

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 530/2014

Date of Institution ... 21.03.2014

Date of Decision ... 25.07.2017

Tehseen Ullah, Ex-Constable No.220 Platoon No.31,
Elite Force Mardan, ... (Appellant)

VERSUS

The Commandant Elite Force, Khyber Pakhtunkhwa and 2 others.
... (Respondents)

MR. BASHIR AHMAD SAFI,
Advocate --- For appellant.

MR. MUHAMMAD JAN,
Deputy District Attorney ... For respondents.

MR. AHMAD HASSAN, ... MEMBER(Executive)
MR. MUHAMMAD HAMID MUGHAL ... MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The brief facts are that the present appeal has been filed under Section-4 Khyber Pakhtunkhwa Service Tribunal Act, 1974 read with Rule-19 of the Khyber Pakhtunkhwa Efficiency and Disciplinary Rules, 2011 against the final order dated 19.02.2014 of respondent no.1 passed on the departmental appeal of the appellant. On the charges of stealing Rs. 6000/- from the kit box of Alamzeb, Constable disciplinary proceedings were initiated and upon culmination major penalty of removal from service was imposed on him vide impugned order dated 17.01.2011.

ARGUMENTS

3. Learned counsel for the appellant argued that disciplinary proceedings were initiated against the appellant for stealing Rs. 6000/- and upon conclusion, major penalty of removal from service was imposed vide impugned order dated 17.01.2014. Enquiry proceedings were not conducted in the mode and manner prescribed in the rules. Enquiry report annexed with the comments of the respondents appears to be fact finding, as it was concluded on 08.10.2013, while charge sheet/summary of allegations were signed on 21.10.2013. Show cause notice being a necessary requirement of disciplinary proceedings was not served on the appellant. Punishment awarded is not according to the quantum of guilt/charges leveled against him and is very harsh.

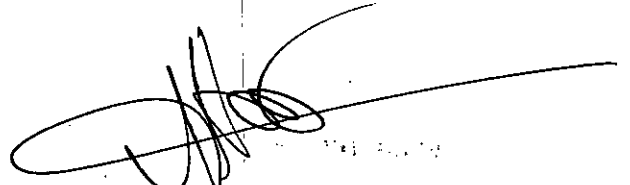
4. On the other hand the Learned Deputy District Attorney contended that the appellant admitted the charge leveled against him in the reply to the charge sheet/summary of allegations. All codal formalities were completed before imposing penalty on the appellant.

CONCLUSION.

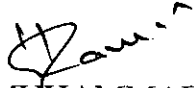
5. Having gone through the record, it transpired that required formalities for awarding penalty of dismissal from service have not been observed during the inquiry proceedings conducted against the appellant. No show-cause notice was served on the appellant.

6. In view of the foregoing, we are constrained to partially accept the instant appeal in hand and modify/convert the major penalty of removal from service into stoppage of three annual increments. The intervening period may be treated as leave

of the kind due. Parties are left to bear their own cost. File be consigned to the record room.



(AHMAD HASSAN)
MEMBER



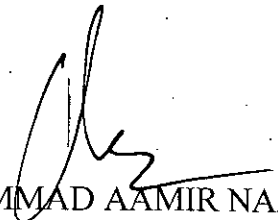
(MUHAMMAD HAMID MUGHAL)
MEMBER

ANNOUNCED
25.07.2017

30.01.2017

Appellant with counsel and Mr. Ziaullah, GP alongwith Mr. Javid Iqbal, Inspector for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 12.04.2017 before D.B.



(ASHFAQUE TAJ)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

12.04.2017

Appellant alongwith his counsel present. Mr. Attaullah, S.I (legal) alongwith Mr. Muhammad Jan, Government Pleader for the respondents also present. Learned counsel for the appellant requested for adjournment on the ground that he has not prepared the case. Adjourned: To come up for arguments on 25.07.2017 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

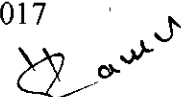
Order


25.07.2017

Learned counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for respondents present.

Vide separate judgment of today of this Tribunal placed on file, the present appeal in hand is partially accepted by modifying/convert the major penalty of removal from service into stoppage of three annual increments. ~~for the cumulative effect~~
The intervening period may be treated as leave of the kind due. No order as to cost. File be consigned to the record room.

Announced:
25.07.2017


(Muhammad Hamid Mughal)
Member


(Ahmad Hassan)
Member

530/14

19.02.2016

Appellant in person and Mr. Muhammad Jan, GP with Javed Iqbal, Inspector and Muhammad Ghani, SI for the respondents present. Since the court time is over, therefore, case is adjourned to 3.6.16 for arguments.


MEMBER


MEMBER

03.06.2016

Counsel for the appellant, M/S Javed Iqbal, Inspector (legal) and Muhammad Ghani, S.I alongwith Mr. Usman Ghani, Sr.GP for respondents present. Rejoinder not submitted and requested for further time for submission of rejoinder. To come up for rejoinder and arguments on 27-9-16 before D.B.


MEMBER


MEMBER

27.09.2016

Appellant with counsel, Mr. Muhammad Ghani, SI for respondent No. 3 and Javed Iqbal, Inspector for respondents No. 1 and 2 alongwith Mr. Ziaullah, GP for respondents present. Rejoinder submitted which is placed on file. To come up for arguments on 31.01.2017 before D.B.


Member


Chairman

09.01.2015

No one is present on behalf of the appellant. M/S Javed Iqbal, Inspector Legal on behalf of respondents No. 1 and 2 and Muhammad Shafique, Inspector Legal on behalf of respondent No. 3 with Mr. Muhammad Adeel Butt, AAG present. The Tribunal is incomplete. To come up for written reply and reply to application for condonation of delay, positively, on 29.04.2015.



