27.06.2022 Learned Member (Executive), is on leave. Therefore, the case is adjourned to 15.08.2022 for the same as before.

READER

15.08.2022 Learned counsel for the petiitone present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Shah Rawan, Superintendent and Mr. Bakht Wali Shah, Assistant for the respondents present.

Departmental representative produced a copy of the office order bearing No. 1635-39/DSJ/Buner dated 25.06.2022 whereby the petitioner has been reinstated in service conditionally subject to the outcome of CPLA. Copy of the office order is placed on file and the same also provided to learned counsel for the petitioner. Learned counsel for the petitioner, however, has some reservations on implementation/order which he intents to submit on the next date. Adjourned. To come up for objections on 03.10.2022 before S.B.

(Mian Muhammad)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 212 /2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	13.04.2022	The execution petition of Mr. Zubair Ahmad submitted today by Syed Noman Ali Bukhari Advocate may be entered in the relevant register and put up to the Court for proper order please. REGISTRAR
2-	14/4/22	This execution petition be put up before to Single Bench at Peshawar on 25-05-2022. Original file be requisitioned. Notices to the appellant and his counsel be also issued for the date fixed. Notices be also issued to the Respondents for I/P CHAIRMAN

25th May, 2022

Counsel for the petitioner present. Mr. Kabeer Ullah Khattak, AAG alongwith Shah Rawan, Suptd, Session Court, Buner and Bakht Wali Shah, Assistant for respondents present.

Representative of respondents submitted that though the respondents had filed CPLA before august Supreme Court of Pakistan, yet they will submit conditional order subject to the result of the CPLA on the next date. To come up for implementation report on 27.06.2022 before SB.

(Kalim Arshad Khan)
Chairman

OFFICE OF DISTRICT & SESSIONS JUDGE/ZILLA QAZI, BUNER

E-mail: dsjbuner@yahoo.com
Ph:+92-939-510434
Fax:+92-939-512162

No. ——— /DSJ, Buner

Dated at Buner the ———

OFFICE ORDER

In pursuance of the Judgment dated 25.01.2022, passed by the Khyber Pakhtunkhwa Service Tribunal Peshawar, in **Service Appeal No.41/2016** titled " Zubair Ahmad Vs Registrar, Peshawar High Court, Peshawar & DSJ, Buner and subsequent letter No.9368/Admn dated 06.06.2022 of the Hon'ble Peshawar High Court, Peshawar, **Mr. Zubair Ahmad, is reinstated into service as Senior Clerk, with immediate effect,** subject to final decision of the Hon'ble Apex Court in the pending CPLA.

(Haq Nawaz)
District & Sessions Judge/ZQ,
Buner at Daggar.

No. 1635-39 /DSJ/Buner Dated Daggar the, 25/06 /2022.

Copy forwarded for information to:

1) The worthy Registrar, Peshawar High Court, Peshawar w/r to their good self letter referred above.
2) The worthy Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
3) The learned Senior Civil Judge (Admn) Buner.
4) The District Accounts Officer, Buner.
5) Mr. Zubair Ahmad, Senior Clerk.
6) Office copy for record.

District & Sessions Judge/ZQ,
Buner at Daggar.
District & Session Judge
Zilla Qazi
Buner at Daggar.

BEFORE THE KHYBER PAKHTUNKHWASERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 212 /2022

In

Appeal No. 41 /2016

Zubair Ahmad VERSUS Judiciary

1.	Memo of Execution	1 – 2
2.	Copy of Service Tribunal Judgment	3 – 12
3.	Wakalat Nama	13

Dated: 13/03/2022

Appellant

Through

Syed Noman Ali Bukhari

&

UZMA Syed

(1)

BEFORE THE KHYBER PAKHTUNKHWASERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. _____/2022
In
Appeal No. 41 /2016

Zubair Ahmad S/o Nisar Ahmad R/o Khat Killi Tangi, Tehsil Tangi District Charsadda, Ex- Reader/Senior Clerk, of the Establishment of respondent.

..... Appellant

Versus

1. The appellate Judge through Registrar, Peshawar High Court Peshawar.
2. District and Session Judge Buner at Daggar.

RESPONDENTS

.....

