13.10.2021

Learned counsel for the appellant present and states that security and process fee have not been deposited due to illness of appellant and submitted an application for extension of time to deposit the same.

Application is accepted. The appellant is allowed to deposit security and process fee within seven working days from today. After the requisite deposit notices be issued to the respondents for submission of reply/comment within 10 days in office from the date of receipt of notice. In case they fail to submit reply/comments within stipulated time from today, they shall have to seek extension of time through written application citing sufficient reasons, the office shall submit the file with a report of non-compliance. Case to come up for arguments before the D.B on 16.02.2022 at Camp Court Abbottabad.

(Salah-Ud-Din) Member (Judicial) Camp Court A/Abad Nemo for parties.

Chalfman

Camp Court A/Abad

13.06.2022

Muhammad Riaz Khan Paindakheil, learned Assistant Advocate General present.

Perusal of record would reveal that appellant was directed to deposit security and process fee within 7 working days but till today, the same was not deposited and accordingly notitices were not issued to respondents. Notice be issued to appellant and his counsel to deposit security and process fee within 3 working days of the receipt of notice. Thereafter, notices be issued to respondents for submission of reply/comments for _____/8 ___/2022 before S.B at Camp Court, Abbottabad.

(Fareeha Paul) Member (E) Camp Court, A/Abad (Rozina Rehman) Member (J) Camp Court, A/Abad

Nemo for the appellant.

This case belongs to Abbottabad Region and such cases were previously heard at camp court, Abbottabad. May be notices issued to appellant/counsel have not been received by them, therefore, they are not in attendance. I have gone through the memorandum of appeal and documents annexed therewith. The appellant through this appeal has challenged the order of his removal from service. The departmental appeal and revision application are apparently time barred. In view of specific ground, the impugned order was not served upon the appellant he has no knowledge of the impugned order. Further urged that as per dictum of Honourable Superior Court, if personal service has not been done then no period of limitation will lie in preferring the service appeal. Obviously, the question of limitation will require determination in view of the said ground. Let this appeal is admitted to full hearing, subject to all just and legal objections including that of limitation. appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days receipt notices, positively. If the of reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 13.10.2021 before the D.B, at camp court Abbottabad.

Chāirman

FORM OF ORDER SHEET

Court of			
	1649		
Case No	6041	/2021	

S.No.	Date of order proceedings	Order or other proceedings with signature of judge		
1	2	3		
1-	30/06/2021	The appeal of Mr. Muhammad Ejaz resubmitted today by Mr. Iqbal Advocate, may be entered in the Institution Register and put up to Worthy Chairman for proper order please.		
		REGISTRAR!		
2-		This case is entrusted to S. Bench Peshawar. Notices be issued to the appellant/counsel for preliminary hearing to be put up there on-		
		CHAIRMAN		
	_			
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The appeal of Mr. Muhammad Ijaz son of Muhammad Arshad Ex-Constable LHC 1264 Abbottabad received today i.e. on 24.06.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Copy of Charge sheet & statement of allegations mentioned in the memo of appeal (Annexure-B) is not attached with the appeal which may be placed on it.

Appeal has not been flagged/marked with annexures' marks.

(3) Annexures of the appeal may be attested.

SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Mr. Sajid Iqbal Adv. A.Abad.

Resubmitted after confletions

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No. <u>6649</u>/2021

Muhammad Ejaz son of Muhammad Arshad, Ex-Constable, LHC-1264, resident of Mohallah Seri Sheik-ul-Bandi Jogan, District Abbottabad, presently Police Line, Abbottabad.

.APPELLANT

VERSUS

District Police Officer, Abbottabad & others.