Reader.

6. 29.04.2015

Appellant in person and Mr. Javed Iqbal, Inspector (legal) alongwith Addl: A.G for respondents present. Comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 28.10.2015.



Chairman

18.08.2015

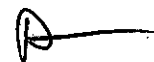
Clerk to counsel for the appellant and Assistant A.G for respondents present. The learned Member (Executive) is on official tour to Abbottabad as well as non-availability of learned counsel for the appellant, therefore, case is adjourned to 28-10-15 for rejoinder and arguments.



Member

28.10.2015

Appellant in person, Mr. Javid Iqbal, Inspector (Legal) for respondent No.1 and Mr. Muhammad Ghani, SI for respondent No.2 and 3 alongwith Mr. Ziaullah, GP for respondent present. Arguments could not be heard due to learned Member (Judicial) is on official tour to D.I Khan. Therefore, the case is adjourned to 19-2-16 for arguments.



Member

Appeal No. 530/2014
Mr. Fakhree Ullah

3. 12.06.2014

Appellant with counsel present. Preliminary arguments

heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the original order dated 17.01.2014, he filed departmental appeal on 21.01.2014, which has been rejected on 19.02.2014, hence the present appeal on 21.03.2014. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. Counsel for the appellant has also filed an application for condonation of delay. Notice of application should also be issued to the respondents for reply/argument. To come up for written reply/comments on main appeal as well as reply/arguments on application for condonation of delay on 10.09.2014.

Appellant Deposited
Security & Process Fee
Rs. 180/- Bank
Receipt is Attached with File.

4. 12.06.2014

This case be put before the Final Bench I for further proceedings.

Member

Chairman

5. 10.9.2014



Clerk of counsel for the appellant, M/S Javed Iqbal, Inspector Legal for respondents No. 1 and 2 and Muhammad Ghani, SI (Legal) for respondent No. 3 with Mr. Muhammad Adeel Butt, AAG present. Written reply and reply to application for condonation of delay have not been received, and request for further time made on behalf of the respondents. To come up for written reply and reply to application for condonation of delay, positively, on 9.1.2015.

Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 530/2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	14/04/2014	<p>The appeal of Mr. Tehseenullah resubmitted today by Mr. Ashraf Ali Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	18-4-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on 12-6-2014</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Tehseen Ullah Ex-Constable No.220 Platoon No.31 received today i.e. on 21 .03.2014 is incomplete on the following score which is returned to the counsel for the appellants for completion and resubmission within 15 day.

- 1- Copies of show cause notice and enquiry report are not attached with the appeal which may be placed on it.
- 2- Wakalat Nama is unsigned may be attested.

No. 514 /S.T,

Dt. 26/03 /2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Ashraf Ali Khattak Adv. Pesh.

Re-submitted

Para No 5 of the appeal is

~~shown~~ that neither any show cause has been served upon the appellant and neither inquiry report has been

provided - Therefore, the same has not been annexed. kindly put before the Bench

Ashraf Ali Khattak

Advocate

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 530 /2014

Ex Constable Tehseen Ullah
No.220 Platoon No.31, Elite Force
Mardan.....Appellant

Versus

The Commandant Elite Force,
Khyber Pakhtunkhwa, Peshawar
and others
.....Respondents

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4.	Copy of departmental appeal	21-01-2014	C	10
5.	Copy of impugned order of Respondent No.1	19-02-2013	D	11
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Through Appellant

Ashraf Ali
Ashraf Ali Khattak

and

Nawaz Khan
Nawaz Khan Khattak
Advocates, Peshawar

Dated: _____ / 04/ 2014

cell 0333-5012472

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR

Service Appeal No. 530 /2014

Ex Constable Tehseen Ullah No.220 Platoon No.31, Elite Force Mardan
.....Petitioner.

Versus

1. The Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Commandant Elite Force Khyber Pakhtunkhwa, Peshawar.
3. The District Police Officer, District MardanRespondents.

445
21-3-2014

Service Appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 read with section 19 of the Khyber Pakhtunkhwa Efficiency and Disciplinary Rule, 2011 against the final order No.2378/EF dated 19-02-2014 (Annexure-C) of the respondent No.1 passed on the departmental appeal of the appellant.

Prayer:-

On accepting the instant service appeal this Honourble Tribunal may graciously be pleased to declare the impugned order of respondent No.1 dated 19-02-2014 is illegal, unlawful, void, without lawful authority and has no bearing upon the rights of the appellant and set aside the same and also re instate the appellant with all back benefits.

Respectfully Sheweth,

Facts giving rise to the present service Appeal are as under:-

1. That appellant has been enrolled in the Police Force in the year, 2007. He has got five year service at his credit and has never been rated as un qualified and in efficient before the impugned decision of the respondent No.1 & 2.

2. That respondent No.2 vide Charge Sheet and Statement of allegation dated 21-10-2013 (Annexure-A) charge the appellant to the following effect:-

“ You have stolen cash amount of Rs.6000/- from kit box of constable

21/3/2014

re-submitted to the
and filed;
14/4/14

Alamzeb No.2994 of Elite Force.”