EXECUTION PETITION FOR DIRECTING THE RESPONDENTS TO IMPLEMENT THE JUDGMENT DATED: 25/01/2022 OF THIS HONOURABLE TRIBUNAL IN LETTER AND SPIRIT.

.....

Respectfully Sheweth:

1. That the appellant/Petitioner filed Service Appeal No.41/2016 before this Hon' able Tribunal which has been accepted by this Hon' able Tribunal vide Judgment dated 25/01/2022 which was accepted and the impugned order dated 06/08/2011 and 16/11/2015 are set aside and the appellant is reinstated in service with all back benefits. (Copy of the Judgment is attached as Annexure-A).

2. That the Petitioner after getting of the attested copy approached the respondents several times for implementation of the above mention Judgment and properly moved an application to respondent Department. However they using delaying and reluctant to implement the Judgment of this Hon' able Tribunal.

3. That the Petitioner has no other option but to file the instant petition for implementation of the Judgment of this Hon' able Tribunal.

4. That the respondent Department is bound to obey the order of this Hon' able Tribunal by implementing the said Judgment.

It is therefore requested that on acceptance of this Petition the respondents may kindly be directed to implement the Judgment dated 25/01/2022 of this Hon' able Tribunal.

Appellant/Petitioner

Through

Syed Noman Ali Bukhari

&

Uzma Syed Advocates
High Court Peshawar

(1) (3)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 41 /2016

Amended Appeal

Zubair Ahmad S/O Nisar Ahmad R/O Khat Killi Tangi,
Tehsil Tangi District Charsadda, Ex-Reader/Senior Clerk,
Of the Establishment Of Respondents.....**(Appellant)**

VERSUS

1. The Appellate Judge through Registrar, Peshawar High Court Peshawar.
2. District and session Judge Buner at Daggar.

.....
(Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED ~~02.12~~ 16-11.2015 WHEREBY THE DEPARTMENTAL APPEAL OF APPELLANT AGAINST THE ORDER OF COMPULSORILY RETIREMENT DATED. 06.08.2011 HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

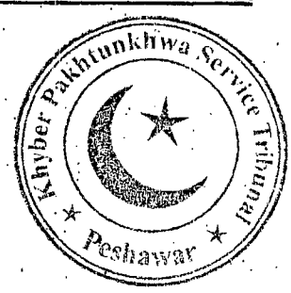
THAT ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 16.12.2015 AND 06.08.2011 MAY BE SET ASIDE AND THE APPELLANT MAY BE RE-INSTATED IN SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER, REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND PROPER THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

ATTESTED

EXAMINER

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR



Service Appeal No. 41/2016

Date of Institution ... 19.02.2016

Date of Decision ... 25.01.2022

Zubair Ahmad S/O Nisar Ahmad R/O Khat Killi Tangi, Tehsil Tangi District Charsadda, Ex-Reader/Senior Clerk, of the Establishment of Respondents.

... (Appellant)

VERSUS

The appellate judge through Registrar, Peshawar High Court Peshawar and one another.

... (Respondents)

Syed Noman Ali Bukhari,
Advocate ... For Appellant

Asif Masood Ali Shah,
Deputy District Attorney ... For respondents

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

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant while serving as Reader/Senior Clerk in district judiciary, was proceeded against on the charges of misconduct and was ultimately awarded with major penalty of compulsory retirement from service vide order dated 06-08-2011. Feeling aggrieved the appellant filed departmental appeal dated 24-10-2011, which was rejected vide judgment dated 16-11-2015, hence the instant service appeal with prayers that the impugned order dated 06-08-2011 and 16-11-2015 may be set aside and the appellant may be re-instated in service with all back benefits.