... RESPONDENTS

SERVICE APPEAL

INDEX

S.#	Description	Page No.	Annexure
1.	Service appeal along with affidavit	1 to 8	
2,	Copy of FIR No. 523	9	"A"
3.	Copy of the statement of allegation	10-11	"B"
4.	Copy of order OB No. 44 dated 28,02,2020	12	"C"
5.	Attested copies of order of respondent NO. 2 dated 07.01.2021 and order dated 26.02.2021	13-16	"D" & "E"
6.	Copies of department appeal and order dated 27.05.2021	19 726	"F" & "G"
7.	Wakalatnama	21_	1

...APPELLANT

Through

Dated: 22/06 /2021

(SAJID PQBAL)

Advocate High Court, Abbottabad

9

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No.	/2021

Muhammad Ejaz son of Muhammad Arshad, Ex-Constable, LHC-1264, resident of Mohallah Seri Sheik-ul-Bandi Jogan, District Abbottabad, presently Police Line, Abbottabad.

...APPELLANT

VERSUS

- 1. District Police Officer, Abbottabad.
- 2. Regional Police Officer, (RPO), Hazara Region, Abbottabad.
- 3. Provincial Police Officer (IGP) Khyber Pakhtunkhwa.
- 4. Secretary to Home Department, Government of Khyber Pakhtunkhwa, Peshawar.

... RESPONDENTS

SERVICE APPEAL UNDER ARTICLE 4 OF KPK TRIBUNAL **FOR** ACT, 1974. SERVICE **EFFECT THAT** THE **DECLARATION** TO IMPUGNED REMOVAL ORDERS FROM SERVICE DATED 28.02.2020, 07.01.2021 AND 27.05.2021 ISSUED BY RESPONDENTS, WHEREBY DEPARTMENTAL APPEAL/ REVISION PETITION FILED BY THE PRESENT APPELLANT WAS DISMISSED BEING TIME BARRED, IS ILLEGAL, LAW AUTHORITY, UNLAWFUL, WITHOUT

ARBITRARY, PERVERSE AGAINST THE FACTS,
RECORD AND CIRCUMSTANCES OF THE CASE
AND OF NO LEGAL EFFECT UPON THE RIGHTS
OF THE APPELLANT.

PRAYER: ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, THE IMPUGNED REMOVAL ORDERS FROM SERVICE DATED 28.02.2020, 07.01.2021 AND 27.05.2021 ISSUED BY RESPONDENTS MAY GRACIOUSLY BE SET ASIDE AND THE APPELLANT MAY GRACIOUSLY BE REINSTATED IN SERVICE WITH ALL BACK BENEFITS. ANY OTHER RELIEF WHICH THIS HONOURABLE TRIBUNAL DEEM APPROPRIATE MAY ALSO BE GRANTED TO THE APPELLANT.

Respectfully Sheweth:-

Brief facts of the case are as under:-

1. That, the appellant was inducted in police department and after qualifying successful police training he was deployed in police lines Abbottabad.

- 2. That the appellant has served the department for the period of 13 years from which the appellant also served as Drill Instructor. The appellant has served with honesty and dignity for the satisfaction of his superiors.
- 3. That on 07.08.2020 the appellant was charged in concocted and fabricated case FIR No. 523 under section 9D-CNSA P.S Nawanshehr District Abbottabad. Copy of FIR is annexed as Annexure "A".
- 4. That the appellant surrendered himself at P.S Nawanshehr he was sent to Judicial Lockup and thereafter he was released on bail.
- of respondent No. 1 for assumption of charge and he came to know that he has been suspended from duties and statement of allegations was handed over to the appellant on 07/05/2019. Copy of the statement of allegation is annexed as Annexure "B".

