6<sup>th</sup> July, 2022

Petitioner alongwith his counsel present. Mr. Kabiruallah Khattak, Addl: AG for respondents present.

- 2. Learned counsel for the petitioner submits that grievance of the appellant has been redressed and he wants to withdraw the instant execution petition. Dismissed accordingly. Consign.
- 3. Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal on this  $6^{th}$  day of July, 2022.

Kalim Arshad Khan)

Chairman



20<sup>th</sup> April, 2022

Junior to counsel for the petitioner present. Mr. Kabirullah Khattak, Addl. AG for the respondents present. Learned AAG seeks further time to implement the judgment.

Last opportunity is granted. Respondent No. 3 be summoned to attend the Tribunal personally alongwith implementation report on 31.05.2022 before S.B.



Chairman

31.05.2022

Counsel for the petitioner present. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Judgment of this Tribunal has not been implemented so far. The respondents are directed to implement the judgment of this Tribunal and submit implementation report on the next date. To come up for implementation report on 06.07.2022 before S.B.

Chairman

28.01.2022

Learned counsel for the petitioner present.

The petitioner through this Execution Petition has brought the judgment of this Tribunal for execution which was passed in his favor on 30.08.2022. The petitioner has submitted that the judgment is still in field and has not been suspended or set aside by the august Supreme Court of Pakistan. Therefore, the respondents are legally bound to implement the judgment in letter and spirit.

Needles to say that the respondents are at liberty to challenge the judgment at credit of the petitioner before the august Supreme Court of Pakistan, if so advised; however, filing of the petition against the judgment before august Supreme Court of Pakistan does not absolve the respondents from their obligation from implementation of the judgment of this Tribunal in letter and spirit unless the same is suspended by a specific order of the august Supreme Court of Pakistan. If the respondents are not in possession of any such order, they are supposed to implement the judgment at credit of the petitioner but with liberty to get an affidavit from him for return/restoration of the benefits, if the judgment of this Tribunal at his credit is set aside by the august Supreme Court of Pakistan.

To come up for implementation report on16.03.2022 before S.B.

Atiq-ur-Rehman Wazir)
Member(E)

16.03.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 20.04.2022 for the same as before.

Reader

# $Form^{\frac{1}{2}} A^{\frac{1}{2} \frac{1}{2}}$

# FORM OF ORDER SHEET

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•	<b>-</b> .			
Execution Petition No.	59/2022		•	

	Exe	cution Petition No. <u>59/2022</u>
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	. 3
1	20.01.2022	The execution petition of Mr. Farman Ali Khan submitted today by Mr. Fazal Shah Mohmand Advocate may be entered in the relevant
275	and the first of the second	register and put up to the Court for proper order please.
	•	REGISTRAR,
2-		This execution petition be put up before S. Bench at Peshawai on 5-8101/2022.
1	·	
		CHAIRMAN
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# **BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

Execution Petition No 5 / /2022 In Service Appeal No 4308/2020

Farman Ali Khan.....Petitioner/Appellant

#### **VERSUS**

Govt. and others......Respondents

#### INDEX

S. No	Description of documents	Annexure	Pages
1.	Execution Petition with Affidavit	_	1-2
2.	Copy of the Judgment/Order dated	A	
	30-08-2021		3-8
3.	Copy of Application dated 23-09-2021	В	م م
4.	Vakalat Nama		10

Dated:-20-01-2022

**Through** 

Appellant

FAZAL SHAH MOHMAND

ADVOCATE,

SUPREME COURT OF PAKISTAN.

OFFICE:-

Cantonment Plaza Flat# 3/B Khyber Bazar Peshawar. Cell# 0301 8804841

Email:- fazalshahmohmand@gmail.com

#### BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Execution Petition No\_\_\_\_\_\_\_\_\_ Service Appeal No 4308/2020



Farman Ali Khan, Junior Clerk, Khyber Pakhtunkhwa Service Commission, Peshawar. .....Petitioner

#### VERSUS

1. Govt. of Khvber Pakhtunkhwa, through Secretary, Establishment Department, Peshawar

2. Chairman, Khyber Pakhtunkhwal Service Commission, Peshawar 3. Secretary, Khyber Pakhtunkhwal Service Commission, Peshawar. .....Respondents

**EXECUTION PETITION UNDER SECTION 7 OF THE KPK** SERVICE TRIBUNAL ACT 1974 FOR THE EXECUTION OF ORDER DATED 30-08-2021 PASSED BY THIS HONORABLE TRIBUNAL IN THE ABOVE TITLED SERVICE APPEAL.

