


Form-A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

**Restoration Application No. 1391/2024**

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	19.11.2024	<p>The application for restoration of Service Appeal No. 6332/2020 submitted today by Roeda Khan Advocate. It is fixed for hearing before Division Bench at Peshawar on 25.11.2024. Parcha Pehsi 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. No. 1391/2024

Service appeal No. 6332/2020

Hazir Ali

VERSUS

IGP and others

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3.	Copy of Judgment dated 27.09.2024		4-6
4.	Copy of application for fixation		7-8

*Hazir Ali*  
Petitioner

Through

*Roeeda Khan*  
Roeeda Khan  
Advocates High Court  
Peshawar

①

**BEFORE THE SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 6332/2020

In

Restoration No 1391 /24

Khyber Pakhtunkhwa  
Service Tribunal

Vol. No. 18037

Dated 19-11-24

Hazir Ali Ex Head Constable No. 665 (CTD) S/o Nameer Khan R/o  
Mohallah Manakhel Tehsil razar District Swabi Khyber Pakhtunkhwa.

.....  
Appellant/Petitioner

VERSUS

1. Inspector General of Police /Provincial Police Central Police Office  
Khyber Road Peshawar.
2. Deputy Inspector General of Police CTD, CPO Khyber  
Pakhtunkhwa Peshawar.
3. Superintendent of Police, CTD Region Police Line District Khyber  
Pakhtunkhwa Mardan.
4. Government of Khyber Pakhtunkhwa through Chief Secretary Civil  
Secretariat Peshawar.
5. Secretary Home and Tribal Affairs, Government of Khyber  
Pakhtunkhwa Civil Secretariat Peshawar.

..... Respondents

**APPLICATION FOR RESTORATION OF THE ABOVE  
MENTION SERVICE APPEAL NO. 6332/2020 WHICH HAS  
BEEN AJDOURNED SINE-DIE ON 23.09.2024.**

**Respected Sir.**

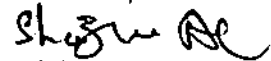
1. That the above mentioned service appeal was pending before this  
Hon'able Tribunal which was adjourned sine-die due to the criminal  
case on 23.09.2024. (Copy of order dated 23.09.2024 is attached).

2


2. That the applicant has been acquitted in the above mentioned criminal case by the Senior Civil Judge (J) Mardan vide order dated 27.09.2024. (Copy of Judgment dated 27.09.2024 is attached).

It is therefore, most humbly submitted that on acceptance of this application the service appeal of the appellant may kindly be restored.

Dated 19.11.2024

  
Petitioner

Through

  
Roeda Khan  
Advocates High Court  
Peshawar

3


Annex - A



Service Appeal No. 6332/2020 titled "Hazir Ali Versus Inspector General of Police/Provincial Police Chief, Central Police Officer, Khyber Road, Peshawar and 04 others"

20<sup>th</sup> Sept, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.
2. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 23.09.2024 before D.B. P.P given to the parties.

  
(Rashida Bano)  
Member (J)

  
(Kalim Arshad Khan)  
Chairman

\*Adnan Shah, P.A.\*


ORDER  
23/09/2024

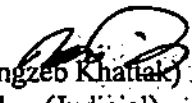
Mr. Kabir Ullah Khattak, Advocate for the appellant present. Mr. Tariq, Sub-Inspector (Legal) alongwith Mr. Muhammad Jan, District Attorney for the respondents present.

Learned counsel for the appellant submitted that the appellant was dismissed from service due to involvement in a criminal case and the trial of the case is pending, therefore, the appeal in hand may be adjourned sine-die till the decision of the criminal case is rendered.


In view of the above circumstances, the appeal is hereby adjourned sine-die. The parties retain the liberty to file an application for restoration of this appeal, if the need arise following the conclusion of the criminal proceedings. File be temporarily consigned to the record room.

ANNOUNCED  
23/09/2024

  
(Rashida Bano)  
Member (Judicial)

  
(Aurangzeb Khattak)  
Member (Judicial)

Certified to be true copy

  
E. Aurangzeb  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

19-11-24

Khyber Pakhtunkhwa Service Tribunal, Peshawar

Application No. 780 Date 19-11-2024  
Name of Applicant Waseem  
Number of Words/Pages 1-  
Copying Fee 5/-  
Urgent/Ordinary 5/-  
Total 10/-  
Name & Sign of Copyist Zeeshan  
Date of Completion of Copy 19-11-2024  
Date of Delivery of Copy 19-11-2024

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IN THE COURT OF QAISER SHAHZAD  
Senior Civil Judge (J), Mardan  
Page-1

Order No. 63  
27.09.2024

SPP present. Accused Hazir Ali, Mian Dad and Mufeed, on bail. present. Accused Ayaz and Fazal Subhan were produced in custody by the jail authorities.

