19.07.2022

Learned counsel for the petitioner present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Shoukat Hayat, ASI for the respondents present.

Learned Additional Advocate General apprised the court that CPLA has been filed in the august Supreme Court of Pakistan and request made for early hearing. The department is obligated either to get judgement of the Service Tribunal dated 21.10.2021 suspended from the august Supreme Court of Pakistan or conditionally/provisionally implement it subject to the outcome of CPLA. Learned Additional Advocate General is, therefore, directed to consult the respondent department and to come up with proper implementation report on the next date. Adjourned. To come up for implementation report on 21.09.2022-before S.B.

(Mian Muhammad) Member (E) 19th April, 2022

Counsel for the petitioner present. Notices be issued to the respondents for the date fixed. To come up for implementation report on 08.06.2022 before S.B. Original file be also requisitioned.

Chairman

08.06.2022

Nemo for petitioner. Lawyers are on general strike.

Muhammad Riaz Khan Paindakheil learned Assistant Advocate General alongwith Waqar Ahmad ASI for respondents present.

Implementation report was not submitted. Representative of respondents is directed to submit proper implementation report on or before the next date.

Adjourned to 19.07.2022 before S.B.

(Rozina Rehman) Member (J)

Form- A FORM OF ORDER SHEET

ourt of	
Execution Petition No.	53/2022

	E)	xecution Petition No. 53/2022
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	19.01.2022	The execution petition of Mr. Fazal Munir submitted today by Syed Roman Shah Advocate may be entered in the relevant register and put up to the Court for proper order please. REGISTRAR
2-		This execution petition be put up before S. Bench at Peshawar on IRloware.
	18.02.2022	Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 19.04.2022 for the same as before.
		Reader

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BEFORE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR. Execution letition No-53/2022 Ef:

In ref:

Service Appeal No. 481/2019

Dated: 19.01.2022

VERSUS

Provincial Police Officer & Others..... RESPONDENTS

INDEX

S.No	Description of Documents	Annex	Pages
1.	Execution Form		A
2.	Application with affidavit		1-2
3.	Copy of appeal		3-7
4.	Copy of Judgment		8-11
5.	Copy of other documents		
6.	Wakalatnama		12

Through

SYED ROMAN SHAH

Advocate High Court.

BEFORE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,

PESHAWAR.

Execution Petition No.53/222

In ref:

Service Appeal No. 481/2019

Fazal Munir Constable No. 812 of KBI Staff, Karak......APPLICANT

VERSUS

- 1. Provincial Police Officer/ Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2. Deputy Inspector General of Police, Kohat region, Kohat.
- 3. Superintendent of Police, investigation wing, Karak.

APPLICATION FOR DIRECTING RESPONDENTS TO IMPLEMENT THE ORDER JUDGMENT DATED: 21.10.2021 OF THIS HONORABLE TRIBUNAL IN THE ABOVE NOTED APPEAL.

Respectfully Sheweth:

- 1. That the above noted appeal has been decided by this Honorable Tribunal on 21.10.2021 in favor of applicant.
- 2. That the appeal of the applicant has been accepted and the respondents were directed to treat the intervening period of the applicant on duty with the consequential benefits.
- 3. That applicant time and again approaches for implementation of order of this Honorable Tribunal but in vein.

- nt has no other option but to approach this
- 4. That the applicant has no other option but to approach this Honorable Tribunal for the implementation of order dated: 21.10.2021.
- 5. That there is no bar in filing of this application and the application as well within time.
- 6. That the respondents are time and again assuring applicant that they are processing the case of the applicant but so far no progress has been made, hence the present execution petition before this Honorable Tribunal.

It is therefore, most humbly prayed that by accepting of this application the respondents may please be directed to implement order of this Honorable Tribunal dated: 21.10.2021 and to punish the respondents for defiance of this Honorable Tribunal order dated: 21.10.2021.

Through

Dated: 19.01.2022

SYED ROMAN SHAH
Advocate High Court.