- 6. That the then SHO Police Station Nawansheher was having personal grudges against the appellant and due to the said reason the SHO Police Station Nawanshehr manipulated and chalked out cases against the appellant.
- 7. That during the pendency of above said case, the respondent No. 1 removed the appellant from service vide order OB No. 44 dated 28.02.2020. It is worth mentioning here that the said order was passed in absence of the appellant without giving him opportunity of personal hearing. Copy of order OB No. 44 dated 28.02.2020 is annexed as Annexure "C".
- 8. That feeling aggrieved from the above order, the appellant moved departmental appeal before respondent No. 2 which was also met with the same order on 07.01.2021 vide order dated No. 44/PA dated 07.01.2021. The appellant was unable to appear before respondent No. 2 as the SHO of Police Station Nawanshehr having ill will and personal grudges against the appellant booked him in another case vide FIR No. 523 of Police Station Nawanshehr and the date which was fixed for personal hearing of the appellant before the

respondent No. 2 he was behind the bars in District Jail, Abbottabad, and the appellant was released vide order dated 26.02.2021 by the competent court of law. Attested copies of order of respondent NO. 2 dated 07.01.2021 and order dated 26.02.2021 is annexed as Annexure "D" & "E".

- 9. That feeling aggrieved by the order of respondent No. 2 the appellant submitted departmental appeal/revision to respondent No. 3 which was also dismissed vide order dated 27.05.2021. Copies of department appeal and order dated 27.05.2021 are annexed as Annexure "F" & "G".
- 10. That feeling aggrieved by this harsh and arbitrary decision of respondent No. 2 & 3, the appellant preferred the instant service appeal, inter-alia on the following grounds;-

GROUNDS:

a. That orders of removal from service of the appellant dated 28.02.2020, 07.01.2021 and 27.05.2021 are without considering the record and reply of the appellant and

without giving opportunity of personal hearing is against the law, void-ab-initio and are liable to be set aside.

- b. That the inquiry was not conducted as per prescribed procedure and the impugned removal from service orders dated 28.02.2020, 07.01.2021 and 27.05.2021 are liable to be set aside. As per law, the record produced by the appellant has not been perused and no evidence has been recorded by the inquiry officer.
- c. That the impugned order dated 07.01.2021 and 27.05.2021 of respondents No. 2 and 3 were not served to the appellant and he was having no knowledge of these orders.
- d. That as per the dictums of Honourable

 Superior Courts if personal service has not
 been done then nor period of limitation will
 lie in preferring the service appeal.
- e. That service appeal is within time and the appellant seeks his reinstatement of service from this Honourable Tribunal.

- f. That no other efficacious, speedy and adequate remedy is available to the appellant except the service appeal before this Honourable Tribunal.
- That the other points shall be urged at the g. time of arguments.

It is therefore, humbly prayed that on acceptance of the instant service appeal removal orders from service dated 28.02.2020, 07.01.2021 and 27.05.2021 may graciously be set aside and respondents may graciously be directed to restore/ reinstate the appellant with all service back benefits in the service of Police Department Khyber Pakhtunkhwa.

...APPELLANT

Through

Dated: 22/06/2021

Advocate High Court, Abbottabad

VERIFICATION:-

Verified on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

...APPELLANT

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Service	Appeal	No.	/2021

Muhammad Ejaz son of Muhammad Arshad, Ex-Constable, LHC-1264, resident of Mohallah Seri Sheik-ul-Bandi Jogan, District Abbottabad, presently Police Line, Abbottabad.

...APPELLANT

VERSUS

District Police Officer, Abbottabad & others.

... RESPONDENTS

SERVICE APPEAL

<u>AFFIDAVIT</u>

I, Muhammad Ejaz son of Muhammad Arshad, Ex-Constable, LHC-1264, resident of Mohallah Seri Sheik-ul-Bandi Jogan, District Abbottabad, presently Police Line, Abbottabad, do hereby solemnly affirm and declare that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

