

Form- A  
FORM OF ORDER SHEET

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

Execution Petition No. 471 /2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	17.08.2022	<p>The execution petition of Mr. Niaz Hussain submitted today by Mr. Taimur Ali Khan Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed.</p> <p style="text-align: right;">By the order of Chairman</p> <p style="text-align: center;">REGISTRAR</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

Execution Petition No. 471 /2022  
In Service Appeal No.1524/2019

Niaz Hussain

VS

Police Department

.....  
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**PETITIONER**

THROUGH:

  
**(TAIMUR ALI KHAN)  
ADVOCATE HIGH COURT**

Contact No. 03339390916

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

Execution Petition No. 471 /2022  
In Service Appeal No.1524/2019

**Khyber Pakhtunkhwa  
Service Tribunal**

Diary No. 1012

Dated 17-8-2022

Niaz Hussain, Inspector (BPS-16),  
Counter Terrorism Department, Mardan Range Mardan.

**PETITIONER**

**VERSUS**

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police, CTD, Khyber Pakhtunkhwa, Peshawar.
3. The Senior Superintendent of Police CTD, Central Zone, Khyber Pakhtunkhwa, Peshawar.

**RESPONDENTS**

.....  
**EXECUTION PETITION FOR DIRECTING THE  
RESPONDENTS TO IMPLEMENT THE  
JUDGMENT DATED 05.01.2022 OF THIS  
HONOURABLE TRIBUNAL IN LETTER AND  
SPIRIT.**  
.....

**RESPECTFULLY SHEWETH:**

1. That the petitioner has filed service appeal No.267/2018 in the Honorable Tribunal against the order dated 09.11.2017, whereby the petitioner was dismissed from service. **(Copy of memo of service appeal No.267/2018 is attached as Annexure-A)**
2. The said appeal was heard and decided by this Honorable Service Tribunal on 03.05.2019. The Honorable Service Tribunal partially accepted the appeal of the petitioner, set aside the impugned order and reinstated the petitioner directed the respondent to conduct de-novo


inquiry as per Police Rules, 1975. **(Copy of judgment dated 03.05.20219 is attached as Annexure-B)**

3. That in the compliance of the direction of this Honorable Tribunal given in the judgment dated 03.05.2019, de-novo inquiry was conducted against the petitioner and was again removed from service vide order dated 23.08.2019 against which the petitioner filed departmental appeal which was also rejected on 07.10.2019. **(Copies of order dated 23.08.2019 and order dated 07.10.2019 are attached as Annexure-C&D)**
4. That the petitioner then again filed service appeal No.1524/2019 in the Honorable Tribunal against the order dated 23.08.2019, whereby the petitioner was removed from service and against the order 07.10.2019, whereby his departmental appeal was rejected. **(Copy of memo of service appeal No.1524/2019 is attached as Annexure-E)**
5. That the said appeal was heard and decided by this Honorable Service Tribunal on 05.01.2022. The Honorable Service Tribunal accepted the appeal of the petitioner. The impugned order dated 23.08.2019 and 07.10.2019 were set aside and the petitioner was reinstated into service with all back benefits. **(Copy of judgment dated 05.01.2022 is attached as Annexure-F)**
6. That in pursuance of judgment dated 05.01.2022, the petitioner was reinstated into service by the respondent department vide order dated 04.02.2022, but he has granted back benefits in the shape of salaries/ arrears with effect from 23.08.2019 instead of 09.11.2017 i.e the date on which he was first dismissed from service as the petitioner was dismissed from service on 09.11.2017 against which he filed service appeal No.267/2018 in this Honorable Service Tribunal which was decided 03.05.2019 in which the impugned order was set aside and the petitioner was reinstated into service with the direction of de-novo inquiry. The de-novo inquiry was conducted against the petitioner in which he was again removed from service on which he again filed service appeal No.1524/2019 which was decided on 05.01.2022 in which the impugned order were set aside and the petitioner was reinstated into service with all back benefits which means that the petitioner is entitle for back benefits from the date when he was first dismissed from service i.e 09.11.2017 as petitioner has dismissed on 09.11.2017 and removed on 23.08.2019 from service on the basis of same allegation and both the orders of dismissal and removal order

were set aside by this Honorable. **(Copy of order dated 04.02.2022 is attached as Annexure-G)**

7. That the petitioner was dismissed from service on 09.11.2017 on the basis of criminal case vide FIR 492 U/S 419/420/468/171 PPC /15AA dated 29.07.2017 and the prosecution itself sought discharge the petitioner from FIR on the ground that nothing tangible was proved against the petitioner to connect the petitioner with the commission of offense and upon request of prosecution, the petitioner was discharged from FIR vide order dated 12.10.2017 by the competent court of law, which means that the petitioner has been dismissed from service on 09.11.2017 on presumption basis and nothing has been proved against him and has deprived to perform duty in the department for no fault on his part, therefore, it is the legal right of the petitioner to grant back benefits from the date of his first dismissal from service i.e 09.11.2017 instead of 23.08.2019.
8. That petitioner was first dismissed from service on 09.11.2017 on the basis of some baseless allegation which was set aside by the Honorable Tribunal in its dated 03.05.2019 in appeal No.267/2018 with the direction of de-novo inquiry to the respondent department and after de-novo inquiry the petitioner was again removed from service on 23.08.2019 on the same allegation which means that the order dated 09.11.2017 was merged into order dated 23.08.2019, which was also set aside by the Honorable Tribunal in its judgment dated 05.01.2022 in appeal No.1524/2019, therefore the petitioner is entitle for back benefits from the date i.e 09.11.2017 when he was dismissed from service and not granting back benefits to the petitioner from the date of 09.11.2017 by the respondents after passing the judgment of this Honourable Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
9. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to obey the judgment dated 05.01.2022 of this Honorable Service Tribunal in letter and spirit.
10. That the petitioner has having no other remedy except to file this execution petition for implementation of judgment dated 05.01.2022 of this Honorable Tribunal.