AFFIDAVIT

I, **Fazal Munir** Constable No. 812 of KBI Staff, Karak., do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

DEPONENT

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 481 /2019

Fazal Munir Constable No. 812 of KBI staff Karak

Diary No. 600
Daniel Daniel

Khyho

Versus

 Provincial Police Officer/ Inspector General of Police Khyber Pakhtunkhwa, Peshawar

2. Deputy Inspector General of Police Kohat Region, Kok

- 3. Superintendent of Police, Investigation Wing Karak

4. Government of Khyber Pakhtunkhwa through

Chief Secretary, Peshawar

.Respondents

APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 18/01/2019 PASSED BY RESPONDENT NO. 2 BY WHICH THE DEPARTMENTAL APPEAL OF PETITIONER WAS ACCEPTED BUT THE INTERVENING PERIOD WAS TREATED AS UNAUTHORIZED LEAVE WITHOUT PAY AND AGAINST THE ORDER DATED 21/03/2019 OF RESPONDENT NO. 1 BY WHICH THE PETITION OF APPELLANT HAS BEEN REJECTED BEING TIME BARRED FOR 14 DAYS

PRAYER

Filedto-day

Registrar

10 | 4 | 19

On accepting this service appeal, the impugned order dated 18/01/2019 passed by respondent No. 2 to the extend of punishment of intervening period being treated as unauthorized leave without pay may please be set aside alongwith order dated 21/03/2019 passed by respondent No. 1, by declaring it illegal, void, unlawful, without authority, based on mala fide, void abinitio and thus not sustainable to the extend of punishment and the appellant is entitled for all back benefits of pay and service.

Respectfully Sheweth;

That appellant was serving in the police department as constable and has rendered satisfactory service in the Department and performed his duties with full zeal and enthusiasm.



- 2. That respondent No. 3 issued a charged sheet to the appellant and after enquiry final show cause notice was issued to him which was properly replied. (Copies of attached as Annexure A & B)
- 3. That respondent No. 3 without taking into consideration the plausible reply awarded major punishment of dismissal from service of appellant vide order dated 27/09/2016. (Copy of the order is attached as Annexure C)
 - 4. That appellant filed departmental appeal against the impugned order before worthy respondent No. 2 who vide order dated 18/01/2019 accepted the appeal of appellant but the intervening period was treated as unauthorized leave without pay. (Copy of the representation and impugned order are attached as Annexure D and E)
 - 5. That appellant filed review petition before the learned respondent No. 1 who vide order dated 21/03/2019 rejected the same being barred by time, hence, the petitioner feeling aggrieved from the above orders, to the extend of unauthorized leave without pay, filling this appeal on the following amongst other grounds inter. (Copy of review petition and order are attached as Annexure F and G)

GROUNDS:

- a. That both the impugned orders of the respondents are illegal, unlawful, without authority, based on mala fide intention, void abinitio, against the nature justice, in violation of the Constitution mandate and Service Law and equally with out jurisdiction, thus untenable in the eyes of law and is liable to be set aside.
- b. That the impugned orders passed by respondents to the extend of unauthorized leave without pay are very much harsh, without any evidence based on surmises & conjectures and is equally against the principle of natural justice.



- That petitioner after lodging of FIR applied for ad interim bail and therefore, on 15/08/2016 submitted his arrival for resuming duty but respondent No. 3 denied arrival report of petitioner and continued ex-parte departmental proceeding against petitioner.
- d. That at the mean time the ad-interim bail petition of the petitioner was dismissed and he was arrested and thereafter the circumstances were beyond his control to join the duty.
- e. That appellant has been allowed to join duty vide Naqal Mad No. 15 Roznamcha dated 08/09/2016 but when he appeared before the court for confirmation of his BBA the same was cancelled vide order dated 17/09/2016 he was taken into custody, thus thereafter he was not in a position to perform his duty but later on he was acquitted from the charges vide order dated 07/06/2018. keeping in view the acquittal order the learned respondent No. 2 was kind enough to accept the appeal of petitioner by re-instated him on service but the intervening period was treated as leave without pay which is totally against the circumstance of the case.
- f. That learned appellate authority wrongly treated the intervening period as unauthorized leave without pay. The non joining of duties was beyond the control of petitioner on two count i.e Firstly respondent No. 3 did not allow petitioner for joining duties and secondly petitioner remained under detention in judicial lock-up therefore, the benefits of intervening period has wrongly been denied to petitioner.
- g. That the learned respondent No. 2 was kind enough that he accepted departmental appeal of petitioner but denied the grant of benefits of the intervening period to the petitioner. The learned appellate authority did not take into factor of compulsory outsmart of petitioner.

h. That petitioner belong to poor family and managed payment of expenses of defending the murder charges for some time, therefore, with holding of benefits of the intervening period amounts to adding salt to the burning injuries of petitioner.

