

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1172/2013

Date of Institution ... 31.07.2013

Date of Decision ... 07.12.2018

Noor Hussain S/o Juma Khan, R/o House No. 113/3 Kassi Mohallah, Saddar Bazar,  
Nowshera Cantt. Presently House No. 1365, Damudar Street, Nowshera Cantt.

... (Appellant)

VERSUS

1. Govt: of Khyber Pakhtunkhwa through Secretary, Establishment Department,  
Civil Secretariat, Peshawar and another. ... (Respondents)

MR. INAYAT ULLAH KHAN,  
Advocate

--- For appellant.

MR. MUHAMMAD JAN  
Deputy District Attorney

--- For respondents.

MR. AHMAD HASSAN,  
MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER(Executive)  
--- MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.-

This judgment shall dispose of the instant service appeal as well as connected service appeal no. 1225/2013 titled Noor Hussain as similar question of law and facts are involved therein.

2. Arguments of the learned counsel for the parties heard and record perused.

FACTS

3. The appellant was awarded major penalty of dismissal from service vide impugned order dated 21.05.2013. Feeling aggrieved, he filed departmental appeal on 11.06.2013 which was rejected on 15.07.2013 received by him on 22.07.2013, hence, the present service appeal.

### ARGUMENTS

4. Learned counsel for the appellant argued that he was arrested by NAB on 31.08.2006 and remained in jail upto 01.08.2007. He was placed under suspension w.e.f 31.8.2006 by the respondents. The appellant remained in that position till <sup>1.8.2007</sup> ~~21.05.2013~~. Thereafter on the orders of Peshawar High Court, Peshawar he was released on bail. That after conclusion of trial by the Accountability Court he was awarded four months. R.I alongwith fine on Rs.5000/- He filed an appeal in Peshawar High Court which was dismissed vide judgment dated 18.05.2016. Against the above judgment of Peshawar High Court, Peshawar dated 18.05.2016 he filed criminal appeal no. 457/2017 in the august Supreme Court of Pakistan which was accepted vide judgment dated 30.05.2018. Not only order of the Peshawar High Court was set aside, but he was acquitted of the charges giving him benefit of doubt. After having been acquittal of the charges impugned dismissal order dated 24.05.2013 lost its utility/validity. He deserved to be reinstated in service with all back benefits. That the impugned order passed by respondent no 1 (Secretary Establishment) was *corum-non-judice*, as respondent no.2 (Chief Secretary) was the competent authority in this case. Despite the fact his criminal appeal was pending in Peshawar High Court and without waiting of its outcome major penalty was awarded to him. Reliance was placed on case law reported as 2012 PLC (CS)502, 2002 SCMR 57, 2003 SCMR 215 and PLJ 2012 T.r.C (Service) 6. Learned counsel for the appellant stressed on the last judgment referred to above as circumstances of both the cases were similar.
5. On the other hand learned Deputy District Attorney argued that the appellant had concealed his conviction by the Accountability Court vide judgment dated 29.01.2010.

Upon getting knowledge respondents rightly dismissed him from service. The Peshawar High Court had not suspended the judgment of the Accountability Court so action of the respondents was intandum with the laid down rules. Moreover, Secretary Establishment was the competent authority for employees up to BPs-15 and at the time of imposition of penalty the appellant was in BPS-15. At the end he requested that the appeal may be dismissed.

