

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 669/2022.

Waqas Ahmad Son of Sami Ullah (Ex-Constable No. 326/5540 of FRP HQrs) R/O Mathra District PeshawarAppellant.

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others.....Respondents

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RESPONDENTS



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 669/2022.

Waqas Ahmad Son of Sami Ullah (Ex-Constable No. 326/5540 of FRP HQrs)
R/O Mathra District PeshawarAppellant.

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others.....Respondents.

PARAWISE REPLY BY RESPONDENTS.

RESPECTFULLY SHEWETH.

PRELIMINARY OBJECTIONS

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1821

Dated 01-11-2022

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
3. That the appellant has no cause of action and locus standi to file the instant appeal.
4. That the appellant has not come to this Honorable Tribunal with clean hands.
5. That the appellant is estopped due to his own conduct to file the instant Service Appeal.
6. That the appellant is trying to conceal the material facts from this Honorable Tribunal.

FACTS:-

1. The appellant was appointed as constable in this department as admitted by the appellant. However, the rest of para is incorrect as perusal of his service record reveals that he remained absent from his lawful duty for a long period of 226 days on different occasions previously, which he was awarded various kinds of punishments. Thus his service roll is full of red entries.
2. Incorrect. The appellant was remained absent from lawful duty with effect from 02.01.2020 to 04.06.2020 for a total period of 05 months and 02 days without any leave or prior permission of the competent authority. The appellant failed to submit any request for leave verbally or in written, before the competent authority.
3. Correct to the extent that on the allegations of willful absence the appellant was proceeded against proper departmentally as he was issued Charge sheet with Summary of Allegations and Enquiry Officer was nominated. The appellant submitted his reply of Charge Sheet, wherein he taken the plea of the illness of his younger brother, while on the other hand he taken the plea of the illness of his mother. Thus there is contradiction between the statements of the appellant, trying to mislead this Honorable Tribunal by producing false and baseless grounds. (Copy of Charge Sheet, reply of Charge Sheet & Enquiry Report attached herewith as Annexure "A, B & C")

4. Incorrect. Upon the findings of the Enquiry Officer the appellant was issued/served with Show Cause Notice accordingly, besides, he was heard in person in orderly room, but he failed to present any justification before the competent authority in regard to his innocence and after fulfillment of all codal formalities, he was awarded major punishment of dismissal from service as per law/rules. (Copy of Final Show Cause Notice attached herewith as Annexure "D").
5. Correct to the extent that departmental appeal submitted by the appellant was thoroughly examined and rejected on sound grounds. (copy of appeal rejection order attached herewith as annexure "E")
6. The revision petition submitted by the petitioner is still under consideration.

GROUND:-

- A. Incorrect. The removal order as well as the rejection order of the appellant passed by the respondents are legally justified and in accordance to law/rules.
- B. Incorrect. The appellant was absolutely treated under the law/rules in vogue.
- C. Incorrect. As the appellant was proceeded against proper departmentally provided by Police Rules 1975 amended in 2014. Thus the judgments of Apex Court provided by the appellant are not applicable to the case of the appellant.
- D. Incorrect. As the appellant was proceeded against special law i.e Police Rules 1975 amended in 2014 which is applicable law for a police officer who committed a misconduct.
- E. It is correct that departmental enquiry has been conducted against the appellant in accordance with law as admitted by the appellant himself. However, the rest of Para is incorrect as the allegations leveled against the appellant were fully established by the Enquiry Officer during the course of enquiry.
- F. Incorrect. The appellant was absolutely treated in accordance with law within the meaning of Article 10-A of the constitution by giving him sufficient and proper opportunities at every level of defense and that the entire proceedings were carried out in accordance with existing laws and rules. The judgments of the Apex Court of Pakistan produced by the appellant in the para are not applicable to the case of the appellant.
- G. Incorrect. As explained in the preceding Paras above the appellant was proceeded against proper departmentally as per law and the appellant was never deprived from his legal rights by the respondents.
- H. Incorrect. As the appellant was willfully remained absent from his lawful duty without any leave or prior permission of the competent authority. The

willful absenteeism is a serious grounds of misconduct under the disciplinary rules necessitating departmental action. The appellant being a member of disciplined force by willfully absenting himself was found to be guilty of grave misconduct. Thus the penalty awarded to the appellant commensurate to the gravity of his misconduct.