DEPONENT

9 ابتدائي اطلاعي ربورك فارم نمبر (۱) ۵(۱) ابتدائی اطلاع نسیت جرم قابل دست اندازی پولیس ر پورٹ شده زیر دفعهٔ ۱۹ مجموعه ضابط -17.00 =18.00 = == 7 P خفر كيفيت جرم (معدفعه) عال اكر يحول اليام 400 مراهدى م الأورى 1000 كرام يحرس 1000 كر 0311-5292849 كارواكى جوفتش كے متعاق كى گئى اگراطلاع درج كرنے ميں توقف موا ، وتو دجہ بيان كرد اسر مسائر كر ري مكرم مي مقوم ترائ ك تفانه ہے روانگی کی تاریخ ووقت ابتداني اطلاع ننج درج كرو لوفت صدر فخر سرى مرامله اخال متلاف عدارهم كر القرور مسترات المح والحراج والحري والمح وقد الرحيد ونشا شة الله المنادمين كالم مون كالم موفوس ويد سي عنى كافعل من فيك مر الكم شرى مر فعوالاً 100 100 100 161 is cill's 7400 wis س دو دولتنی نالم کوف نفاک کے فائم سری در و دور تفری کی فرد او الحل مقال در و تعامله مرافق الم كن د مين الموجو مرادال نام ير مرس ٧ يفط الرسفىدلنا فرس كيلي عوفي حفروبين مرقد الرقيه سكنه مي ملي مني البائدي عال فيون بنارا عدرو Il per Signification contrate de le construction en 2° a rabide george 1074 مع ما در صد مارا د فالم المحلى در در المربط في ازورع مقد مر العالمات من وقده وزع رفسار المراس و المربط و المرا مرفح الفسر عواله المره على منا عا على المراس ولي على المول المول المول المراس و المراس والم كان مول المراس و ا معرف المراس و المراس و المراس و المراس الفنس و المراس ما ما منا ف كيا المراس و و الموسس والمراس و المراس Blesow MIKPINSR

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DISCIPLINARY ACTION

Abbottabad as Competent Authority of the opinion that you LHC Ajaz No. 1264/LHcof Police Line Abbottabad, rendered yourself liable to be proceeded against as you committed the following act/omission within the meaning of Police Disciplinary Rules 1975.

STATEMENT OF THE ALLEGATIONS

According to D.D No. 20 dated 17-11-2019, DD No. 34 dated 17-11-2019, DD No. 10 dated 11-12-2019, DD No. 8 dated 01-01-2020, DD No. 33 dated 04-01-2020 and DD No. 32 dated 29-01-2020, he has absented himself without sufficient cause of leave / permission at various time continuously i.e. 4 hours, 10 hours, one day, two days, three days and 14 hours and 2 days (total absentee period is 05 days and 14 hours),

which is shown his lack of interest in official duty.

2). For the purpose of scrutinizing your conduct with reference to the above allegations, <u>Inspector Sajjad PAL Office</u> is appointed as Enquiry Officer.

- The Enquiry Officer shall in accordance with the provision of this ordinance, provide reasonable opportunity of hearing to the accused, record finding and make within 25 days of the receipt of this order, recommendation as to punishment or the appropriate action the accused.
- 4). The accused a well conversant representative of departmental shall in the proceedings on the date, time and place fixed by the Enquiry Officer.

Addl: Superintendent of Police

a Abbottabad

No: 49

/PA, Dated Abbottabad the 66 162 12020.

CC:

Delinquent official, with the direction to submit his defense within 07 days of the receipt of this statement of allegations and also to appear before the Enquiry Officer of the date, time and place fixed for the purpose of departmental proceedings.

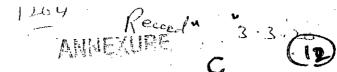
Enquiry officer to complete departmental enquiry within stipulated period.

CHARGE SHEET

- 1). I Muhammad Jamil Akhtar Addl: Superintendent of Police Abbottabad as competent authority hereby charge you LHC Ajaz No. 1264/LH of Police Line Abbottabad as explained in the attached statement of allegations.
- 2). You appear to be guilty of misconduct under Police Disciplinary Rules 1975, and have rendered yourself liable to all or any of the penalties specified in the said Police Disciplinary Rules.
- 3). You are therefore, directed to submit your written defense within seven days on the receipt of this Charge Sheet in the Enquiry Officer.
- 4). Your written defense, if any shall reach the Enquiry Officer with in the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall follow against you.
- 5). Intimate whether you desire to be heard in person or otherwise.
- 6). A statement of allegations is enclosed.