### CONCLUSION

6. On the charges of some underhand dealing in preparation of fake/bogus arms licenses, the appellant was arrested by NAB on 31.08.2006. He was placed under suspension by the respondents from 31.08.2006. On acceptance of his bail application by the Peshawar High Court, Peshawar, he was released from jail on 01.08.2007. After conclusion of trail by the Accountability Court, he was sentenced to four months R.I alongwith fine of Rs. 5000/-. Order of the Accountability Court was assailed through an appeal in Peshawar High Court but was dismissed. He was dismissed from service vide impugned order dated 24.05.2013. Subsequently, criminal appeal no. <sup>457/2017</sup>~~589/2002~~ filed in the august Supreme Court of Pakistan was accepted vide judgment dated 30.05.2018. Judgment of the Peshawar High Court was set aside and the appellant acquitted of the charges. The charge on the basis of which major penalty of dismissal from service was imposed on him was no more in the field. Appellant has a sound case for reinstatement in service. Attention is invited to case law reported as PLJ 2012 T.r.C (Services) 6 relied upon by the learned counsel for the appellant. In this Case a former DMG Officer was awarded 10 years R.I by the Accountability Court. He was also awarded penalty of dismissal from service on the basis of conviction by the Accountability Court. Later on the said officer was acquitted of the charge by the august Supreme Court of Pakistan. Charge on which penalty of dismissal from service was awarded to the civil servant was

automatically set aside when there was no conviction there was no dismissal from service. Directions were given to the respondents to reinstate him and grant all the back benefits. Both the cases are similar in nature:

7. The appellant has also filed service appeal no. 1225/2013 against the impugned order dated 11.06.2013, where-under he was directed to return subsistence drawn by him for the period from 29.01.2010 to 30.11.201<sup>2</sup><sub>3</sub>. The contention of the respondents was that he had concealed his conviction by the Accountability Court vide order dated 29.01.2010 and continued to draw salary/subsistence allowance upto 21.05.2013. It is not disputed that he remained suspended from service upto 21.05.2013 and received subsistence allowance under F.R 53. On acceptance of service appeal no 1172/2013 and withdrawal of impugned order dated 21.05.2013, he shall be deemed to have been reinstated in service w.e.f. 29.01.2010. In these circumstances, it would unjust to recover the salaries already received/drawn by the appellant.

8. As a sequel to above, the appeal is accepted, impugned order dated 21.05.2013 is set aside and the appellant is reinstated in service. The intervening period may be treated as leave of the kind due. Resultantly impugned order dated 11.06.2013 and 22.07.2013 are also set aside. Parties are left to bear their own costs. File be consigned to the record room.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

  
(AHMAD HASSAN)  
MEMBER

ANNOUNCED  
07.12.2018

Order

07.12.2018


Counsel for the appellant present. Mr. M. Saleem, Supdt alongwith Mr. Muhammad Jan, DDA for respondents and present. Arguments heard and record perused.

Vide detailed judgment of today of this Tribunal placed on file, the appeal is accepted, impugned order dated 21.05.2013 is set aside and the appellant is reinstated in service. The intervening period may be treated as leave of the kind due. Resultantly impugned order dated 11.06.2013 and 22.07.2013 are also set aside. Parties are left to bear their own cost. File be consigned to the record room.

Announced:  
07.12.2018



(Ahmad Hassan)  
Member



(Muhammad Amin Khan Kundi)  
Member

24.10.2018

Due to retirement of Hon'ble Chairman, the Tribunal is incomplete. Therefore, the case is adjourned. To come up for the same on 08.11.2018.

  
Reader

08.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 05.12.2018.

  
READER

05.12.2018

Counsel for the appellant present. Mr. M. Saleem, Supdt alongwith Mr. Muhammad Jan, DDA for respondents present. Arguments heard. Case to come up for order on 07.12.2018 before D.B.

Order

(Ahmad Hassan)  
Member

  
(M.Amin Khan Kundi)  
Member

07.12.2018

Appellant with counsel present. Mr. Muhammad Jan, DDA for respondents and present. Arguments heard and record perused.

Vide detailed judgment of today of this Tribunal placed on file, the appeal is accepted, impugned order dated 21.05.2013 is set aside and the appellant is reinstated in service ~~with all back benefits~~. Resultantly impugned order dated 11.06.2013 and 22.07.2013 are also set aside. Parties are left to bear their own cost. File be consigned to the record room.

Announced:  
07.12.2018


(Ahmad Hassan)  
Member

(Muhammad Amin Khan Kundi)  
Member

17.07.2018

Appellant in person present. Mr. Inayat Ullah Khan, Advocate present and submitted Wakalat Nama on behalf of the appellant. Mr. Muhammad Jan, Deputy District Attorney for respondents present. Arguments heard. To come up for order on 19.07.2018 before D.B.