- I. Incorrect. The allegations are false and baseless as the impugned order of the appellant was passed by the competent authority after fulfillment of codal formalities required as per law/rules. Thus the respondents did not violated any law/rules as well as judgment of the Apex Court of Pakistan.
- J. Incorrect. The appellant did not bother to get copy of the impugned orders during the course of enquiry. However, the appellant was properly treated departmentally by fulfilling all the codal formalities of enquiry.
- K. Incorrect. The allegations are false and baseless. As proper departmentally enquiry was conducted against the appellant under the existing law as he was issued Charge Sheet alongwith Summary of Allegations and DSP FRP HQrs; Peshawar was nominated as Enquiry Officer. The appellant was fully associated with enquiry proceedings and it is evident from Charge Sheet and his reply. After fulfillment of all codal formalities required as per law/rules, he was awarded major punishment of dismissal from service. A sufficient opportunity of personal hearing in the light of natural justice has already been provided to the appellant, but he failed to prove himself innocent.
- L. Incorrect. The Para has already been explained in the preceding Para No. "K" above accordingly.
- M. Incorrect. In the reply of Charge Sheet the appellant taken the plea of illness of his younger brother, while now in the instant appeal he presented the reason of illness of his mother meaning thereby that the appellant is an inefficient and malingering type worker. Therefore, any leniency or complacency would further embolden the accused officer and impinge upon adversely on the overall discipline and conduct of the force.
- N. Incorrect. The appellant deliberately remained absent from lawful duty for a long period of 05 months and 02 days without any leave or prior permission of the competent authority. He was proceeded against proper departmentally and the allegations leveled against him were fully established by the Enquiry Officer during the course of enquiry. After fulfillment of all codal formalities he was awarded major punishment of dismissal from service which commensurate with the gravity of the misconduct of the appellant.
- O. Incorrect. As the allegations of willful absence against the appellant were fully established by the Enquiry Officer against him during the course of enquiry and after fulfillment of all codal formalities he was awarded major

punishment in accordance with law, which commensurate with the gravity of his misconduct. Moreover, the appellant was not deprived from his legal rights.

P. The respondents may also be permitted to adduce additional grounds at the time of arguments

PRAYERS:-

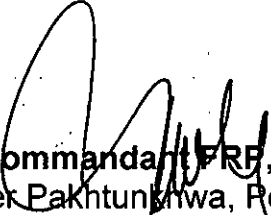
Keeping in view the above facts and circumstances, it is most humbly prayed that the instant service appeal being not maintainable, may kindly be dismissed with costs please.



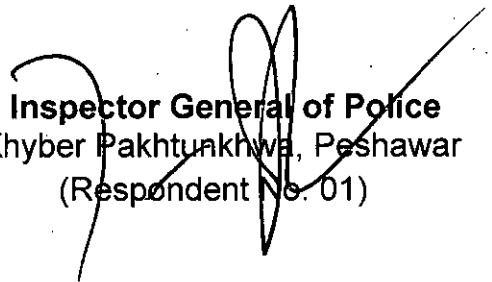
**DSP FRP HQrs;
Peshawar**
(Respondent No. 03)



**Deputy Commandant FRP,
Khyber Pakhtunkhwa, Peshawar.**
(Respondent No. 04)



**Commandant FRP,
Khyber Pakhtunkhwa, Peshawar.**
(Respondent No. 02)



**Inspector General of Police
Khyber Pakhtunkhwa, Peshawar**
(Respondent No. 01)

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Service Appeal No. 669/2022.


Waqas Ahmad Son of Sami Ullah (Ex-Constable No. 326/5540 of FRP HQrs) R/O Mathra District PeshawarAppellant.

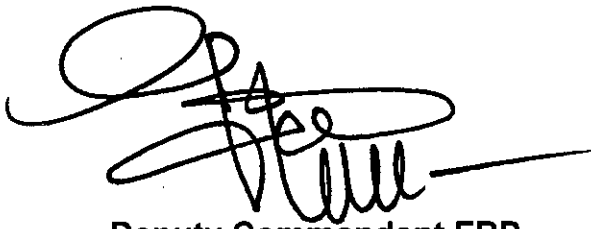
VERSUS

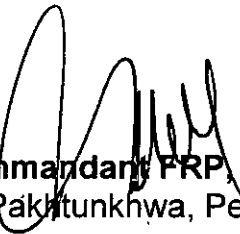
Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others.....Respondents.

