

20<sup>th</sup> Sept 2022 Counsel for the appellant present. Mr. Kabiruallah  
Khattak, Addl: AG present.

Written reply not submitted. Learned AAG assured  
that the written reply will be submitted on the next  
date. To come up for written reply on 15.11.2022  
before S.B at camp court Abbottabad.



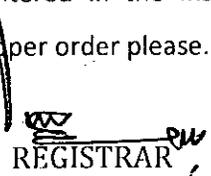
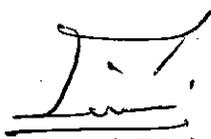
(Kalim Arshad Khan)  
Chairman  
Camp Court Abbottabad

Form- A

## FORM OF ORDER SHEET

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

Case No.- \_\_\_\_\_ 945/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	23/06/2022	<p>The appeal of Mr. Shahzad Shah resubmitted today by Mr. Muhammad Aslam Tanoli Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR,</p>
2-	14-7-22	<p>This case is entrusted to touring Single Bench at A.Abad for preliminary hearing to be put there on <u>19-7-22</u>. Notices be issued to appellant and his counsel for the date fixed.</p> <p> CHAIRMAN</p>
	19.07.2022	<p>Learned counsel for the appellant present. Preliminary arguments heard.</p> <p>Points raised need consideration, hence the appeal in hand is admitted to regular hearing subject to all just and legal objections. The appellant is directed to deposit security and process fee within 10 days, where-after notices be issued to the respondents for submission of written reply/comments on 20.09.2022 before the S.B at Camp Court Abbottabad.</p> <p> (Salah-Ud-Din) Member (J) Camp Court Abbottabad</p>

Appellant Deposited  
Security & Process Fee

26/7

To

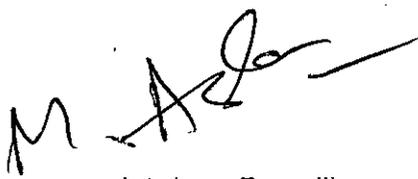
The Registrar,  
KPK Service Tribunal,  
Peshawar.

Subject:- **RE-SUBMISSION OF APPEAL FILE OF SHAHZAD SHAH  
APPELLANT AFTER COMPLTION AND REMOVAL OF  
OBJECTIONS.**

Reference: Your letter No.1040/ST dated 13-05-2022.

That copy appeal with your objection was delivered on 09-06-2022 in the Library of Judicial Complex Haripur which was passed in the office beneath the door by someone. I remained busy in Camp Court of KPK Service Tribunal at Abbottabad from 13-06-2022 to 17-06-2022. On 20-06-2022 when I went to my office at Judicial Complex Haripur the same was found lying on the floor of office. The following objections were raised vide your letter referred to above have been removed and filed is resubmitted

1. That check-list has been attached with appeal.
2. That copy of departmental appeal as mentioned in para-3 of the memo of appeal has been placed on file.
3. File is re-submitted please.

  
(Muhammad Aslam Tanoli)  
Advocate High Court  
District Courts Haripur

Dated: 23-06-2022

The appeal of Mr. Shahzad Shah Constable No. 2398 Elite Force KP Peshawar received today i.e. on 12.05.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Check list is not attached with the appeal.
- 2- Copy of departmental appeal mentioned in para-3 of the memo of appeal is not attached with the appeal which may be placed on it.

No. 1040 /S.T,

Dt. 13-5- /2022

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Muhammad Aslam Tanoli Adv.  
High Court at Haripur

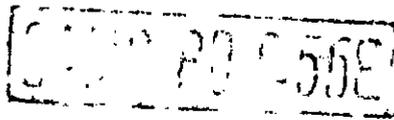
O.P.S.S

Regel

To,

Muhammad Aslam Tanoli  
Advocate High Court  
Haripur

19/5/11



A handwritten signature in black ink, appearing to be 'Aslam'.

Dispatcher  
Service Tribunal  
Peshawar

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR  
CHECK LIST**

Case Title: \_\_\_\_\_ vs \_\_\_\_\_

S.#	Contents	Yes	No
1.	This appeal has been presented by: <u>Shahzad Shah</u>		
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the requisite documents?	✓	
3.	Whether Appeal is within time?	✓	
4.	Whether the enactment under which the appeal is filed mentioned?	✓	
5.	Whether the enactment under which the appeal is filed is correct?	✓	
6.	Whether affidavit is appended?	✓	
7.	Whether affidavit is duly attested by competent oath commissioner?	✓	
8.	Whether appeal/annexures are properly paged?	✓	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10.	Whether annexures are legible?	✓	
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/clear?	✓	
13.	Whether copy of appeal is delivered to A.G/D.A.G?		✓
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15.	Whether numbers of referred cases given are correct?	✓	
16.	Whether appeal contains cuttings/overwriting?		✓
17.	Whether list of books has been provided at the end of the appeal?	✓	
18.	Whether case relate to this Court?	✓	
19.	Whether requisite number of spare copies attached?	✓	
20.	Whether complete spare copy is filed in separate file cover?	✓	
21.	Whether addresses of parties given are complete?	✓	
22.	Whether index filed?	✓	
23.	Whether index is correct?	✓	
24.	Whether Security and Process Fee deposited? on		✓
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on		
26.	Whether copies of comments/reply/rejoinder submitted? on		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

Muhammad Adam Tahir  
Advocate

Signature:

M. Adil

Dated:

12/05/2022

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

Appeal No. .... 945/2022

Shahzad Shah, Constable No. 2398 Elite Force KPK Peshawar.

**Appellant**

**VERSUS**

1. Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. Commandant. Elite Force KPK, Peshawar.
3. Deputy Commandant, Elite Force KPK, Peshawar.