(Ahmad Hassan)  
Member

  
(Muhammad Hamid Mughal)  
Member


20.07.2018

Due to engagement of the undersigned in judicial proceeding before S.B further proceeding in the case in hand could not be conducted. To come on 06.08.2018 <sup>before</sup> D.B

  
Member (J)

06.09.2018

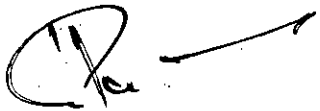
Bench incomplete. To come up for order on 25.09.2018 before proper bench.

  
Reader

25.09.2018

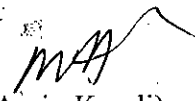
Mr. Muhammad Jan learned Deputy District Attorney present. Due to non-constitution of proper bench at the proper stages, further proceedings in the case in hand could not be conducted. Adjourn. Now to come up for arguments on 24.10.2018 before D.B.

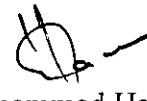
  
(Hussain Shah)  
Member

  
(Muhammad Hamid Mughal)  
Member

02.02.2018

Appellant in person present. Mr. Zia Ullah, Learned Deputy District Attorney for the respondents present. Appellant seeks adjournment as his counsel is not available. Adjourned. To come up for arguments on 03.04.2018 Before D.B.

  
(Muhammad Amin Kundi)  
MEMBER

  
(Muhammad Hamid Mughal)  
MEMBER

03.04.2018


Learned counsel for the appellant and Mr. Kabir Ullah Khattak, learned Additional Advocate General for respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 28.05.2018 before D.B.

  
(Ahmad Hassan)  
Member

  
(Muhammad Hamid Mughal)  
Member

28.05.2018

Counsel for the appellant and Addl: AG for respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 23.07.2018 before D.B.

  
(Muhammad Hamid Mughal)  
Member

10.07.2018

Appellant Noor Hussain in person present and submitted an application for early hearing instead of 23.07.2018. Request being genuine is allowed. Case to come up for arguments on 17.7.2018 instead of 23.07.2018. Notices be issued to the respondents.

  
Chairman



14.03.2017

Petitioner in person and Addl. AG for respondents present. Office is directed to requisition main appeal from the record and this restoration application may be clubbed with the main appeal. To come up for further proceedings on 26.05.2017.

  
(AHMAD HASSAN)  
MEMER

26.05.2017


Counsel for the petitioner present. Arguments on application for restoration of appeal heard and case file perused. Through instant petition the petitioner has prayed for setting aside order dated 09.02.2017 vide which the appeal of the present petitioner was dismissed due to non prosecution.

Since the instant application has been filed well within time, hence the appeal be restored and be fixed for its previous proceedings on 21.07.2017 before S.B.

  
(AHMAD HASSAN)  
MEMER

21.07.2017

Petitioner in person present. Mr. Muhamamd Adeel Butt, Additional AG for the respondent present. The present appeal may be fixed before Learned D.B/arguments on 24.11.2017 before S.B.

  
(Muhammad Hamid Mughal)  
Member

24.11.2017

Learned Counsel for the appellant present. Mr Muhammad Jan, Learned Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 02.02.2018 before D.B.

  
(Gul Zeb Khan)  
MEMBER




  
(MUHAMMAD HAMID MUGHAL)  
MEMBER

Form- A

FORM OF ORDER SHEET

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

Appeal's Restoration Application No. 27/2017

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	14.02.2017	<p>The application for restoration of appeal No. 1172/2013 submitted by Mr. Noor Hussain through Muhammad Asif Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	15-2-2017	<p>This restoration application is entrusted to S. Bench to be put up there on <u>22-2-2017</u>.</p> <p style="text-align: right;"> MEMBER</p>
	22.02.2017	<p>Clerk to counsel for the petitioner and Addl. AG for respondents present. Clerk to counsel for the petitioner requested for adjournment due to general strike of the bar. Request accepted. To come up for further proceedings on 14.03.2017 before S.B.</p> <p style="text-align: right;"> (MUHAMMAD AAMIR NAZIR) MEMBER</p>

①

BEFORE SERVICE TRIBUNAL, KPK, PESHAWAR.