Addl: Superintendent of Police

ORDER



This office order will dispose of the departmental enquiry against LHC Ejaz No. 1264 Police Lines Abbottabad. It has been reported with grave concern that he is habitual drug (Heroin) addict and also involved in selling of drug. Test purchase of heroin has also made from him on 27-11-2019 which has proved that he is involved in this criminal practice. Being member of disciplined force, his this criminal acreearned bad name for police department in the eyes of general public and also causing bad affect on other officials, which is tantamount to gross misconduct.

He was issued Show Cause Notice. In response to Show Cause Notice, he failed to submit reply of Show Cause Notice. He summoned time and again to appear in Orderly Room but he willfully failed to appear in Orderly Room.

He is not only serious drug addict but also involved in drug-peddling. He was counseled for a number of times by the undersigned and even made an effort to send him to rehabilitation but all to no avail. Therefore, in exercise of the powers vested in the undersigned Police Disciplinary Rules-1975 (Amended 2014), I, Javed Iqbal, PSP, District Police Officer, Abbottabad as a competent authority, am constrained to award him the punishment of <u>Dismissal from service</u> with immediate effect.

Order announced.

OB No. 44

Dated >8-2-20

District Police Officer
Abbottabad

CC.

- 1. Pay Officer DPO Office Abbottabad.
- 2. Establishment Clerk, DPO Office Abbottabad.
- OHC DPO Office Abbottabad along with Enquiry containing ____ pages for completion of record.

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OFFICE OF THE REGIONAL POLICE OFFICER
HAZARA REGION, ABBOTTABAD
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🔀 r.rpohazara@gmail.com

」 r.rponazara@gman.com □ 0345-9560687

NO: 44

ORDER

This order will dispose off departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rules, 1975 submitted by Ex. Constable Muhammad Ejaz No.1264 District Abbottabad against the punishment order i.e. *Dismissal from Service* awarded by DPO Abbottabad vide OB No.44 dated 28.02.2020.

Brief facts leading to the punishment are that the appellant while posted at Police Lines, Abbottabad, it was reported that the he is habitual drug (Heroin) addict and also involved in drug peddling. Test purchase of heroin was made on 27.11.2019 which proved that he is involved in this criminal practice.

The appellant was issued Show Cause Notice, however he failed to advance any cogent reason in his defence. He was called in OR but he failed to appear before the competent authority. DPO Abbottabad counseled the appellant number of times and even made an effort to send him to a rehabilitation centre but in vain. Consequently, he was awarded major punishment of dismissal from service. Hence, the appellant submitted this present appeal.

After receiving his appeal, comments of DPO Abbottabad were sought and examined/perused. The undersigned called the official in OR and heard him in person. However, he failed to appear before the undersigned as he is presently confined in district Jail due to his involvement in case FIR No. 523 dated 07-08-2020 u/s 9D CNSA PS Nawansher. The misconduct on the part of the appellant is unacceptable in a disciplined force and appeal being meritless is liable to be dismissed. Therefore, in exercise of the powers conferred upon the undersigned under Rule 11-4 (a) of Khyber Pakhtunkhwa Police Rules, 1975 the instant appeal is hereby fited with immediate effect.

Qazi Jamil ur Rehman (PSP)
REGIONAL POLICE OFFICER
HAZARA REGION, ABBOTTABAD

No. 44 CC.

/PA, dated Abbottabad the $\mathcal{O} \overrightarrow{\mathcal{F}} = 1/\pi$ /2020.

1. The District Police Officer, Abbottabad for information and necessary action with reference to his office Memo No.2810/Legal dated 27-07-2020. Service Roll and Fuji Missal containing enquiry file of the appellant is returned herewith for record.