3. That appellant submitted reply to the charge sheet and denied the allegation/accusations.
4. That slip shod inquiry was conducted. The inquiry failed to record the statement of complainant and other prosecution witness in the presence of appellant. The question of cross examination cannot be raised in such like situation.
5. That inquiry officer submitted ex parte inquiry. Neither any final show cause was served upon the appellant nor inquiry report provided to the appellant and thus was deprived from fair defense.
6. That vides order dated 17-01-2011 (Annexure-B) respondent No.2 imposed upon the appellant major penalty of dismissal from service with any legal support.
7. That appellant being aggrieved of the impugned penal order preferred departmental representation (Annexur-C) before the respondent No.1, who vide order dated 19-02-2014 rejected the same (Annexure-D) and maintain the order of respondent No.2, hence the instant service appeal inter alia on the following grounds:-

Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. Appellant was regular civil servant therefore was entitled for the benefits of section 16 of the Civil Servant Act, 1973, wherein it has been provided that every civil servant is liable for prescribed disciplinary action but in accordance with prescribed procedure. In the instant case the inquiry officer has not adopted the prescribe procedure neither the statement of any witness has been recorded in appellant's presence nor he has been served with final show cause. Moreover he has been condemn unheard. The procedure adopted by the Inquiry Officer is illegal, unlawful, without lawful authority therefore, the impugned penalty is unjust, unfair and hence not sustainable in the eye of law.

- B. That as per section#5 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 the appellant authority is duty bound make such further inquiry or call further information or giving the appellant opportunity to be heard in person as he consider necessary and thereafter shall determine as to whether facts of the case on which the impugned order is based have been established and whether facts established affords sufficient ground for taking action and whether the penalty is excessive, adequate or inadequate. The impugned order is devoid of such merits and more so no reason what so ever has been assigned by the appellate authority while rejecting the appeal of the appellant, which is also violation of section 24A of the General Clauses Act, 1897.
- C. That the entire proceeding commencing from issuance of charge sheet, departmental inquiry, order of imposition of penalty has been conducted under Police Rule in the event when E & D Rules of 2011 were in field, therefore, the impugned penalty is unlawful and cannot be sustained.
- D. That the impugned order has been passed by incompetent authority, respondent No.2 is not an appointing authority in relation to the service of the appellant, therefore, he cannot act as competent authority. Since the impugned order has been passed by incompetent authority, therefore, void abinito and liable to be set aside on this score alone.
- E. That accusation required to be proved through solid evidence and beyond any shadow of doubt, but appellant has been held guilty on flimsy reasons having no legal sanctity, therefore, nullity in the eyes of law.
- F. That major penalty has been imposed without giving reason for disregarding appellant's defense constitute violation of Section 24A of the General Clauses Act, 1897, therefore, the impugned orders are not sustainable in the eyes of law and liable to be struck down.
- G. That the Honourable Supreme Court of Pakistan has in thousand of cases has held that no major punishment could be imposed without

regular inquiry, the subject impugned order based on slipshod inquiry has therefore, no base in the light of the decision of the Apex Court, thus liable to be set aside.

- H. That so called slipshod inquiry has been conducted in the absence and at the back of the appellant. Appellant active participation during inquiry proceeding has been willfully and deliberately ignored. Inquiry proceedings are of judicial in nature in which participation of accused civil servant as per law condition sine qua non. On this ground the impugned orders are coarm non judice and liable to be set back.
- I. That the well-known principle of law "Audi altram Partem" has been violated. This principle of law was always deemed to have embedded in every statute even though there was no express specific or express provision in this regard.
....An adverse order passed against a person without affording him an opportunity of personal hearing was to be treated as void order. Reliance is placed on 2006 PLC (CS) 1140. As no proper personal hearing has been afforded to the appellant before the issuing of the impugned order, therefore, on this ground as well the impugned order is liable to be set aside.
- J. That no inquiry report has been provided nor final show cause notice. Failure to supply copy of inquiry report to a civil servant proceeded against would be sufficient circumstances to hold that either no inquiry was held at all or if inquiry was held, the inquiry report was held as a secret document. Delivery of copy of inquiry report to civil servant proceeded against being a mandatory requirement; disciplinary action taken against a civil servant would not be sustainable in the eyes of law. Reliance is placed on the reported judgment 2010 TD (Service) 19.
- K. That petitioner is jobless since impugned order, there fore entitled to be re instated with all back benefits.

For the aforesaid reasons, it is therefore, humbly prayed that the appeal may kindly be allowed as prayed for above.

Any other relief not specifically asked for, but deem fit in the circumstance of the case may also be graciously granted.

Through

Tahseen

Appellant

Ashraf Ali

Ashraf Ali Khattak

and

Nawaz Khan

Nawaz Khan Khattak
Advocate, Peshawar.

Dated: _____ / 03 / 2014

8

6

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. _____/2014

Ex Constable Tehseen Ullah No.220 Platoon No.31, Elite Force Mardan
.....Petitioner.

Versus

The Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.

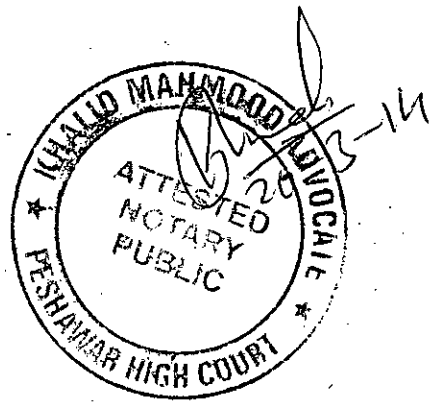
Affidavit

I, Ex Constable Tehseen Ullah No.220 Platoon No.31,
Elite Force Mardan, do hereby solemnly affirm and declare on
oath that the contents of this writ petition are true and correct to the
best of my knowledge, and nothing has been concealed from this
Hon'ble Court.