*Restoration Application NO-27/2017*

C.M.A.No. \_\_\_\_\_/2017

IN

Appeal No.1172/2013

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 114

Dated 14-2-17

Noor Hussain s/o Juma Khan

R/o House No.113/3 Kassi Mohallah, Saddar Bazar,

Nowshera Cantt.....Petitioner

Versus

- 1) Govt. of KPK through Secretary Establishment Department, Civil Secretariat, Peshawar.
- 2) Govt. of KPK through Chief Secretary, Civil Secretariat, Peshawar.
- 3) Govt. of KPK through ~~Chief~~ Secretary Elementary and Secondary Education Department, Civil Secretariat, Peshawar..... Respondents

APPLICATION FOR RESTORATION OF  
APPEAL DISMISSED IN DEFAULT ON  
09.02.2017.

***Respectfully Sheweth;***


Applicant/ appellant submits as under:

- 1) That the above noted appeal was fixed for 09.02.2017 which was dismissed for non-prosecution.
- 2) That applicant/ appellant is a diabetic patient and on 09.02.2017 when was coming to attend the court, became unconscious in the bus and was deboarded from the bus near Pabbi and thus could not attend the hon'ble court.

- 3) That in Pabbi applicant/ appellant was taken to the chemist shop by the people present there who gave some medicine to the applicant.
- 4) That after some recovery the applicant/ appellant went back to house/ Nowshera because applicant/ appellant was not able to travel further.
- 5) That on the other hand, counsel for the applicant/ appellant has not received the notice for 09.02.2017 while on the 20.01.2017 applicant/ appellant requested for fixing both the appeals on 26.05.2017 and counsel has noted the date 26.05.2017 and thus could not appear on the date fixed.
- 6) That absence of the applicant/ appellant is not willful but is due to the reason mentioned above.

It is, therefore, requested that by accepting the application the order dated 09.02.2017 may kindly be set aside and the appeal after restoring may kindly be decided on merits.

Applicant/ appellant

Through   
Muhammad Asif  
Advocate Supreme Court

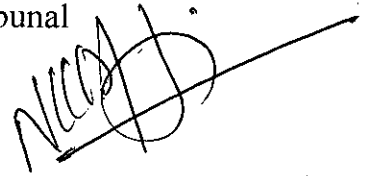
BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,  
PESHAWAR.

S.A.No1172/2013

Noor Hussain ..... V/S ..... Govt. of KPK and others

AFFIDAVIT

I, Noor Hussain son of Juma Khan R/O House No.1365, Damodar, Street, Nowshera Cantt (petitioner), do hereby affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal



Deponent

CNIC No.17201-2307235-9

S. M. J. Khan  
14-2-2013

Oath Commissioner  
Eid Muhammad Khattak (ASC)  
License No.961/14-4-2014  
Peshawar High Court Peshawar  
CNIC: 17301-7401834-5

Appeal No. 1172/2013

09.02.2017

4



None present for appellant. Asst: AG for respondents present. The court time is about to over but non-appeared on behalf of the appellant nor the appellant was present in person despite issuance of the notice to appellant and his counsel; therefore, the instant appeal is hereby dismissed in default. File be consigned to the record room.

*Sd/- M. Amir Nazir,*  
Member

ANNOUNCED:  
09.02.2017

*Sd/- Ashfaqul Taj,*  
Member

Certified to be true copy  
EXPLAINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 10-02-17  
Number of Words 500  
Copying Fee 500  
Urgent Yes  
Total 500  
Name of Copyist AWD  
Date of Completion of Copy 10-02-17  
Date of Delivery of Copy 10-02-17

BEFORE THE CHAIRMAN KHYBER PAKHTUNKHW

SERVICE TRIBUNAL, PESHAWAR



Appeal no. 1172/13

1193  
29/7/13

Noor Hussain S/o Juma Khan

R/o House No.113/3 Kassi Mohallah, Saddar Bazar, Nowshera Cantt.