It is, therefore, most humbly prayed that the respondents may kindly be directed grant back benefits from the date of 09.1.2017 instead of 23.08.2019 by fully implementing the judgment dated 05.01.2022 of this Honorable Service Tribunal in letter and spirit. Any other remedy, which this august Service Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.

  
**PETITIONER**  
Niaz Hussain

**THROUGH:**

  
**(TAIMUR ALI KHAN)**  
**ADVOCATE HIGH COURT**

**AFFIDAVIT**

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief.

  
**DEPONENT**



A (5)  
D

**IN THE SERVICE TRIBUNAL ,K.P.K PESHAWAR**

Service Appeal No. 267/2018

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 266

Niaz Hussain S/o Shah Zali Khan R/o Rustam District Mardan Dated 26-2-2018

.....Appellant

**VERSUS**

1. Inspector General of Khyber PukhtoonKhwa, Central Police Officer, Peshawar
  2. Deputy Inspector General of Police CTD KP Peshawar
- .....Respondents

**SERVICE APPEAL U/S 4 OF KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER  
VIDE NO 13146-53/PA DATED 09-11-2017 OF DEPUTY  
INSPECTOR GENERAL OF POLICE CTD KP PESHWAR**

**Prayer in Appeal:**

ON ACCEPATNCE OF THIS APPEAL THE ORDER VIDE NO 13146-53/PA DATED 09-11-2017 OF DEPUTY INSPECTOR GENERAL OF POLICE CTD KP PESHWAR MAY KINDLY BE SETASIDE AND THE APPELLANT MAY GRICIOUSLY BE REINSTATE ON HIS POST WITH ALL BACK BENIFIT.

Filed to-day

Registrar

26/2/18 **Respectfully Sheweth:**

1. That the appellánt was appointed in Police Department in the year 2006.
2. That the appellánt as SHO police station CTD Mardan was performing his services with the entire satisfaction of their high-ups.
3. That the appellánt well performed his duty but he was blamed for the allegations which is as under:
  - charged in the FIR No 492 U/S 419/420/468/471PPC/15AA, Dated 29-07-2017
  - Directing his gunman namely Ishfaq Ullah No.182 received the NCP vehicle from one Haji Hayat Khan for transportation to skhakot.
  - Poor Performance as SHO CTD Mardan.

**(Statement of allegation, Final Show Cause &  
charge sheet is Attached as annexure A, B & C)**

4. That departmental inquiry was initiated against the appellánt; appellánt produced a comprehensive reply before the inquiry officer and forwarded his detailed record of his performance.

**(Copy of reply is Attached as annexure D)**

5. That after conducting the inquiry on said baseless allegation the respondent No 2 passed an impugned Order No.13146-53/PA Dated 09-11-2017 by awarding major punishments, Dismissal from service.

**(Copy of impugned order is attached as annexure E)**

6. That the appellant filed departmental appeal before the respondent no 1 which met no response.

**(Copy of Departmental Appeal is attached as annexure F)**

That being aggrieved from the said orders passed, Approached this Honourable Tribunal on the following Grounds.

**GROUND:**

- A. That the impugned order is illegal, unlawful and against natural justice.  
B. That all the allegations leveled against the appellant due to the above said concocted FIR No 492, that's why the prosecution submitted an application for the discharge of appellant.  
C. That the appellant was not present at the time of occurrence and he was on special duty in charsada on 29-07-2017.

**(Copy of Daily Dairies are Attached as annexure G & H)**

- D. That the appellant was discharge by the Learned Judicial Magistrate Takht Bhai on 12-10-2017. So base of the inquiry was quashed by the Learned Magistrate but this aspect is totally ignored by the respondents and the alleged inquiry so far conducted against the appellant is against the norm of justice.

**(Copy of Discharge Order is Attached as annexure I)**

- E. That the appellant was blamed and charged on the false statement of constable. Ishfaq who was suspended from his post on 4-07-2017 and appellant has no concern with the said constable and there is no evidence available against him except oral allegations.

**(Copy of Daily Dairy is Attached as annexure J)**

- F. That the appellant was serving the department since 2006 and his all service tenure shows that no complaint, neither criminal proceedings nor any departmental inquiry has been conducted against him.

- G. That the impugned order is totally unfair, biased and not according to circumstances of the case in hand.



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- G. That the impugned order is totally unfair, biased and not according to circumstances of the case in hand.
- H. That during course of departmental inquiry neither any evidence was brought against the appellant neither any person was examined to sustain the allegation, nor any opportunity given for cross examination.
- I. That the allegation against appellant is baseless and without any proof but awarding major punishment which is against the basic principles of service rules.
- J. That enquiry officer has not examined even a single witness against the appellant to support the baseless allegation and the alleged inquiry so far conducted against the appellant is against the norm of justice.
- K. That the appellant was not properly adopted the way of inquiry which is unjust and against the law.
- L. That the harsh punishment awarded by respondent is not according to the Law and it is no where mentioned in either police or other service rules..
- M. That the appellant has not been treated in accordance with law as provided and guaranteed under the constitution of 1973.
- N. That any other ground may be forwarded at the time of arguments with the kind permission of this Hon, ble court.

It is therefore humbly prayed that on acceptance of this appeal the order vide no 13146-53/PA Dated 09-11-2017 of deputy inspector general of police CTD KP PESHWAR may kindly be set aside and the appellant may griciously be reinstate on his post with all back benefit.