#### Respectfully Submitted:-

- 1. That the Petitioner/appellant filed Service Appeal No. 4308/2020, before this honorable Tribunal against his compulsory retirement order which was accepted and the appellant was reinstated in service with all back benefits vide Order/Judament dated 30-08-2021. (Copy Order/Judgment dated 30-08-2021 is enclosed Annexure A).
- 2. That the Petitioner/appellant after obtaining attested copy of the stated Order/Judgment of this honorable Tribunal approached respondents by conveying the same through written application dated 23-09-2021 vide diary No 5861 of even date which was duly forwarded but even then the appellant is not reinstated in service by the respondents. (Copy of Application dated 23-09-2021 is enclosed as Annexure B).
- 3. That the respondents are not ready to implement the Order/Judgment of this honorable Tribunal in its true spirit for no legal and valid reasons, this act of the respondents is unlawful, unconstitutional and goes against the Order dated 30-08-2021 of this honorable Tribunal.

**4.** That noncompliance of the order of this honorable Tribunal, speaks malafide on part of the respondents and they are bent upon to lower the position of the judiciary in the eyes of the public at large.

It is therefore prayed, that on acceptance of this Application/Petition, respondents may kindly be directed to implement the Order of this honorable Tribunal dated 30-08-2021 passed in Service Appeal No 4308/2020.

Dated:-20-01-2022

Through

Appellant

FAZAL SHAH MOHMAND

ADVOCATE,

SUPREME COURT OF PAKISTAN.

#### **AFFIDAVIT**

I, Farman Ali Khan, Junior Clerk, Khyber Pakhtunkhwa Service Commission, Peshawar, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Execution Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

DEPONENT

## BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 43 68 /2020

3/harvar x 18 Farman Ali Khan , Ex Junior Clerk Khyber Pakhtunkhwa Public Service Commission Peshawar ..... ......Appellanthyber p

#### VERSUS

1. Govt. of KPK through Secretary Establishment Departme Peshawar.

Khyber Pakhtunkhwa Public Service Commission 2. Chairman. Peshawar.

Khyber Pakhtunkhwa Public Service Commission **3.** Secretary, Peshawar. .....Respondents

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 FOR THE MODIFICATION OF ORDER CONVEYED VIDE DATED 16-04-2020 (RECEIVED LETTER BY **APPELLANT ON 06-05-2020) WHEREBY THE PUNISHMENT** OF REMOVAL from service HAS BEEN CONVERTED INTO **COMPULSORY RETIREMENT.** 

#### PRAYER:-

On acceptance of this appeal the impugned Order dated 16-04dto-day 2020 may kindly be modified to the extent of reinstatement of the appellant into service with all back benefits.

# 20>0 Respectfully Submitted:-

- 1. That the appellant was serving as junior clerk he has performed his duties with honesty and full devotion and to the entire satisfaction of his high ups.
- 2. That the appellant being an active member of the Clerks Association of the Province was elected time and again to various offices on local, District and even Provincial level who continued his struggle for the welfare of the Association within the Constitution of the Association, law of the land besides within moral ambit. The appellant was lastly elected as Provincial President of the APCA.
- 3. That on 18-01-2018 Charter of demand was presented to the respondent No. 2 and after peaceful struggle, an agreement was ATESTED reached at between the Association and respondent No.2 on 09-11-2018, the respondent No.3 was also a signatory to the saids agreement wherein the same demands were agreed to be resolved. (Copy of Charter of demands & Agreement dated Ser 09-11-2018 is enclosed as Annexure A & B).
- 4. That no action was taken nor the demands were materialized as per the agreement so the Association again after various

-4-

# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAV

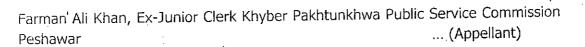
Service Appeal No. 4308/2020

Date of Institution ...

14.05.2020

Date of Decision

30.08.2021



#### **VERSUS**

Government of Khyber Pakhtunkhwa through Secretary Establishment Department Peshawar and two others.

(Respondents)

FAZAL SHAH MOHMAND

Advocate

For Appellant

MUHAMMAD ADEEL BUTT, Additional Advocate General

For Respondents

SALAH-UD-DIN ATIQ-UR-REHMAN WAZIR MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

#### JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant was serving as Junior Clerk in the office of provincial public service commission and in due course was elected as president of all Pakistan Clerk Association (APCA). The appellant naturally was under obligation to defend the interests of his colleagues and for the purpose, he used to pressurize the authorities for resolution of the issues being faced by the clerk community. The appellant was proceeded against on the charges of misconduct, inefficiency and habitually absenting himself from duty without prior approval and was ultimately removed from service vide order dated 14-02-2020, against which the appellant filed departmental

Khyber Pakhtukhwa Service Tribungt Pashawas

appeal dated 18-02-2020, which was partially accepted and the penalty of removal from service was converted into compulsory retirement vide order dated 16-04-2020. Feeling aggrieved, the appellant filed the instant service appeal with prayers that the impugned order dated 16-04-2020 may be modified and the appellant be reinstated into service with all back benefits.