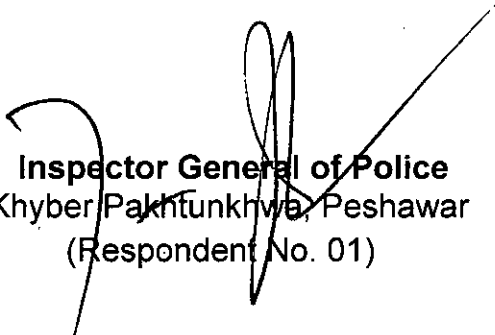
AFFIDAVIT

We respondents No. 1 to 4 do hereby solemnly affirm and declare on oath that the contents of the accompanying Para-wise Comments is correct to the best of our knowledge and belief that nothing has been concealed from this Honorable Court.

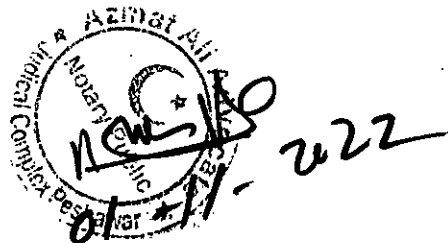

DSP FRP HQrs;
Peshawar
(Respondent No. 03)


Deputy Commandant FRP,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 04)


Commandant FRP,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 02)


Inspector General of Police
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 01)

ATTESTED


Notary Seal: Azmat Ali, Notary Public, Khyber Pakhtunkhwa, Peshawar. Date: 11/11/2022.

D.S.P

CHARGE SHEET U/S 6(1) (A) POLICE RULES 1975

You Charge Constable Waqas No.326 of FRP HQrs: Peshawar is hereby charged for committing the following omission/commissions.

While posted at FRP HQrs: Peshawar absented himself from duty w.e from 2.01.2020 till date without taking any leave/permission of the competent authority.

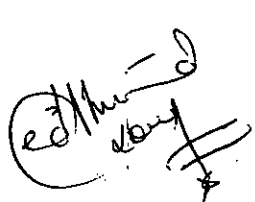
You are hereby called upon to submit your written defense against the above charges before the enquiry officer.

Your reply should reach the Enquiry Officer within seven (7) days from date of receipt of this Charge Sheet, failing which ex-parte action shall be taken against you.

Summary of allegations is enclosed herewith.


Deputy Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa Peshawar

4/6/2020
17/9



مقام ڈیپوٹنٹ کمیشنر پولیس پشاور
سید سعید اللہ خان
تاریخ 17/9/2020

mob 0545-9737772

case 17301-1244419-1

Received

" A/2 "

ORDER.

UNDER SUB-SECTION-3 & SECTION 5 POLICE RULES, 1975

I, Deputy Commandant FRP, Khyber Pakhtunkhwa Peshawar as Competent Authority Charge Constable Waqas No.326 of FRP HQrs: is prima facie guilty of the following acts to be dealt with u/ 5 (3) of Police Rules, 1975.

While posted at FRP HQrs: Peshawar absented himself from duty w.e from 2.01.2020 till date without taking any leave/permission of the competent authority.

The act of delinquent Official falls within the ambit of gross misconduct and is liable to be proceeded under Police Rule 1975.

For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations. I, Deputy Commandant FRP, Khyber Pakhtunkhwa, being authorized officer hereby nominate enquiry officer as below to enquire into the charges within the meaning of 2(iii) under Police Rules 1975.

DSP Rafiullah /FRP

The enquiry officer after completing all enquiry proceedings should submit findings to the undersigned within stipulated period of (10) days per u/s 6(5) of the Rules.

Charge Sheet and Statement of Allegations are issued against the accused officer separately. Reply should be submitted before the Enquiry officer within the period of (07) days from the date of receipt.


**Deputy Commandant,
Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar.**

No. 345 /PA, dated Peshawar the 04 /03 /2020.