ATTESTED

EXAMINER

ON DOT PARKING TOWN



- i. That the petitioner was not provided with copy of judgment on time and thus the delay calculated in the impugned order/judgment in revision is against the law of limitation and hence the decision was based upon technicalities rather on the merit of the case and thus liable to be set-aside.
- j. That valuable rights of petitioner were involved with the case and the learned respondent No. 1 without deciding the case on merit, simply rejected the same being time barred which totally against the norms of justice. Superior courts also stresses on merit rather on technicalities.
- k. That from the very beginning the stance of petitioner was that he has been charged in the criminal case falsely and now the petitioner has been acquitted from the charges leveled against him which is sufficient proof of his innocence and on the basis of the same petitioner has been re-instated on service but he has been denied his back benefits which is totally against the natural justice.
- 1. That the appellate authority has transgress the powers granted by the rules by imposing a penalty in arbitrary exercise of the jurisdiction vested in appellate authority under the law and thus the order passed by the appellate authority is void, illegal, irregular and against the principles of natural justice.
- m. That the punishment awarded to the appellant is illegal, against the rules and regulations, as such type of punishment has not been prescribed anywhere by the rules.
- n. That petitioner was absolved of both the criminal and departmental charge therefore, petitioner is entitled for grant of benefits of intervening period.
- o. That petitioner came to know regarding the order dated 18-01-2019 on 25-01-2019 when the office call him and accordingly he joined his duties, as no belt number was allotted to him therefore, he filed review/revision petition on 22-2-2019, which is well within time from the date of knowledge and receipt of copy of order i.e on 25/01/2019 but that aspect of the case has wrongly been decided without taking into consideration the circumstances mentioned above.



That the learned respondent has not taken into consideration that the rules under which the appellant has been charged are not applicable on him.

It is, therefore, most humbly prayed that by accepting this service appeal, the impugned order dated 18/01/2019 passed by respondent No. 2 to the extend of punishment of intervening period being treated as unauthorized leave without pay may please be set aside alongwith order dated 21/03/2019 passed by respondent No. 1, by declaring it illegal, void, unlawful, without authority, based on mala fide, void abinitio and thus not sustainable to the extend of punishment and the appellant is entitled for all back benefits of pay and service.

Any other relief not specifically prayed for but deem appropriate in the circumstances of the case may also be granted.

Appellant

Through

Dated: 10/04/2019

Shahid Qayum Khattak Advocate, Supreme Court of Pakistan

Certified that as per instruction of my client no such appeal has been filed before this Hon'ble Forum.

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<u>Affidavit</u>

I, do hereby solemnly affirm and declare on Oath that the contents of the above appeal are true and correct to the best of my knowledge and belief and nothing has been kept secret from this $1.0~{\rm APR}~2019$

Hon'ble Tribunal.

Deponent

1



BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Service Appeal No. 481/2019

Date of Institution

... 10.04.2019

Date of Decision

... 21.10.2021

Fazal Munir Constable No. 812 of KBI Staff Karak.

(Appellant)

<u>VERSUS</u>

Provincial Police Officer/Inspector General of Police Khyber Pakhtunkhwa, Peshawar and three others.

(Respondents)

MR. SHAHID QAYUM KHATTAK,

Advocate

- For appellant.

MR. MUHAMMAD ADEEL BUTT,

Additional Advocate General

For respondents.