Tehseen
Deponent

Identified by

Ashraf Ali Khattak
Ashraf Ali Khattak
Advocate, Peshawar



Annex-A

7

CHARGE SHEET

I, Dilawar Khan Bangash, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority hereby charge you Constable Tehseen Ullah No. 220, Platoon No. 31 of Elite Force as follows;

You have stolen cash amount of Rs. 6000/- from Kit box of Constable Alamzeb No. 2994 of Elite Force.

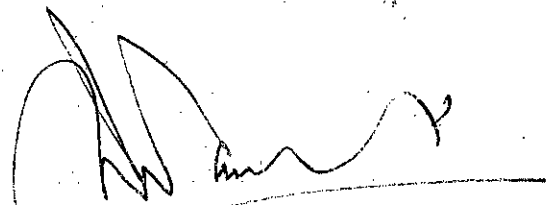
2. By reason of the above, you appear to be guilty of misconduct under the Police Rules (amended vide NWFP gazette, 27th January 1976) and have rendered yourself liable to all or any of the penalties specified in the said rules.

3. You are, therefore, directed to submit your defense within seven days of the receipt of this Charge Sheet to the Enquiry Officer.

4. Your written defense, if any, should reach the Enquiry Officer within the specified period, failing which, it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.

5. You are directed to intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed.



(DILAWAR KHAN BANGASH)
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar.

Attested
[Signature]
To be true copy
Advocate

Annexure - B


9

ORDER

You Constable Tahseen Ullah No. 220, Platoon No. 31 of Elite Force were found guilty of gross misconduct on the following ground.

You while posted at Elite Headquarters Peshawar, stolen an amount of Rs. 6,000/- from your colleague. Charge Sheet & Summary of Allegation were issued to you vide No. 14330-33/EF, dated 21.10.2013 and Superintendent of Police Elite Force Peshawar was appointed as enquiry officer. The enquiry officer found you guilty and recommended for major punishment. You were also heard in person in the Orderly Room on 16.01.2014 but you failed to produce any evidence in your defence and admitted the offence.


I, Sajid Khan Mohmand, Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar, therefore, as competent authority, impose major penalty of removal from service upon you with immediate effect.


(SAJID KHAN MOHMAND)
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

No. 691-99 /EF, dated Peshawar the 17 /01/2014.

Copy to;

1. Superintendent of Police, Elite Force, Peshawar
2. Office Superintendent Elite Force Khyber Pakhtunkhwa Peshawar.
3. RI Elite Force Khyber Pakhtunkhwa Peshawar.
4. Incharge Elite Kot Elite Headquarters Peshawar.
5. Accountant Elite Force Khyber Pakhtunkhwa Peshawar.
6. OASI/SRC/FMC Elite Force Khyber Pakhtunkhwa Peshawar.
7. Constable Tasheen Ullah No. 220 of Elite Force through Moharrar Elite Force Peshawar.

Attested

to be true copy
Advocate

۱۸۶۷

بیت جناب مہاندٹ ایلٹ فورس شیہر چتر خواہ لہنادر

(10)

ان اپیل رقم بر خلاف حکم ڈپٹی مہاندٹ جناب لہنادر رجوالہ اردو نمبر ۱۹-۱۵۹۱۱

ایلٹ فورس تاریخ 17.01.2014

Annex-C

۔ عالی

گزارش کی جاتی ہے کہ کیسل جسٹس اللہ منبر 22 بلاٹون نمبر 31 مردان
 میں تصنیفات صحافیہ کہ مسائل ٹیڑھا لکھا اور تربیت بانسہ جوان ہے مسائل پر چھوٹے
 اور میں عظمت الزام میں جا کر تزلزل کی گئی مسائل کی اپیل و عدالہ اور رشتہ داروں میں
 عزت اچھائی گئی ہے مسائل نے اپنے دوست سے =/6500 کا ہزار روپیے کی
 چوری پیش کی ہے مسائل نے اپنے دوست سے یہ رقم چوری نہیں بلکہ یہ رقم
 اس کے دوست سے جیب سے گم ہوئی تھی اور مسائل نے یہ رقم ملنے گئی تو مسائل اس
 رقم کو واپس کرے ہر مسائل پر درخواست دی کہ مسائل نے یہ رقم مجھ سے چوری کی
 تھی۔ مسائل ایک غریب خاندان سے تعلق رکھتا ہے اور اس کا خاندان کی حال ملین ہو
 چوروں والی نہیں ہے اس لئے آپ عدلیان سے بذریعہ درخواست استدعا ہے کہ

آپ عدلیان سے یہی کرے مسائل کو بحال کرنے کا حکم صادر فرمائے تاکہ مشکور فرمائیں

عین گزارش ہوئی

موصوفہ 21
2014

Attested
To be true copy
Advocate

الکاملہ

مفرمان مسائل کیسل جسٹس اللہ منبر 22 ایلٹ فورس بلاٹون نمبر 31 مردان



Annexure-D

Office of the Addl: Inspector General of Police
Elite Force Khyber Pakhtunkhwa Peshawar




No. 2378 /EF

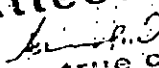
Dated: 19 /02/2014

To : Mr. Tehseen Ullah S/O Shakir Ullah
Address : Village Sajjan Kalay P/O Lound Khwar Tehsil Takht Bhai Distt: Mardan
Contact No : 0345-5725379

Subject : APPEAL FOR RE-INSTATEMENT IN SERVICE

Your appeal has not been accepted for re-instatement in service and Filed by the competent authority.