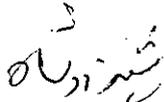
**Respondents**

**SERVICE APPEAL**

**INDEX**

S/No	Description of Document	Ann- exure	Page No.
1.	Memo of appeal		01-07
2.	Dismissal Order dated <b>20-02-2018</b>	"A"	08
3.	Acquittal Order dated <b>16-12-2020</b>	"B"	09-15
4.	Appeal Rejection Order dated <b>25-02-2021</b>	"C"	16
5.	Revision Petition dated <b>04-03-2021</b>	"D"	17-18
6.	Order of Revision Petition dated <b>15-04-22</b>	"E"	19
7.	Wakalatnama		

Through

  
**Appellant**

(Mohammad Aslam Tanoli)  
Advocate High Court  
at Haripur

Dated: 12 -05-2022

①

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

Appeal No.....

Shahzad Shah, Constable No. 2398 Elite Force KPK Peshawar.

**Appellant**

**VERSUS**

1. Provincial Police Officer, Khyber, Paktunkhwa, Peshawar.
2. Commandant. Elite Force KPK Peshawar.
3. Deputy Commandant, Elite Force KPK Peshawar.

**Respondents**

**SERVICE APPEAL UNDER SECTION-4 OF KPK SERVICE TRIBUNAL  
ACT 1974 AGAINST ORDER DATED 20-02-2018 OF DEPUTY  
COMMANDANT ELITE FORCE KPK PESHAWAR WHEREBY  
APPELLANT WAS "DISMISSED FROM SERVICE" AND ORDER DATED  
25-02-2021 OF COMMANDANT ELITE FORCE KPK PESHAWAR VIDE  
WHICH HIS DEPARTMENTAL APPEAL HAS BEEN REJECTED AND  
ORDER DATED 15-04-2022 OF PROVINCIAL POLICE OFFICER  
PESHAWAR WHEREBY WHILE PARTIALLY ACCEPTING APPELLANT'S  
REVISION PETITION PENALTY OF DISMISSAL FROM SERVICE HAS  
BEEN CONVERTED INTO STOPPAGE OF TWO YEARS INCREMENTS  
WITH COMULATIVE EFFECT, THE PERIOD APPELLANT WAS KEPT OUT  
OF SERVICE HAS BEEN TREATED AS LEAVE WITHOUT PAY.**

**PRAYER: ON ACCEPTANCE OF INSTANT SERVICE APPEAL THE  
ORDERS DATED 20-02-2018, 25-02-2021 AND 15-04-2022 OF  
RESPONDENTS MAY GRACIOUSLY BE SET ASIDE/MODIFIED AND  
APPELLANT BE RESTORED HIS TWO YEARS STOPPED INCREMENTS,  
THE PERIOD HE WAS KEPT OUT OF SERVICE BE TREATED AS ON  
DUTY OR AT LEAST LEAVE OF THE KIND DUE BE ALLOWED WITH  
GRANT OF ALL CONSEQUENTIAL SERVICE BACK BENEFITS.**

Respectfully Sheweth:

1. That appellant while posted as Constable in Elite Force KPK Peshawar a false and fabricated FIR No.133 dated 27-01-2018. was registered at Cit Police Station Haripur against him on the instance of his opponents on the basis of grudge and enmity. On account of said FIR the appellant was dismissed from service by the Deputy

2)

Commandant, Elite Force, KPK Peshawar vide order dated 20-02-2018 without conducting any proper departmental inquiry and providing a chance of personal hearing. **(Copy of dismissal order dated 20-02-2018 is attached as annexure as Annexure-"A")**.

2. That after trial the appellant was acquitted of the charge by the Trial Court of Judicial Magistrate Haripur vide decision dated 16-12-2020. No appeal was filed against the said order which had attained finality. **(Copy of acquittal order dated 16-12-2020 is attached as Annexure-"B")**.
3. That on acquittal the appellant filed a departmental appeal dated 04-01-2021 against his dismissal order before the appellate authority/Commandant Elite Force KPK Peshawar which was rejected vide order dated 25-02-2021. Copy of departmental appeal could not be retained. **(Copy of appeal rejection order dated 25-02-2021 is as annexed as Annexure-"C")**.
4. That aggrieved of the order of Commandant Elite Force KPK Peshawar, the appellant filed a Revision Petition before the Provisional Police Officer KPK Peshawar on 04-03-2021 which was partially accepted vide order dated 15-04-2022 and appellant was reinstated in service and penalty of dismissal was converted in to stoppage of 02 (two) years increments with cumulative effect and the period appellant kept out of service was treated as leave without pay. **(Copy of appeal dated 04-03-2021 and appellate order dated 15-04-2022 are attached as Annexure-"D&E")**.

5. Hence instant service appeal, inter alia, on the following amongst others:-

**GROUND:**

- a) That impugned orders dated 20-02-2018, 25-02-2021 and dated 15-04-2021 of the respondents are illegal, unlawful, void ab-initio against the facts, departmental rules and regulations and principle of natural justice hence liable to be set aside/modified.
- b) That no proper departmental inquiry was conducted. No witness was called for to appear before the inquiry officer in presence of appellant to record evidence nor was appellant provided with a chance to cross-examine such a witness. Copy of inquiry report, if any, was never provided to appellant. No Show Cause Notice was given to him. Even opportunity of personal hearing was not afforded to the appellant rather he was condemned unheard.
- c) That respondents have not treated the appellant in accordance with law, departmental rules & regulations and policy on the subject and have acted in violation of Article-4 of constitution of Islamic Republic of Pakistan 1973 and unlawfully issued the impugned orders, which are illegal, unlawful, void ab-initio, unjust, unfair and against the facts hence not sustainable in the eyes of law.
- d) That appellate authority has also failed to abide by the law and even did not take into consideration the grounds

taken by appellant in the memo of appeal and has filed the appeal. Thus act of respondent is contrary to the law as laid down in the KPK Police Rules 1934 read with section 24-A of General Clause Act 1897 and Article 10-A of the Constitution of Islamic Republic of Pakistan 1973.

