
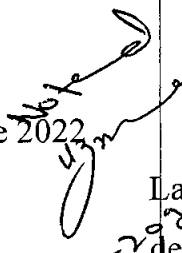




Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 830/2022 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/05/2022	<p>The appeal of Mr. Mursaleen resubmitted today by Syed Noman Ali Shah Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	1-6-2022 17 th June 2022  1-6-2022	<p>This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put there on <u>17.6.22</u>. Notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Appellant present in person and seeks adjournment. Last opportunity is granted, failing which the case will be decided on the basis of available record without the arguments. To come up for preliminary hearing on 05.08.2022 before the S.B.</p> <p style="text-align: right;"> (Kalim Arshad Khan) Chairman</p>

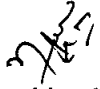
The appeal of Mr. Mursaleen Ex-Constable no. 3912 Police Station Town Peshawar received today i.e. on 18.05.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Index of the appeal is incomplete which may be completed according to Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 2- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 3- Affidavit may be got attested by the Oath Commissioner.
- 4- Copy of departmental appeal and revision petition mentioned in the memo of appeal are not attached with the appeal which may be placed on it.
- 5- Annexures-B & C of the appeal are illegible which may be replaced by legible/better one.
- 6- Wakalat nama is blank which may be filled up.

No. 1100 /S.T,

Dt. 20/5 /2022


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.


Syed Noman Ali Bukhari Adv. Pesh.

Sir,

it is submitted that, all objections (1 to 6) were removed. regarding to objection no 2 & 4 also mentioned in Para No No 3 & 4 mentioned that the charge sheet, statement of allegations final show causes enquiry not issued to appellant & Departmental Appeal & revision petition not available to appellants. ~~may~~ ~~you~~ ~~may~~ ~~you~~ be ~~re~~ resubmitted the file ~~may~~ ~~you~~ ~~may~~ ~~you~~ 02/05/22

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No. 830 /2022

Mursaleen

Versus

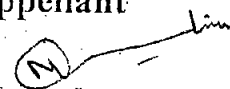
Prison Deptt:

INDEX


S.No	Documents	Annexure	Page
1.	Memo of Appeal	-----	
2.	Condonation of delay application		
3.	Copy of Medical prescription	A	
4.	Copy of impugned order	C	
5.	Copy of Departmental appeal rejection order	D	
6.	Copy of revision rejection order	E	
7.	Vakalat Nama	-----	

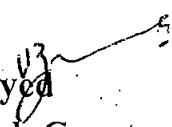
Dated 18/05/2022

Appellant


Mursaleen

Through:


Syed Noman Ali Bukhari

&

Uzma Syed
Advocates, High Court

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No. _____/2022

Mr. Mursaleen Ex-Constable No. 3912, Police Station Town Peshawar.

(Appellant)

VERSUS

1. The Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police, Cantt, Peshawar.

(Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 10.01.2020 WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE AGAINST THE REJECTION ORDERS DATED 16.07.2020 AND 24/03/2021 WHEREBY THE DEPARTMENTAL APPEAL AND REVISION PETITION OF THE APPELLANT WAS REJECTED WITHOUT SHOWING ANY REASON.

PRAYER:

That on the acceptance of this appeal, the impugned orders dated 10.01.2020, 16.07.2020 and 24/03/2021 may please be set aside and the appellant may be reinstated in to service with all back and consequential benefits. Any other remedy, which this august tribunal deems fit and appropriate that, may also, be awarded in favor of appellant.

Respectfully Sheweth:

Giving rise to the present service are as under:

1. That the appellant was the employee of the Police Department and was on the strength of the Police Force Peshawar.
2. That, in 2019 appellant has seriously ill due to which appellant did not perform his duties the absence of the appellant was not willful but due to serious illness, on the score of said absence appellant was dismissed from service on 10/01/2020. (Medical report & impugned order is attached as Annexure-A & B).
3. That neither any show cause, charge sheet, statement of allegation, inquiry, opportunity of defense, final show cause notice has been served and provided respectively nor any publication has ever been made calling him for assumption of his duty.
4. That appellant feeling aggrieved from the said dismissal order dated 10/01/2020 filed/ referred Departmental appeal which was rejected on 16-07-2020 after that appellant filed Revision Petition which was also rejected on 24-03-2021. Received by appellant on 21/04/2022 for no good grounds. (Rejection order is attached as Annexure C&D).
5. That the appellant being aggrieved of the impugned orders of respondents and having no other adequate and efficacious remedy, file this Service Appeal inter-alia on the following grounds amongst others.

GROUND:

- A) That the orders dated 10.01.2020, 16.07.2020, 24.03.2021 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.