.....Petitioner

Versus

1. Govt. of KPK through Secretary, Establishment Department, Civil Secretariat, Peshawar.
2. Govt. of KPK through Chief Secretary, Civil Secretariat, Peshawar.
3. Govt. of KPK through Secretary, Elementary and Secondary Education Department, Civil Secretariat, Peshawar.

..... Respondent

Appeal u/s 4 of the NWFP Service Tribunal Act, whereby Departmental Appeal filed on 11.06.2013 by the appellant against the dismissal, has been regretted on 15.07.2013 received by appellant on 22.07.2013 through which vide order dated 21.05.2013 issued by respondent No.1 the appellant has been dismissed from service by imposing major penalty of dismissal from service with effect from the date of his conviction by National Accountability Court-I, Peshawar on 29.01.2010.

29/7/13

**ATTESTED**  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

6  
2

Prayer:

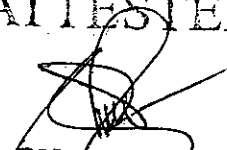
*On accepting this appeal, the order dated 21.05.2013 and 15.07.2013 may kindly be cancelled and the appellant be reinstated in service with all back benefits.*

*Respectfully Submitted:*

The appellant humbly submits as under:-

1. That appellant joined the service in the year 1984 as steno-typist on adhoc basis in Information Department, Civil Secretariat, Peshawar.
2. That in the year 1985 the services of the appellant was regularized on passing of departmental examination and was posted in Home Department as Steno-typist (BPS-12). (Copy of Regularization is Annexure "A")
3. That in the year 1996 the appellant was transferred to the department of Auqaf, Hajj, Religious and Minority, Civil Secretary, Peshawar.
4. That in the year 2004 on the basis of Departmental Promotion, Appellant was promoted from BPS-12 to BPS-15 and was posted/ transferred in Elementary and Secondary Education, Civil Secretariat, Peshawar as Stenographer. (Copy of order is Annexure "B")
5. That on 31.08.2006 the appellant was arrested by NAB authorities in a concocted case. However, prior to arrest appellant use to attend the office of NAB on their orders.
6. That appellant remained in jail till 01.08.2007 when the appellant was released on bail by the Hon'ble Peshawar High Court, Peshawar.

ATTESTED

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar



- (7)
7. That after release of bail appellant moved an application to the department on 25.08.2007, which was referred to Law Department through Establishment Department (Photocopy of the letter is Annexure "C")
  8. That on the advice of law department, appellant was not reinstated in service till the court proceedings are terminated against him. (Photocopy of the Advice is Annexure "D")
  9. That on the other hand after conclusion of the trial, appellant was convicted and sentenced to 4 months R.I. and fine of Rs.5000/-.
  10. That appellant filed an appeal in the hon'ble Peshawar High Court, Peshawar, which was admitted for full hearing and is still pending and the next date of hearing is fixed as 11.09.2013. (Annex "E")
  11. That till 21.05.2013 appellant remained suspended when all of a sudden the appellant received the termination/dismissal order on 24.05.2013. (Copy of order is attached as Annex "F")
  12. That appellant filed the Departmental Appeal on 11.06.2013 and the appellant was informed through letter dated 15.07.2013 received by appellant on 22.07.2013 with the following reply

*"and to inform you that your appeal has been  
regretted by the competent authority"*

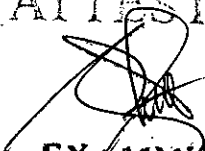
(Copy of the departmental appeal is Annex "G" while the reply is Annex "H")

13. That aggrieved with, appellant has come before this Tribunal for setting aside the orders of respondents on the following grounds.

### GROUNDS

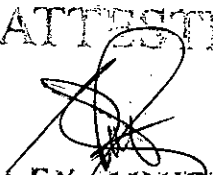
- A. That order dated 21.05.2013 issued by Secretary Establishment is against law and facts. Hence, untenable in the eyes of law.