- e) That appellant has discharged his assigned duties with devotion, dedication and honesty always fighting against the forces of criminals. He pointed out and got arrested the narcotics paddlers, gamblers and other species of different type criminals. He left no stone un-turned in discharge of his official duties and responsibilities.
- f) That the allegations leveled against appellant in the charge sheet are of ambiguous nature, without any reason, reference, justification and based on surmises, speculation and conjectures which remained un-proved and un-substantiated to even this day. Appellant was innocent and FIR was based on enmity and personal grudge, he was acquitted by the Trail Court. Nothing could be brought on record against appellant like he was involved in criminal case etc for which he has been awarded with punishment.
- g) That since his dismissal from service to re-instatement in service, the appellant remained jobless and had no source of income to live on, and therefore, he along with his family had to suffer with financial distresses. The appellant never absented himself from duty rather he was kept forcibly out of service.

5

1) That instant appeal is well within time and this honorable Service Tribunal has got every jurisdiction to entertain and adjudication upon the same.

**PRAYER:**

It is, therefore, humbly prayed that on acceptance of instant Service Appeal the orders dated 20-02-2018, 25-02-2021 and dated 15-04-2021 of the respondents may graciously be set aside and appellant be restored his two years stopped increments, the period he was kept out of service be treated as on duty or at least leave of the kind due be granted with all consequential service back benefits. Any other relief which this Honorable Service Tribunal deems appropriate and proper in circumstances of the case may also be granted.

شیرازیہ  
Appellant

Through:

M. Aslam Tanoli  
(Mohammad Aslam Tanoli)  
Advocate High Court  
At Haripur

Dated / 2 -05-2022

**VERIFICATION**

It is verified that the contents of instant Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed thereof.

Dated / 2 -05-2022

شیرازیہ  
Appellant

6

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

Shahzad Shah, Constable No. 2398 Elite Force KPK Peshawar.

**Appellant**

**VERSUS**

1. Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. Commandant. Elite Force KPK Peshawar.
3. Deputy Commandant, Elite Force KPK Peshawar.

**Respondents**

**SERVICE APPEAL**

**CERTIFICATE**

It is certified that no such Appeal on the subject has ever been filed in this Honorable Service Tribunal or any other court prior to instant one.

  
**APPELLANT**

Dated: /2-05-2022

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**BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

Shahzad Shah, Constable No. 2398 Elite Force KPK Peshawar.

**Appellant**

**VERSUS**

1. Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. Commandant. Elite Force KPK Peshawar.
3. Deputy Commandant, Elite Force KPK Peshawar.

**Respondents**

**SERVICE APPEAL**

**AFFIDAVIT:**

I, Shahzad Shah appellant do hereby solemnly declare and affirm on oath that the contents of the instant Service Appeal are true and correct to the best of my knowledge and belief and nothing has been suppressed from this Honorable Service Tribunal.

شہزاد شاہ

**Deponent/Appellant**

Dated: 12-05-2022

Identified By:

m. Aslam

Mohammad Aslam Tanoli  
Advocate High Court  
At Haripur

شہزاد شاہ

**Appellant**



No. 2670-77/EF

Dated 20/02/2018.

ORDER

This order will dispose the departmental proceedings against Constable Shehzad Shah No. 2398 of Elite Force, on deputation from Haripur.

He was involved in case FIR No. 133, dated 27.01.2018 U/S 377/511/506 PPC Police Station City District Haripur also remained absent from duty without any leave or prior permission w.e. from 28.12.2017 to 02.01.2018, 08.01.2018 to 12.01.2018, 13.01.2018 to 17.01.2018 and 19.01.2018 to 20.02.2018 (total 46 days). Charge Sheet & Summary of Allegations were issued to him by this office vide No. 1432-37/EF, dated 29.01.2018 and Acting SP Elite Force HQrs was appointed as enquiry officer. Enquiry Officer in his findings found him guilty as the charges leveled proved against him and his criminal act with a school child and involvement in such activities brought bad names to Elite Force as well as to whole police department. His previous record was also perused, the defaulter during his whole service was awarded different punishments i.e. Warning, fine of Rs. 200. Stoppage of 03 annual increments and dismissal from service, which shows he is a habitual absentee and did not take interest in his official duty. Enquiry officer in his findings found him guilty in the matter and recommended him for major Punishment i.e. dismissal from service. A Final Show Cause Notice was issued to him but his reply was found unsatisfactory. He was also called in orderly room on 20.02.2018, to appear before the undersigned to explain his position, and was heard in a person but he failed to satisfy the undersigned.

Therefore, I, Muhammad Hussain, Deputy Commandant, Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, keeping in view of above facts and recommendations of enquiry officer impose major penalty of dismissal from service upon him.

Moreover, period he remained absent from duty i.e. 46 days is treated as leave without pay.

(MUHAMMAD HUSSAIN) PSP  
Deputy Commandant  
Elite Force Khyber Pakhtunkhwa  
Peshawar.

Copy of the above is forwarded to the:-

1. District Police Officer, Haripur for information.
2. Superintendent of Police, Elite Force Headquarters.
3. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
4. Incharge Kot, Elite Force Khyber Pakhtunkhwa Peshawar.
5. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
6. OHC, Elite Force Khyber Pakhtunkhwa Peshawar.
7. SRC, Elite Force Khyber Pakhtunkhwa Peshawar.
8. FMC, Elite Force along with complete enquiry file i.e. 42 pages.