- B) That the appellant has been condemned unheard in violation of Article 10-A of the Constitution of Islamic republic of Pakistan and in violation of maxim "Audi Alterum Partum" and has not been treated according to law and rules. That according to reported judgment cited as *2019 CLC 1750* stated that Audi Alterum Partum" shall be read as part and parcel of the every statute. The same principle held in the Superior Court judgments cited as *2016 SCMR 943, 2010 SCMR 1554 and 2020 PLC(cs) 67*, where in clearly stated that the penalty awarded in violation of maxim "Audi Alterum Partum" is not sustainable in the eye of law.
- C) That the appellant; is seriously ill, therefore cannot attend duties, so absentia of the appellant was not willful but on the ground of illness which is beyond the control of the appellant. So, according to superior Court Judgment cited *as 2008 SCMR 214* availing leave on medical grounds without permission could not be considered an act of gross misconduct entailing major penalty, the major penalty in this case on the basis of absentia on medical ground is so harsh and not commensurate with guilt. So the impugned order is liable to be set-aside.
- D) That impugned order was based on willful absence, so, for the willful absence procedure is provided in Rule 9 of the *E&D rule 2011*, which is so much crystal clear. The authority before imposing major penalty also violates the procedure of Rule-9. So the impugned order is defected in eye of law.
- E) That no show cause notice was issued before taking adverse action which is violation of rule *Rule-5(a) Read with Rules -7* in case inquiry was not necessary and *Rule-14(b) of the E&D Rules 2011*, in case where regular inquiry is necessary. Which were totally ignored before taking adverse action. The same principle held in the Superior Court judgments cited as *1987 SCMR 1562, 2019 PLC cs 811, 2008*

PLC cs 921 and 209 SCMR 605. Further it is added that inquiry report was also not provided to the appellant which was also violation of Rule 14(c) of the E&D rules 2011, so the impugned order was passed in violation of law and rules and norms of justice. The same principle held in the Superior Court judgments cited as 1981 PLD SC 176 and 1987 SCMR 1562.

- F) That it is, pertinent to mention here that if inquiry was not necessary the competent authority should follow the rule 5(a) of the E&D rules 2011 and dispense with the inquiry with reasons but the same was also violated, so the impugned order was in violation of law and rules so not tenable in the eye of law.
- G) That no proper regular inquiry was conducted before imposing major penalty. Moreover, if any fact finding inquiry was conducted but the appellant was not associated with the same, neither the statement recorded in presence of appellant nor was the chance of cross examination provided to the appellant which is violation of *Rule-10 (b) and Rule 11 (1) of the E&D Rules 2011,* which were totally ignored before imposing punishment which is illegal and against the law, rules and natural justice. The same principle held in the Superior Court judgments cited as 2010 SCMR 1554, 2016 SCMR 108, 2009 PLC (cs) 19, 2008 SCMR 1369, 2009 SCMR 412, 2007 PLC cs 247 and 2008 PLC cs 1107.
- H) That according to Federal Shariyat court Judgment cited as *PLD 1989 FSC 39* the show cause notice is must before taking any adverse action, non-issuance of show cause notice is against the injunction of Islam. Hence the impugned order is liable to be set-aside.
- I) That the show cause is the demand of natural justice before taking adverse action and also necessary for fair trial and also necessary in

light of injunction of Quran and Sunnah but show cause was not served to the appellant (show cause given to the appellant but with the impugned order) which is malafide on the part of the deptt. So, fair trail denied to the appellant which is also violation of Article 10-A of the constitution. Further it is added that according to reported judgment cited as *1997 PLD page 617* stated that every action against natural justice treated to be void and unlawfully order. Hence impugned order is liable to be set-aside. The natural justice should be considered as part and parcel according to superior court judgment cited as *2017 PLD 173 and 1990 PLC cs 727.*

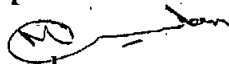
- J) That no charge sheet was issued to the appellant on the allegation appellant was dismissed from service which is violation of *Rule-10(b) of the E&D Rules 2011* and if inquiry was conducted any in absence of charge sheet that is to be treated as fact finding inquiry and awarded major penalty on fact finding inquiry is against the law, rules and norms of justice, because in case of imposing major penalty proper regular inquiry and proper procedure has to be conducted under *Rule-5, 10, 11 & 14 of the E&D Rules 2011* but in case of the appellant same was violated which is also violation of Supreme Court judgment Cited as *2008 SCMR 609* wherein clearly stated that *inquiry conducted in absence of charge sheet is void-ab-initio and also violation of this tribunal judgment in appeal no: 905/2016 decided on 20.02.2018.* In Supreme court judgment cited *as 2004 SCMR 294, 2008 PLC cs 1107, 2008 PLC cs 1065* wherein clearly state that *the major penalty cannot be imposed on the basis of fact finding inquiry.*
- K) That the opportunity of personal hearing and personal defense was not provided to the appellant which was violation of **Rule 7(d)** in case inquiry was not necessary and *14(5) of the E&D rules 2011* in case where inquiry is necessary.

- L) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

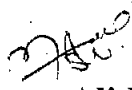
It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated 18/05/2022

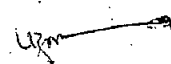
Appellant


Mursaleen

Through:


Syed Noman Ali Bukhari

&


Uzma Syed

Advocates, High Court

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

Appeal No. _____/2022

Mursaleen

Versus

Prison Department:

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.

Deponent

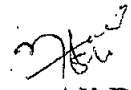
LIT OF BOOKS:

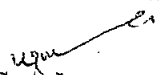
1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE.
3. Any other case law as per need.

Appellant


Mursaleen

Through:


Syed Noman Ali Bukhari

&

Uzma Syed

Advocates, High Court

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

Appeal No. _____/2022

Mursaleen

Versus

Prison Department:

AFFIDAVIT

I, Mursaleen, (Appellant) do hereby affirm that the contents of this service appeal are true and correct, and nothing has been concealed from this honorable Tribunal.