AND Any other remedy which the court deems fit & proper may also be granted in favour of the petitioner against the respondents with cost.

**Appellant**

Through

  
**RAHMAN ULLAH**

&

  
**ASIM KHAN**

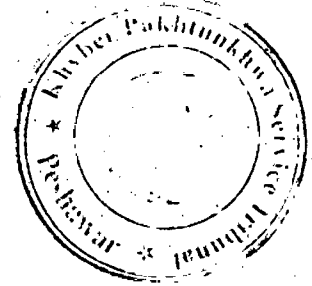
Advocates

B 8

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**SERVICE APPEAL NO. 267/2018**

Date of institution .... 26.02.2018  
Date of judgment .... 03.05.2019



Niaz Hussain S/o Shah Zali Khan  
R/o Rustam District Mardan

... (Appellant)

**VERSUS**

1. Inspector General of Khyber Pakhtunkhwa, Central Police Officer, Peshawar.
  2. Deputy Inspector General of Police CTD Khyber Pakhtunkhwa Peshawar.
- ... (Respondents)

**APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER  
VIDE NO. 13146-53/PA DATED 09.11.2017 OF DEPUTY  
INSPECTOR GENERAL OF POLICE CTD KP PESHAWAR.**

Mr. Rahman Ullah, Advocate.

.. For appellant.

Mr. Riaz Ahmad Paindakhel, Assistant Advocate General

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI  
MR. AHMAD HASSAN

.. MEMBER (JUDICIAL)  
.. MEMBER (EXECUTIVE)

**DISSENTING JUDGMENT**

**MUHAMMAD AMIN KHAN KUNDI, MEMBER: -** Counsel for the

appellant present. Mr. Riaz Ahmad Paindakhel, Assistant Advocate General  
alongwith Mr. Wajid Ali, ASI for the respondents present. Arguments heard  
and record perused.

2. Brief facts of the case as per present service appeal are that the appellant  
was serving in Police Department as Inspector. He was imposed major penalty  
of dismissal from service vide order dated 09.11.2017 by the Deputy Inspector  
General of Police on the allegation

A. B. ...  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

(i) that he was reportedly involved in the transportation and smuggling of Non Custom Paid (NCP) vehicles vide FIR No. 492 under sections 419/420/468/471/171PPC/15AA dated 29.07.2017 PS Lund Khwar District Mardan.

(ii) That on his direction his gunman namely Ishfaq Ali No. 182 received the NCP vehicle from one Haji Hayat Khan r/o Bara Khyber Agency for transportation to Sakhakot.

(iii) That his performance as SHO CTD Mardan remained poor.

The appellant filed departmental appeal before the Inspector General of Khyber Pakhtunkhwa Peshawar on 15.11.2017 which was not responded within the stipulated period hence, the present service appeal on 26.02.2018.

3. Respondents were summoned who contested the appeal by filing of written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving as Inspector in Police Department. It was further contended that the appellant was imposed major penalty of dismissal from service vide order dated 09.11.2017 by the Deputy Inspector General of Police on the aforesaid allegations. It was further contended that the departmental proceeding against the appellant was initiated mainly on the grounds that he was involved in the aforesaid criminal case but the appellant was totally innocent in the said criminal case that is why that the prosecution submitted application for discharge of the appellant in the said criminal case before the competent court which was accepted and the appellant Naiz Hussain was discharged from the aforesaid criminal case vide detailed order dated 12.10.2017 passed by the Judicial Magistrate Takht Bahi. It was further contended that the appellant was serving in Police Department since 2003 but there was not complaint against the appellant nor any criminal proceeding or any departmental proceeding was

*Naiz Hussain*  
3.5.2019

TESTED  
INSPECTOR  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

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initiated till the present departmental proceeding. It was further contended that as per schedule first Police Rules, 1975 the competent authority of Inspector was DPO/SSP but in the present departmental proceeding, charge sheet, statement of allegation and show-cause notice was issued to the appellant by the Deputy Inspector General of Police and the impugned order was also passed by the Deputy Inspector General of Police instead of DPO/SSP therefore, the impugned order is illegal and void. It was further contended that the allegations against the appellant are baseless and without any proof. It was further contended that neither proper inquiry was conducted nor the appellant was associated in the so-called inquiry nor opportunity of cross examination, personal hearing and defence was provided to the appellant therefore, the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside and prayed for acceptance of appeal.

5. On the other hand, learned Assistant Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in Police Department as Inspector. It was further contended that a proper departmental proceeding was initiated against the appellant on the aforesaid allegation. It was further contended that the criminal proceeding has no bearing/effect on the departmental proceeding therefore, the discharge of the appellant from criminal case does not help the appellant in departmental proceeding. It was further contended that proper regular department <sup>al m</sup> proceeding was conducted and after fulfilling all the codal formalities the appellant was rightly imposed major penalty of dismissal from service on the recommendation of inquiry committee report. It was further contended that though charge sheet, statement of allegation and show-cause notice was issued by the Deputy Inspector General of Police and the major penalty was also imposed to the appellant by the Deputy Inspector General of