ATTESTED

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Service Tribunal
Peshawar

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2. Learned counsel for the appellant has contended that the impugned orders are against law, fact and norms of natural justice, therefore liable to be set aside; that the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated; that the order dated 06-08-2011 had been issued with retrospective effect, which as per verdict of the apex court could not legally be done, therefore the order is not tenable in the eye of law and liable to be set at naught; that the appellant has not been connected with the charges, rather the evidence on both the inquiry files suggests that the appellant has not committed any negligence in performance of his duty; that the appellant has not sent any threatening messages to the Civil Judge, nor misbehaved with him and the charges so leveled against the appellant are frivolous and not based on facts; that other charges of corruption, missing of court management file and the case file of Muhammad Saleem Vs Bakht Ferosh etc were not proved, so remarks given by civil judge-1 in the ACR for the year 2010 of the appellant has automatically washed out as the same allegations in the complaint and remarks in the ACR for the year 2010 were based on malafide; that no data from concerned mobile company regarding alleged receipt of messages to the cell number of civil judge-1 and his steno were obtained and placed on inquiry file, hence remain unproved, even the phone owner was not called for inquiry despite the application of appellant, which caused grave miscarriage of justice; that the opinion/ recommendations of the inquiry officer and authorized officer and making it ground for imposing major penalty of compulsory retirement from service by the respondents in the impugned order with regard to absence of appellant from duty with effect from 07-12-2010 to 20-12-2010 are also not in accordance with rules of medical leave, as such impugned order/ judgment to this effect is not tenable; that malafide of the respondents is also evident from the fact that the he was not the authority of appellant, still his explanations were called regarding his absence, thus acted beyond his powers and on this score alone, the impugned orders being void ab initio is liable to be set aside; that the respondents altogether ignore the

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factum of the appellant illness and the appellant was suspended from service during inquiry proceedings; that the appellant fell ill due to severe fever, the appellant applied for three days leave, which was allowed to the appellant and the appellant being resident of Charsada, went to his home, where his fever turned in typhoid, which is evident from record and the appellant was advised bed rest for fourteen days with effect from 07-12-2010 to 20-12-2010, but his illness was ignored by the respondents; that statement of the superintendent of session court Buner would reveal that the appellant had fulfilled the requirement for the grant of medical leave, still his application for medical leave was not allowed by predecessor of the respondent, thus impugned order is nullity in the eye of law; that no proper procedure has been followed before awarding major punishment of compulsory retirement, as no proper inquiry has been conducted, the appellant have not been properly associated with the inquiry proceedings, statement of witnesses if any were never recorded in presence of the appellant nor opportunity was afforded to the appellant to cross-examine such witnesses, thus the proceedings so conducted are defective in the eye of law; that the appeliant have not been afforded fair opportunity of personal hearing, thus the appellant have been condemned unheard; that the appellant have never committed any act or omission with bad or malafide intentions which could be termed as misconduct, albeit the appellant have been awarded penalty; that the appellant have seventeen years spotless service at his credit and the penalty so awarded is harsh; that the appellant was victimized due to personal grudge of the civil judge for no fault of him.

03. Learned Deputy District Attorney for the respondents has contended that the appellant was posted as reader with civil judge-1 Buner; that during his posting, he misbehaved with the said judicial officer; that the appellant was also in the habit of absenting himself from his official duty and a complaint was made by the then civil judge to the then district & session judge, who called his explanation,

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but reply so furnished by the appellant was not found satisfactory and he ordered inquiry into the allegations; that Additional District & Session Judge-1 was appointed as authorized officer, who charge sheeted the appellant and statement of allegation was served upon him and senior civil judge was appointed as inquiry officer, who conducted inquiry and sent his inquiry report to the authorized officer; that the authorized officer concurred with the recommendations of the inquiry officer and recommended imposition of major penalty within the meaning of Rule-4(1)(B) of E&D Rules, 1973; that the District & Session Judge transferred the appellant from the court of Civil Judge-1 to his own office and on assumption of charge, the appellant again started absenting himself on one pretext or the other; that his explanation was called time and again; that the appellant submitted medical prescriptions advising the appellant for bed rest, however there was no application with any of the medical prescription; that the appellant was advised to appear before a standing medical board, however the appellant did not comply with the orders and willfully defied the same; that the inquiry officer recommended the appellant for imposition of major penalty within the meanings of rules ibid, to which the authorized officer also agreed; that the appellant remained indulged in maligning integrity of the judicial officers by sending text messages and past history of the appellant is reflective of frequent departmental inquiries and disciplinary actions taken against him, some even conveyed to Peshawar high court; that the appellant remained a permanent headache for the whole local set up throughout his service career and he paid no heed to his official responsibilities, absented himself from official duty unabated on one pretext or the other and his overall conduct was totally unbecoming of a responsible official; that due to his least interest in his job and contemptuous behavior toward his colleagues and superiors, no judicial officer would accept him for duty; that as a result of the above mentioned two fold departmental proceedings and concurrent recommendations of the inquiry officer and authorized officer in both the above cases and taking a lenient view, the official was compulsory retired from service.