Deponent

Mursaleen

(1) KP Edideems Control and Relief Act 2020, Section 30 limitation Frozen.

BEFORE THE COURT SERVICE TRIBUNAL PESHAWAR

Appeal No. _____/2022

APPLICATION FOR FOR CONDINATION OF
DELAY.

Respectfully Sheweth:

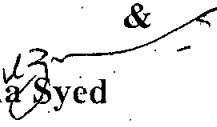
1. That the impugned order is vide illegal and against the law. Because the impugned order passed without mandatory provision of law so no limitation would run against vide order. (2007 SCMR 834 and 2015 SCMR 795).
2. That the impugned order never communicated to the appellant. The appellant himself received by the Department.
3. That the impugned passed on 10/01/2020 but never communicated to the appellant. The appellant received it himself and filed Departmental appeal with in time and the appellate order dated 24/03/2021 received by the appellant on 21/04/2022 and filed Service Appeal will with in time.

Dated 18/05/2022


Appellant

Through

Syed Noman Ali Bukhari


Uzma Syed

Advocate High Court Peshawar

(A)

LADY READING HOSPITAL
MEDICAL TEACHING INSTITUTION
PESHAWAR, KP

Patient Identification

NAME: Mursalin Khan
MR NO: K02ACE19641478
CINC NO: 17301-1483988-
District: Peshawar
Age: 40 years

ADMISSION ORDERS

Drug Allergies

Date & Time	30/7/2019	Nurs Initial
ADMIT TO SERVICE OF:	CCU - ER	
ADMITTING DIAGNOSIS:	Cardiogenic shock + SVT + H	
CONDITION:	<input type="checkbox"/> Stable <input checked="" type="checkbox"/> Serious <input type="checkbox"/> Critical	
VITAL SIGNS:	100/80 - 110 puls - 120 bpm 50% on RA	
INVESTIGATIONS:	E.C.G., Echo, Bles, lipid profile	
MEDICATION:	At The Time of admission	
	Inj - 5% Staptokamine	
	Inj - elexain 60 OD	
	Inj - Dobutamine in ml - 20ml/hr	
	Inj - Rest. 1/2 State	
	Tab - Amicard	
	Tab - Ascard Plus 75/75mg	
	Tab - Rovasta 10mg	
	Tab - Conlat 0mg	

Doctor Name: Adil Mahmood

Signature: Adil Mahmood



Echocardiography

Cardiology Department
Lady Reading Hospital - Peshawar

9

Name: **MUHAMMAD KHAN** Age: **40** Sex: **Male**
 Patient ID: **10000000000000000000** Date: **07/08/2010** Type: **ECG**
 Address: **...**

End Diastolic Diameter	5.00	3.5-5.7
End Systolic Diameter	3.50	
Right Ventricle	2.00	0.9-2.6
Interventricular septum	1.20	0.6-1.1
LV Post Wall	1.20	0.6-1.1
Aorta	3.00	2.0-3.7
Left Atrium	3.90	1.9-4.0
Fractional Shortening	30.0	(30-44) %
Ejection Fraction	65.7	
Mitral Valve Area		
VSD Size		

Mitral Valve			
Aortic Valve			
Pulmonic Valve			
Tricuspid Valve			1
VSD Gradient			
RV Systolic Pressure	35		
Rvot			
Lvot			

COMMENTS

Left atrium size is normal.
 Left ventricle size is normal with preserved function.
 Right ventricle size is normal.
 Valvular structures are normal.
 LA Clot not seen.
 LV Clot not seen.
 IVS AND PW thickness are increased.

DOPPLER

TR, documented.

CONCLUSION

Inferior hypokinesia.
 LVH.
 Preserved LV function.
 Mild TR.

Analyzed By FR

Signature



Exercise Tolerance Test

Cardiology Department
Lady Reading Hospital - Peshawar

19

Name: MURSALEEN KHAN

Age: 40 Years Sex: Male

Phone ID: 999787-99

Date: 30 July-219 Type: Poor

Address:

Treatment: Beta Blocker.

Exercise Protocol: BRUCE

RECOVERY

Stage	Elev	Speed	Time	HR	B/P
1	10	1.7	03	102	130/80
2	12	2.5	03	112	140/80
3	14	3.4	02	123	150/80

Time	H.R	B.P
3	63	120/80

Resting H.R : 58 bpm

Resting B.P : 120/80 mm Hg

Report

- 1) The resting ECG shows normal sinus rhythm.
- 2) Patient was exercised on the treadmill according to BRUCE protocol for a total of 8 minutes equivalent to 9.5 mets and achieved 68.3% of target heart rate.
- 3) Limiting factor to exercise was not reached.
- 4) Blood pressure response was normal.
- 5) Electrocardiographically there were no changes during and after exercise.
- 6) Patient on beta blockers. Target heart rate was not achieved.