Learned counsel for the appellant has contended that the appellant has 02. not been treated in accordance with law and mandatory provisions of law and rule have badly been violated; that no proper inquiry was conducted as no one was examined in presence of the appellant and the appellant was not provided opportunity of cross-examination; that the inquiry committee had also recommended that a chance may be given to the appellant to improve his performance but even them major penayy was awarded to the appellant; that even otherwise the allegation of absence from duty were never proved during the so-called inquiry, as no witness was examined in support of such allegation; that the allegations of misbehavior too were never substantiated rather were negated by the witnesses and same is the case of all other allegations; that the impugned order is based on malafide as is evident from chain of instances, like a complaint was made by respondent No 3 and the appellant was proceeded against by the respondents No 3 and even the impugned order was also passed by respondent No 3 in violation of law and rule as no one could be judge in his own complaint; that on 23-10-2019 warning was issued to the appellant along with nine other members of the association regarding alleged incident of 22-10-2019, while only the appellant was proceeded against, thus the appellant was discriminated too; that malafide is also proved from the fact that the appellant was issued warning on 23-10-2019, while he was transferred on 24-10-2019 and was thus subjected to disciplinary proceedings according to the satisfaction of respondent No 3; that all such facts were brought into the notice of Secretary KPPSC in reply to show cause notice, but respondent No. 3 turned deaf ear as she was bent upon to remove the appellant from service for the satisfaction of her ego

EXAMINER
Khyler-Fakhtukhwg
Service Tribunal
Pashawas

and personal grudge; that the appellant was subjected to cross-examination, but was not allowed to cross-examine witnesses; that the appellant never absented from his lawful duty, which the appellant denied at every step of the proceedings; that the impugned order is wrong and illegal, hence not tenable in the eye of law.

Learned Additional Advocate General appearing on behalf of official 03. respondents has contended that while joining the association, the appellant did not take permission from the competent authority, hence violated Rule-32(h) of the Khyber Pakhtunkhwa Government Servant (Conduct) Rules, 1987; that the respondents were committed to materialize the demands of employees and it can be gauged from the agreement signed between representative of the clerk association and chairman Khyber Pakhtunkhwa Public Service Commission; that most of the demands were under the domain provincial government and it was not feasible for taking action on such demands even by the establishment and administration departments; that warning was issued to the appellant along with others to refrain from unlawful activities within the office premises, moreover the appellant always remained unpunctual from the very start of his appointment; that the appellant was properly proceeded against in accordance with, law and rule, where proper charge sheet/statement of allegations was served upon the appellant, to which he responded; that an inquiry committee was constituted to this effect and the inquiry process was carried out as per law and the appellant was given proper opportunity of defense, but he failed to prove his innocence; that show cause notice was issued to the appellant, to which he responded, but failed to satisfy the inquiry committee; that the appellant was initially removed from service keeping in view his earlier conduct, but the appellate authority, while taking a lenient view, modified the punishment into compulsory retirement.

04. We have heard learned counsel for the parties and have perused the record. Record reveals that the appellant while serving as Junior Clerk in the office of Provincial Public Service Commission was elected as president of APCA and was

EXAMPER Khyber Pakhfukhwa Service Tribunak Peshawar

ATTESTED

under obligation to promote and secure the lawful demands of the clerk community. The association, while presenting their demands before the respondents, reached to the conclusion that an agreement was signed between the association and Secretary Public Service Commission on 09-11-2018, but such demands were not honored in its true spirit, which resulted into a protest against the office of Secretary KPPSC and the real tussle started between President of the association and Secretary of the Commission. On 22-10-2019 the association allegedly gathered some staff members and loudly shouted and raised slogans against the respondents for non-adherence to the agreement already signed between the parties. To this effect a warning was issued to the appellant on 23-10-2019 as well as he was transferred from Admin. Section to the office of Secretary KPPSC vide order dated 24-10-2019. Another warning was issued on 08-11-2019 to the appellant with instructions to attend to his duty and refrain from the activities of the association.