ATTESTED

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

- (6)  
(8)
- B. That the Secretary Establishment failed to appreciate the real point involved in the case in its true perspective. Hence, has arrived at an incorrect conclusion.
- C. That Secretary Establishment by issuing the dismissal order has violated the terms and conditions of service as well as service laws and rules.
- D. That respondents failed to appreciate the fact that appellant has been dismissed from service by respondent No.1, while the under the law respondent No.2 is the competent authority to pass any such order and thus the dismissal order issued by respondent No.1 is illegal.
- E. That as the criminal appeal of the appellant has not yet been decided by the Hon'ble Peshawar High Court, Peshawar therefore, during the pendency of the appeal, the dismissal order is totally illegal and cannot be relied on.
- F. That it is very strange that on 08.11.2012 through their letter respondent No.1 ordered the appellant to join the duty (Annex "I") on which appellant submitted his arrival report (Annex "J").
- G. That prior to the issuance of dismissal order appellant has neither been served/ informed nor was personally heard and thus has acted illegally.
- H. That the appellant has served the department approximately 27/28 years without any complaint to superiors.
- I. That appellant is a poor man and has to support the family in these hard days.
- J. That the decision/ order of dismissal dated 21.05.2013 and 15.07.2013 are perversant against the settled principle of law and justice and as such is liable to be set aside.

ATTESTED

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

It is therefore, requested that on acceptance of this appeal, the impugned order dated 15.07.2013 passed on Departmental Appeal issued may kindly be modified to the extent that the appellant may kindly be reinstated in service with all back benefits.

*[Handwritten Signature]*

Appellants

Through

*[Handwritten Signature]*

Muhammad Asif  
Advocate, Peshawar

Certified to be true copy

*[Stamp]*  
Khalid Khan  
Services Tribunal,  
Peshawar

10-02-17

Date of Presentation of Copy \_\_\_\_\_

Number of Words 2050

Copying Fee 12/-

Urgent 2/-

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Name of Copyist *[Signature]*

Date of Completion of Copy 10-02-17

Date of Delivery of Copy 10-02-17

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 2411 /ST

Dated 19/12/2018

To

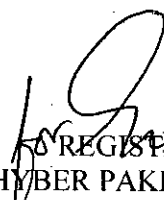
The Secretary Establishment Department,  
Government of Khyber Pakhtunkhwa,  
Peshawar.

Subject: -

JUDGMENT IN APPEAL NO. 1172/2013, MR. NOOR HUSSAIN.

I am directed to forward herewith a certified copy of Judgement dated 10.12.2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.

**WAKALATNAMA**  
(Power of Attorney)

BEFORE THE SERVICES TRIBUNAL KPK., PESHAWAR.

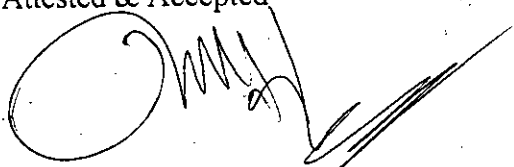
.....Noor Hussain.....  
(Petitioner)  
(Plaintiff)  
(Applicant)  
(Appellant)  
(Complainant)  
(Decree Holder)

.....Court of ISPK and others.....  
VERSUS  
(Respondent)  
(Defendant)  
(Accused)  
(Judgment Debtor)

I/ We, Noor Hussain So jumma Ishaq

House No 1365 Pandar Street Nowshera in the above  
noted Appeal-1172/13 do hereby appoint and constitute **Inayat Ullah  
Khan** Advocate Peshawar to appear, plead, act, compromise, withdraw or refer  
to arbitration for me/ us as my/ our Counsel in the above noted matter, without  
any liability for that default and with the authority to engage/ appoint any other  
Advocate/ Counsel at my/ our matter.

Attested & Accepted



**Inayat Ullah Khan**  
Advocate High Court, Peshawar.  
LL.M (UK)  
House No.460 Street No.12,  
E/4, Phase-VII, Hayatabad Peshawar.  
Cell: 0333-9227736

  
CLIENT

16/7/2018

16/7/2018