Encl: Papers (03) in Original.

بیان آراء و افکار
صاحب عالی

326 / H22

کچھ لڑکا برج شو کری آخ ایلین فارم
صاحب ڈیٹنگ سب سے خاصا ٹوڈوں درہتہ سوں کج جن سے
کا جو بانی علامہ صاحب کو لوٹوں نے رب کی ہیبت میں سرفکر
لینے کا عادی بن گیا ہے، اور جن میں اس نے گھسٹا
واحد نہیں ہوں، اور حضرت علیؓ کی تردید داری

میرے تڑھوں پر ہے، اور میرے گھسٹا کے علاوہ

لوگوں کو ذریعہ معاش نہیں ہے، جس کے علاوہ

علاجی مرفوعہ کا بہت زیادہ وقت اور لیسٹ

ہوا، جیگہ و ج سے جن سے سارے دنیا پر لپٹا ہوا

فیلڈ ہوا، درج بالا گھسٹے والے کو ج سے

جن سے فورڈ 2020-01-02 سے 2020/4/6 تک

غیر باہر ہوا

نہذا اہل ایمان سے نہ ریلج در خواست ہذا العار

ہے، کہ جن میں سے کئی ناموں کے لئے گھسٹے والے غیر باہر کی کوریج

وقت شمار کرنے اور انہوں میں سے کوئی نہ کرنا اور جن سے

کے لئے سزا کے لئے احکامات صادر فرما کر

~~edham~~

الغرض
لیکن اس کا نتیجہ
326 / H22

Mob: 0345-9737772

Annex "C"

ENQUIRY REPORT.

It was alleged that constable Waqas No. 326 of FRP/HQrs: Peshawar absented himself w. e. from 02.01.2020 to 04.06.2020 for the period of (05) Months and (02) days, without any leave/permission of the competent authority. He was issued charge sheet and summary of allegation by the Worthy Deputy Commandant of FRP Khyber Pakhtunkhwa, which was duly served upon the said constable by DHC Shakir Ullah and the undersigned was nominated as enquiry officer.

FINDINGS.

Being an enquiry officer it has come to light that the said constable absented himself w. e. from 02.01.2020 to 04.06.2020 for the period of (05) Months and (02) days.

According to the FMC FRP/HQrs the said constable absented himself for 229 days in previous service which was treated as without pay and extra drill etc.

The said constable stated in his written statement that due to his brother illness he was unable to performed duty and remained absent. He failed to submit any cogent ground to show his brother illness.

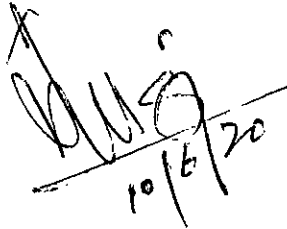
Keeping in view the above his deliberate absence period of (05) Months and (02) days are recommended for major punishment.

Submitted Please.


DSP HQrs FRP
Peshawar

NO. ~~121~~ 121 - /R Peshawar Dated 06.08.2020. Enclosed (05 sheets)

PA
ISSU F S C N


10/6/20

Annex "D"

FINAL SHOW CAUSE NOTICE UNDER POLICE RULES 1975.

I, Deputy Commandant, FRP, KPK as competent authority do hereby serve you Constable Waqas No.326 of FRP/HQrs, Peshawar.

(1) i- That consequent upon the completion of enquiry conducted against you by DSP FRP HQrs: Peshawar for which you were given full opportunity of hearing, but you failed to submit reply in response to the Charge sheet/statement of allegation and recommend you for Ex-parte action.

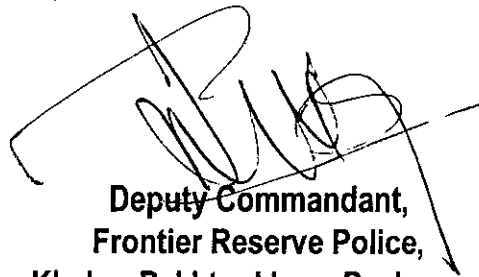
ii- On going through the findings/recommendations of the Enquiry Officers, the material available on record and other connected papers I, am satisfied that you have committed the following acts/omissions per Police Rules 1975.