On 20-11-2019 charge sheet/statement of allegations were served upon 05. the appellant by Secretary PSC with allegations of misconduct, inefficiency and habitually absenting himself from lawful duty and an inquiry committee was constituted for the purpose by the same Secretary PSC vide order dated 20-11-2019. The appellant responded to the charge sheet and denied all the allegations, rather explained that being president of clerk association, he always carried out its activities in peaceful manner for the welfare of the clerk community within the framework of law and rule and never absented from duty, which is not misconduct on any score. The inquiry report placed on record clearly depicts that a personal grudge existed between the appellant and the Secretary PSC and to this effect, the appellant tendered un-conditional apology to the Secretary PSC in presence of the inquiry committee, but she did not accept such apology. Findings of the inquiry revolves around the issue of tussle between the appellant and the Secretary PSC and the inquiry committee neither proved his absence nor proved his inefficiency, rather focused on his activities relating to the association. The inquiry committee however,

> Khyber Eskntukhwa Service Tribunal Bushawar

recommended that the accused may be given a chance to improve his behavior, but contrary to such recommendations, major penalty of removal from service was imposed upon the appellant without recording specific reasons of her disagreement with recommendations of inquiry officer. The Worthy Apex Court vide its judgments reported in 2008 SCMR1174, 2014 SCMR 147 and 2011 SCMR 1504 has discouraged such practice.

Perusal of the inquiry report would reveal that the appellant was not 06. afforded opportunity to cross-examine witnesses, which was a mandatory step under the law; rather the inquiry so conducted was only completion of formality. No effort was made to prove the allegations leveled against him and such inquiry cannot be termed as a proper inquiry. The Worthy Apex Court in its judgment reported in 2004 SCMR 316, 2009 SCMR 412 and 2008 SCMR 1369 has held that while awarding major penalty, a proper inquiry was to be conducted which had not been done in the instant case, rather the respondents were bent upon to remove the appellant from service in any case.

What we have gathered from the record is that the disciplinary proceedings against the appellant were not conducted in a fair manner and the relevant provisions of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 were not complied with, therefore, the impugned penalty imposed upon the appellant is not sustainable in the eye of law.

In view of the foregoing discussion, the instant appeal is accepted 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.

Tribunal

Penhaway

<u>ANNOUNCED</u> 30.08.2021

> (SALAH-UD-DIN) MEMBER (JUDICIAL) ertified to be ture copy

ATIQ-UR-REHMAN WAZIR) MEMBER (EXECUTIVE)

"B" \_9-

# BEFORE THE SECRETARY KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION, PESHAWAR.

Subject: -

**Arrival** 

## Respectfully submitted

That I was serving in this office as Junior Clerk and was Removed from Service on 14-02-2020 against which order I filed departmental appeal where upon my removal from service was converted into compulsory retirement on 16-04-2020.

I then preferred Service Appeal No. 4308/2020 before the Khyber Pakhtunkhwa Service Tribunal Peshawar which was accepted and I was reinstated in Service with all back benefits vide Judgment dated 30.08.2021, hence I report my arrival accordingly.

Prince Farman Ali Khan

Junior Clerk Khyber Pakhtunkhwa

Public Service Commission, Peshawar.

Cell: 0308-8279033

Note: The Copy of the the judgement of the Services Tribunal Bratlack ed herewith.

D.No 5861

DaTads-23/9/2021

to be true cony

# VAKALATNAMA BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No/2022_	
Prince Farman Alikhar	Appellant
VERSUS	
RPPS & others	Respondent(s)

I, the undersigned, do hereby appoint and constitute,

Fazal Shah Mohmand Advocate Supreme Court & Rabia Muzaffar Advocate. To act, appear and plead in the above-mentioned matter and to withdraw or compromise the said matter or submit to arbitration any differences or dispute that shall arise touching or in any manner relating to the said matter and to receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and the course of the prosecution of the said matter.

- To draft and sign files at necessary pleadings, applications, objections, 1. affidavits or other documents as shall be deemed necessary and advisable for the prosecution of the said matter at all its stages.
- To employ any other Legal Practitioner, authorizing him to exercise the 2. power as conferred on the undersigned Advocate, wherever he may think fit to do so.

AND I hereby agree to ratify whatever the Advocate or his substitute shall do in the above matter. I also hereby agree not to hold the Advocate or his substitute responsible for the result of the said matter in consequence of his absence from the Court when the said matter is called up for hearing. I further hereby agree that in the event for the whole or any part of the fee to be paid to the Advocate remaining unpaid, he shall be entitled to withdraw from the above matter. Received by me on 2-1-22

CLIENT(s)

ACCEPTED BY:

FAZAL SHAH MOHMAND

ADVOCATE.