(SAJID KHAN MOHMAND)
Deputy Commandant
Elite Force, Khyber Pakhtunkhwa Peshawar

Attested

To be true copy
Advocate

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

In Re:

Service Appeal No. _____/2014

Tehseen Ullah. Applicant/Appellant

V E R S U S

Commanding Elite Force, KPK, Peshawar & others. Respondents

APPLICATION FOR CONDONATION OF DELAY

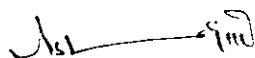
Respectfully Sheweth:

1. That the above titled service appeal has been filed by the applicant in which 12.06.2014 has been fixed.
2. That the delay, if any, is in filing the accompanying service appeal is not intentional, but due to misconception of the counts of day.
3. That the law favors adjudication on merits, rather than on technicalities, therefore, the limitation may be condoned in the best interest of just, fair play and equity.

It is, therefore, most humbly prayed that on acceptance of this application, the delay, if any, in filing the above titled appeal may kindly be condoned in the interest of justice.

Applicant

Through


Ashraf Ali Khattak
Advocate, Peshawar

Date: 13.06.2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

In Re:

Service Appeal No. _____/2014

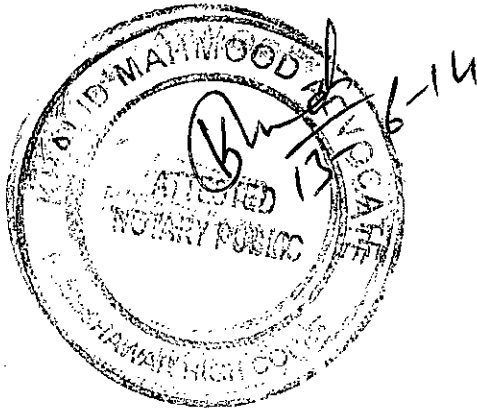
Tehseen Ullah. Applicant/Appellant

V E R S U S

Commanding Elite Force, KPK, Peshawar & others. Respondents

A F F I D A V I T

I, Tehseen Ullah, Ex-Constable No.220, Platoon No.31, Elite Force, Mardan, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Condonation Application** are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Tribunal.



Tehseen Ullah
DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

Service Appeal No. 530/2014

Tahseen Ullah..(Appellant)

Versus

Commandant Elite Force, Khyber Pakhtunkhwa,
Peshawar & others.....(Respondents)

Subject:- COMMENTS ON BEHALF OF
RESPONDENTS.

Respectfully Sheweth!

Preliminary objections:-

- 5/6
29/04/15
- a) The appeal has not been based on facts.
 - b) The appeal is not maintainable in the present form.
 - c) The appeal is bad for non-joinder and mis-joinder of necessary parties.
 - d) The appellant is estopped by his own conduct to file the appeal.
 - e) The appeal is barred by law and limitation.
 - f) The appellant has not come to the Honorable Tribunal with clean hands.

FACTS:-

1. Incorrect, appellant was recruited as Constable in the year 2007 and he earned seven (07) bad entries during short span of service. He committed theft of Rs. 6000/- from the kit box of his colleague constable, therefore he was dismissed from service.
2. Correct.
3. Incorrect, appellant admitted the charges in his reply submitted in response to the charge sheet. Copy of the reply is enclosed as Annexure-A.
4. Incorrect, proper enquiry was conducted and appellant admitted the charges in his statement before the enquiry officer. In addition to recording statement of Alam Zeb Constable victim of the theft, eye witness Nawab Ali constable were examined. Copy of the enquiry report, statement of Alam Zeb, Nawab Ali and

appellant are enclosed as Annexure-B, C, D and E respectively. the appellant was also provided all kind of opportunities.

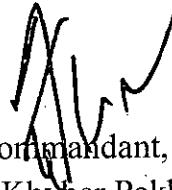
5. Incorrect, appellant had admitted the charge in his statement and reply; therefore there was no need of collecting further evidence.
6. Correct, however, the impugned order was based on sound reasons.
7. Incorrect, appellant had admitted commission of theft in his departmental appeal, therefore, the same was correctly filed.

GROUND:-

- A. Incorrect, appellant was treated in accordance with law and rules. Proper charge sheet and statement of allegations was issued to appellant and he admitted the charges in his reply and statement before the enquiry officer.
- B. Incorrect, appellant had admitted the charges and recovery of stolen property was made from his possession and in addition to Alam Zeb constable victim of the theft, Nawab Ali constable also supported the charges in his statement recorded by enquiry officer.
- C. Incorrect, Police Disciplinary Rule 1975 are still intact and Police official are required to be proceeded against departmentally under the said rules.
- D. Incorrect, Deputy Commandant Elite Force is appointing authority of constable of Elite Force.
- E. Incorrect, appellant has admitted commission of theft of money of colleague constable. Furthermore, victim of the theft and Nawab Ali constable also supported the charges of theft against appellant.
- F. Incorrect, appellant has admitted the charge in his statement and reply in response to charge sheet.

- G. Incorrect, proper enquiry was conducted in to charges leveled against appellant.
- H. Incorrect, proper enquiry was conducted in to the charges against appellant.
- I. Incorrect, proper enquiry was conducted in to the charges against appellant.
- J. Incorrect, sufficient evidence was brought on record in support of the charges leveled against appellant.
- K. Incorrect, appellant committed theft of cash amount from his colleague constable, therefore, his retention in Police department is uncalled for.

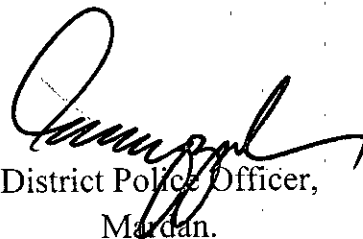
It is therefore, prayed that the appeal of appellant mark dismissed with costs.