Impression

~~Negative for ischemia~~

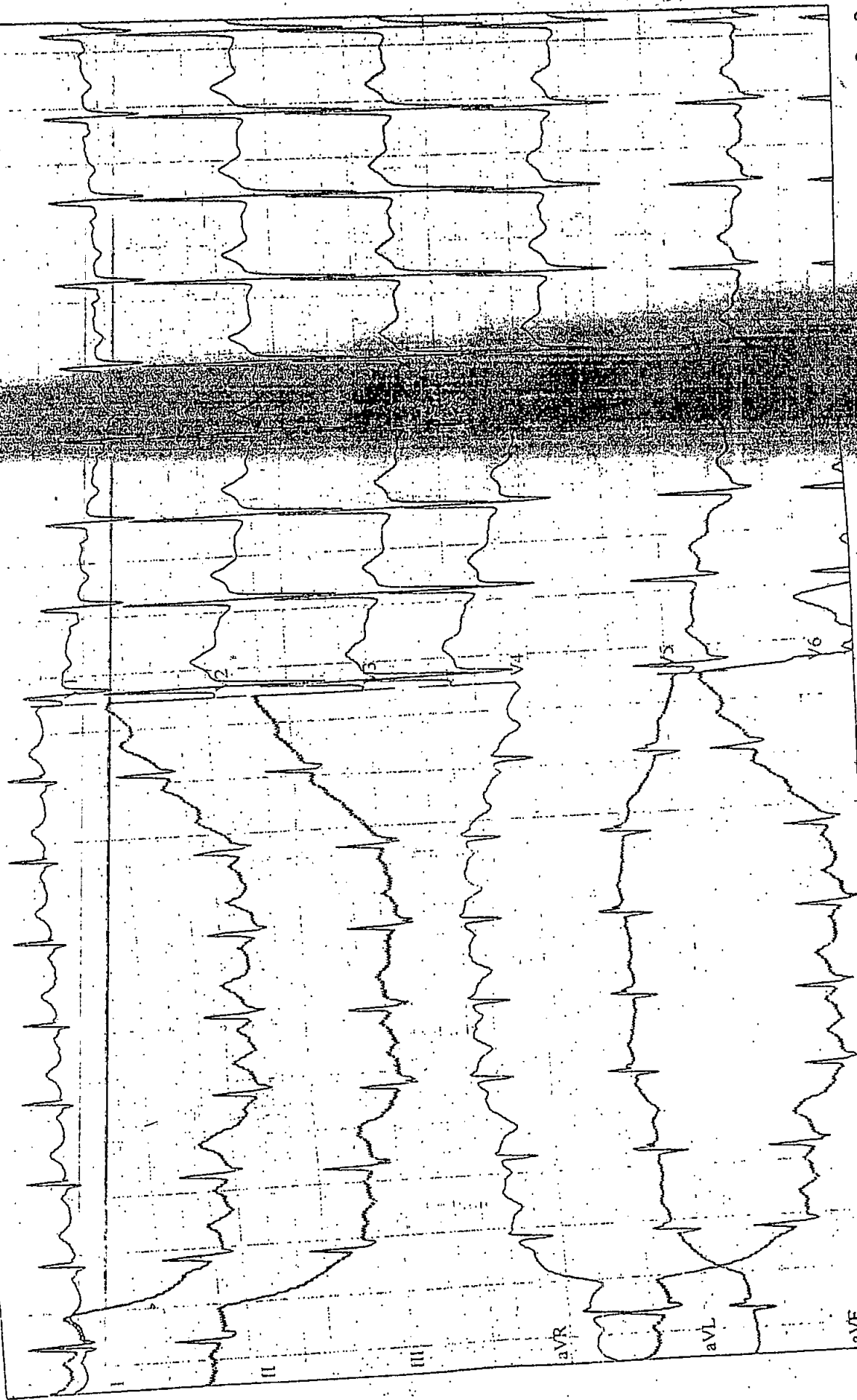
~~Negative for angina~~

Inconclusive Test for Ischemia, Angina

Medical Officer

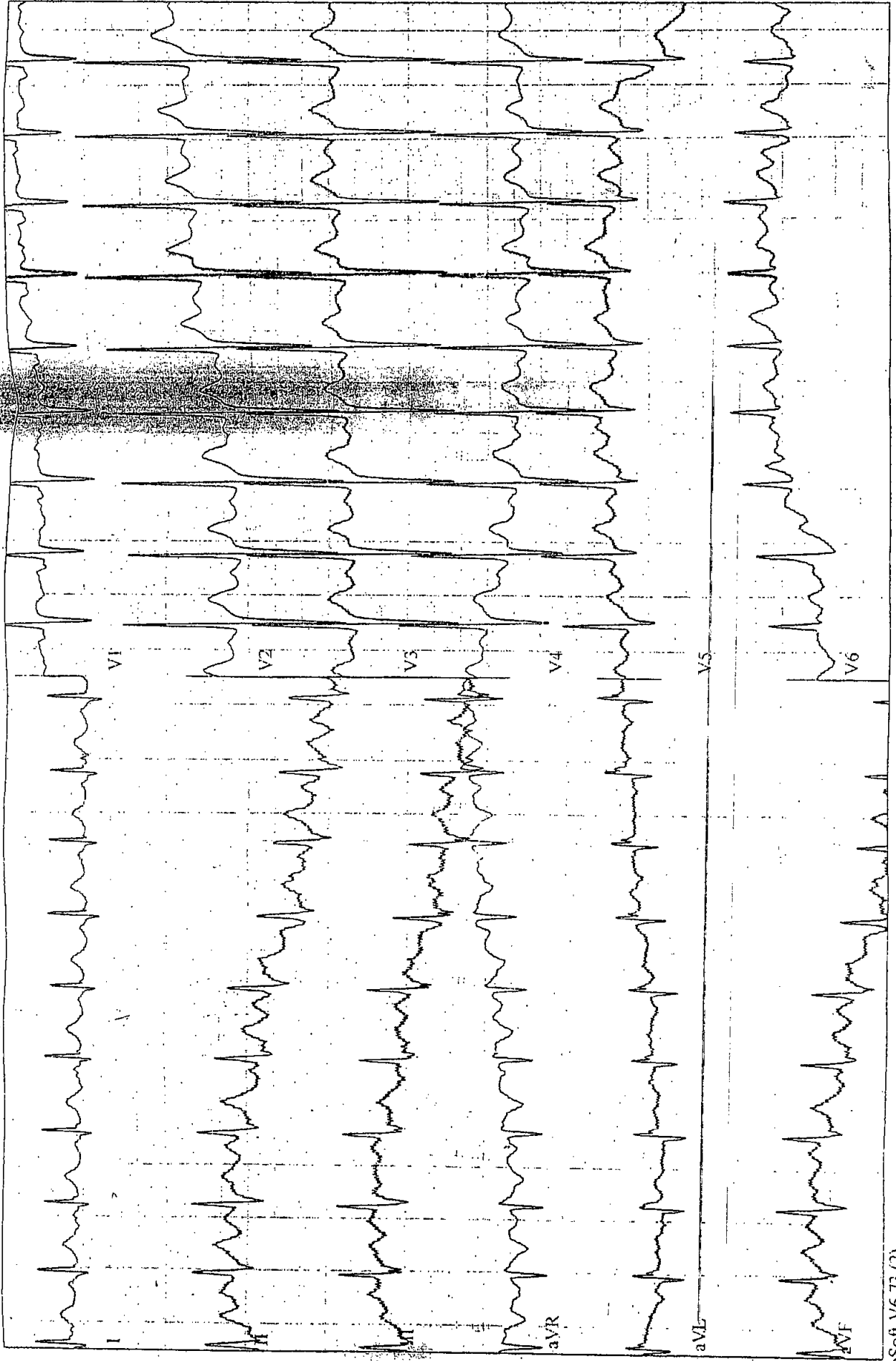