Attested  
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Annex B

IN THE COURT OF MUBARAK ALI JUDICIAL MAGISTRATE-II,  
HARIPUR.

Case File No. : 882/2 of 2018  
Date of Institution : 07.06.2018  
Date of Decision : 16.12.2020

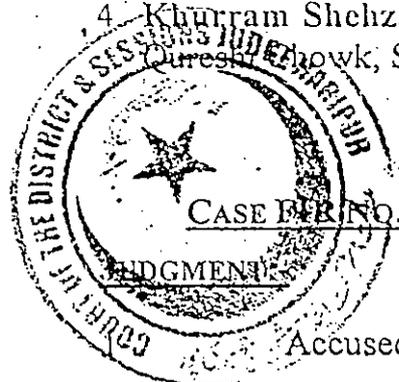
STATE through Tariq Khan S/O Muhammad Sadiq R/O Sector No-01 Khalabat  
Town Ship, Tehsil and District Haripur.

..... (Complainant)

VERSUS

1. Shehzad Shah S/O Chan Shah Caste Syed, R/O Mohallah Liaqatabad, Qureshi Chowk, Sector No-01 KTS.
2. Muhammad Ishfaq S/O Abdul Rehman Caste Awan, R/O Mohallah Thapla, Qureshi Chowk, Sector No-01 KTS.
3. Arsalan Khan S/O Shafqat Zaman Caste Pathan, R/O Mohallah Thapla, Qureshi Chowk, Sector No-01 KTS.
4. Khurram Shehzad S/O Shafqat Zaman Caste Pathan, R/O Mohallah Thapla, Qureshi Chowk, Sector No-01 KTS.

..... (Accused)



CASE FILE NO. 133, DATED 27.01.2018, U/S 377/506/34 PPC PS CITY.

Accused are charged in the present case for having carnal intercourse in furtherance of their common intention with the nephew of complainant and criminally intimidated him of dire consequences.

Mubarak Ali  
16-12-2020  
Mubarak Ali  
Judicial Magistrate.II  
Haripur

Hence, the instant case was registered against the accused.

2-  
Attested to be true copy  
Authorized U/A 87 of  
Gandhinagar  
17 MAY 2021

On completion of investigation challan was submitted by prosecution on 07.06.2018 and after submission of challan accused were summoned.

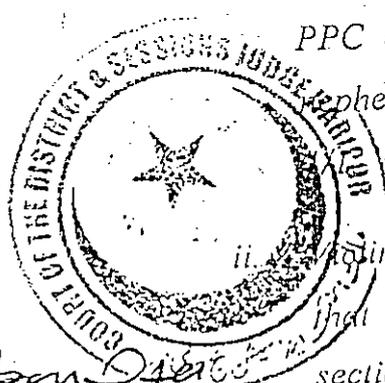
Examiner  
Distt. & Sessions Judge  
Haripur

On appearance of the accused, formalities under section 241-A Cr.PC were complied with on 08.01.2019. Formal charge was framed

against the accused on 28.01.2019 to which they pleaded not guilty and claimed trial.

3) The prosecution seized the opportunity of production of evidence to prove the guilt of accused and the prosecution examined as many as four witnesses while remaining were abandoned by the prosecution. The brief resume of prosecution evidence is as under:-

i. Tariq Mehmood Khan S/O Muhammad Sadiq / complainant deposed as PW-01 that he made the report in shape of application and in this respect FIR No. 133 u/s 377/506/34 PPC on the narration of victim Shamal Khan, who is his nephew and is minor. He exhibited the application as Ex.PW-



ii. Victim of the case recorded his statement as PW-02 and stated that his paternal uncle lodge report against accused under section 377/506 PPC and I.O also recorded his statement.

16-12-2020  
Meharab Ali  
Judicial Magistrate, II  
Haripur

iii. Dr. Omer Khan Medical Officer D.H.Q Haripur appeared in the witness box as PW-03 and stated that on 29.01.2018 he examined the victim. He exhibited his report as Ex.PW-3/1.

iv. Dr. Dildar Khan SMO, DHQ, Hospital Haripur got recorded his statement as PW-04 and stated that he medically examined the accused. and his reports are Ex.PW-4/1 to Ex.PW-4/6.

Attested to be true copy  
Authorized U/A 87 of  
Qanoon-e-Shahadat order:199  
17 MAY 2021  
Examiner  
Distt & Session Judge  
Haripur

v. Saeed Shah ASI, PS Saddar appeared before the court for recording his statement and recorded his statement as PW-05. PW-05 in his statement stated that I started investigation in the instant case. on the pointation of Shamil Khan he prepared the site plan which is Ex.PW-5/1. He prepared recovery memo which is Ex.PW-5/2. On 29.01.2018 he arrested the accused Shehzad Shah and issued card of arrest Ex.PW-5/3 and too

into possession his mobile Nokia and sealed into parcel No-054 and prepared recovery memo Ex.PW-5/4. The accused which was arrested by SHO was handed over to him along with his card of arrest and mobile and currency notes, which were taken into possession vide recovery memo Ex.PW-5/5. He arrested the accused Ahmad Shams and his card of arrest is Ex.PW-5/6. He took into possession the mobile phone of accused along with memory card, recovery memo is Ex.PW-5/7. He arrested the accused Khurram Shehzad and Arsalan and issued card of arrest Ex.PW-5/8 and took into possession their mobile phones along with SIMs mentioned in the memo Ex.PW-5/9. He produced the victim before the doctor through an injury sheet Ex.PW-5/10. He took into possession phial produced by constable Mumtaz No-733, vide recovery memo Ex.PW-5/11. He produced accused Ahmad Shams for his medical examination through an application Ex.PW-5/12. He also produced the accused Ishfaq, Khurram Shehzad, Shehzad Shah, Arsalan vide application Ex.PW-5/13 to Ex.PW-5/16 for their medical examination. Application for police custody is Ex.PW-5/17. He sent the sample for analysis through application, carbon copy of which is Ex.PW-5/18. Application for DNA examination of victim Shamil Khan is Ex.PW-5/19. He also took into possession the blood of victim for FSL, vide recovery memo Ex.PW-1/20. He also took into possession the samples of all the accused for matching with the victim vide his applications Ex.PW-5/21 to Ex.PW-5/23. He also took into possession the blood of above said accused vide memo Ex.PW-5/24 and Ex.PW-5/25. He produced accused Ahmad Shams for recording his confessional statement vide application Ex.PW-5/26. He took into possession the laptop of accused Ishfaq vide recovery memo Ex.PW-5/27. He took into possession car bearing No. 882 Islamabad vide recovery memo Ex.PW-5/28. He took into possession the mobile phone of Khurram Shehzad