Commandant,
Elite Force, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 1)



Deputy Commandant,
Elite Force, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 2)



District Police Officer,
Mardan.
(Respondent No. 3)



خاصی عالی

گزارش عدم سائنس کمیٹی 30 اگست 2003ء کو لکھی گئی
 اس دوران میں کہیں سے چوری ہوئی۔ یہ براہ کرم
 کہ چوری نہیں تھی اللہ نے کفر نہیں سے چوری کی
 اور پھر اس سے پہلے/بعد سے چوری کی ہے۔ جو
 عاقل اور دیکھ چکے ہیں فوراً سے لکھو
 شرم کی بات ہے اور اس سے ساری فوراً میری بہت کمزور
 شرمیہ و فریاد استعدا
 کے طرف سے ہمارے کی حالت ماکرو
 نہ کریں۔

عین وراثت

الکافی

انجمن اہل علم و کتب عالمیہ 2004ء حال بلوچستان

طبرک

02/10/03

0346-9696098

گ
ا

گواہ

خدا علی!

(2)

میرا ہفت نیل نگرہ نے بیان کیا کہ میں نے کسی طرح طلب پیر والہ میں آ کر
 تھا۔ رمضان المبارک کا موسم تھا کہ صبح سویرے میں نیرت بہار ہوا
 کھینک میں حرا حصے اور ان شہرہ عالمگیر شاہ کی حصے کے بعضی حصے
 سے نسل صندوق کا عالمی نکال کر اس کے صندوق کو کھولا اور اس میں پترا
 ہوا پیر میں نکال دینے حسب میں رکھا اور بعد میں اس سے کھرا روپا نکالا
 پیر میں نکال کر وہی حال تھا مگر اس میں ہفت نکات دیا۔ حکم جابوئی کو فرمایا
 گواہی میں ہوتا اور دوبارہ اپنے پیر میں سو گیا۔ عالمگیر شاہ کا دیکر
 شہر میں چھوڑ دیا گیا مگر اس میں پیر میں جب وہ نکات بنا۔
 اور میں خدا کا در سے اسکی حور شہرہ رقم پہلے کا پیر روپے موجود
 پیر نور علی 3809 عالمگیر شاہ کو کھولا اور اسکی پیر میں
 پیر اور جابوئی میں نکات دے۔ وہ اسکی پیر میں نکات نکالی
 جو اسکی دس دھم نکالی اور پیر میں نکات نکالی اور اسکی

الذین حسین اللہ 2020 حال پیروں

Date
07/10/13

ازاں کنشیل تحسین اللہ نمبر 220 کمپنی نمبر 26 حال ایلیٹ ہیڈ کوارٹر پشاور

جناب عالی!

حسب الحکم افسران بالا بسلسلہ انکوائری ہذا معروض خدمت ہوں کہ کنشیل مذکورہ بالا کی انکوائری افسران بالا صاحبان کی جانب سے موصول ہو کر اس سلسلہ میں درخواست کنندہ کنشیل عالمی نمبر 2994 کے علاوہ رہائشی خیمے میں موجود چند ایلیٹ جوانان سے زبانی طور پر معلومات کے علاوہ چشم دید گواہ کنشیل گواہ کنشیل نواب علی نمبر 3809 سے تحریری بیان قلمبند کروایا جا کر کنشیل مذکورہ بالا سے بھی زبانی معلومات کے علاوہ تحریری بیان قلمبند کرایا گیا جو کنشیل متذکرہ کا بیان قابل ملاحظہ ہے۔

جملہ تحریری ریکارڈ حالات، واقعات کو مدنظر رکھتے ہوئے میں بحیثیت انکوائری افسر اس نتیجہ پر پہنچا ہوں کہ کنشیل تحسین اللہ نمبر 220 نے درخواست کنندہ کے سرکاری کٹ بکس سے رقم مبلغ 6000/- چوری کی تھی اور بعد حرکات، سکنات مشکوک ہیں کنشیل مذکورہ عادی چور نظر آتا ہے۔

ایلیٹ فورس جیسے اعلیٰ ادارے میں مذکورہ کو مزید رکھنا کسی بڑے نقصان کا اندیشہ پایا جاتا ہے کیونکہ ایلیٹ فورس کے ہر جوان پر ایلیٹ کوت ہیڈ کوارٹر سے اسلحہ، ایمنونیشن سرکاری تقسیم ہو کر ہر ایک ایلیٹ جوان کے کٹ بکس میں رکھا ہوتا ہے۔

لہذا استدعا ہے کہ کنشیل مذکورہ کو سنگین سزا دینے کی سفارش کی جاتی ہے۔ فائنڈنگ رپورٹ مرتب ہو کر گزارش ہے۔

M. S. Q.
(محمد حنیف شاہ خان)

انسپیکٹر ایلیٹ فورس پشاور
08/10/13

SPIEF Peshawar
Conduct Proper

James O'Connell
Commandant

Sir,
9/10

Submitted for strict
action against the Ab
name constable.