You Constable Waqas No.326 of FRP HQrs: Peshawar absented yourself from duty with effect from 02.01.2020 to 04.06.2020 for the total period of (05) months and 02 days without any leave/permission of the competent authority. In this connection an enquiry was entrusted to DSP FRP HQrs: Peshawar, who after enquiry recommend you for Ex-parte action.

(2) Therefore, I, Deputy Commandant, FRP, KPK as competent authority has tentatively decided to impose upon you Major/Minor penalty including dismissal from service under the said Rules.

(3) You are, therefore, required to Show Cause as to why not the aforesaid penalty should not be imposed upon you.

(4) If no reply to this Final Show Cause Notice is received within fifteen days of its delivery in the normal course of circumstances, it shall be presumed that you have no defence to put in and consequently ex-parte action shall be taken against you.


Deputy Commandant,
Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar.

No. 804

/PA, Dated 11-06-2020

ORDER

This order will dispose of the departmental appeal preferred by ex-constable Waqas Ahmad No. 326/5540 of FRP HQrs; against the order of competent authority, wherein he was awarded major punishment of removal from service on 09.07.2020.

Brief facts of the case are that the delinquent ex-constable was enlisted in police department on 01.09.2014. He remained absent from duty with effect from 02.01.2020 to 04.06.2020 for total period of (05 months and 02 days) without any leave or prior permission of the competent authority.

In this regard formal departmental proceedings were initiated against him as he was issued Charge Sheet alongwith Summary of Allegations and DSP FRP HQrs; Peshawar was nominated as Enquiry Officer to conduct proper enquiry against him. The Enquiry Officer submitted his findings, wherein he reported that Charge Sheet alongwith Summary of Allegations were duly served upon him, but he badly failed to submit reply within stipulated period. At the end the Enquiry Officer has recommended him for major punishment.

Upon the findings of Enquiry Officer, he was issued Final Show Cause Notice, to which he replied, but his reply was found unsatisfactory. He was called in orderly room to justify his prolong absence, but he could not produce any cogent reason in his defence.

From the perusal of his service record, it has been found that he was enlisted in police department on 01.09.2014 and previously he was remained absent from duty for a total period of (226) days on different occasions for which he was awarded various kinds of punishments, but failed to mend his ways.

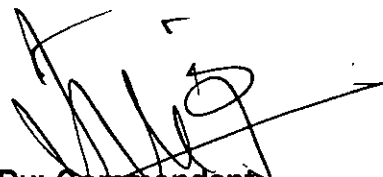
Keeping in view the recommendation of Enquiry officer and other material available on record, he was removed from service vide Order Endst; No. 1024-29/PA, dated 09.07.2020.

Feeling aggrieved against the impugned order, the applicant preferred the instant appeal. The applicant was summoned and heard in person in Orderly Room held on 06.07.2021.

During the course of personal hearing, the applicant failed to present any justification regarding to his prolong absence. From perusal of enquiry file it has been found that the allegations were fully established against the applicant. It is settled proposition of law that the law helps the diligent and not indolent. Thus the applicant has been found to be an irresponsible person in utter disregard the discipline of the force and his reinstatement may impinge upon the over all moral and affect adversely the discipline of the force. Thus the instant appeal preferred by the applicant without any substance and there doesn't seem any infirmity in the order passed by the competent authority, therefore no ground exist to interfere in same.

Based on the findings narrated above, and exercise of power, delegated to the undersigned vide office order No. 341-45/PA, dated 13.03.2019, being the competent authority, finds no substance in the appeal, therefore, the same is rejected and filed being meritless and badly time barred.

Order Announced.


Dy: Commandant
For Gemmmandant FRP
Khyber Pakhtunkhwa, Peshawar.

No 5750-58/SI Legal, dated Peshawar the 16 10/72021.

Copy of above is forwarded for information and necessary action to the:-

1. SRC FRP HQrs; Peshawar. His service roll sent herewith.
- ✓ 2. Incharge Fauji Missal FRP HQrs; Peshawar. Fauji Missal alongwith D-file sent herewith.
3. Ex constable Waqas Ahmad 326/5540 of FRP HQrs S/o Sami Ullah R/o Village

O.R.D.E.R.