GE CardioSoft V6.73 (2)
25 mm/s 10 mm/mV 60Hz 0.01 - 20Hz FRF- HR(II,V2)



Start of Test

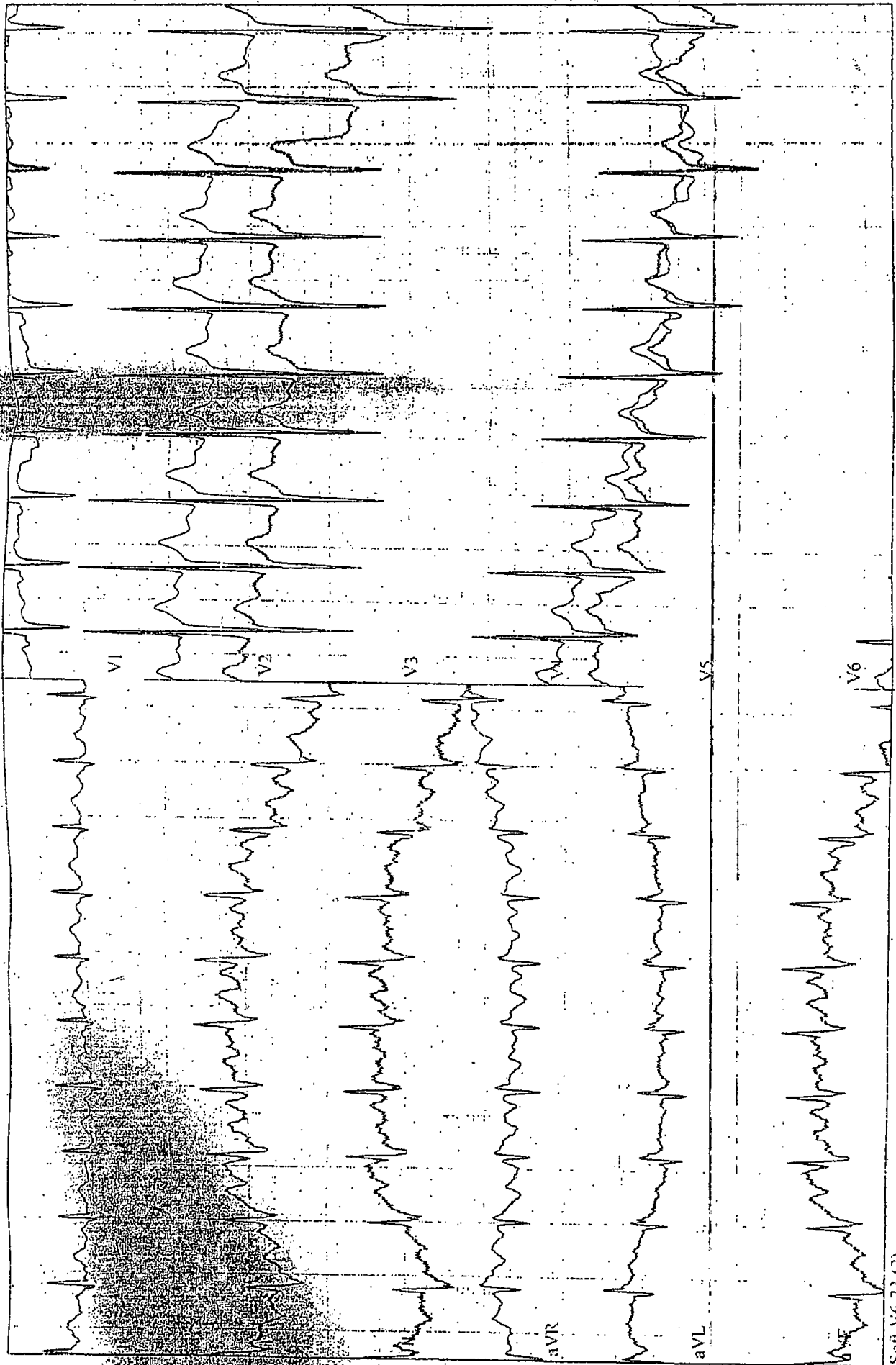
GE CardioSoft V6.73 (2)
25 mm/s 10 mm/mV 60Hz 0.01 - 20Hz FRF - HR(V2.II)