Mubarak Ali  
 16-12-2020  
 Mubarak Ali  
 Judicial Magistrate-II  
 Haripur

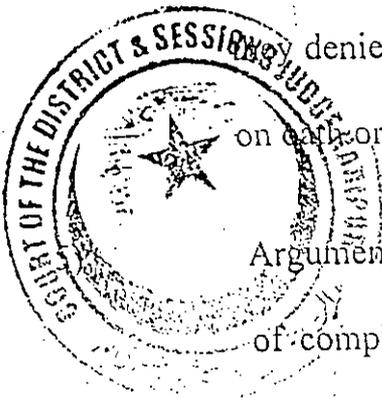
Attested to be true copy  
 Authorized Sign. of  
 Examiners  
 17 MAY 2021  
 Distt. & Session Judge  
 Haripur

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vide recovery memo Ex.PW-5/29. He also issued for addition of charge Ex.PW-5/30. He drafted an application for de-sealing the parcel of mobile for the purpose of repairing, application is Ex.PW-5/31. He drafted an application for sending the mobile phone Galaxy J-& and others for FSL, carbon copy of which is Ex.PW-5/32. Report of FSL is Ex.PW-5/33. He recorded the statement of PWs u/s 161 Cr.PC.

vi. Adil Khan IHC, PW-06 also recorded his statement.

4) After conclusion of evidence of prosecution, statements of accused within the meaning of section 342 Cr.PC were recorded, wherein denied the allegations. The accused did not wish to be examined on oath or to produce evidence in defense.



Arguments of learned SPP for the state duly assisted by the counsel of complainant and learned defense counsel are heard and record perused.

Mubarak Ali

16-12-2020

Mubarak Ali  
Judicial Magistrate.II  
Haripur

Perusal of record reveals that as per record the alleged occurrence has taken place two months ago before lodging the FIR, whereas FIR was registered on 27.01.2018 after considerable delay. Further, on 29.01.2018, the victim underwent medical examination however, according to medical report "No superficial or deep wound, injury,

Attested to be true copy  
Authorized U/A of  
Ghanoon-e-Shahadat order-1984

17 MAY 2021

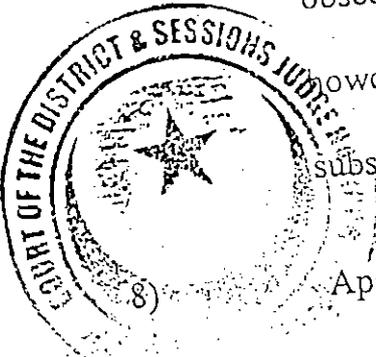
Examiner  
Dist. & Sessions Judge  
Haripur

laceration or abrasion, near rectum or around it" thus the medico legal report does not lend support to the stance of the prosecution.

7)

More so, according to the contents of the FIR, no eyewitness of the occurrence has been named out rather an unseen occurrence. In this connectivity, complainant as PW-01 during cross examination

admitted that "it is correct that no eyewitness supported my version. I myself not the eye witness of the occurrence. I have made my report on the narration of my nephew who is minor." Furthermore the medico legal report does not confirm that the victim was subjected to any torture and sodomy. The said report specifically negates any superficial or deep wound, injury, laceration or abrasion, near rectum or around it. Complainant himself admitted that, "It is correct that medical report is not supported my version." Further allegations of the case are that accused made obscene video and pictures of the victim and blackmailed him. Though the immoral material i.e. obscene videos and picture have been found in the mobile of accused



however, noting related to instant case has been brought on record to substantiate the version of prosecution.

M M Azeer

Mubarak Ali  
Judicial Magistrate-II  
Haripur

Apart from this, compromise has been affected between the parties as complainant during his cross examination admitted that "accused during local Jirga satisfied us for their innocence in the instant case and today, I have got no objection if the accused facing trial are acquitted from the charge leveled against them." He further during his cross examination stated that, "I am no more interested in further prosecution of case and have no objection if accused are acquitted from the charges. Meaning thereby complainant has patched up the matter with the accused and he does not want to proceed further against the accused.