This order will dispose off the Departmental Enquiry against Constable Waqas No. 326/5540 of FRP/HQrs: Peshawar.

Brief facts of the case are that Constable Waqas No. 326 of FRP HQrs: Peshawar, now drawing his pay from FRP Kohat Range, absented himself from duty with effect from 02.01.2020 to 04.06.2020 for a total period 05 months and 02 days without any leave/permission of the Competent Authority. In this regard, formal departmental proceedings were initiated and he was issued Charge Sheet alongwith Statement of allegations and DSP FRP HQrs Peshawar was nominated as Enquiry Officer. After enquiry, the Inquiry Officer submitted his findings, wherein he reported that Charge Sheet/Statement of allegation were duly served upon him, but he badly failed to submit reply within in stipulated period. At the end the Enquiry Officer has recommended the above named constable for Major Punishment. Upon the finding of Enquiry Officer, he was issued Final Show Cause Notice, but his reply was found not satisfactory. He was called in Orderly Room to justify his prolong absence, but could not produce any cogent reason in his defence.

In view the aforementioned facts, recommendations of the Enquiry Officer and other material available on record it has come crystal clear that the said Constable has deliberately absented himself from duty for a long period/time. From perusal of his past record it has been found that previously he remained absent from lawful duty for a period of 226 days on different times to which he was punished accordingly. Being a member of the discipline force, he does not take interest in his official duty. He is not fit for Police Active duty and there is no likelihood of become his good Police Officer in future.

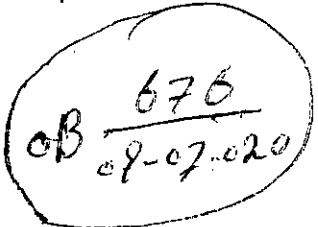
Keeping in view the findings narrated above, I, Malik Muhammad Tariq, PSP, Deputy Commandant FRP Khyber Pakhtunkhwa Peshawar being a competent authority is hereby awarded Major punishment of Removal from service to Constable Waqas No. 326/5540 of FRP HQrs: Peshawar under Police Rules 1975 amended 2014 with effect from 02.01.2020. However his absence period is treated as absence without pay.


Deputy Commandant,
Frontier Reserve Police
Khyber Pakhtunkhwa Peshawar

No. 1024-29 /PA dated Peshawar, the 09 / 07 /2020.

Copy to the:-

1. Worthy Commandant, FRP Khyber Pakhtunkhwa Peshawar for information please.
2. SP FRP Kohat Range Kohat.
3. Accountant /FRP/HQrs: Peshawar.
4. SRC/OASI/FRP HQrs: Peshawar.
5. FMC/ FRP/HQrs: Peshawar with original Enquiry file.


OB 676
08-07-2020

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 669/2022.

Waqas Ahmad Son of Sami Ullah (Ex-Constable No. 326/5540 of FRP HQrs) R/O Mathra District PeshawarAppellant.

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others.....Respondents.


AUTHORITY LETTER

Respectfully Sheweth:-

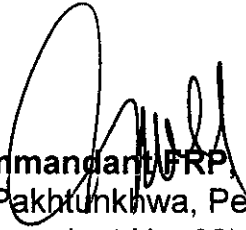
We respondents No. 1 to 4 do hereby solemnly authorize Mr. Ghassan Ullah ASI FRP HQrs to attend the Honorable Tribunal and submit affidavit/Para-wise comments required for the defense of above Service Appeal on our behalf.



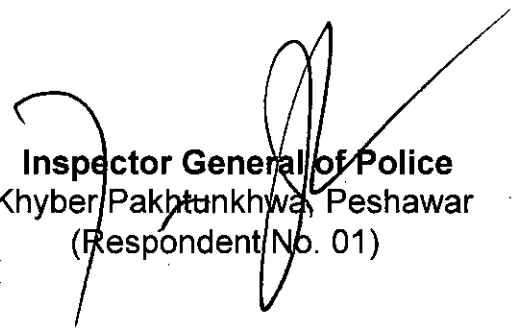
**DSP FRR HQrs;
Peshawar
(Respondent.No. 03)**



**Deputy Commandant FRP,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 04)**



**Commandant FRP,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 02)**



**Inspector General of Police
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 01)**