GE CardioSoft V6.73 (2)
25 mm/s 10 mm/mV 60Hz 0.01 - 20Hz FRF- HR(V2.II)

Start of Test: 10:44:22am

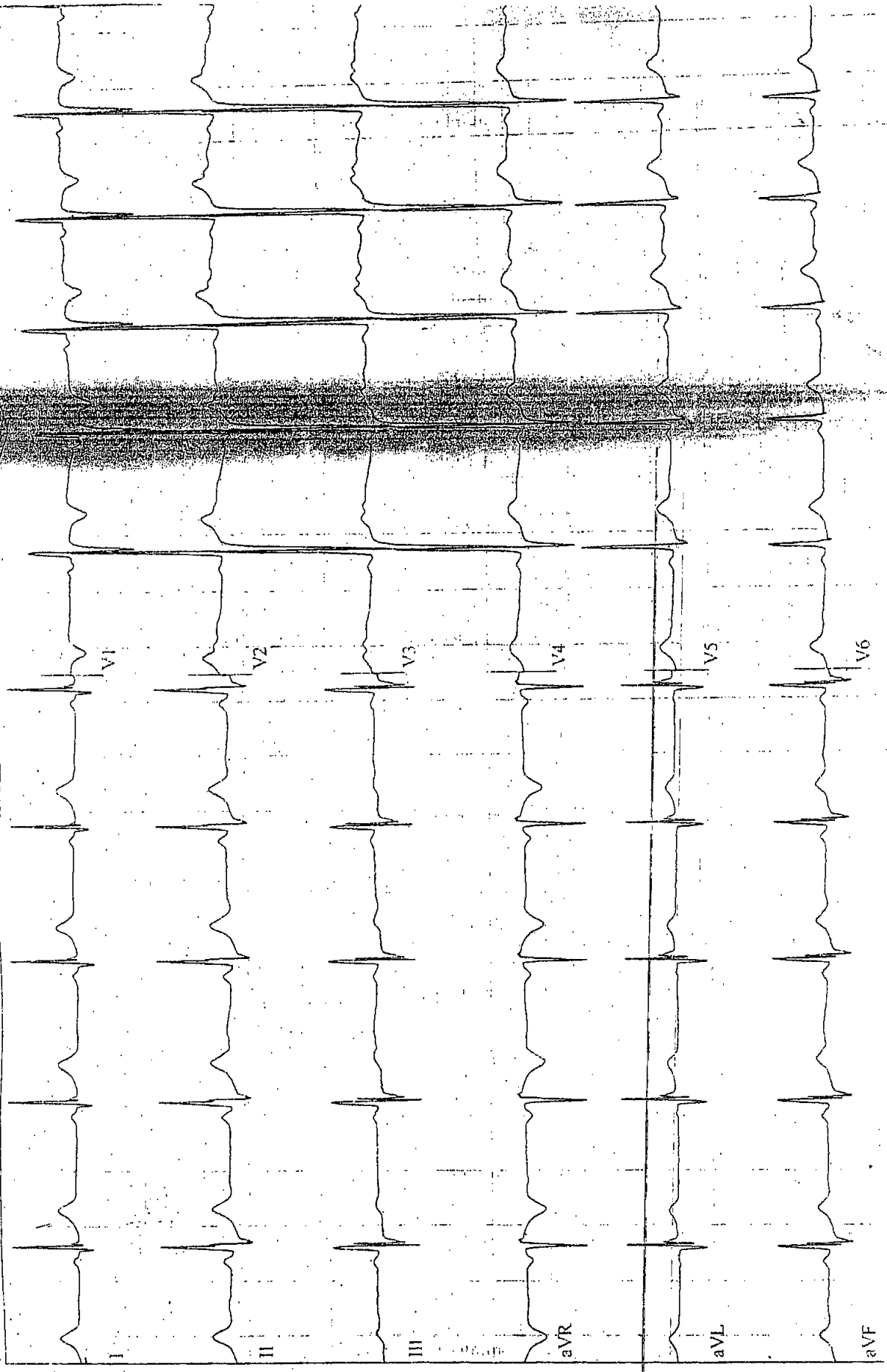
Page 3



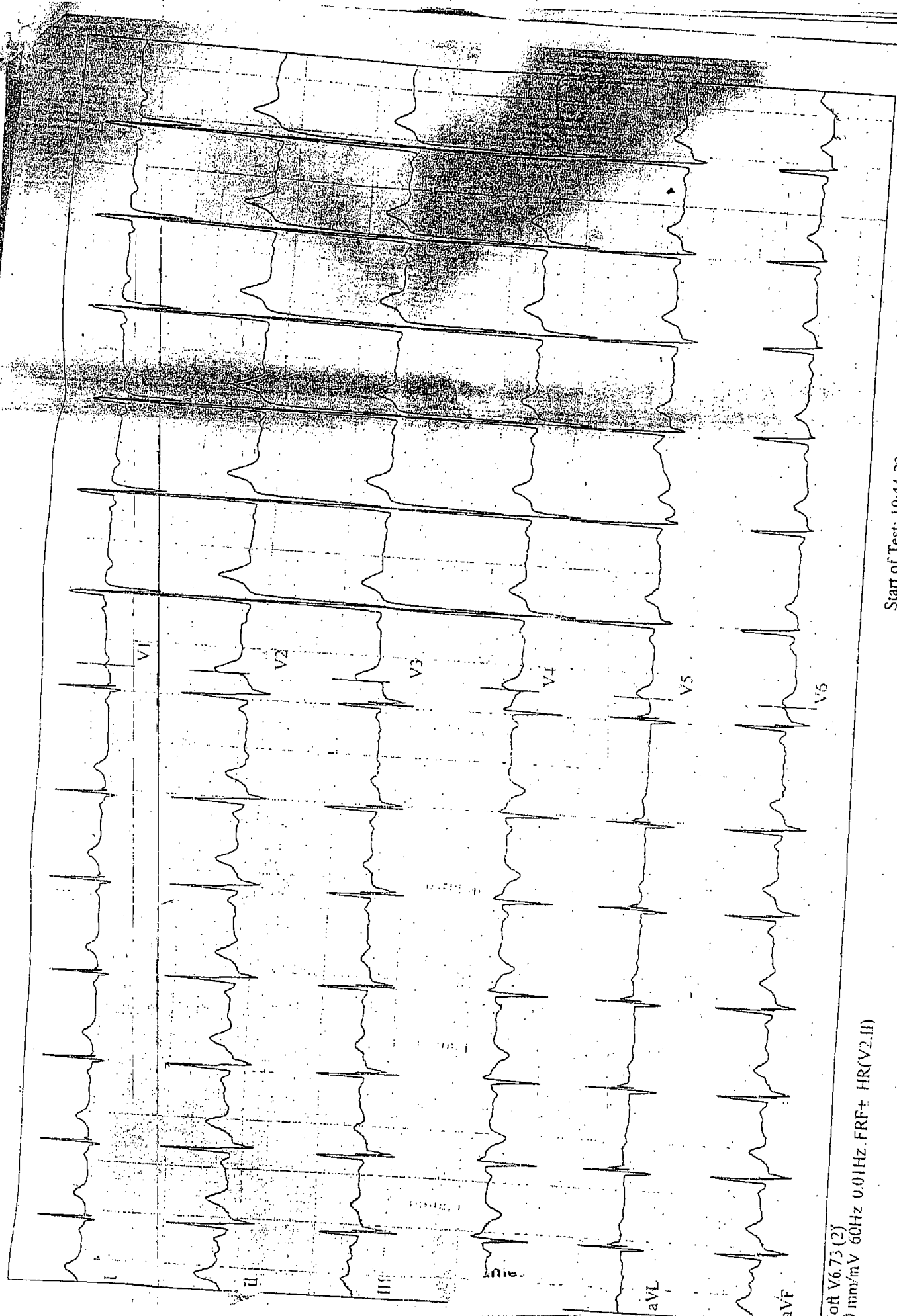
GE CardioSoft V6.73 (2)
25 mm/s 10 mm/mV 60Hz 0.01 - 20Hz FRF- HR(V2.I)

Start of Test: 10:44:22am

Page 4



II



GE CardioSoft V6.73 (2)
25 mm/s 10 mm/mV 60Hz 0.01Hz.FRF+ HR(V2.II)

Start of Test: 10:44:22am

Page 5

30 websi

ORDER

(B)

Z

This office order will dispose off the departmental proceedings against Constable Mursaleen No. 3912 who while posted to Police Station Town, absented himself from his lawful duty with effect from 30.07.2019 to till date.

Under Police Rules 1975 (amended 2014) proper charge sheet alongwith summary of allegation were issued against Constable Mursaleen No. 3912 and SDPO Hayatabad was appointed as enquiry officer to scrutinize the conduct of Constable Mursaleen No. 3912.

The enquiry officer submitted finding and recommended the Constable Mursaleen No. 3912 for major punishment after issuing final show cause notice as he did not join the enquiry proceedings. Hence, he was issued final show cause notice, and sent to the alleged constable through his home address. He received final show cause notice but did not submit reply nor appear before the undersigned within specified period. This shows his lack of interest in official duty and shows negligence. He is continuously absent from duty, neither joined enquiry/proceedings nor appeared before the undersigned.