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

05. Record reveals that the appellant was posted as Reader with Civil Judge-1 Buner and while performing his duty as reader, the tussle between him and the civil judge erupted on the issue of misplacement of court management file, upon which the civil judge abused the appellant in court and ordered him to get out of court. Record would suggest that such misplaced file was later on found somewhere else but differences between them went worst when the appellant submitted a complaint against the behavior of civil judge-1 to the District & Session judge on 24-09-2010. In retaliation, the civil judge-1 also submitted a complaint against the appellant on 02-10-2010 to the district & session judge followed by another letter dated 17-02-2010 complaining against the misbehavior of the appellant. Since disciplinary proceedings were already in progress against the appellant on first complaint dated 02-10-2010 of the civil judge-1, hence his second complaint was also referred to the authorized officer i.e. the additional district & session judge, who was made authorized by the district & session judge to proceed against the appellant. No heed was paid upon the complaint of the appellant, but while considering the complaint of the civil judge-1, the appellant was suspended from service vide order dated 20-12-2010 and charge sheet/statement of allegation was served upon the appellant on 03-01-2011, whereupon he was charged on account of absence from duty with effect from 07-12-2010 to 20-12-2010 and his salary was also stopped vide order dated 18-01-2011. The appellant responded to the charge sheet vide letter dated 11-01-2011 supported with medical prescription and bed rest advised by doctor with pleadings that he was suffering from typhoid and was unable to attend to his duty with a further stance that the appellant had already submitted leave application to the concerned office alongwith his medical prescriptions. Placed on record is statement of Mr. Shah Rawan, Superintendent Session Court Buner, which would testify the

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submission of his leave application in time alongwith his medical prescription for bed rest for the mentioned period of absence. To this effect, the inquiry so conducted by senior civil judge submitted its report on 10-02-2011 and contents of the report would reveal that stance of the appellant regarding his illness was not accepted and his absence was termed as gross misconduct and negligence.

06. The appellant was also issued another charge sheet on the same date i.e. 03-01-2011 containing the allegations of misplacement of court management file, misbehavior with the civil judge-1, disobedience, absence from duty and corruption, to which also the appellant responded vide letter dated 11-01-2011 denying all the allegations. Another inquiry to this effect was also conducted on the above allegations and the inquiry officer submitted its report on 18-02-2011. Perusal of the inquiry report would suggest that the appellant was exonerated of rest of the charges and he was held guilty only for misbehavior.

07. In pursuance of the both the inquiry proceedings undertaken simultaneously, the authorized officer i.e. additional district & session judge recommended the appellant for major penalty of removal from service vide his report submitted on 01-03-2011 and based on such report, final show cause notice was served upon the appellant on 11-03-2011 and he was ultimately awarded with major punishment of compulsory retirement from service with effect from 12-06-2011 vide order dated 06-08-2011. We have noticed that the disciplinary proceedings were initiated against the appellant upon annoyance of the civil judge-1, who was his immediate boss and such annoyance turned into a personal grudge, when the appellant enraged the civil judge-1 by submitting a complaint against him to the district & session judge regarding his disgrace in open court by the civil judge concerned, hence the whole proceedings in the first place, can be termed as vengeance inflicted in retaliation having no value in the eye of law and on this score alone, the impugned orders are liable to be set at naught. Record reveals that after the occurrence, the appellant was subjected to disciplinary

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proceedings on different accounts at a time, his salary was stopped as well as he was suspended from service. In a manner, he was bombarded with penalties before due legal process was taken, which smacks malafide on part of the respondents. The appellant was served with two charge sheet/statement of allegations and two inquiries were conducted against him, but both the inquiries were found to be fact-finding inquires, where the appellant was not associated with proceedings of the inquiry, nor he was afforded opportunity of defense, whereas the Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