SUPREME COURT OF PAKISTAN.

NDVOCATE PESHAWAR

OFFICE:-Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841 (Clerk) Cell# 03339214136

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Email: - fazalshahmohmand@gmail.com.

Case Title:			
Government of K	hyber Pakhtunkhwa through Secretary Establish	hment Peshawar and oth	ers v. Farman Ali Khan
Case No:			\$
C.P.675-P/2021			
Case Status:			
Disposed	· · · · · · · · · · · · · · · · · · ·		
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19-04-2022	Serial#: 9  Location: Islamabad	Converted into	Appeal and Allowed
25-03-2022	Bench: REGULAR BENCH - I List: Final Cuase List No. 12 Serial#: 3 Location: Islamabad	Adjourned (No	tice), stay
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BEFORE THE SERVICE TRIBUI	VAL KPK PESHAWAR Pakhtu
C. M. No/2021 In Service Appeal No_ <u>4368_</u> /2020	Diary No. 24
Farman Ali Khan	Petitioner/Appellant Vice Triburo
Govt. & others. 31/15/2021.	Respondents

APPLICATION FOR EARLY HEARING OF THE TITLED CASE.

## Respectfully submitted:-

- **1.** That the above titled Service Appeal is pending before this honorable Tribunal wherein next date of hearing is fixed for 30-08-2021
- 2. That in the titled case is ripe for arguments as reply as well as replication has been filed while the case is adjourned for one or other reason.
- **3.** That the applicant is facing severe hardships and is suffering badly hence the matter needs to be expedited so that the case is disposed of at the earliest.
- **3.** That the valuable rights of the applicant are at stake and if the case of the applicant is not fixed for early date, he would suffer irreparable loss.
- **4.** That if the case is not fixed, the very purpose of his appeal would be lost resulting in multiplicity of litigation.

It is therefore prayed, that on acceptance of this application, the above titled case may please be fixed for early date.

Dated:-31-05-2021

Appellan

Through

Fazal Shah Mohmand Advocate Supreme Court

**AFFIDAVIT** 

I, Farman Ali Khan, (the Appellant) do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

**DEPÓNENT** 

# BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

VERSUS	
Farman Ali KhanPetitioner/A	ppellant
C. M. No/2021 In Service Appeal No_4308/2020	

# APPLICATION FOR EARLY HEARING OF THE TITLED CASE.

## Respectfully submitted:-

- 1. That the above titled Service Appeal is pending before this honorable Tribunal wherein next date of hearing is fixed for 30-08-2021
- 2. That in the titled case is ripe for arguments as reply as well as replication has been filed while the case is adjourned for one or other reason.
- **3.** That the applicant is facing severe hardships and is suffering badly hence the matter needs to be expedited so that the case is disposed of at the earliest.
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- **4.** That if the case is not fixed, the very purpose of his appeal would be lost resulting in multiplicity of litigation.

It is therefore prayed, that on acceptance of this application, the above titled case may please be fixed for early date.

Dated:-31-05-2021

Appellant

**Through** 

Fazal Shah Mohmand Advocate Supreme Court

AFFIDAVIT

I, Farman Ali Khan,(the Appellant) do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

DEPÓNENT

## BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

C. M. No In Service Appeal No	/20 · <b>4</b> 5			
Farman Ali Khan	1	********************	· · · · · · · · · · · · · · · · · · ·	.Petitioner/Appellant
		ERSUS		
Govt. & others	; •••••	•	*****	Respondents

# APPLICATION FOR EARLY HEARING OF THE TITLED CASE.

### Respectfully submitted:-

- 1. That the above titled Service Appeal is pending before this honorable Tribunal wherein next date of hearing is fixed for 30-08-2021
- 2. That in the titled case is ripe for arguments as reply as well as replication has been filed while the case is adjourned for one or other reason.
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- **4.** That if the case is not fixed, the very purpose of his appeal would be lost resulting in multiplicity of litigation.

It is therefore prayed, that on acceptance of this application, the above titled case may please be fixed for early date.

Dated:-31-05-2021

Appellant

Through

Fazal Shah Mohmand Advocate Supreme Court

AFFIDAVIT

I, Farman Ali Khan, (the Appellant) do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

**DEPÓNENT** 

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Government of K	hyber Pakhtunkhwa through Secretary I	Establishment l	Peshawar and others v. Farman Ali	i Kl
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C.P.675-P/2021	· · · · · · · · · · · · · · · · · · ·		·	
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Disposed				
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19-04-2022				
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Moin-ud-Din Hur	mayun (AOR)			
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Muhammad Tariq	Khan (AOR)			
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