Keeping in view of the above and recommendation of Enquiry Officer, I, Tassawar Iqbal (PSP), SP Cantt, Peshawar being a competent authority, agreed with the recommendation of the enquiry officer. Therefore, under Police Disciplinary Rules 1975, Constable Mursaleen No. 3912 is hereby awarded major punishment of dismissal from service, with immediate effect.

119
9.2.2020

(TASSAWAR IQBAL) PSP
SUPERINTENDENT OF POLICE,
CANTT PESHAWAR

No. _____ / SP/ Cantt: dated Peshawar, the 12/2/2020.

Copy for information and necessary action to the:-

1. The Sr. Superintendent of Police, Operation, Peshawar.
2. The Superintendent of Police Headquarter: Peshawar.
3. SDPO Hayatabad enquiry officer.
4. Pay Officer.
5. CRC,
6. OASI branch.
7. Fauji Missal branch with enquiry file for record.
8. Official concerned.



OFFICE OF THE
CAPITAL CITY POLICE OFFICER
PESHAWAR

Phone No. 091-9210989
Fax No. 091-9212597

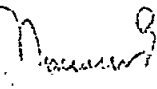
ORDER.

This order will dispose of the departmental appeal preferred by Ex-Constable Mursalin Gul No.3912 who was awarded the punishment of "Dismissal from service" by SP/Cantt: Peshawar vide OB No.119, dated 09-01-2020.

The allegations leveled against him were that he while posted at Police Station Town absented himself from his lawful duty with effect from 30-01-2019 till the date of dismissal i.e 09-01-2020 without leave or permission from the competent authority for a total period of 05 months and 09 days.

He was served Charge Sheet and Summary of allegations by SP/Cantt: Peshawar and SPO Hayatabad Peshawar was appointed as enquiry officer to scrutinize the conduct of delinquent official. The enquiry officer after conducting proper enquiry submitted his findings and recommended the official for major punishment. The competent authority i.e SP/Cantt: Peshawar after receipt of enquiry report issued him Final Show Cause Notice at his home address but he neither submitted his reply to the Final Show Cause Notice nor appeared before the competent authority during the specified period, hence was awarded the above major punishment.

He was also given opportunity to produce any plausible explanation in his defence. During personal hearing the appellant failed to produce any plausible explanation in his defence to prove his innocence. Therefore, his appeal to set aside the punishment order awarded to him by SP/Cantt: Peshawar vide OB No.119, dated 09-01-2020 is hereby rejected /dismissed being also time barred for 05 months and 09 days.

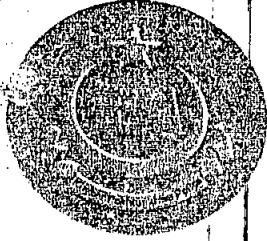

(MUHAMMAD ALI KHAN)PSP
CAPITAL CITY POLICE OFFICER
PESHAWAR.

No. 845-50 /PA dated Peshawar the 16-07- 2020

Copies for information and file:

- 1. SP/Cantt: Peshawar.
- 2. P.O. Office: URC, D.A.S.F.
- 3. ✓ P.M.C. along with F.M.
- 4. Official concerned.

9



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

No. S/ 1300 /21, dated Peshawar the 24/03 /2021.

To : The Capital City Police Officer,
Peshawar.

Subject: REVISION PETITION.

Memo:

The Competent Authority has examined and filed the revision petition submitted by Ex-FC Mursalin Gul No. 3912 of Peshawar district Police against the punishment of dismissal from service awarded by SP/Cantt: Peshawar vide OB No. 119, dated 09.01.2020, being badly time barred.

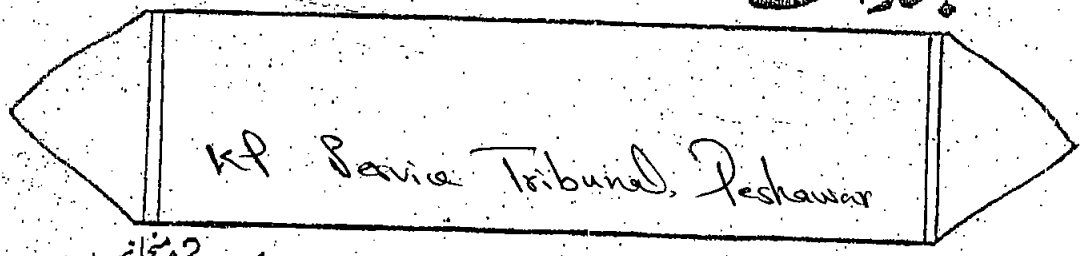
The applicant may please be informed accordingly.


(SYED ANIS-UL-HASSAN)

Registrar,

For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

بعدالت



2 منجانب
بنام

سورجہ
مقدمہ
دعوی
جرم

باعث تحریر آنکے

مقدمہ مشدرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام Peshawar کیلئے محمد نواز ابنذ عظیم اسپ اڈوکلر

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برادگی 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 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختتام
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائنہ التوائے مقدمہ کے سب سے دہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکورہ کریں۔ لہذا وکالت نامہ لکھدیا کہ سند ہے۔

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Attest

Attest

المرقوم 18 ماہ 2022

الع الع واه الع

بمقام Peshawar کے لئے منظور ہے۔

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