Attested to be true copy  
Authorized U/A 87 of  
Qanoon-e-Shahadat order: 1984

17 MAY  
Examiner,  
District & Session Judge  
Haripur

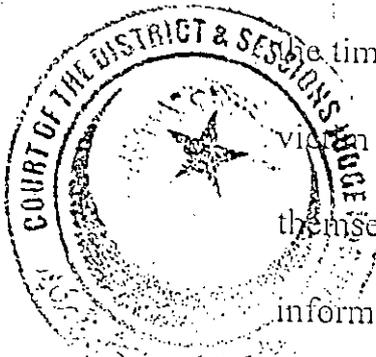
19

9)

Victim was subjected to cross examination. Relevant portion of his cross examination is hereby reproduced as under for ready reference;

"یہ درست سیل میں نے اپنے بیان میں تقابلی فرس کو یہ کہا تھا کہ جن لمزمان نے میرے ساتھ وقوعہ کیا ہے وہ بروقت وقوعہ اپنے ہنہ پر رومال دھانپے ہوئے تھے۔ من نے لمزمان کو اس وقت نہیں پہچانا تھا۔ یہ درست ہے کہ بعد از وقوعہ میرے چچا کے ہمراہ ہمارے محلے کے لوگ رپورٹ درج کرانے گئے تھے۔ جنہوں نے لمزمان کے نام لکھوائے تھے۔ یہ درست ہے کہ جن اشخاص نے لمزمان کے نام بتائے تھے انکا سیاسی طور پر لمزمان کے خلاف مقدمہ بازی پیل رہی تھی۔ یہ درست ہے کہ بعد از وقوعہ لمزمان نے بروئے جرم اپنے بے گناہی کی تسلی کرائی تھی۔ جس بنا پر میں اور میرا چچا مقدمہ کی مزید پیروی نہیں کرنا چاہتے اگر عدالت انہیں بری کرے تو مجھے کوئی غدر اعتراض نہ ہے۔"

Meaning thereby that victim himself did not identify the accused at the time of occurrence and report was lodged not on the pointation of victim himself but on the pointation of other persons even who themselves not seen the occurrence. No source of satisfaction / information is available on the case file that on what grounds accused



Mubarak Ali

was charged in the instant case.

16-12-2020  
Mubarak Ali  
Judicial Magistrate-II  
Haripur

In the FIR no date and time of occurrence is mentioned. IO during cross examination admitted that, "It is also correct that complainant did not stated in his application the time of occurrence."

11)

During investigation of the case, accused did not record their confessional statement. Accused remained in police custody for sufficient time but no incriminating article was recovered from their possession.

Attested to be true copy  
Authorized U/A 87 of  
Qanoon-e-Shahadat order:1988  
17 MAY 2021  
Examiner  
District & Sessions Judge  
Haripur

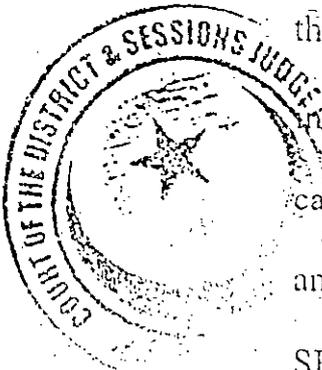
12)

For the proof of the criminal charge all the rings of the chain should connect each other in such a way that one end of the chain should start from the guilt and the other end should reach to the neck of the

accused and if any link is missing and is creating doubt, its benefit is always to be extended in favor of the accused. *In present scenario when the parties have entered into compromise then the question of completing the chain become impossible.*

13) For extending the benefit of doubt, it is not necessary that there should be many circumstances creating doubts. Single circumstance, creating reasonable doubt in the prudent mind about the guilt of accused, makes him entitled to its benefit, not as a matter of grace or concession, but as a matter of right.

14) Therefore, while extending the benefit of doubt in favor of accused, this Court hereby acquits the accused from the charge leveled in the instant case. Since, accused are on bail, their bail bonds stands cancelled and sureties are discharge. Case property, i.e Mobile Phone and Laptop be returned to lawful owner, subject to verification by SHO concerned. File be consigned to District record room after its completion and compilation.



ANNOUNCED  
16.12.2020

Attested to be true copy  
Authorized Sign of  
Qanoon-e-Shahadat order: 100  
17 MAY 2021  
MUBARAK ALI  
Judicial Magistrate-II, Haripur

CERTIFICATE

Certified that this judgment consists upon Seven Pages. Each page has been checked, corrected where necessary and signed by me.

Dated: 16.12.2020

MUBARAK ALI  
Judicial Magistrate-II, Haripur  
16-12-20

15/A

To

The Worthy Commandant  
Elite Force Khyber Pakhtunkhwa.  
Peshawar

Sub

**DEPARTMENTAL APPEAL FOR RE INSTATEMENT IN SERVICE OF THE APPELLANT AS PER HIS ACQUITTAL FROM THE CHARGE BY THE COURT OF LEARNED JUDICIAL MAGISTRATE-II, HARIPUR DATED 16-12-2020**

Respected Sir,

Most reverentially the appellant would like to state as follows:-

1. That the appellant had been serving as Constable under Employment No 2398 in Elite force and was posted at Elite Headquarter Peshawar.
2. That the appellant had been performing the assigned duties with zeal and zeal and he did not give any chance of reprimand throughout his post service tenure which is evident from his service record.
3. That the appellant was falsely involved in Case FIR No 133, dated 27-01-2018 U/S 377/511/506 PPC Police Station City, District Haripur and after pro and contra evidence /facts the court of learned Judicial Magistrate –II Haripur accepted the bail with the remarks that “More so as per record the accused\petitioner is neither previous convict not remained involved in such like offences as no previous history is available on record and post arrest bail application was allowed (Copy of Court Order is annexed herewith )
4. That thereafter the appellant’s case was also trialed in the court of learned Judicial Magistrate-II and on 16-12-2020 he was completely acquitted from the charge leveled against him in the said FIR. (Copy of Order Passed by learned Judicial Magistrate-II, Haripur is enclosed herewith).

15/B

5. That the appellant was found and wrongly/charged in the said FIR and as a record thereof he was terminated and suffered huge financials besides mental service depression and agony.
6. That as for as the extension allegation to the absent from duty of the appointment without any venue on priority permission is concerned it is stated that appellant father having the age of 82 years was seriously ill and there was none to look after him in absence of the appellant hence it was dire compulsion of the appellant to look after his father. He appellant also told his face to the inquiry officer but he gave no weight toward such unavoidable circumstances and facts merely to deprive the appellant from his employment.
7. That as per decision of the Court the appellant eligible for re-instatement in service with all the back benefits.