Dy. No 10308
9/10/13
Commandant
Elite Force KPK
Peshawar

Superintendent of Police
Elite Force Peshawar Range
08-10-2013

پشاور

P. T. O.

جواب - چارج سٹیٹ

15

صدا علی

220

گزارش ہے کہ محو پر کنٹینل کونسل اللہ

بلداؤن عزیز 3 جو سٹینڈر پیپر کوٹر میں لفتیہات تھا

محو پر کنٹینل عالم زب سے ایزام لگایا تھا۔ - کہ اس سے بکس

سے میں 6000 لزار دینے ہو رہی ہے۔ - جبکہ لڈ میں

بالہا راضی مدی سے مذکورہ کنٹینل کو 6000 روپے ایسے صبر

سے ادا کر دیئے تھے۔ - جس پر باقی بلداؤن کی نفی موقع

تھا ہیجان ہے۔ اور ایسے لیے بھی ایسے انوائری میں جواب

دیئے جھگڑوں

لیڈا۔ - میری اس غلطی میں کو لڈ انڈر ریک

صافی دیئے جائے۔ کیونکہ مذکورہ کنٹینل سے میری

راضی نام ہو چکا ہے۔ لیڈا میری چارج سٹیٹ فائل

رکے انوائری حکم کیے جا سکتے۔

شکر گزار رہوں گا

Shukar

220
کونسل اللہ

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

In Re:

Service Appeal No. _____/2014

Tehseen Ullah. Applicant/Appellant

V E R S U S

Commanding Elite Force, KPK, Peshawar & others. Respondents


APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth:

1. That the above titled service appeal has been filed by the applicant in which 12.06.2014 has been fixed.
2. That the delay, if any, is in filing the accompanying service appeal is not intentional, but due to misconception of the counts of day.
3. That the law favors adjudication on merits, rather than on technicalities, therefore, the limitation may be condoned in the best interest of just, fair play and equity.

It is, therefore, most humbly prayed that on acceptance of this application, the delay, if any, in filing the above titled appeal may kindly be condoned in the interest of justice.

Through Applicant


Ashraf Ali Khattak
Advocate, Peshawar

Date: 13.06.2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

In Re:

Service Appeal No. _____/2014

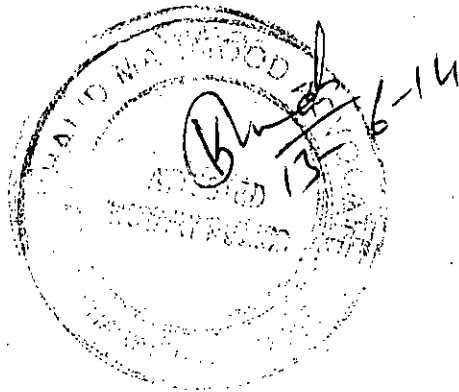
Tehseen Ullah. Applicant/Appellant

V E R S U S

Commanding Elite Force, KPK, Peshawar & others. Respondents

A F F I D A V I T

I, Tehseen Ullah, Ex-Constable No.220, Platoon No.31, Elite Force, Mardan, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Condonation Application** are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Tribunal.



Tehseen Ullah
DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

In Re:

Service Appeal No. _____/2014

Tehseen Ullah. Applicant/Appellant

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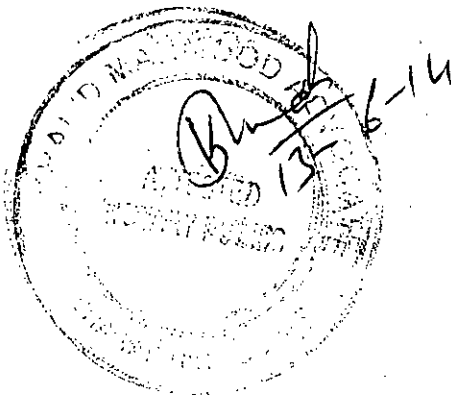
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V E R S U S

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DEPONENT

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In Re:

Service Appeal No. _____/2014

Tehseen Ullah. Applicant/Appellant

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Commanding Elite Force, KPK, Peshawar & others. Respondents

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TRIBUNAL, PESHAWAR

In Re:

Service Appeal No. _____/2014

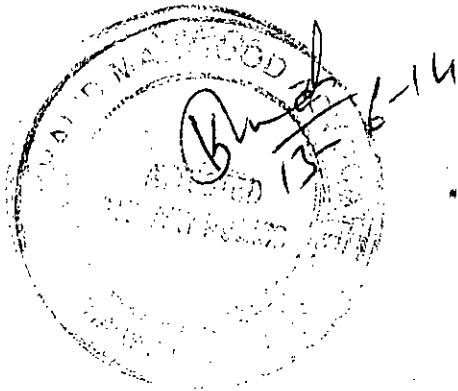
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TRIBUNAL, PESHAWAR**

In Re:

Service Appeal No. _____/2014

Tehseen Ullah..... Applicant/Appellant

VERSUS

Commanding Elite Force, KPK, Peshawar & others..... Respondents

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Through Applicant

Date: 13.06.2014

Ashraf Ali Khattak
Ashraf Ali Khattak
Advocate, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

In Re:

Service Appeal No. /2014

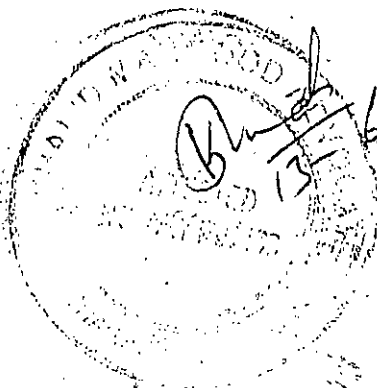
Tehseen Ullah. Applicant/Appellant

VERSUS

Commanding Elite Force, KPK, Peshawar & others. . . . Respondents

AFFIDAVIT

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Tehseen Ullah
DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

In Re:

Service Appeal No. _____/2014

Tehseen Ullah..... Applicant/Appellant

V E R S U S

Commanding Elite Force, KPK, Peshawar & others..... Respondents

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It is, therefore, most humbly prayed that on acceptance of this application, the delay, if any, in filing the above titled appeal may kindly be condoned in the interest of justice.