M. A. Khan  
B.S. 2019

Signature  
Deputy Inspector General of Police  
Services Tribunal

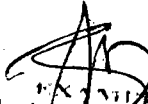
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Police and as per schedule first of Police Rules, 1975 the competent authority of the inspector/appellant was DPO/SSP but the order of higher authority should always be maintained and the impugned order cannot be set-aside only on this ground and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Police Department as Inspector. The record further reveals that departmental proceeding was initiated against the appellant on the aforesaid allegation. The record further reveals that inquiry was conducted by the inquiry committee and the inquiry committee have recorded the statement of witnesses namely Zakir Khan S.I Incharge Chowki Umer Abad, Mazhar Ali ASI I.O case FIR No. 492 under sections 419/420/468/471/171PPC/15AA dated 29.07.2017 PS Lund Khwar District Mardan and Khan Muhammad ASI Muharrar PS CTD Mardan. Copy of the statement of the aforesaid witnesses were also furnished by the representative of the department at the time of arguments which shows that the statements of said witnesses were recorded by the inquiry committee during the inquiry proceeding on 09.08.2017 and 16.08.2017 but the appellant was neither provided opportunity of cross examination nor the statement of witnesses were recorded by the inquiry committee in the presence of the appellant therefore, the appellant was condemned unheard, as opportunity of cross examination to the appellant on the aforesaid witnesses was the fundamental right of the appellant therefore, the inquiry committee has violated the principle of natural justice and the appellant has been deprived from his defence through cross-examination which has rendered the whole proceeding illegal and liable to be set-aside. AS such, we partially accept the appeal, set-aside the impugned order, reinstate the appellant into service with the direction to the respondent-department to conduct de-novo inquiry in the mode and manner prescribed by rules.

M. Khan  
3.5.2019

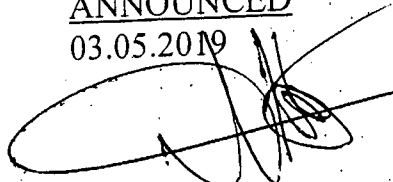
ATTESTED

  
 MEMBER  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

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7. Before parting with the judgment it is observed that since the service appeal has been partially accepted and the department have been directed to conduct de-novo inquiry and as per Police Rules, 1975 first schedule the competent authority to the extent of rank of inspector is DPO/SSP therefore, it would be proper to direct concerned DPO/SSP to issue charge sheet, statement of allegation as well as final show-cause notice and pass order deem appropriate in de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
03.05.2019



(AHMAD HASSAN)  
MEMBER

*Muhammad Amin*  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

*AD*  
Service Tribunal  
Punjab

Site of the institution of the appeal 14-6-22  
 Number of cases 2000  
 Copying fee 22/-  
 Deposit 4/-  
 Total 26/-  
 Date of institution of appeal 14-6-22  
 Date of institution of appeal 14-6-22



OFFICE OF THE,  
DEPUTY INSPECTOR GENERAL OF POLICE,  
COUNTER TERRORISM DEPARTMENT,  
KHYBER PAKHTUNKHWA, PESHAWAR.

C 13  
J.C. 2019

ORDER

In compliance with the Judgment of Honorable Service Tribunal announced in service appeal No 267/2018 and also conveyed by CPO, Peshawar vide his office Endst: No 2706/Legal dated 23.05.2019 so far relates to Ex- Inspector Niaz Hussain of this Unit who has been dismissed from his services on the following allegations vide this office order Endst: No 13146-53/PA dated 09.11.2017:-

- i. That he was reportedly involved in the transportation and smuggling of Non Custom Paid (NCP) Vehicles vide FIR No 492 u/s 419/420/468/471/171 PPC /15AA dated 29.07.2017 PS Lund Khwar District Mardan.
- ii. That on his direction his gunman namely Ashfaq Ali NO 182 received that NCP Vehicle from One Haji Khan r/o Bara Khyber Agency for transportation to Sakhakot.
- iii. That his performance as SHO CTD Mardan remained poor.

In consequence he was proceeded departmentally by issuing him Charge Sheet alongwith summary of allegation vide this office 8709-15/PA dated 01.08.2017 "Dismissal from Services". Later On, he also submitted an appeal before Worthy Inspector General of Police, Khyber Pakhtunkhwa but the appeal was rejected vide this office order Endst: No 3/1066-74/18 dated 22.03.2018.

Feeling aggrieved, the defaulter officer filed service appeal No 267/2018 in Service Tribunal Khyber Pakhtunkhwa. On 03.05.2019 Service Tribunal partial accepted the appeal and announced Judgment wherein it was directed that "the concerned DPO/SSP to issue charge sheet, statement of allegations as well as final show cause notice and pass order deem appropriate in the de novo enquiry"

In consequence upon the judgment of Honorable Service Tribunal, the undersigned perused his previous service record and agreed with the recommendation of the enquiry officer stating therein that "Major Punishment" may be awarded to the said Inspector for keeping such like criminal mind/bad character Constable as gunman, which shows his negligence and lack of supervision on his part.

Now, I SENIOR SUPERINTENDENT OF POLICE, CENTRAL ZONE CTD, PESHAWAR being a competent authority in exercise of the powers vested in me vide Police Rules, 1975 (amendment 2014) is hereby ordered to award him "Major Punishment of Removal from Service".

Encls: 164 Pags

*Attended*  
*[Signature]*

Senior Superintendent of Police,  
CTD, Central Zone,  
Peshawar.

No 1227-28 - IEC/CTD

Dated Peshawar the 23/08/2019

Copy of above is forwarded for information and necessary action to the:-

- i. Worthy Inspector General of Police, Khyber Pakhtunkhwa Peshawar w/r to his office memo No 2686/CPO/IA3/C&E dated 30.07.2019.
- ii. AIG, Legal CPO, Peshawar.