Keeping in view the facts explained above appellant request your honor that he may please be re-instated in service with back benefits as per decision of the Honorable court of Judicial Magistrate-II Haripur and in the interest of justice

Dated:: 04-01-2021

Appellant

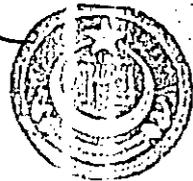


(Shehzad Shah)  
Ex- constable No. -2398  
Elite Headquarter Peshawar  
R/o: Khalabat Township  
Sector No. 1 Mohallah  
Liaqat Abad, Haripur  
Contact N. 0313-5949606



(16)  
Office of the Deputy Commandant  
Elite Force Khyber Pakhtunkhwa Peshawar

Annex-C



Dated 25/02/2021

ORDER

This is departmental appeal submitted by EX-Constable Shehzad Shah No.2398 which was perused and he was called for orderly room on 19.02.2021 but he could not satisfied the undersigned regarding his absence and not explain any cogent reason or any documental proof regarding his absence, hence, his appeal is hereby rejected.

-Sd-

(HAMAYUN BASHIR TARAR) PSP  
Commandant,

Elite Force Khyber Pakhtunkhwa Peshawar

No. 1696-1703/EF,

Copy of above is forwarded:-

1. Superintendent of Police, HQrs: Elite Force, Peshawar.
2. Deputy Superintendent of Police, HQrs: Elite Force, Peshawar.
3. Accountant/RI, Elite Force, Khyber Pakhtunkhwa, Peshawar.
4. OASI/SRC/FMC, Elite Force, Khyber Pakhtunkhwa, Peshawar.
5. EX/FC Shehzad Shah No.2398, cell No.03135949606.

(ZAIBULLAH KHAN) P.S.P.

Deputy Commandant

Elite Force Khyber Pakhtunkhwa Peshawar.

Accepted  
Ejaz

To

(17)

Annex-D

The Worthy Inspector General of Police,  
Khyber Pakhtunkhwa, PESHAWAR.

Sub: Mercy Appeal for reinstatement in service on the basis of acquittal of the appellant by the Hon'able court of Judicial Magistrate-II, Haripur, dated 16-12-2020.

Respected Sir,

With great reverence and humble submission the appellant submits the following facts for your worth consideration and favourable order please:-

1. That the appellant belongs to a very poor family of District Haripur and did not commit any unlawful act to maintain the dignity of his respective family and Department throughout his past life.
2. That the appellant had been serving in the Elite Force as Constable under Employment No. 2398 and was posted at Elite Headquarter, Peshawar.
3. That consequent upon personal grudge and malafide intention the appellant involved in Case FIR No. 133, dated 27-08-2018 U/S 377/511/506, PPC, Police Station City, Haripur. The charge/allegations levelled against the appellant were false concocted and self-made and the opponent party failed to prove their allegations in the Court, hence the appellant acquitted from the charge by the Honourable Court of Judicial Magistrate-II, Haripur. (Copy of Court Order is attached).
4. That the appellant's old father was seriously ill and there was none to look after his father, hence the appellant could not attend the duty for some period. This fact was also explained before the Inquiry Officer but he did not give any weight toward this fact merely to deprive me from the employment.
5. That the appellant preferred a Departmental Appeal before the Commandant Elite Force Khyber Pakhtunkhwa, Peshawar, but he also rejected the appeal on the plea that the appellant did not provide documentary proof regarding his absence. (Copy of order is attached).
6. Sir, the acquittal of the appellant from the allegations levelled against him in the impugned FIR is an ample instance for your worth consideration that the appellant is an innocent and the Hon'able Court has decided the case in his favour, but this fact has been entirely ignored by the learned Deputy Commandant while deciding the Departmental Appeal.

*Ali...*  
*16/12/20*

Contd.

- That the appellant's past service tenure & commendable performance of assigned duties were ignored, hence the appellant has no alternate avenue except the instant appeal before your honour for redressal of grievance.
8. That the appellant has no other source of income and he has been facing great financial difficulties due to his unemployment.

Keeping in view the facts explained above, the appellant implores your kind magnanimity to kindly issue orders for his reinstatement in services on the basis of his acquittal from the charge by the Hon'able Court and sickness of his old father, and in the interest of justice.

Thanking you,

Dated: 04-03-2021.

Appellant

(Ex-Constable Shehzad Shar)  
No. 2398,

Elite Headquarter, Peshawar,  
R/O K.T.S. Sector No. 1,  
Mohallah Liaqat Abad,  
Haripur.

Contact No. 0313-5949606

Accepted  
04/03/21



(19)  
OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Annex-E

ORDER

This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted by Ex-FC Shehzad Shah No. 2398. The petitioner was dismissed from service by Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar vide order No. 2670-77/EF, dated 20.02.2018 on the allegations that he was involved in case FIR No. 133, dated 27.01.2018 w/s 377/511/506 PPC Police Station City District Haripur and also remained absent from duty without any leave or prior permission w.e.f 28.12.2017 to 02.01.2018, 08.01.2018 to 12.01.2018, 13.01.2018 to 17.01.2018 and 19.01.2018 to 20.02.2018 (total 46 days). His appeal was rejected by Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar vide order Endst: No. 1696-1703/EF, dated 25.02.2021.

Meeting of Appellate Board was held on 29.03.2022 wherein petitioner was heard in person. Petitioner contended that he was acquitted by the court of Judicial Magistrate-II, Haripur vide judgment dated 16.12.2020.