IN THE COURT OF SYED MUDASSIR SHAH TERMIZI, ADDITIONAL DISTRICT & SESSIONS JUDGE/JUDGE MCTC/JSC, ABBOTTABAD.

State...Vs...Muhammad Ejaz 158/III-S of 2019.

Or.....12 26.02.2021

1. Accused facing trial namely Muhammad Ejaz being in custody not produced from jail due to COVID 19 pandemic and only his jail warrant received, however, learned counsel for the accused present. Mr. Asim Mehmood Sr. PP for the state present. Remaining PWs not present. Learned counsel for the accused submitted an application u/s 265-K Cr. P.C for acquittal of accused which is placed on file and notice of the same is given to prosecution for arguments today.

- 2. Through this order I intend to dispose of an application u/s 265-K Cr. P.C filed by the accused facing trial for his acquittal. Arguments heard and record perused.
 - 3. According to the contents of case FIR No. 523 dated 07.08.2020 u/s 9 (d) of KP CNSA of PS Nawanshehr Abbottabad, allegedly the accused facing trial was found in possession of charas weighing 4190 grams consisting of four slabs and heroin weighing 1000 grams wrapped in a plastic envelop, (from a white colour shopping bag) which the accused was carrying in his hand. Hence, the accused facing trial was charged for the commission of offence under section 9 (d) CNSA.
 - 4. After registration of the case and completion of investigation complete challan against the accused facing trial was submitted. The

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(B)

accused was summoned who produced before the court in custody and formal charge against him was framed on 20.01.2021 to which he pleaded not guilty and claimed trial. Thereafter, the prosecution was directed to produce the witnesses in support of its case and so far, the prosecution has produced four witnesses.

- 5. Perusal of record reveals that accused facing trial was charged for offence u/s 9 (d) of KP CNSA for possessing 4190 grams charas and 1000 grams heroin from the possession of accused facing trial. It is also evident from record that case was registered against the accused facing trial on 07.08.2020 and complete challan against him was submitted before the court for trial on 07.11.2020 and later on the charge was framed against the accused facing trial on 20.01.2021.
- 6. Perusal of record reveals that in the instant case no private witness has been associated with the recovery proceedings and this fact has been admitted by complainant/PW-4 during his cross examination by stating that there were lot of people present at the spot at the time of occurrence but he did not engage any person to become witness of recovery memo. Although, there were general complaints for several days about selling of charas and heroin and after apprehension of accused the accused disclosed his name as Muhammad Ejaz son of Muhammad Arshad but in cross examination PW-4 admitted it correct that accused was previously known to him as he was a police servant. Complainant/seizing officer (PW-4) further

1/2 /2/2°

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stated in his cross examination that recovered slabs of charas were not separately weighed.

- Record further reveals that although there is extract of register No. 19 but the same is incomplete and it only contains seven columns instead of eight. Moreover, the complainant of the case has conducted the investigation in violation of section 27 of Police Act 2017.
- In wake of such glaring contradictions/deficiencies in deposition of witnesses examined by the prosecution so far, I am of the opinion that there exists no probability of the conviction of the accused facing trial even if the prosecution is allowed to producefurther evidence. Hence, in the given circumstances, to continue with the proceedings would amount to wastage of precious time on one hand and would be a futile exercise on the other. Hence, the court is left with no option rather to invoke the provisions of section 265-K-Cr. PC. Moreover, today the prosecution also submitted an application for withdrawal from prosecution of the instant case under section 494 Cr. P.C read with section 5 (b) Prosecution Act, 2005 which is placed on file.
- Resultantly, by accepting the instant application, the accused facing trial-namely Mühammad Ejaz son of Muhammad Arshad is acquitted of the charges leveled against him in the present case. He is in custody; therefore, he be released forthwith if not required to be detained in any other case. Case property i.e. Cash amount of Rs. 3,970/-, one US Dollar, CNIC, ATM card of Khyber bank and brown

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

No.			
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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR.

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