ali No.2195, while posted at Police Station Ekkaghund was charged vide FIR No. 68 dated 25.07.2021 u/s 302-34-148-149 PPC by Police Station Ekka Ghund **(Copy enclosed vide Anx"A")**

To scrutinize the conduct of the delinquent official, he was issued charge sheet together with statement of allegation & inquiry was entrusted to Investigation Officer vide this office letter No. 1635-38/PA, dated 28.07.2021. The inquiry officer after fulfilling all legal and codal formalities, the alleged constable was found at fault and was recommended for **Major Punishment. (Copy enclosed vide Anx"B")**

Final show cause notice was issued to the delinquent officials vide this office No:714/PA dated 16.02.2022, however, the he failed to submit his reply in Final Show **(Copy enclosed vide Anx "C")**

Based on the above, being competent authority and in exercise of power vested under the Khyber Pakhtunkhwa, Police Disciplinary Rules 1975 (as amended in 2016, he was awarded Major **Punishment of Dismissal from the service** vide this office Order No. 1589-91/PA dated 13.06.2022 **(Copy enclosed vide Anx"D")**

His service book is enclosed for further necessary action please.

District Police Officer,
Mohmand.

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BEFORE THE SERVICE TRIBUNAL K.P.K.PESHAWAR

Service Appeal No._____/2024

Gul Shah Ali S/o Kimkhab,(Ex-Constable Belt No.2195, EkkaghundDistrict Mohmand)R/O Karari Machini District Mohmand.
.....Appellant

Versus

[illegible]

1. Inspector General of Police, KPK, Peshawar.
2. The Regional police Office Khyber Pakhtunkhwa District Mardan.
3. District Police Officer District Momand Khyber Pakhtunkhwa.

.....**Respondents**

Application for condonation of delay

Respectfully Sheweth,

1. That the appellant was serving in Police Department as Constable Belt No.178 Police, Mohmand.
2. That the applicant is illiterate person and belongs to backward area of District Mohmand.
3. That the applicant had no knowledge about the limitation of departmental appeal and procedure.
4. That the applicant was arrested in the case FIR No. 68, U/s: 302,324,427,34 PPC, in police Station of Ekkaghund District Mohmand, and the applicant was also serious injured, he arrest from Khyber teaching hospital (KTH) Peshawar.
5. That the applicant was convicted and sentenced on 12/05/2023, and the applicant assailed his conviction and sentence before the august Peshawar High Court Peshawar vide Cr. Appeal No. 942-P/2023 which has been allowed on 16/05/2024, and the appellant was released on 21/05/2024,

6. That the applicant was released from jail on 21/05/2024, and he is not go to his home for few months due to his enemies.
7. That after released from jail the applicant was in shock and weak.
8. That the delay in submissio9n of the departmental appeal was not calculate rather due to the health of the applicant as the remained in jail for 2 years, 9 months and 26 days.
9. That in this way there is a delay in a one months in departmental appeal and the application u/s 5 of limitation Act has been filed along with memorandum of appeal.

It is therefore for humbly prayed that on acceptance of this condonation of delay application may kindly be accepted and the delay may please be condoned to the great interest of justice.

Appellant

Through:
ASTAHFIR ULLAH (ASC)
&
Usman Ullah
Advocate High Court, Peshawar

Dated: 24.10.2024

Affidavit

It is hereby solemnly affirm and declare on oath that all the contents of the instant application are true and correct to the best of my Knowledge and belief and nothing has been concealed intentionally from this Honourable Court.

Further is solemnly affirm that I got knowledge of the impugned order on **02/07/2024**, when I visited the office, I have not intimated about the impugned before .

Deponent
Gul Shah Ali
CNIC# 21407-0618149-5

Daraz Khan

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بعدالت

سے 2 منجانب

بنام

گل شاہ وغیرہ

مورخہ _____

مقدمہ _____

دعویٰ _____

جرم _____

گورنمنٹ وغیرہ

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کارروائی متعلقہ آن مقام _____ کیلئے استغفر اللہ ۔ شاہ اللہ ایڈووکیٹ مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارعرضی دعوی اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند رہے۔

المرقوم _____ ماہ _____ سنہ 20ء

العبد _____ گواہ العبد _____

بمقام _____ کے لئے منظور ہے۔