Application u/s 249-A CrPC, moved on behalf of accused facing trial/petitioners. is taken for decision.

Facts of this case are that Inspector Mohsin Fawad SHO/complainant received, while on patrol, a spy information that stolen vehicle No. EX 213/Islamabad required to PS Nawasher Abbottabad in case FIR No. 810 dated 03.12.2019 u/s 381-A was present in accused Hazir Ali's house. He raided the house. There he found the vehicle whereas, accused Hazir Ali, Sajjad Ali alias Zubair, Salim Khan alias Dr Salim and Ayaz s/o Shahjehan were tempering the chassis number of the vehicle with tools. From that house, four other vehicles, mentioned in the FIR, were also seized. In initial interrogation of the accused, it was disclosed to the complainant that four other persons namely Shahid, Janas, Taslim alias Lal Kohistani alias Fauji and Said Muhammad were also members of the gang. The complainant sent Murasila (ExPA) to PS City for registration of FIR. Consequently, FIR No1303 dated 19.12.2019 u/s 381-A/411/412/419/420/468/471/148/149 PPC was registered in PS City. It is necessary to mention here that it is prosecution contention that after arrest of accused Hazir Ali, on his pointation fourteen (14) further tempered vehicles and on pointation of accused Sajjad three (03) further tempered vehicles were recovered. Some of those persons from whom the further tempered vehicles were recovered were also charged in this case as accused.

After completion of investigation, complete challan for trial was submitted. The accused/ petitioners were summoned. Copies u/s 241-A CrPC were provided to them. They were indicted. They did not plead guilty to the charge, and claimed trial. Trial was commenced and the PWs were summoned. The complainant, I.O and witness of the recovery memos have been examined as PWs. The testimonies recorded so far is sufficient for deciding the application under consideration.



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Session Court Mardan



Arguments have been heard and record has been perused.

From the available record, it is clear that no offence defined in sections 419, 420 & 468 PPC has been committed. Similarly, from the evidence it is not proved that the offences defined in sections 411 & 412 PPC have been committed.

Coming to the commission of offence punishable u/s 381-A and 471 PPC. The evidence adduced so far has to be scanned. The whole incident starts with information that vehicle No. EX 213/Islamabad was present in accused Hazir Ali's house. This vehicle was recovered from a house alleged by the complainant to be Hazir Ali's house, but no proof is available on the file that that house belonged to accused Hazir Ali. After recovery of that vehicle, accused Hazir Ali was charged u/s 381-A PPC in this case and he was also charged as accused in case FIR No. 810 dated 03.12.2019 u/s 381-A PPC PS Nawasher Abbottabad. Thus, accused Hazir Ali was charged in two criminal cases for the commission of one offence. He has submitted attested copies of Order dated 04.01.2023 passed in Case No. 113/2 for trial in respect of case FIR No. 810 dated 03.12.2019. That Order has been passed by the learned Judicial Magistrate-I, Abbottabad whereby accused Hazir Ali has been acquitted u/s 249-A CrPC. That Order has direct effect on this case to the extent of vehicle No. EX 213/Islamabad.

As far as the recoveries of other vehicles are concerned, no evidence is available on file to prove that the chassis number of those vehicle were tempered by any of the accused or they were stolen by any of the accused. The accused/petitioners have not been charged by anyone for stealing those vehicles.

A very poor investigation has been conducted in this case, which is evident from the cross-examination of the I.O. Nevertheless, the complainant and I.O have not charged some of the police officials; mentioned in their cross-examination, from whom some of the tempered vehicles were recovered. Thus, the complainant and the I.O have done pick and choose method in nominating the offenders. Why they have absolved some of the police officials from the tempered vehicles were

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Session Court Mardan

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(Ad) 27.09.2024

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26-6-24

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Handwritten signature

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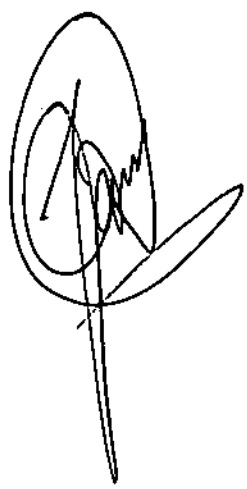
27

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0 — 63  
(Crd) 27.09.24

recovered vehicles? If mere possession of a tempered vehicle was the criteria for nominating the offenders, then those police should also have charged in this case. Nevertheless, the I.O admitted during the cross-examination that no recovery was effected from accused Mian Dad, Mufeed and Yousaf. When no recoveries were effected from them, then why they were charged in this case as accused and how they can be held guilty for commission of offence of forgery or theft or dishonestly receiving a stolen property? It is strange that the complainant or the I.O has not charged those police officials from whom the tempered vehicles were recovered whereas, police officials/accused Mian Dad, Mufeed and Yousaf were charged in this case as accused even without any recovery from them.