*attended*  
S.I. CTD  
29.08.2019

D 14  
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**ORDER.**

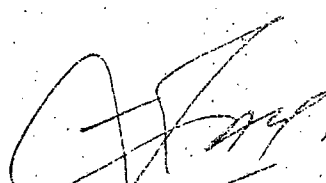
In compliance with the Judgment of Honorable Service Tribunal announced in service appeal No 267/2018, Ex-Inspector Niaz Hussain of this Unit was proceeded departmentally by Senior Superintendent of Police, CTD Central Zone Peshawar vide his office order issued under Endst: No 11227-28/EC dated 23.08.2019 on the following score of allegations that:

- i. He was reportedly involved in the transportation and smuggling of Non Custom Paid (NCP) Vehicles vide FIR No 492 u/s 419/420/468/471/171 PPC 15AA dated 29.07.2017 PS Lund Khwar District Mardan.
- ii. That on his direction his gunman namely Ashfaq Ali No 182 received that NCP Vehicle from One Haji Khan r/o Bara Khyber Agency for transportation to Sakhakot.
- iii. That his performance as SHO CTD Mardan remained poor.

After completion of all codal formalities and perusal of relevant records, Senior Superintendent of Police, CTD Central Zone Peshwar awarded him Major punishment of "REMOVAL FROM SERVICE".

Feeling aggrieved, The appellant Mr. Niaz Hussain Ex-Inspector submitted an appeal for withdrawal of Major Punishment awarded to him. The undersigned gone through the enquiry file / relevant record in detail but his reply / contention was not found satisfactory.

Therefore in exercise of power conferred upon me, I DEPUTY INSPECTOR GENERAL OF POLICE CTD KHYBER PAKHTUNKHWA PESHAWAR, being a competent authority, his appeal is hereby rejected / filed, and the punishment awarded to him shall stand as it is.

  
Deputy Inspector General of Police,  
CTD, Khyber Pakhtunkhwa,  
Peshawar. OIC

56  
No/2853- /EC/CTD

Dated Peshawar the 07/10/2019.

Copy of above is forwarded for information and necessary action to all concerned in CTD Khyber Pakhtunkhwa, Peshawar.

Attended  
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E (15)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR**

**APPEAL NO. 1524 /2019**

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1536

Dated 01-11-2019

Mr. Niaz Hussain, Ex-Inspector (BPS-16),  
Counter Terrorism Department, Mardan Region at Mardan

**APPELLANT**

**VERSUS**

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Deputy Inspector General of Police, CTD, Khyber Pakhtunkhwa Peshawar.
- 3- The Senior Superintendent of Police, CTD, Central Zone, Khyber Pakhtunkhwa, Peshawar.

**RESPONDENTS**

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED  
ORDER DATED 23-08-2019 WHEREBY THE APPELLANT HAS  
BEEN REMOVED FROM SERVICE AND AGAINST THE  
APPELLATE ORDER DATED 07-10-2019 WHEREBY THE  
DEPARTMENTAL APPEAL OF THE APPELLANT IS REGRETTE  
WITH NO GOOD REASONS**

**PRAYER:**

That on acceptance of this appeal the impugned orders dated 23-08-2019 and 07-10-2019 may very kindly be set aside and the appellant may be re-instated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

Filed to-day  
Registrar  
01/11/19

**R/SHEWETH:**

**ON FACTS:**

**Briefs facts giving rise to the present appeal are as follows:-**

- 1) That the appellant while posted as SHO Police Station Counter Terrorism Department, Mardan was charged in the FIR No.492 dated 29-7-2017 U/S 419/420/468/471/171/PPC and 15AA P.S Lund Khwar in an offence not committed by the appellant but was incorporated by his ex: gunman namely Ishfaq Ali. (Copy of the FIR is attached as annexure..... **A**).
- 2) That it is pertinent to mention here that constable Ishfaq Ali No. 182 was suspended through Mad No.9 dated 4-7-2017 by the oral direction of DSP Operation as an inquiry was initiated against

Filed to-day  
13/11/19

Constable Ishfaq Ali. (Copy of the Mad No.9 is attached as annexure.....**B**).

3) That vide order dated 12-10-2017 the Honorable Judicial Magistrate, Takht Bhai discharged the appellant from the above mentioned FIR. (copy of the discharge order is attached as annexure.....**C**).

4) That on the basis of the mentioned FIR a Show cause notice was issued, wherein the following charges were leveled against the appellant.

*i) That he (appellant) is reportedly involved in the transportation and smuggling of Non Custom Paid (NCP) Vehicles vide FIR No. 492 u/s 419-420-468-471-171/PPC/ 15AA, dated 29-07-2017 PS Lund Khwar, Mardan.*

*ii) That on his direction, his gunman namely Ishfaq Ali No.182 received the NCP Vehicle from one Haji Hayat Khan r/o Bara Khyber Agency for Transportation to Sakhakot.*

*iii) That your performance as SHO CTD Mardan remained poor.* (Copy of the show cause notice is attached as annexure.....**D**)

5) That following the show cause notice major penalty of dismissal from service was imposed on the appellant vide order dated 09-11-2017. That feeling aggrieved from the mentioned order the appellant preferred departmental appeal followed by Service Appeal No.267/2018, which was partially accepted and the appellant was reinstated to his service, however, the respondents were directed to conduct de-novo inquiry in to the matter vide judgment dated 3.5.2019. (Copies of the dismissal order, Departmental appeal & judgment is attached as annexure.....**E, F & G**).

6) That in compliance with the judgment of the august Service Tribunal the competent authority initiated De-novo inquiry against the appellant. That an inquiry was initiated in to the matter to dig out the real story and culprits in the matter. (Copies of the charge sheet, statement of allegation and reply attached as annexure ..... **H & I**).

7) That following the inquiry report and recommendations therein astonishingly and surprisingly the competent authority award major punishment of removal from service to the appellant vide order dated 23-08-2019. (Copy of the impugned order dated 23-08-2019 is attached as annexure..... **J**).