08. In both the inquires statement of witnesses have been recorded but not in presence of the appellant nor the appellant had been afforded opportunity to cross-examine such witnesses, skipping a mandatory step in disciplinary proceedings as prescribed in law, thus deprived the appellant of his lawful right, which was not warranted by law. Reliance was placed on 2002 SCMR 433, 2012 PLC (CS) 728 and 1997 S C M R 1073. In both the inquiries, amongst so many allegations leveled against the appellant, only the allegation of misbehavior and absence was stated to be proved. The allegation of misbehavior is factual in nature, for which another inquiry was required to be conducted to prove such charges, but statement of the complainant being civil judge was considered enough, which however was not warranted. In case of absence, the appellant had already submitted his application alongwith medical prescriptions and bed rest, which is evident from statement of the superintendent of session court placed on record and denial of leave on medical grounds shows malafide on part of the

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respondents as leave on medical grounds cannot be refused as per leave rules, even otherwise absence on medical grounds without permission of the competent authority does not constitute an act of gross misconduct entailing major penalty. Reliance is placed on 2008 SCMR 214. Since the respondents were in a blind fury, hence constituted a medical board for verification of his medical prescriptions and his check up to ascertain genuineness of his claim. It is very rare that upon submission of medical prescription for grant of leave on medical grounds, the appellant is subjected to appear before a medical board and in the instant case; his referral to the medical board is based on malafide, as referring him to medical board was not expedient. The medical board submitted its report on 17-01-2011, which was signed only by a medical officer and which was objected by the appellant, hence another letter dated 03-02-2011 was manipulated, which was signed by three members, which raises suspicion that respondents were bent upon removing the appellant from service at any cost, which however was not warranted.

09. Additional District & Session Judge, in the capacity as authorized officer, after perusal of both the inquiry reports, had submitted his report to the authority with recommendation of award of major penalty upon the appellant and the authority vide order dated 06-08-2011 awarded major punishment of compulsory retirement upon the appellant. Perusal of the impugned order would reveal that since the misconduct was not so grave, which could justify imposition of major penalty, hence in order to justify their stance, the respondents had projected the appellant with a tainted past, whereas on the strength of PLJ 2005 Tr.C (Services) 107 and PLJ 2016 Tr.C. (Services) 324, it cannot be made a ground for awarding penalty to a government servant. Purpose of deterrent punishment is not only to maintain balance with the gravity of wrong done by a person but also to make an example for others as a preventive measure for reformation of society. Concept of minor penalty in law was to make an attempt to reform the individual wrong doer.

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In service matter, extreme penalty for minor act depriving a person from right of earning would defeat the reformatory concept of punishment in administration of justice. Reliance is placed on 2006 S C M R 60.

10. We are of the considered opinion that the appellant was not treated in accordance with law and was unlawfully awarded with major punishment of compulsory retirement from service in a revengeful manner, which however was not warranted. The charges of misbehavior and sending threatening messages to civil judge-1 were not proved against the appellant by the inquiry officer and so was the allegation of absence, which was neither so long nor willful, it however was noted that leave on medical grounds was initially granted for three days by the civil judge-1 but later on, when the tussle escalated, the remaining leave was refused. All the actions of respondents were based on malafide only to penalize the appellant for lodging complaint against him to the district & session judge and it can easily be inferred that disciplinary proceedings against the appellant were based on personal grudge, which was not warranted. In view of the situation, the instant appeal is accepted. The impugned orders dated 06-08-2011 and 16-11-2015 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
25.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

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

Certified to be ture copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 11-04-2022
Number of Words 400
Copying Fee 4/-
Urgent 4/-
Total 4/-
Name of Copyist
Date of Completion of Copy 11-04-2022
Date of Delivery of Copy 11-04-2022

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR.

S.B

No. E.P.No. 212/22

In *Appeal No.* 41 *of 2016*.

Regd

.....Zubair Ahmad.....*Appellant/Petitioner*

Versus

The Appellate Judge through Registrar Peshawar High Court, *Respondent*

Respondent No. 2

Notice to: Distt: and Session Judge Buner at Daggar.

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 informed that the said appeal/petition is fixed for hearing before the Tribunal *on.....25/5/2022.....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 E/P ✓ **is attached. ~~Copy of appeal has already been sent to you vide this~~ office Notice No.....dated.....**

Given under my hand and the seal of this Court, at Peshawar this..... 21th

Day of..... April **.....20**22

(Implementation Report)

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. 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.

R.2

E.P. No 212/22

Jubon, Ahmed

Rafiq

The Appellate Judge through Registrar The High Court.

First and Session Judge Court of Daggar.

28/2/2022

E/L

21th

April 22

(Implementation Report)