Applicant

Through

Ashraf Ali Khattak
Ashraf Ali Khattak
Advocate, Peshawar

Date: 13.06.2014

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

In Re:

Service Appeal No. /2014

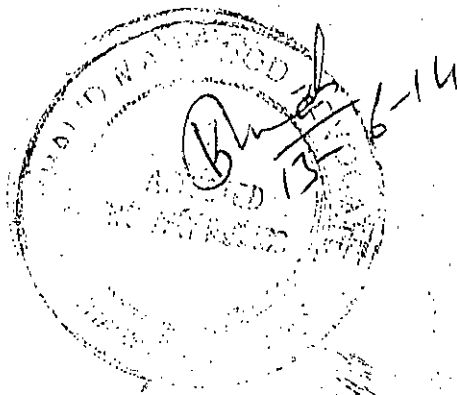
Tehseen Ullah. Applicant/Appellant

VERSUS

Commanding Elite Force, KPK, Peshawar & others. . . . Respondents

AFFIDAVIT

I, Tehseen Ullah, Ex-Constable No.220, Platoon No.31, Elite Force, Mardan, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Condonation Application** are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Tribunal.



Tehseen Ullah
DEPONENT

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

Appeal No.....

Tehseen Ullah

VERSUS

Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar and Others

**REJOINDER ON BEHALF OF PETITIONER /APPELLANT IN
THE CAPTIONED CASE**

Respectfully Sheweth:

Preliminary Objection:

The 6 preliminary objections raised by the respondents in their written statement are wrong, incorrect and are denied in every detail. The appellant has a genuine cause of action and his appeal does not suffer any formal defect whatsoever.

ON FACTS:

- 1) *Correct to the extent that the appellant has been enrolled in the Police Force in the year 2007 Rest of the contents of the same Para are incorrect because during his service he has never been rated as un qualified.*
- 2) *Agreed*

- 3) *Incorrect. Actually the appellant submitted reply to the charge sheet and denied the allegations.*
- 4) *Incorrect.Inquiry was conducted in which they are failed to record the statement of complainant and other prosecution witness in the presence of appellant nor any inquiry report has been provided to the appellant moreover the allegations are totally false and baseless .*
- 5&6) *Incorrect. Appellant never admitted the charge nor any proper opportunity has been given to appellant for his defense. The same was ex-party inquiry and no final show Cause was served upon appellant. Para 5&6 of appeal are correct and its replies are incorrect.*
- 7) *Incorrect. The appellant never admitted commission of theft and the appellant is quite innocent.*

GROUND:

A&B) Incorrect. That according to law every civil servant is liable for prescribed disciplinary action but accordance with the prescribe procedure. In the instant case the inquiry officer has not adopted the prescribe procedure. Furthermore the appellant never admitted the charge and no recovery has been affected from him and the prosecution badly failed to prove case against the appellant. Grounds A&B of appeal are correct and its replies are incorrect.

C&D) Incorrect. Grounds A&B of appeal are correct and its replies are incorrect.

E&F) Incorrect. The appellant has never admitted the commission of theft nor the charge. Grounds A&B of appeal are correct and its replies are incorrect

G,H,I) Incorrect. No proper inquiry was conducted in to the charges leveled against the appellant it was just Ex-Party inquiry and no proper opportunity has been given o appellant.

J,K) Incorrect. Actually not a single iota of evidence available on whole case file against the appellant nor the appellant commit any kind of theft.

It is, therefore, prayed that on acceptance of appeal and rejoinder the relief as prayed for may be granted to the appellant to meet the ends of justice.

Dated 29 /09/2016

Appellant

Through



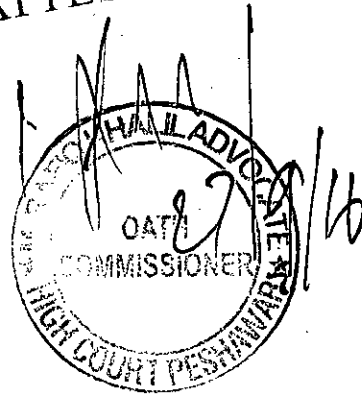
*Shan Asghar
Advocate, Peshawar.*

AFFIDAVIT

I, Tehseen Ullah do hereby solemnly affirm and state on oath that all contents of appeal and rejoinder are true and correct to the best of my knowledge and belief and nothing wrong has been stated by me in the matter.


DEPONENT

ATTESTED



IN THE COURT OF SERVICE TRIBUNAL
PESHAWAR.

TAHESEEN ULLAH
VERSUS
COMMANDANT ELEITE FORCE ETC

APPLICATION FOR EARLY HEARING
OF APPEAL INSTEAD FO FIXED FOR
28/10/2015

RESPECTED SHEWETH:-

- 1) That the appellant filed the above titled appeal before this august court which was fixed for hearing 28/10/2015 for the final hearing.
- 2) That the appellant has been terminated from service on 17/01/2011 and since then he is jobless.
- 3) That the appellant is belonging from very poor family and is only source of income was his job/service.
- 4) That the appellant is suffering from the last 04 years therefore, it would at the interest of justice to fix the case early convenient to his August Court.

It is therefore, very humbly prayed that on acceptance of this application the case may kindly be fixed at the earliest convenient date, instead of 28/10/2015

Dated: 08/06/2015

Applicant

Through

BASHIR AHMED SARI
Advocate High Court
Peshawar.

Pt. x fix accordingly.
R
Render

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1829 /ST

Dated 2 / 8 / 2017

To:


The Deputy Commandant, Elite Force,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: -

JUDGMENT IN APPEAL NO. 530/2014, MR. TEHSEEN ULLAH.

I am directed to forward herewith a certified copy of Judgement dated 25.07.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.