PW-1, i.e marginal witness to the recovery memos, admitted during the cross-examination that his signatures on recovery memos ExPW 1/1, 1/2 and 1/3 were different from each other. The recovery memos ExPW 1/1, 1/2 and 1/3 were perused and it was observed that there are marked difference in the signatures of Constable Miftah ur Rehman. This marked difference has made the recovery memos and the alleged recoveries highly doubtful. It clearly suggests that PW-1 did not sign those recovery memos rather someone else had marked his fake signatures.



The prosecution has not produced the tools by which the vehicles were alleged to have been tempered. It is necessary to mention here that after recording examination in chief of the complainant and I.O, this court gave opportunity to the prosecution to produce the case properties for exhibition, but despite that opportunity the prosecution did not produce the tools used for tempering the chassis number for exhibition. This non-production of the tools is fatal because it is prosecution case that with those tools vehicle No. EX 213/Islamabad was being tampered. It is necessary to add here that vehicle EX 213/Islamabad was not sent to FSL for examination by an expert regarding tempering its chassis number. This lack of evidence is detrimental to the prosecution.

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Session Court Mardan

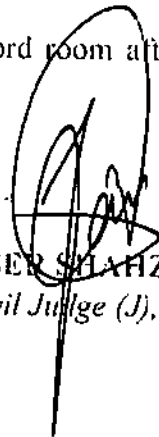
0-63  
(Cd) 27.09.24

Long and short of the above discussion is that during the cross-examination of complainant, witness of the recovery meinos and I.O serious contradictions have come to the surface which has damaged this case. Nevertheless, a very poor investigation was conducted in this case and the I.O did not collect any evidence for leading this court to hold guilty any of the accused. Hence, there is no probability of conviction of any of the accused including the absconding accused. Resultantly, by accepting the application under consideration, all the accused facing trial/petitioners and the absconding accused are acquitted u/s 249-A CrPC. Their sureties are absolved from the liabilities of the bail bonds whereas, Mr. Fazal Subhan and Mr. Ayaz be released from jail, if they are not required in any other case.

The vehicles which have been returned in the criminal cases pending in other courts shall be dealt with by those courts whereas, the tempered vehicles which are still in police custody are confiscated. The confiscated vehicle be handed over to the Excise and Taxation Department for proceedings as per law.

This file is consigned to the record room after completion and compilation.

Announced  
27.09.2024



QAISER SHAHZAD  
Senior Civil Judge (J), Mardan.

Name of Application: 2604  
No. of Application: 18228  
Date of presentation of application: 26-10-24  
Date of preparation of copies: 26-10-24  
Number of Pages: 028  
Court Fees: \_\_\_\_\_  
Urgent Fees: \_\_\_\_\_  
Signed of copyist/Examiner: [Signature]  
Date of delivery: 26-10-24

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Session Court Mardan

2 OCT 2019

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19/12/2019



419, 420, 46, 471  
3818 411-412-473  
148-149 ppc

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**BEFORE THE SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 6332/2020

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Khyber Road Peshawar.
2. Deputy Inspector General of Police CTD, CPO Khyber  
Pakhtunkhwa Peshawar.
3. Superintendent of Police, CTD Region Police Line District Khyber  
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4. Government of Khyber Pakhtunkhwa through Chief Secretary Civil  
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5. Secretary Home and Tribal Affairs, Government of Khyber  
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2. That the applicant has been acquitted in the above mentioned criminal case by the Senior Civil Judge (J) Mardan vide order dated 27.09.2024. (Copy of Judgment dated 27.09.2024 is attached).
3. That the service appeal of two other colleagues namely Mian Dad versus Police Department Service appeal No 7813/2020 in restoration application 1340/2024 and one other is fixed on 21.11.2024.

**It is therefore, most humbly submitted that on acceptance of this application the service appeal of the appellant may kindly be restored.**

*Shafiq Ali*  
Petitioner

Through

**Advocates High Court**

*Roeeda Khan*  
**Roeeda Khan**  
Peshawar