MR. AHMAD SULTAN TAREEN

MR. SALAH-UD-DIN

CHAIRMAN

MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

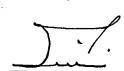
Precise facts as gleaning from the record are that the appellant was serving as constable, who was proceeded against departmentally on the allegations that he was charged in case FIR No. 232 dated 07.02.2016 under section 302/34 PPC Police Station Yaqoob Khan Shaheed District Karak and that he also absented himself from lawful duty. The inquiry against the appellant culminated in his dismissal from service vide order dated 27.09.2016 passed by the competent Authority. The appellant challenged the same through filing of departmental appeal, which was decided vide order dated



18.01.2019, whereby the appellant was reinstated in service, however the intervening period was treated as unauthorized leave without pay. The appellant being aggrieved of the aforementioned order to the extent of treating of the intervening period as unauthorized leave without pay, challenged the same through filing of review, however the same was filed on the ground that it was time barred by 14 days. The appellant has now approached this Tribunal through filing of the instant service appeal for redressal of his grievance.

- 2. Notices were issued to the respondents, who submitted their reply/comments, wherein they refuted the contention of the appellant.
- 3. Learned counsel for the appellant has argued that the appellant did not remain absent from duty and whole of the proceedings were conducted at his back, without affording him any opportunity of personal hearing or self defense; that the appellant was falsely charged in the criminal case and was ultimately acquitted by the learned trial court on 07.06.2018; that in view of acquittal of the appellant, the appellant is entitled to all back benefits, therefore, the impugned order to the extent of treating the intervening period as unauthorized leave without pay is wrong and illegal, hence liable to be setaside to that extent.
- 4. On the other hand, learned Additional Advocate General for the respondents has argued that after involvement in the criminal case, the appellant had willfully absented himself from duty, therefore, disciplinary action was rightly taken against him; that the appellant did not perform any duty during the intervening period, therefore, on the basis of no work no pay, the said period has rightly been considered as unauthorized leave without pay; that the appeal of the appellant is barred by time and is liable to be dismissed with cost.





- 5. We have heard the arguments of learned counsel for the appellant as well as learned Additional Advocate General for the respondents and have perused the record.
- A perusal of the record would show that disciplinary action was taken against the appellant on the allegations that he was involved in a criminal case and had absented himself from lawful duty with effect from 05.05.2016 and that he was reportedly remained absconder. FIR of the concerned criminal case was registered on 07.05.2016 and the disciplinary proceedings were initiated against the appellant 03.06.2016, which culminated in dismissal of the appellant from service vide order dated 27.09.2016 passed by the competent Authority. Copy of Mad No. 15 dated 08.09.2016 would show that the appellant had made his arrival in Police Line Karak and this fact has also been mentioned by the competent Authority in the impugned order dated 27.09.2016. The competent Authority has mentioned in the impugned order dated 27.09.2016 that the Bail Before Arrest of the appellant was recalled on 17.09.2016 and he was sent to District Jail Karak, which means that the appellant was admittedly in Jail, however it is astonishing that the competent Authority has mentioned in the impugned order that the appellant again absented himself from duty with effect from 17.09.2016. The competent Authority was well aware of the fact that the appellant was in jail, however he was treated as absent from duty, which is not justifiable on any legal touchstone. Moreover, It is also evident from copy of Mad No. 19 dated 17.09.2016 that the appellant was already under suspension at the time of recalling of his Bail Before Arrest application. The appellant remained in custody and was ultimately acquitted vide judgment dated 07.06.2018.
- 7. It is evident from the record that the appellant was under suspension and after dismissal of his Bail Before Arrest application, the appellant remained in custody till his acquittal on 07.06.2018. No cogent and convincing material is available on the record to justify the allegations against the appellant





regarding his willful absence, therefore, the appellate Authority was not justified in treating the intervening period as unauthorized leave without pay.

In view of the foregoing discussion, the appeal in hand is allowed. The impugned orders dated 18.01.2019 21.03.2019 are modified to the extent that during the intervening period, the appellant shall be treated as on duty with all consequential benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED 21.10.2021

MEMBER (JUDICIAL)