So far the official was remained absent on frequent occasions and his total period of the absence is 46 days but this does not hold ground for such punishment i.e dismissal from service and the concerned officer did not decide the leave of absence. It is important to note that his absence at intervals was not punished as per separate periods.

Keeping in view of available record, Ex-FC Shehzad Shah No. 2398 is hereby re-instated into service and the period of absence as well as the period he remained out of service is treated as leave without pay. He is awarded minor punishment of stoppage of two (02) annual increments with cumulative effect.

*Sabir Ahmed*  
(SABIR AHMED) PSP

Additional Inspector General of Police,  
HQrs: Khyber Pakhtunkhwa, Peshawar.

No. SI 866-72 /22, dated Peshawar, the 15/4 /2022.

Copy of the above is forwarded to the:

1. Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar. One Service Roll, one Fauji Missal and one enquiry file (123-pages) of the above named Ex-FC received vide your office Memo No. 9124/EF, dated 27.08.2021 is returned herewith for your office record.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar
4. AIG/Legal/Khyber Pakhtunkhwa, Peshawar
5. PA to Addl. IGP/HQrs. Khyber Pakhtunkhwa, Peshawar
6. PA to DIG/HQrs. Khyber Pakhtunkhwa, Peshawar
7. Officer-in-Charge, Sub-Div. E-IV CPO Peshawar

*Ali*  
*Ali*

# وکالت نامہ

قیمتی

کورٹ فیس

بعدالت جناب **محمد حسن صاحب** کورٹ سے **سید محمد یونس** اور  
 منجانب **ایڈووکیٹ سید شاہ**  
**سید شاہ** کورٹ سے **سید محمد یونس** اور

دعویٰ یا جرم **سید محمد یونس** باعث تحریر آنکہ  
 مندرجہ بالا عنوان میں اپنی طرف سے پیروی و جوابدہی مقام **ایڈووکیٹ سید شاہ**

کے حکم منوی ایڈووکیٹ بدیں شرط وکیل مقرر کیا۔ کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص روبرو عدالت  
 حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے وکیل صاحب موصوف کو اطلاع دے کر حاضر کروں گا۔ اگر کسی پیشی پر مظہر  
 حاضر نہ ہوں گا۔ اور حاضری کی وجہ سے کسی وجہ پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ  
 ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے علاوہ کسی اور جگہ یا کچہری کے مقرر اوقات سے پہلے یا بروز  
 تعطیل پیروی کرنے کے مجاز نہ ہوں گے۔ اگر مقدمہ مقام کچہری کے کسی اور جگہ سماعت ہونے پر یا بروز کچہری کے اوقات  
 کے آگیا یا پیچھے ہونے پر مظہر کو کوئی نقصان پہنچے تو ذمہ دار یا اس کے رابطے کسی معاوضہ ادا کرنے مختار نامہ واپس کرنے کے  
 بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھے کل ساختہ پر داختہ صاحب مثل کردہ ذات خود منظور و قبول ہوگا اور صاحب  
 موصوف کو عرضی دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی اپیل نگرانی دائر کرنے نیز ہر قسم کی درخواست پر دستخط تصدیق  
 کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجرا کرنے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے  
 کا ہر قسم کا بیان دینے اور سپروٹا لشی و راضی نامہ و فیصلہ برخلاف کرنے اقبال دعوے کا اختیار ہوگا۔ اور بصورت اپیل و  
 برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا ڈگری قبل از فیصلہ اجراءے ڈگری بھی صاحب موصوف کو  
 بشرط ادائیگی علیحدہ پیروی مختار نامہ کرینا مجاز ہوگا۔ اور بصورت ضرورت اپیل یا اپیل کے واسطے کسی دوسرے وکیل یا پیرسٹر  
 کو بجائے اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہوں گے جیسے صاحب  
 موصوف کو۔ پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ  
 کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ دیا ہے کہ سند رہے مضمون  
 مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا اور منظور ہے۔

مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا اور منظور ہے۔  
 سید شاہ  
 ایڈووکیٹ  
 مورخہ: 05-05-2022  
 م. آ. ا. 175  
 Acceptance

"A"

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**  
JUDICIAL COMPLEX (OLD), KHYBER ROAD,  
PESHAWAR.

No.

APPEAL No. 745 ..... of 20

*TB Atabad.*

*22*

*Shahzad Shah*

Appellant/Petitioner

Versus

*PPO Peshawar*

RESPONDENT(S)

*RESP No 7*  
Notice to Appellant/Petitioner

*Provincial Police Officer*  
*Peshawar*

*[Signature]*  
*22/22*

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal

*20* of *22* at *9:00 AM*

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

*at camp court*  
*Atabad.*

*[Signature]*

*[Signature]*

Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

"A"

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**  
JUDICIAL COMPLEX (OLD), KHYBER ROAD,  
PESHAWAR.

TB At Abad

No.

APPEAL No. 945 of 20 22

Shahzad Shah

Appellant/Petitioner

Versus

PPO Pesh

RESPONDENT(S)

Resp No 3 Deputy Commandant

Notice to Appellant/Petitioner

Elite Force 19 Peshawa

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 20-9-22 at

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

At court  
At Abad

Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

Zahid  
07/09/22

"A"

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**  
JUDICIAL COMPLEX (OLD), KHYBER ROAD,  
PESHAWAR. *TB A1 Abad.*

No.

APPEAL No. *945* of 20 *22*

*Shahzad Shah*

Appellant/Petitioner

Versus

*PPO Peshawar*

RESPONDENT(S)

*RESP No 2*

Notice to Appellant/Petitioner

*Commandant Elite Force*

*ICP Peshawar*

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on *20-9-22* at *9:00 AM*

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

*at camp Coyt  
A1 Abad.*

*[Signature]*  
*07/09/22*

*[Signature]*

Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.