8) That feeling aggrieved from the impugned removal order dated 23.08.2019 the appellant preferred Departmental appeal before the Deputy Inspector General of Police, CTD, Khyber Pakhtunkhwa,

Peshawar but the same was rejected vide order dated 07.10.2019. Copy of the departmental appeal and rejection order dated 07.10.2019 are attached as annexure.....K & L).

9) That appellant feeling aggrieved from the impugned orders and having no other remedy preferred the instant appeal on the following grounds amongst others.

**Grounds:**

- A. That the impugned orders dated 23.8.2019 and 07.10.2019 are against the law, facts, rules, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B. That appellant has not been treated by the respondents Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.
- C. That the removal was solely made on the ground of negligence and lack of supervision on the part of appellant but it is pertinent to mention here that negligence is not come within the definition of misconduct; therefore, on the ground of negligence major punishment cannot be awarded. The same view has been laid down by the Supreme Court and High Courts in a number of judgments.
- D. That the appellant was not associated with the inquiry and the whole proceeding is conducted ex-party, therefore the impugned order dated 23.8.2019 and 07.10.2019 are illegal and void ab initio.
- E. That no chance of personal hearing and personal defense has been provided to the appellant and the whole inquiry proceeding is conducted in the absence of the appellant.
- F. That no show cause notice has been served on the appellant prior to the issuance of impugned orders dated 23.8.2019 which is glaring illegality on the part of competent authority.
- G. That no regular inquiry has been conducted in the matter of the appellant, which is as per Supreme Court Judgments is necessary in punitive actions against the Civil servants.
- H. That it is important to mention here that according to the Fundamental Rule-54, where an accused civil servant is acquitted from the charges he shall be re-instated into services. But the most important point in the instant case is that the appellant was discharged from all the allegations leveled in the FIR and the case is not even put in court for regular haring. Hence the whole story in the

(18)

FIR against the appellant was false, Frivols, and baseless. Therefore if there is no case than there should be no departmental punishment.

- I. That the appellant inspite of discharge from the above mentioned FIR has been declared guilty departmentally and has been imposed Major penalty of Removal from service. That this act of the competent authority is the clear violation of the judgments on the point that **"when there is no conviction there would be no Departmental punishment"**.
- J. That in the Denovo proceedings the appellant has been exonerated from the allegations by the inquiry officer but the respondents without taking into consideration the inquiry report and recommendations straight away imposed major penalty of removal from service. Copy of the report is attached as annexure ..... M.
- K. That the impugned order dated 23.8.2019 is based on conjecture and surmises and as such the Department failed to establish any of the allegations leveled against the appellant.

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

**APPELLANT**  
**NIAZ HUSSAIN**  
**THROUGH**  
**NOOR MUHAMMAD KHATTAK**  
**KAMRAN KHAN**  
**&**  
**MIRZAMAN SAFI**  
**ADVOCATES**

F 19

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

**APPEAL NO. 1524 /2019**

Mr. Niaz Hussain, Ex-Inspector (BPS-16),  
Counter Terrorism Department, Mardan Region at Mardan

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1536

Dated 01-11-2019

..... **APPELLANT**

**VERSUS**

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Deputy Inspector General of Police, CTD, Khyber Pakhtunkhwa Peshawar.
- 3- The Senior Superintendent of Police, CTD, Central Zone, Khyber Pakhtunkhwa, Peshawar.

..... **RESPONDENTS**

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 23-08-2019 WHEREBY THE APPELLANT HAS BEEN REMOVED FROM SERVICE AND AGAINST THE APPELLATE ORDER DATED 07-10-2019 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT IS REGRETTED WITH NO GOOD REASONS**

**PRAYER:**

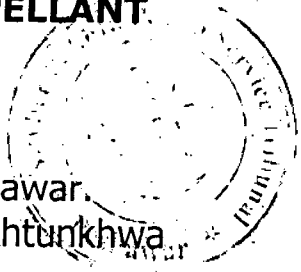
That on acceptance of this appeal the impugned orders dated 23-08-2019 and 07-10-2019 may very kindly be set aside and the appellant may be re-instated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

**R/SHEWETH:**

**ON FACTS:**

**Briefs facts giving rise to the present appeal are as follows:-**

- 1) That the appellant while posted as SHO Police Station Counter Terrorism Department, Mardan was charged in the FIR No.492 dated 29-7-2017 U/S 419/420/468/471/171/PPC and 15AA P.S Lund Khwar in an offence not committed by the appellant but was incorporated by his ex: gunman namely Ishfaq Ali. (Copy of the FIR is attached as annexure..... **A**).
- 2) That it is pertinent to mention here that constable Ishfaq Ali No. 182 was suspended through Mad No.9 dated 4-7-2017 by the oral direction of DSP Operation as an inquiry was initiated against



Filed to-day  
Registrar  
01/11/19

Presented to-day

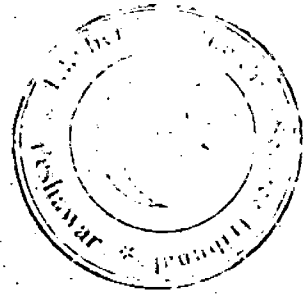
20

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 1524/2019

Date of Institution ... 01.11.2019

Date of Decision ... 05.01.2022



Mr. Niaz Hussain, Ex-Inspector (BPS-16), Counter Terrorism Department, Mardan Region at Mardan. ... (Appellant)

**VERSUS**

The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and two others. ... (Respondents)

Taimur Ali Khan,  
Advocate ... For Appellant

Javed Ullah,  
Assistant Advocate General ... For respondents

**AHMAD SULTAN TAREEN** ... **CHAIRMAN**  
**ATIQ-UR-REHMAN WAZIR** ... **MEMBER (EXECUTIVE)**

*Wh* -----

**JUDGMENT**

**ATIQ-UR-REHMAN WAZIR MEMBER (E):-** Brief facts of the

case are that the appellant while serving as SHO of a police station, was charged in FIR Dated 29-07-2017 U/Ss 419/420/468/471/171PPC/15AA. The appellant was departmentally proceeded against on the same charges and was ultimately dismissed from service vide order dated 09-11-2017. The appellant filed departmental appeal followed by service appeal No 267/2018. This tribunal vide its judgment dated 03-05-2019 re-instated the appellant with direction to the respondents to conduct de-novo inquiry. Because of de-novo proceedings, the appellant was again removed from service vide impugned order dated 23-08-2019. The appellant filed departmental appeal against the impugned order, which was also rejected vide order dated 07-10-2019, but in the meanwhile the

*[Handwritten signature]*  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

appellant was acquitted of the charges by a competent court of law vide order dated 12-10-2017 hence the instant service appeal with prayers that the impugned orders dated 23-08-2019 and 07-10-2019 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned orders are against law, fact and norms of natural justice, hence not tenable and liable to be set aside; that the appellant has not been treated in accordance with law, as such the respondents violated Article-4 and 25 of the Constitution; that the removal was solely made on the ground of negligence and lack of supervision on part of the appellant, but negligence does not come within the definition of misconduct, therefore on the ground of negligence major punishment cannot be awarded; that the appellant was not associated with the process of inquiry and the whole proceedings were conducted ex-parte, therefore the impugned orders are illegal and void ab initio; that no chance of personal hearing and personal defense has been afforded to the appellant and the whole inquiry proceedings were conducted in absence of the appellant; that no show cause notice has been served upon the appellant prior to issuance of the impugned orders; that no regular inquiry has been conducted, which is must before imposition of major penalty of dismissal; that the appellant was discharged from FIR vide judgment dated 12-10-2017, as the whole story of FIR against the appellant was false, frivolous and baseless; that once the appellant was acquitted of the criminal charges, he cannot be penalized for the same charges departmentally; that as per FR-54, where an accused civil servant is acquitted of the charges, he shall be re-instated in service, but the appellant was not treated in accordance with law; that in the de-novo inquiry the appellant has been exonerated from the charges by the inquiry officer, but the respondents without taking into consideration the inquiry report and recommendations, imposed major penalty of removal from service;

W/h

EX-AMINER  
 2023/2024  
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that the impugned order is based on conjecture and surmises, as such the respondents failed to establish any of the charge leveled against the appellant.

03. Learned Assistant Advocate General for the respondents has contended that in pursuance of judgment dated 03-05-2019 of this tribunal, de-novo proceedings were initiated against the appellant and statements of the witnesses were recorded in presence of the appellant and after establishing the charges, the appellant was awarded with appropriate punishment of removal from service vide order dated 23-08-2019; that while conducting inquiry against the appellant, the appellant has been treated in accordance with law with no violation of any right of the appellant nor provision of Constitution; that proper opportunity of defense was afforded to the appellant and the appellant was not left unheard; that proper inquiry to this effect was conducted, where charges leveled against the appellant had been proved and he was found guilty of the misconduct.

04. We have heard learned counsel for the parties and have perused the record.

05. In order to sensitize the respondents about departmental proceedings, it would be expedient to point out some inherent flaws in disciplinary proceedings by police department, where actions are initiated in blatant violation of law and rule. In the instant case, being involved in a criminal case, the respondents were required to suspend the appellant from service under section 16:19 of Police Rules, 1934, which specifically provides for cases of the nature. Provisions of Civil Service Regulations-194-A also supports the same stance, hence the respondents were required to wait for the conclusion of the criminal case, but the respondents hastily initiated departmental proceedings against the appellants and dismissed him from service before conclusion of the criminal case. It is a settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the



same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152. The respondents however did not honor their own rules and dismissed the appellants in violation of rules.

06. The appellant was re-instated for the purpose of de-novo inquiry and because of de-novo proceedings, the appellant was again removed from service inspite of the fact, that he was exonerated of the charges by competent court of law from the same charges, upon which he was proceeded against and was ultimately removed from service. It is pertinent to mention that prosecution itself sought discharge of the appellant from FIR on the ground that nothing tangible was proved against the appellant to connect the appellant with the commission of offense and upon request of prosecution, the appellant was discharged from FIR vide order dated 12-10-2017 by the competent court of law. In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with the authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207, 2002 SCMR 57 and 1993 PLC (CS) 460.

07. As per provisions contained in Section 16:3 of police rules, 1934, the respondents were bound to re-instate the appellant after earning acquittal from the same charges, upon which the appellant was dismissed from service, but the respondents despite his acquittal, removed him from service and did not take into consideration the verdict of the court as well as of Police Rules, 1934. The respondents also violated section-54 of Fundamental Rules by not re-instating the appellant after earning acquittal from the criminal charges. In a manner, the appellant was illegally kept away from performance of his duty. Needless to mention that the charges so leveled are based on presumption as nothing has been proved against the appellant, whereas an accused cannot be convicted on

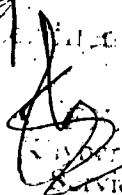
presumptions. Prosecution has to prove the guilt of an accused beyond all reasonable doubt. Reliance is placed on 1991 SCMR 244 and 2002 PLC (CS) 503. Record is silent as to whether any de-novo inquiry was conducted as no inquiry report is available on file to ascertain as to how the appellant was proceeded against. In case of charge of misconduct, a regular inquiry was to be conducted, which had not been done in case of the appellant. In cases of awarding major penalty, a proper inquiry was to be conducted in accordance with law, wherein a full opportunity of defense was to be provided to the civil servant; otherwise, the whole proceedings would be illegal and nullity in the eye of law. Reliance is placed on 2004 SCMR 316. Respondents however cannot absolve themselves from proving the charge beyond any reasonable doubt and the burden shifted to the accused only when the prosecution succeeded in establishing the presumption of guilt. Reliance is placed on 2021 SCMR 408.

08. We are of the considered opinion that the appellants has not been treated in accordance with law and he was illegally kept away from performance of duty as he was acquitted of the same charges by the competent court of law as well as nothing was proved against him departmentally. In view of the foregoing, the instant appeal is accepted. The impugned orders dated 23-08-2019 and 07-10-2019 are set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
05:01.2022

  
(AHMAD SULTAN TAREEN)  
CHAIRMAN

  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (E)

  
Secretary  
Service Tribunal  
Islamabad

Date of Presentation of Application 14-6-22  
Number of Words 2000  
Copying Fee 24/-  
Urgent 4/-  
Total 26/-  
Name of Copyist \_\_\_\_\_  
Date of Completion of Copy 14-6-22  
Date of Delivery of Copy 14-6-22

9/25



DEPUTY INSPECTOR GENERAL OF POLICE,  
CONSTITUTIONAL POLICE DEPARTMENT,  
KHYBER PAKHTUNKHWA, PESHAWAR  
PHONE: 091251919 FAX: 091-9212530,  
No. 2228-237/ACTD Dated: 04.05.2022.

ORDER

In compliance with the judgment of Honorable Service Tribunal announced in subject appeal No. 1524/2019 and also conveyed by CTD, Peshawar vide his office letter No. 2307/2022, in reference to the then Inspector Niaz Hussain of this unit who was re-instated in his office on the following allegations vide this office order Pesh. No. 11144 dated 07.10.2019.

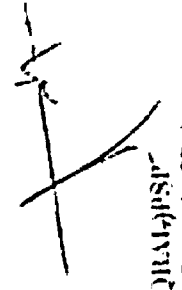
- (i) That you reportedly involved in the transportation and smuggling of Non custom goods (SMT) Vehicles vide FIR No. 492 on 4/9/2016/468/7/171 PPC ISA dated 29.07.2017 PS Lard Khwar District Mardan.
- (ii) That at your direction, your gunman namely Ishaq Ali No. 182 received the NCP Vehicles from one Haji Hayat Khan r/o Harz Khyber Agency for transportation to Sakhakot.
- (iii) That your performance as SMO PS CTD Mardan remained poor.

In consequence he was proceeded departmentally by issuing him charges 84-30 alongwith summary of allegations vide this office No. 8709-13P/ACTD dated 01-05-2017 and after concluding an enquiry he was awarded Major Punishment of "Debarment from service" as per rule. He submitted an appeal before Worthy Inspector General of Police (IG) Khyber Pakhtunkhwa and the appeal was rejected by office order No. S11065-74 dated 23.08.2019. Further updated, the detainee officer filed service appeal No. 2672/015 in Service Tribunal Khyber Pakhtunkhwa on 03-09-2019. Service Tribunal partial accepted the appeal on 12.08.2019 by Senior Superintendents of Police, CTD, Central Zone. He submitted an appeal to Worthy Director, Khyber Pakhtunkhwa, which was also rejected vide order No. 12853-10/ACTD dated 07.10.2019.

In de-novo enquiry he was again recommended for awarding major punishment. However, he was again removed from service vide office order No. 11227-28/ACTD dated 23.08.2019 by Senior Superintendents of Police, CTD, Central Zone. He submitted an appeal to Worthy Director, Khyber Pakhtunkhwa, which was also rejected vide order No. 12853-10/ACTD dated 07.10.2019.

He preferred again service appeal No. 1524/2019 in Service Tribunal Khyber Pakhtunkhwa. On 15-01-2022 Service Tribunal accepted the appeal and announced Judgment wherein it was directed that "The impugned orders dated 23.08.2019 and 07.10.2019 are set aside and the appellant is re-instated in service with all back benefits."

Now I, JAVED IQBAL (PSP) DEPUTY INSPECTOR GENERAL OF POLICE, CTD, KHYBER PAKHTUNKHWA being a competent authority in exercise of the powers vested in me vide Police Rules, 1975 (amendment 2014) is hereby ordered to re-instate in service Mr. Niaz Hussain as Inspector (IPS-16) from the date of his removal from service vide order No. 11227-28/ACTD dated 23.08.2019 with all back benefits.

  
(JAVED IQBAL) PSP  
Deputy Inspector General of Police  
CTD, Khyber Pakhtunkhwa,  
Peshawar.

Ends: Niaz, date even.

- 1. Copy of the above is forwarded to the Inspector General of Police, Khyber Pakhtunkhwa
- 2. Additional, Khyber Pakhtunkhwa vide his office letter No. 632/legal dated 28.01.2022
- 3. Deputy Police Officer, Mardan Region.
- 4. Registrar Service Tribunal Khyber Pakhtunkhwa vide his office Service appeal No. 1524/2019
- 5. All concerned in CTD HQs: Peshawar.

VAKALAT NAMA

NO. \_\_\_\_\_/2022

IN THE COURT OF KP Service Tribunal, Peshawar

Niaz Hussain

(Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Police Deptt.

(Respondent)  
(Defendant)

I/We, Niaz Hussain

Do hereby appoint and constitute *Taimur Ali Khan, Advocate High Court Peshawar*, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated \_\_\_\_\_/2022



(CLIENT)

ACCEPTED



**TAIMUR ALI KHAN**  
*Advocate High Court*  
**BC-10-4240**

**CNIC: 17101-7395544-5**  
**Cell No. 0333-9390916**