(AHMAD SULTAN TAREEN) CHAIRMAN

دعوى 7.7. مقرركر برا تراركيا جاتا ہے۔ كەماحب موصوف كومقدمه كىكل كارداكى كاكامل اختيار ، وكا_ نيز 4 کیل صاحب کوراضی نامه کرنے وتقرر الت و فیعله برحلف دسیتے جواب دہی اورا تبال دعوی اور السورت ذا كرى كرفي اجراءاورصولي چيك وروبييار عرضي دعوى اور درخواست برتم كي تقيدين زرای پردستخدا کرانے کا اختیار موگا۔ نیز صورت عدم بیروی یا فرکری میطرفه یا بیل کی برامد کی اور منسوخی نیز دائر کرنے اپیل محکرانی ونظر ٹانی دبیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ ذکور ككل ياجزوى كاروائى كواسط اوروكيل يامخارقا نونى كواييع بمراه ياايين بباع تقرر كااختيار موكا _اورمهاحب مقرر شده كوبعي واي جمله ندكوره بااختيارات حاصل مول كاوراس كاساخت برواختدمنظورتبول موكا _دوران مقدمهين جوخر چدد مرجاندالتوائي مقدمه كسبب عدوكا کوئی تارج بیشی مقام دورہ پر بویا حدید باہر موتو و کیل صاحب پابند ہوں کے۔ کہ بیروی فدكوركر مي البداوكالت نام لكهديا كرمندرب_

25 to 198

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
No. $E.P.No.$ 13
Appeal No. F. 63 al Min'y of 20.
JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR. 22 Appeal No. F. 3 Appeal No. F. 3 Appeal No. F. 3 Appeal No. F. 3 Appeal No. F. 4 Contains No. Appellant/Petitioner Versus (22)
(2) Respondent
DIG of Police Resplantation Region
Notice to: —
WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhw Province Service Tribunal Act, 1974, has been presented/registered for consideration, it the above tase by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribuna *on
Copy of appeal is attached. Copy of appeal has already been sent to you vide thi
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The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays. Always quote Case No. While making any correspondence.

Peshawar.

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESIIAWAR.

'JUDICIAL COMPLEX (OLD), KHYBER ROAD.

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Province Service the above case by hereby informed *on	S an appeal/petition e Tribunal Act, 1974, le the petitioner in this of that the said appear at 1 appear at 1 appear at 1 appear at 2 appear at 2 appearance on the decided and decided an	has been per Court and I/petition .00 A.M. Into do so on the error of the date on which yate fixed	oresented/notice hat is fixed for the date f	registered for consistence to been ordered to be hearing before to urge anything fixed, or any other rised representative, therefore, request a copies of writted lease also take negatives.	sideration, in issue. You are the Tribunal g against the day to which ive or by any aired to file in otice that in
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Khyber Pakhtunkhwa Service Tribunal, Peshawar.

2. Always quote Case No. While making any correspondence.

^{1.} The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD,

PESHAWAR.

No. SB
Appeal No. 6 10
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Appellant/Petitioner
Versus
Respondent
PPOTEGY ICPK PESHAWAY
Respondent No
WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province to: Whereas an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act 1974 has been presented/registered for consideration, in
WHENEAS - Letter hours the provision of the Khyher Pakhtunkhwa
Province Service Tribunal Act, 1974, has been presented/registered for consideration, in
the above case by the petitioner in this Court and notice has been ordered to issue. You are
hereby informed that the said appeal/petition is fixed for hearing before the Tribunal
*on
the case may be postponed either in person or by authorised representative or by any
Advocate, duly supported by your power of Attorney. You are, therefore, required to file in
this Court at least seven days before the date of hearing 4 copies of written statement
alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the
appeal/petition will be heard and decided in your absence.
Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your
address. If you fail to furnish such address your address contained in this notice which the
address given in the appeal/petition will be deemed to be your correct address, and further
notice posted to this address by registered post will be deemed sufficient for the purpose of
this appeal/petition.
Copy of Eppeal is attached. Copy of appeal has already been sent to you vide this
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Day of20 .
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Registrar, Registrar,
Khyber Pakhtunkhwa Service Tribunal,

The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.

2. Always quote Case No. While making any correspondence.

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR. JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR. No. Chief Sey Gost of KPK Notice to: WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby information is fixed for hearing before the Tribunal *on......at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence. Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition! Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No......dated......dated Given under my hand and the seal of this Court, at Peshawar this.....

. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.

Khyber Pakhtunkhwa Service Tribunal, Peshawar.

2. Always quote Case No. While making any correspondence.

Note: