

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Service Appeal No. 411/2020

BEFORE: MR. KALIM ARSHAD KHAN, ... CHAIRMAN
MR. MIAN MUHAMMAD, ... MEMBER(E)

Saifoor Shah Ex-Head Constable No.4265 Police Station Gulberg, Peshawar.
.....(*Appellant*)

Versus

1. **Inspector General** of Police, Khyber Pakhtunkhwa, Peshawar.
2. **Capital City Police Officer**, Peshawar and
3. **Senior Superintendent of Police (Operation)**, Peshawar.....(*Respondents*)

Mr. Noor Muhammad Khattak, Advocate ... For appellant

Mr. Muhammad Adeel Butt, Addl. Advocate General ... For respondents.

Date of Institution.....20.01.2020

Date of Hearing.....05.04.2022

Date of Decision.....07.04.2022

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN. According to appeal, while being in service the appellant Saifoor Shah stood charged in a case registered vide FIR No.1060 dated 24.07.2019 under sections 365/109/148/149/419/420 PPC Police Station Hayatabad, Peshawar.

2. An enquiry was conducted by the Senior Superintendent of Police, Investigation, Peshawar. According to the facts stated in the enquiry based on the report of OII Hayat Abad, the complainant Habibullah son of Ubaidullah PSO to Director Institute of Kidney Diseases Hayat Abad Peshawar charged the appellant and others; in the complaint it was alleged that Mst. Shaida was suspended by the

cogent material stated in the enquiry proceedings, the enquiry cannot be held to be properly conducted.

10. Therefore, the appeal is allowed and the impugned orders, both original and appellate, as well as the enquiry report are set aside and the matter is remitted to the department for conducting *denovo* detailed enquiry within two months of receipt of this judgment. The appellant shall also be properly associated with the same. The appellant be placed under suspension till the conclusion of enquiry/departmental proceedings. Consign.

11. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 7th day of April, 2022.*

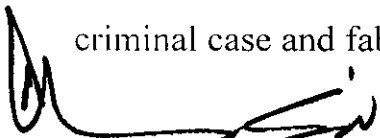


(KALIM ARSHAD KHAN)
Chairman

(MIAN MUHAMMAD)
Member (E)

Director of Institute of Kidney Diseases Hayatabad; that later on she threatened the complainant of dire consequences; that as per routine on 25.07.2019 at 0800 hours he went out of his house in motor car No.AJS-869 Islamabad for duty; that at phase IV, Sector 2, Street 57, House No.239, Hayatabad, three unknown uniformed persons stopped and alighted him from driving seat; that they showed themselves as CT officials; that they seated him in the rear seat and veiled his eyes; that they shifted him to unknown place and confined him to the room guarded by a police official; that after an hour they returned and seated him in motor car and they departed from there; that all the three persons alighted from the motor car with intervals, while the last one asked him to open his eyes after he stepped off from the car; that, when he opened his eyes, he was in his own vehicle in a graveyard; that as he proceeded his vehicle at Karkhano Check post, Police stopped him; that during search of motor car by Police, they recovered heroin from the gate of motor car and registered FIR No.892, dated 25.07.2019 under Section 9-C of the CNSA against him at Police Station Hayatabad; that he was released on bail; that on query, he came to know that on the conspiracy of Mst. Shaida and her husband Luqman, the accused kidnapped him and put heroin in his motor car; that during investigation, site plan was prepared on the pointation of the complainant; accused Saifoor Shah, Ihsanullah and Luqman were arrested; that their two days' custody was obtained and they were interrogated; that the accused Ihsanullah confessed his guilt before the Investigation Officer and stated that he had given Rs.40000/- to IHC Saifoor Shah for doing so; that the amount was also recovered from the appellant and taken into possession.

4. After the enquiry it was recommended that the appellant and another Police official named LHC ShafiqZada No.39, being found guilty for involvement in criminal case and fabrication of an innocent person in concocted case.


07.08.2022

5. The appellant was served with charge sheet, statement of allegations and final show cause notice on 23.09.2019; he submitted reply to the show cause notice and ultimately he was dismissed from service vide order dated 16.10.2019. He filed departmental appeal on 11.11.2019, which was rejected/filed on 31.12.2019 and, hence, this appeal.

6. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents and have gone through the record.

7. Learned counsel for the appellant reiterated the grounds stated in the appeal and submitted that the punishment awarded to the appellant was not warranted.

8. On the contrary, the learned Additional Advocate General controverted the arguments of the appellants and submitted for dismissal of the appeal.

9. It appears from the enquiry report that it is not at all speaking report as it is bereft of the facts and reasons. While dealing with the career of an official extra care is to be taken by the employer whereas in this matter the enquiry seems to have been conducted in very cursory manner. The respondents have not annexed the necessary documents to give weight to the enquiry and their reply. The enquiry proceedings hold the appellant guilty for involvement in a criminal case and fabrication of an innocent person in the concocted case but there is no supportive material stated in the enquiry so to hold that the appellant was actually involved in the alleged crime. Mere alleged confession of the appellant before the Investigation Officer conducting investigation in the criminal case would not *per se* be alone sufficient to prove the guilt of the appellant. There is nothing stated in the enquiry report about the association of the appellant with the enquiry proceedings in any manner, recording statements of the witnesses, providing the accused opportunity to cross examine such witnesses, if any, produced and examined. The complete enquiry proceedings have not been placed on this file. Therefore, in the absence of


07.04.22

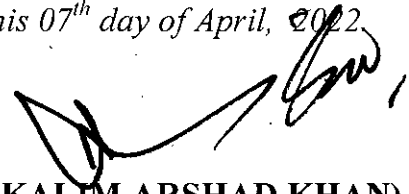
SA 411/2020

07th April, 2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. AG for the respondents present. Arguments heard and record perused.


Vide our detailed judgment of today, containing 04 pages, the appeal is allowed and the impugned orders, both original and appellate, as well as the enquiry report are set aside and the matter is remitted to the department for conducting *denovo* detailed enquiry within two months of receipt of this judgment. The appellant shall also be properly associated with the same. The appellant be placed under suspension till the conclusion of enquiry/departmental proceedings. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 07th day of April, 2022.*



(KALIM ARSHAD KHAN)

Chairman




(MIAN MUHAMMAD)

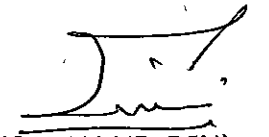
Member (E)

17.09.2021

Mr. Noor Muhammad Khattak, Advocate for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not met preparation for arguments. Adjourned. To come up for arguments before the D.B on 21.12.2021.



(ATIQ UR REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH UD DIN)
MEMBER (JUDICIAL)

21.12.2021

Clerk of learned counsel for the appellant present. Mr. Muhammad Rasheed, Deputy District Attorney for respondents present.

Clerk of learned counsel for the appellant requested for adjournment as counsel for the appellant is not available today due to strike of Lawyers. Adjourned. To come up for arguments before the D.B on 05.04.2022.


(Atiq Ur Rehman Wazir)
Member (E)


Chairman

1-1.2021

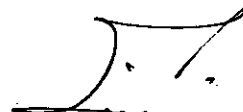
Due to summer vacation, case is adjourned to
19-3.2021 for the same as before.


Reader

19.03.2021

Mr. Afrasyab Wazir, Advocate, on behalf of learned counsel for appellant and Mr. Muhammad Rasheed, Deputy District Attorney alongwith Mr. Muhammad Raziq, Head Constable for the respondents present.

The respondents have submitted reply which is placed on record. Adjourned to 02.06.2021 for arguments before D.B. The appellant may submit rejoinder within one month, if so advised.


(SALAH-UD-DIN)
MEMBER (JUDICIAL)



CHAIRMAN

02.06.2021

Mr. ^{Said} Sher Khan, Advocate, junior of learned counsel for the appellant present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the respondents present.

Junior counsel for the appellant sought adjournment on the ground that learned senior counsel for the appellant is busy before the august Peshawar High Court, Peshawar. Adjourned. To come up for rejoinder and arguments before the D.B on 17.09.2021.


(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

19.11.2020

Appellant in person and Addl; AG for respondents present.

Respondents have not furnished reply, despite last chance.
The appeal is posted to D.B for arguments on 01.01.2021.

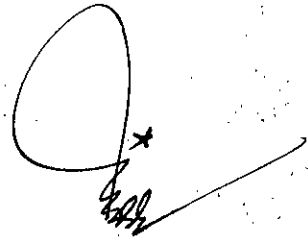

Chairman

26.06.2020

None for the appellant present. Addl: AG for respondents present.

Written reply not submitted. Learned AAG seeks time to submit the same on the next date of hearing.

Adjourned to 13.08.2020 before S.B.



MEMBER

13.08.2020

Junior to counsel for the appellant and Addl. AG for the respondents present.

Learned AAG seeks time to contact the respondents for submission of written reply/comments. Adjourned to 06.10.2020 on which date the requisite reply/comments shall positively be furnished.



Chairman

06.10.2020

Appellant in person and Addl. AG for the respondents present.

Learned AAG seeks further time for submission of reply/comments. He is required to contact the respondents and submit reply/comments on 19.11.2020, as a last chance.



Chairman

11.02.2020


Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (Ex-Head Constable) has filed the present service appeal against the order dated 18.10.2019 whereby he was awarded major punishment of removal from service on account of his involvement in criminal case FIR No.1060 dated 24.07.2019 u/s 365 PPC/9 CNSA/109/148/149/419/420 PPC PS Hayatabad. The appellant has also assailed the order dated 31.12.2019 through which is departmental appeal was rejected/filed.

Submission made by learned counsel for the appellant need consideration. The present service appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security process. Thereafter notices be issued to the respondents for reply/comments. To come up for written reply/comments on 03.04.2020 before S.B.

Appellant Deposited
Security & Process Fee

11/2


Member

03.04.2020

Due to public holiday on account of COVID-19, the case is adjourned for the same on 26.06.2020 before S.B.

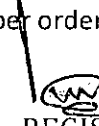


Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 411 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	20/01/2020	<p>The appeal of Mr. Saifoor Shah presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR <u>20/1/2020</u></p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>11/02/2020</u></p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 411 /2020

SAIFOOR SHAH

VS

POLICE DEPTT:

INDEX

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6	Departmental appeal	E	10.
7	Appellate order	F	11.
8	Vakalat nama	12.

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK,
ADVOCATE

Flat No. 3, Upper Floor,
Islamia Club Building,
Khyber Bazar, Peshawar
0345-9383141

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

411
APPEAL NO. 4-201 /2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 614

Dated 20/01/2020

Mr. Saifour shah, EX- Head Constable No.4265,
Police Station Gulberg, Peshawar**APPELLANT**

VERSUS

- 1- The Inspector General of police Khyber Pakhtunkhwa, Peshawar.
- 2- The Capital City Police Officer, Peshawar.
- 3- The Senior Superintendent of police (operation), Peshawar.

.....**Respondents**

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED
ORDER DATED 18-10-2019 WHEREBY THE APPELLANT WAS
DISMISSED FROM SERVICE AND AGAINST THE APPELLATE
ORDER DATED 31/12/2019 WHEREBY THE DEPARTMENTAL
APPEAL OF THE APPELLANT WAS REGRETTEED ON NO GOOD
GROUNDS.**

PRAYER:

That on acceptance of this appeal the impugned orders dated 18/10/2019 and 31/12/2019 may very kindly be set aside and the respondents be directed to reinstate the appellant in to service with all back benefits. Any other relief deem appropriate by this honorable court and not specifically asked for may also be granted.

R/SHEWETH:

ON FACTS:

1- That the appellant has served the respondents department quite efficiently and up to the entire satisfaction of his superiors.

2- That appellant while serving as IHC in police station gulberg was falsely implicated in case FIR no 1060 dated 24/07/2019 charged u/s 365/109/148/149/419/420 PPC, 9 CNSA police station hayat abad in which he was admitted to bail by learned additional sessions judge vide order dated 17/09/2019. Copy of FIR is attached as annexure

..... **A.**

3- That on the basis of alleged involvement in the above mentioned FIR the respondents issued a show cause notice dated 23/09/2019 to the

Filed to-day

Registrar

20/1/2020

appellant to which he submitted a detailed reply. (Copy of show cause notice and appellant reply are attached as annexure.....**B & C.**

4- That it is pertinent to mention here that respondents without considering reply of appellant and without waiting to out come of criminal case pending adjudication before trial court straight away issued the impugned order dated 18/10/2019 whereby major penalty of dismissal from service was imposed on appellant. Copy of impugned order is attached as annexure.....**D.**

5- That appellant feeling aggrieved from the above mentioned impugned order preferred departmental appeal on 11/11/2019 which was regretted vide order dated 31/12/2019 on no good grounds. Copy of departmental appeal and appellate order dated 31/12/2019 is attached as annexure.....**E & F.**

6- That feeling further aggrieved and having no other remedy the appellant filed the instant appeal on following grounds inter alia.

ON GROUNDS:

A. That the impugned orders dated 18/10/2019 and 31/12/2019 are against law, facts, norms of natural justice and material on the record, hence not tenable and liable to be set aside.

B. That no charge sheet and statement of allegations have been served on appellant before issuing of impugned order which are mandatory as per law and judgments of august supreme court, hence the impugned order is not tenable in the eye of law.

C. That no opportunity of personnel hearing has been extended to appellant while issuing the impugned order, which is not only against the police rules but also against the cardinal principle of natural justice. Hence the impugned order is liable to be set aside.

D. That the trial of criminal case is pending adjudication before trial court and not yet concluded, therefore mere involvement in criminal case does not ipso facto warrant punishment of removal/dismissal from service unless proved guilty by competent court of law.

E. The no inquiry whatsoever has been conducted in the matter before issuing the impugned order dated 18/10/2019, hence on this score also the impugned order is liable to be set aside.

F. That the respondents has acted in arbitrary and malafide manner by issuing the impugned order.

G. That any other ground deem fit would be agitated at the time of arguments with the kind permission of this honorable court.

It is, therefore, most humbly prayed that the appeal of appellant may be accepted as prayed for.

Dated: 19.1.2020

APPELLANT

Saifur

SAIFOUR SHAH

THROUGH:

NM

**NOOR MOHAMMAD KHATTAK
SHAHZULLAH YOUSAFZAI**

&

**MIR ZAMAN SAFI
ADVOCATES**

MZ

ابتدائی اطلاعی رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 152 مجموعہ ضابطہ نو جداری

5

تاریخ و وقت رپورٹ	21	ضلع	ضلع
نام و سکونت اطلاع دہندہ مستغیث	صیانت کرم آباد	تاریخ	25/7/15ء
مختصر کیفیت جرم (مختصر دفعہ) حال اگر کچھ لیا گیا ہو	89	نام و سکونت ملزم	کامران خان جیل لوہڑی ٹاؤن ناگہندی
جائے وقوعہ فاصلہ تھانہ سے اور سمت	0313-0922975	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کر کے	سی پی آئی افیسر ASI
نام و سکونت ملزم	17301-7242098-3	تھانہ سے روانگی کی تاریخ و وقت	10:30 بجے چائینی پورہ 11:00 بجے

ابتدائی اطلاع نیچے درج کرو۔

بوقت صدر کے ایک مقرر میں اس لئے تھانہ

شفیق اختر خان ASI سے موصول ہو کر دیل پے بمختصت آفیسر ای پان تھانہ

صیانت کرم آباد میں صدر محمد اکمل خان ASI نجیب اللہ 7300 ابھارتا سلسلہ ناگہندی

بمقام جائے وقوعہ بالا ڈیوٹی پر موجود پنج حسب اطلاع مقرر موٹر کار پان پان

آفیسر شفیق اختر 869-869-869-869 سٹریٹ سٹیٹنگ کو روٹی کنارے گھر کے ڈرائیور نے دریافت

اپنا نام حسب اللہ محمد عمیر اللہ سکت محلہ اجپر دیہہ بہارہ تحصیل و قلعہ پشاور بتلایا

نشاندہ مقرر موٹر کار مقرر کے کنڈیکٹر سائڈ ڈیوٹی پر سے دو بیٹک بہارہ

جو کہ عمیروٹن گت بہ عمیروٹن والا بیٹک 1000 گم قیلہ کیسٹل گانا پان

گم بیکارہ ہو کر بحرضی بخیرہ ASI بند باہر اسٹریٹ میں ایک عمیروٹن و کیسٹل سے

و کیسٹل 1999 گم بندر پارسل میں ہیں بند ہسٹری کے جملہ پارسل پان 3/3

سوائے انہی 15 نیت ہو گے جبکہ موٹر کار ڈرائیور صاحب کے نیچے لیوٹن 2000 گم پان

2500-4013 سے 10 عدد کارٹون میں پان پان سے لا پانس کارڈ نمبر 200598

سے پان پان ہو کر موٹر کار عمیروٹن کیسٹل پستول پان پان پان پان پان پان

بالا کہ حسب ضابطہ پان پان پان پان پان پان پان پان پان پان پان پان

حاکم الزمشی گیشن پان پان کو پاسور لکیشن کیا جائے دھڑا پان پان پان پان پان

کارروائی تھانہ آمد پان پان پان پان پان پان پان پان پان پان پان پان

جائے بحرضی لکیشن پان پان پان پان پان پان پان پان پان پان پان پان

آفیسر ای پان پان پان پان پان پان پان پان پان پان پان پان

MS



B-6

FINAL SHOW CAUSE NOTICE
(Under Police Disciplinary Rules, 1975)

1. I, Senior Superintendent of Police, Operations, Peshawar as competent authority, under the Police disciplinary Rules 1975, do hereby serve you **IHC Saifour Shah No. 4265 of CCP Peshawar** as follows:-

2. (i) That consequent upon the completion of departmental enquiry conducted against you by SSP Investigation, CCP Peshawar, who found you guilty of the charges for which you were given the opportunity of personal hearing.

(ii) Ongoing through the findings and recommendations of the inquiry officer, the material on record and other connected papers including your defense before the said officers;

I am satisfied that you have committed the follow misconducts:

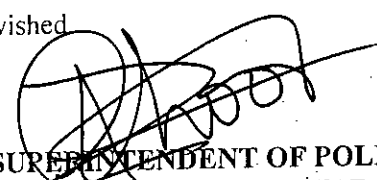
That you have been found guilty of the charges leveled against you in the charge already issued to you by the enquiry officer.

3. As a result thereof I, as Competent Authority decided to impose upon you major/minor penalty including dismissal from service under the said Rules.

4. You are, therefore, require to Show Cause as to why the aforesaid penalty should not be imposed upon you.

5. If no reply to this notice is received within **7-days** of its delivery, it shall be presumed that you have no defense to put in and in that case an ex-parte action shall be taken against you.

6. You are at liberty to be heard in person, if so wished


SR: SUPERINTENDENT OF POLICE,
OPERATIONS, PESHAWAR

No. 1173 /PA dated Peshawar the 23/09, 2019



To

The Worthy
Senior Superintendent of Police
Operation, Peshawar.

C-7

Subject: **REPLY TO FINAL SHOW CAUSE NOTICE**

Respected Sir,

In compliance of the show cause notice, vide No.1173/PA dated Peshawar the 23.09.2019, it is submitted as under:-

1. I was asked to explain that why major/ minor penalty including dismissal from services under Police Disciplinary Rules, 1975 be not imposed against me.
2. I have been charged / booked in a false, fabricated and concocted case vide FIR No.1060 dated 24.07.2019 u/s 9-C CNSA/ 109/148/149/419/420/365 PPC, registered at PS Hayatabad. I have neither committed the alleged offence nor I have knowledge of the above alleged occurrence.
3. As per the FIR, there is delay of 35 days in lodging the FIR against me alongwith 07 others.
4. The complainant in the instant case has neither stated nor mentioned the source of information or the source of satisfaction that how the complainant came to know that such offences have been committed by me alongwith others.
5. It is further stated that, in the said criminal case, I have been bail out by the first competent Court of law i.e. Additional Session Judge, Peshawar dated 17.09.2019 with respect, it is just allegation and till yet the offence has not been proved against me.
6. There is no recovery or discovery in the said case FIR No.1060 from me.
7. I have been appointed in the said department on 20.02.2002, and since then I have served the department with full devotion and to the entire satisfaction of my seniors and colleagues and even there is no charge/ compliant against me in the past.
8. It is further stated that, I have been bail out by the competent Court of law on 17.09.2019 and I have not



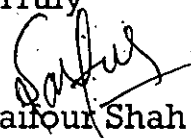
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received any explanation, show cause or statement of allegation / charge sheet from the department, nor I have been heard personally by any inquiry officer during the inquiry, except this final show cause notice. I may please be personally heard in this respect.

- 9. As per the rules, the criminal charges leveled against me in case FIR No.1060 is yet to be proved, till then no adverse action is to be taken against me.
- 10. I may be allowed to perform my duties at my post at the concerned Police Station.

It is, therefore, the show cause notice issued to be may graciously be withdrawn in my favour and I may also be allowed to perform my duties.

Your Truly



IHC Saifur Shah No.4265
Police Line Peshawar
CNIC No.17301-1305389-1





D-9

THE CAPITAL CITY POLICE OFFICER
6248
Date: 18-10-19

ORDER

1. This office order will dispose of the formal departmental enquiry against IHC Saifour Shah No. 4265 who while posted at Police Station Gulberg Peshawar was placed under suspension vide this office order endst: No. 1036-91/PA dated 30/08/2019 and proceeded against departmentally, vide this office No. 189/E/PA dated 02/09/2019 on account of involvement in criminal case FIR No. 1060 dated 24/07/2019 u/s 365 PPC / 9C-CNSA / 109/148/149/419/420 PS Hayatabad.
2. Charge sheet along with summary of allegations was issued to him and SSP/Investigation, Peshawar was appointed as Enquiry Officer who after conducting a thorough probe held the accused official guilty on account of his involvement in the aforementioned criminal case and implicating an innocent person namely Habib Ullah s/c Ubald Ullah, PSO to Director Institute of Kidney Disease, Hayatabad in a concocted case.
3. On receipt of findings of the departmental enquiry dated 20/09/2019, Final Show Cause Notice bearing this office No. 1173/PA dated 23/09/2019 was served upon the accused official who personally received the FSCN and acknowledged its receipt by affixing his signature on the duplicate copy. His written defence received well in time. The same was perused and found unsatisfactory. Consequently, he was summoned for personal hearing on 16/10/2019 in orderly room but he failed to appear for explaining his position with regard to the aforementioned allegations. Thus, the allegations leveled against him stand proved beyond any shadow of doubt.
4. Having gone through findings of the enquiry officer and other connected papers including personal hearing of the accused official, the undersigned reached to the conclusion that the official is guilty of gross misconduct.
5. In light of the aforementioned facts, the undersigned in exercise of the powers conferred upon him under Police (Efficiency & Disciplinary) Rules, 1975 hereby awards IHC Saifour Shah No. 4265 the major punishment of dismissal from service with immediate effect.

Order announced on 16/10/2019.


SENIOR SUPERINTENDENT OF POLICE,
OPERATIONS, PESHAWAR.

C.C.P.O. _____

SSP/O _____

SSP/I _____

SP/Cantt _____

SP/City _____

SP/Rural _____

SP/Sec _____

SP/HQ _____

SP/T.O. _____

SP/T. HQ _____

DSP/LOS _____

P.O./C.C. _____

PA/EC-II _____

AS/C.Cell _____

No. 1301-06 /PA dated Peshawar, the 18/10 /2019.

Copy for information and necessary action to:

1. The Capital City Police Officer, Peshawar.

2. The Senior Superintendent of Police, Investigation CCP Peshawar w/r to his findings dated 07/10/2019.

3. The DSP Legal Peshawar: to keep in touch with the Court concerned and inform this office about the final decision of the court so that the departmental proceedings could be finalized.

4. EC-I/EC-II/OSI/PO/AS.

5. FMC (along with complete enquiry file containing _____ pages) is directed to keep contact with

DSP Legal regularly and on receiving a copy of court's judgment, the case file be put up

immediately to finalize the proceedings.

18/10/19



①



To,

The Chief Capital City Police,
Peshawar.

E - (10)

Subject: **DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED 18.10.2019 MAJOR PUNISHMENT OF DISMISSAL FROM HAS BEEN IMPOSED UPON ME**

Respected Sir,

With due respect it is stated that I was the employee of your good self Department and serving as Head Constable No. 4265 quite efficiently and upto the entire satisfaction of my superiors. During service while I was performing my duties as Head Constable at Police Station Gulberg, Peshawar was placed under suspension on account of involvement in a false criminal case vide FIR No.1060 under section 365 PPC/ 9C CNSA/109/148/149/419/420, dated 24.07.2019, Police Station Hayat Abad. That after chalking of the above mentioned FIR I was arrested by the local police and later on was released on bail. That after releasing on bail I was visited the concerned quarter to re-join my duty but the concerned authority despite of accepting my arrival straight away handed over the impugned order dated 18.10.2019 whereby major penalty of dismissal from service has been imposed on me without waiting of the outcome of trial in the above mentioned case. It mere involvement in a criminal case does not ipso fact warrant imposition of major punishment unless and until proved in a competent court of law. That feeling aggrieved I am preferring the instant Departmental appeal before your good self.

It is therefore, most humbly prayed that on acceptance of this appeal the impugned order dated 18.10.2019 may very kindly be set aside and I may be re-instated into service with all back benefits.

Dated: 11.11.2019.

M-1

Your Obediently

SAIFUR

SAIFUR SHAH(IHC)
Police Lines, Peshawar



OFFICE OF THE
CAPITAL CITY POLICE OFFICER
PESHAWAR

Phone No. 091-9210989

Fax No. 091-9212597

F - (11)

ORDER.

This order will dispose of the departmental appeal preferred by Ex-IHC Saifur Shah No.4265 who was awarded the major punishment of "Dismissal from service" under Police Rules-1975 by SSP/Operations Peshawar vide Order No.1301-06, dated 18-10-2019.

2- The allegations leveled against him were that he while posted at Police Station Gulberg Peshawar involved himself in case vide FIR No.1060, dated 24-07-2019 u/s 365-PPC/9C CNSA/109/148/149/419/420 PS Hayatabad.

3- He was served charge Sheet and Summary of Allegations by SSP/Operations Peshawar and SSP/Investigation Peshawar was appointed as enquiry officer. The enquiry officer after conducting enquiry submitted his findings that the accused official namely IHC Saifur Shah No.4265 of PS Gulberg was found guilty for involvement in a criminal case and fabrication of an innocent person in concocted case. The competent authority after perusal of the finding issued him Final Show Cause Notice to which his reply received and found unsatisfactory by the competent authority and hence the above punishment.

4- He was heard in person in O.R. The relevant record perused along with his explanation. During personal hearing the appellant failed to produce any plausible explanation in his defense. All codal formalities were completed before awarding him the punishment of dismissal from service by the Competent Authority and there is no need to interfere in the order of SSP/Operations. Therefore, keeping inview the above circumstances his appeal for reinstatement in service is hereby rejected /filed.

(MUHAMMAD ALI KHAN)PSP
CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 1868-75 /PA dated Peshawar the 31-12- 2019

Copies for information and n/a to the:-

1. SSP/Operations Peshawar.
2. OASI/CRC/Pay officer, EL-I, EL-II
3. FMC along with complete Fouji Missil.
4. Official concerned.

M

VAKALATNAMA

Before the KP Service Tribunal, Peshawar

_____ OF 2020

Saifoor Shah

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Police Deptt.

(RESPONDENT)
(DEFENDANT)

I/We Saifoor Shah

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2020

Saifoor

CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK

SHAHZULLAH YOUSAFZAI

&

MIR ZAMAN SAFI
ADVOCATES

OFFICE:

Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.
Phone: 091-2211391
Mobile No. **0345-9383141**

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

Service Appeal No.411/2020.

Ex- Head Constable Saifour Shah No.4265 of CCP, Peshawar.....**Appellant.**

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Senior Superintendent of Police Operations Peshawar**Respondents.**

Reply by Respondents No. 1, 2, &3.

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS.

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to Hon'able Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Honorable Tribunal.
7. That the appeal is not maintainable being devoid of any merit.

FACTS:-

- (1) Correct to the extent that the appellant was serving in the respondent department, while rest of para is denied on the ground that the appellant has not a clean service record and contains 20 bad entries in his service. (copy of list as annexure A)
- (2) Incorrect. The appellant while posted at PS Gulberg Peshawar involved himself in criminal case vide FIR No.1060 dated 24.07.2019 u/s 365-PPC/9CCNSA/109/148/149/419/420 PS Hayatabad. In this regard, he was issued charge sheet with statement of allegations. SSP/Investigation Peshawar was appointed as enquiry officer. The enquiry officer after conducting departmental enquiry submitted his findings report that the appellant was found guilty for involvement in criminal case and also implicating an innocent citizen in a fabricated case. After receipt of the findings report, Final Show Cause Notice was issued to him, which he replied, but his written reply was found unsatisfactory. The appellant then summoned for personal hearing on 16.10.2019 in orderly room, but he failed to appear before the competent authority. After observing all codal formalities, he was awarded appropriate major punishment of dismissal from

service. (copy of charge, statement of allegations, enquiry report and FSCN are annexure as B,C,D,E)

- (3) Incorrect. After completion of all codal formalities he was issued final show cause notice to which he replied, but his reply was found unsatisfactory, hence he was awarded appropriate major punishment.
- (4) Incorrect. Appellant was associated with the enquiry proceedings and proper opportunity of defense was provided to him. The charges against the appellant falls under moral turpitude and is against the discipline of the force, leniency in such cases would motivate other members of the force. The charges leveled against him were stand proved. So for as court judgment is concerned, the Apex Court in various judgments has held that the criminal and departmental proceedings are two different entities.
- (5) Incorrect. The appellant filed departmental appeal which after due consideration was rejected/failed because the charges leveled against him were stand proved.
- (6) That appeal of the appellant being devoid of merits may kindly be dismissed on the following grounds.

GROUND:-


- A. Incorrect. The punishment orders passed by the competent authority are in accordance with law/rules and liable to be upheld.
- B. Incorrect. Proper charge sheet with statement of allegations was issued to appellant. During course of enquiry, he was found guilty of the charges leveled against him. After fulfilling all codal formalities he was awarded appropriate major punishment.
- C. Incorrect. The appellant was treated as per law and rules. He was provided full opportunity of defense and personal hearing, but he failed to defend himself.
- D. Incorrect. The court proceedings and departmental proceedings are two different entities. Acquittal in a criminal case would not lead to exoneration of a civil servant in departmental proceedings. The charges of appellant falls under moral turpitude and is against the discipline of the force, leniency in such cases would motivate other members of the force.
- E. Incorrect. Proper departmental enquiry in accordance with law and rules was conducted, and proper opportunity of defense was provided to the appellant. He was found guilty of the charges leveled against him, hence the punishment order passed by the competent authority is as per law/rules and liable to be upheld.
- F. Incorrect. The appellant was issued charges sheet, summary of allegations, proper enquiry was conducted and final show cause notice was issued before passing the punishment order. He was provided full opportunity of defense, but he failed to defend himself. After fulfilling all codal formalities appellant was awarded appropriate major punishment of dismissal from service.

G. Respondents also seek permission of this Honorable Tribunal to raise additional grounds at the time of arguments.

PRAYERS:-

In view of the above, and keeping in view the gravity of slackness, willful negligence and misconduct of appellant, it is prayed that appeal being devoid of merit may kindly be dismissed with cost please.


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.


Capital City Police Officer,
Peshawar.


Senior Superintendent of Police,
Operations, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.411/2020.

Ex- Head Constable Saifour Shah No.4265 of CCP, Peshawar.....**Appellant.**


VERSUS.

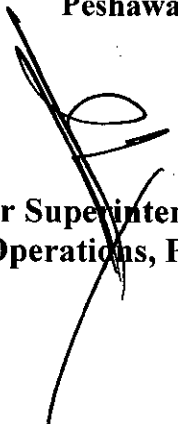
1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Senior Superintendent of Police Operations Peshawar**Respondents.**

AFFIDAVIT

We respondents No. 1 ,2 & 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.

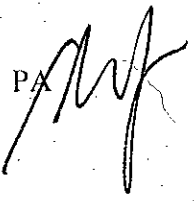

Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.


Capital City Police Officer,
Peshawar.

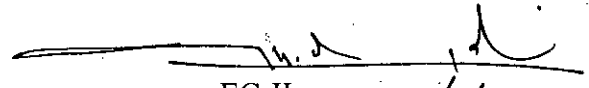

Senior Superintendent of Police,
Operations, Peshawar.

A

Name of official: IHC Saifoor Shah No. 4265 S/O Muhammad Shah
D/O Birth: 01.03.1979
D/O enlistment: 20.02.2002
Education: BA
Courses Passed: Lower and Intermediate Courses Passed
3. Total Qualifying Service: 17 years 10 months and 03 days
7. Good entries: Nil
8. Punishment (Previous): Nil
Minor Major
Nil Nil
9. Bad entries: 20
Leave without pay Extra Drill Warning
17 Nil 03
10. Punishment (Current): (Dismissed from Service by SSP/Operation dated 18.10.2019)

PA 

CCPO:


EC-II 23/12/19

B

CHARGE SHEET

Whereas I am satisfied that a Formal Enquiry as contemplated by Police Rules 1975 is necessary & expedient in the subject case against you **IHC Saifour Shah No. 4265 PS Gulberg District Peshawar.**

And whereas, I am of the view that the allegations if established would call for major/minor penalty, as defined in Rule 3 of the aforesaid Rules.

Now therefore, as required by Rule 6 (1) (a) & (b) of the said Rules, I, Senior Superintendent of Police, Operations, Peshawar hereby charge you **IHC Saifour Shah No. 4265 PS Gulberg District Peshawar** under Rule 5 (4) of the Police Rules 1975 on the basis of following allegations:

- i. That you IHC Saifour Shah No. 4265 involved in case vide FIR No. 1060 dated 24.07.2019 u/s 365-PPC/9CCNSA/109/148/149/419/420 PS Haytabad.
- ii. All this amounts to gross misconduct on your part and renders yourself liable for disciplinary proceedings under Police Rules 1975.

I hereby direct you further under Rule 6 (I) (b) of the said Rules to put forth written defence within 7 days of the receipt of this Charge Sheet to the Enquiry Officer, as to why the action should not be taken against you and also stating at the same time whether you desire to be heard in person.

In case your reply is not received within the specific period to the Enquiry Officer, it shall be presumed that you have no defence to offer and ex-parte action will be taken against you.


**SENIOR SUPERINTENDENT OF POLICE,
(OPERATIONS) PESHAWAR**

C

DISCIPLINARY ACTION

I, Senior Superintendent of Police Operations, Peshawar as competent authority am of the opinion that IHC Saifour Shah No. 4265 PS Gulberg District Peshawar has rendered him liable to be proceeded against, as he committed the following acts/omission within the meaning of section 03 of the Police Rules 1975.

STATEMENT OF ALLEGATIONS

- i. That IHC Saifour Shah No. 4265 involved in case vide FIR No. 1060 dated 24.07.2019 u/s 365-PPC/9CCNSA/109/148/149/419/420 PS Haytabad.
- ii. All this amounts to gross misconduct on his part and renders himself liable for disciplinary proceedings under Police Rules 1975.

For the purpose of scrutinizing the conduct of afore said police official in the said episode with reference to the above allegations SSP - Imran Dey is appointed as Enquiry Officer under Rule 5 (4) of Police Rules 1975.

The Enquiry Officer shall in accordance with the provision of the Police Rules (1975), provide reasonable opportunity of hearing to the accused Official and make recommendations as to punish or other action to be taken against the accused official.


SENIOR SUPERINTENDENT OF POLICE,
(OPERATIONS), PESHAWAR

No. 189 E/PA, dated Peshawar the 02 / 10 / 2019.

Copy to the above is forwarded to the Enquiry Officer for initiating proceeding against the accused under the provision of Police Rules 1975.



D

CAPITAL CITY POLICE PESHAWAR
OFFICE OF THE
SENIOR SUPERINTENDENT OF POLICE INVESTIGATION PESHAWAR.

Office Phone No. 091-9210642

No. 275E/PA, Dated Peshawar the 20/9/2019. E19

**To: The Senior Superintendent of Police,
Operation, Peshawar.**

**Subject: DISCIPLINARY ACTION AGAINST IIC SAIFUR SHAH NO. 4265 OF PS
GULBERG AND IIC SHAFIQ ZADA NO. 39.**

Kindly refer to your office Dy No. 188-189 E/PA dated 02.09.2019.

BREAF FACTS:

That IIC Shafiq Zada No. 39 involved in case vide FIR No. 1060 dated 24.07.2019 u/s 365/109/148/149/419/420 PPC/9 CCNSA PS Hayat Abad.

Brief of the case.

As per report of OII Hayat Abad, that the complainant Mabib Ullah s/o Ubaid Ullah PSO to Director Institute of Kidney Diseases Hayat Abad Peshawar charged the following accused for the commission of offence.

1. Saifur Shah s/o Muhammad Shah r/o Achini Peshawar.
2. Luqman s/o Fazal Raziq r/o Hayat Abad.
3. Ihsan Ullah s/o Aman Ullah /o Charsadda.
4. Constable Shafiq Zada s/o Akhunzada r/o Musa Zai.
5. Samandar s/o Hajat Khan r/o Umarzai.
6. Rahab s/o unknown r/o Jamrod.
7. Mst, Shahida Bibi w/o Numan r/o Bunir.

The complainant reported that Mst. Shahida was suspended by Director Institute of Kidney Diseases Hayat Abad. Later on she threatened me for dire consequences. As per routine on 25.07.2019 at 0800 hours i went out from home in motor car No. AJS-869 Islamabad for duty. At phase No. 04, Sector No. N-2, Street No. 57, House No. 239 Hayat Abad, three unknown uniformed personnels stopped and alighted me from driving seat. They showed himself as CT officials. They seated me in rear seat and veiled my eyes. They shifted me to an unknown place and confined me to the room, guarded by a Police official. After an hours, they were returned and seated me in motor car and we departed from there. All the three persons alighted from motor car with intervals, while the last one asked me to open my eyes after he steps off from motor car. when I opened my eyes, i was in my own vehicle in a graveyard. As I proceeded my vehicle at Karkhano check post, Police stopped me. During search of motor car by Police they recovered heroin from the gate of motor car and case vide FIR No. 892 dated 25.07.2019 9CCNSA was registered against me at Police Station Hayat Abad. I was released on bail from the court of law. On query, it came to know that on the conspiracy of Mst. Shahida and her husband Luqman, the above mentioned accused kidnapped me and put heroin in my motor

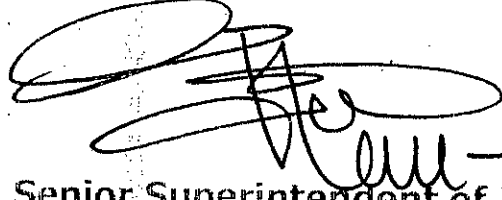
During course of investigation, site plan was prepared on _____ tion of complainant. accused Saifur Shah, Ihsan Ullah and Luqman were arrested _____ Isnad. Two days cust of accused were obtained from the court of law and interrogated them properly. The accu Ihsan Ullah confessed his guilt before the investigation officer and stated that he gave 40 thousand rupces to IHC Saifur Shah for doing so. The amount was also recovered from accu Saifur Shah and taken into possession. The arrested accused are confined in judicial lockup.

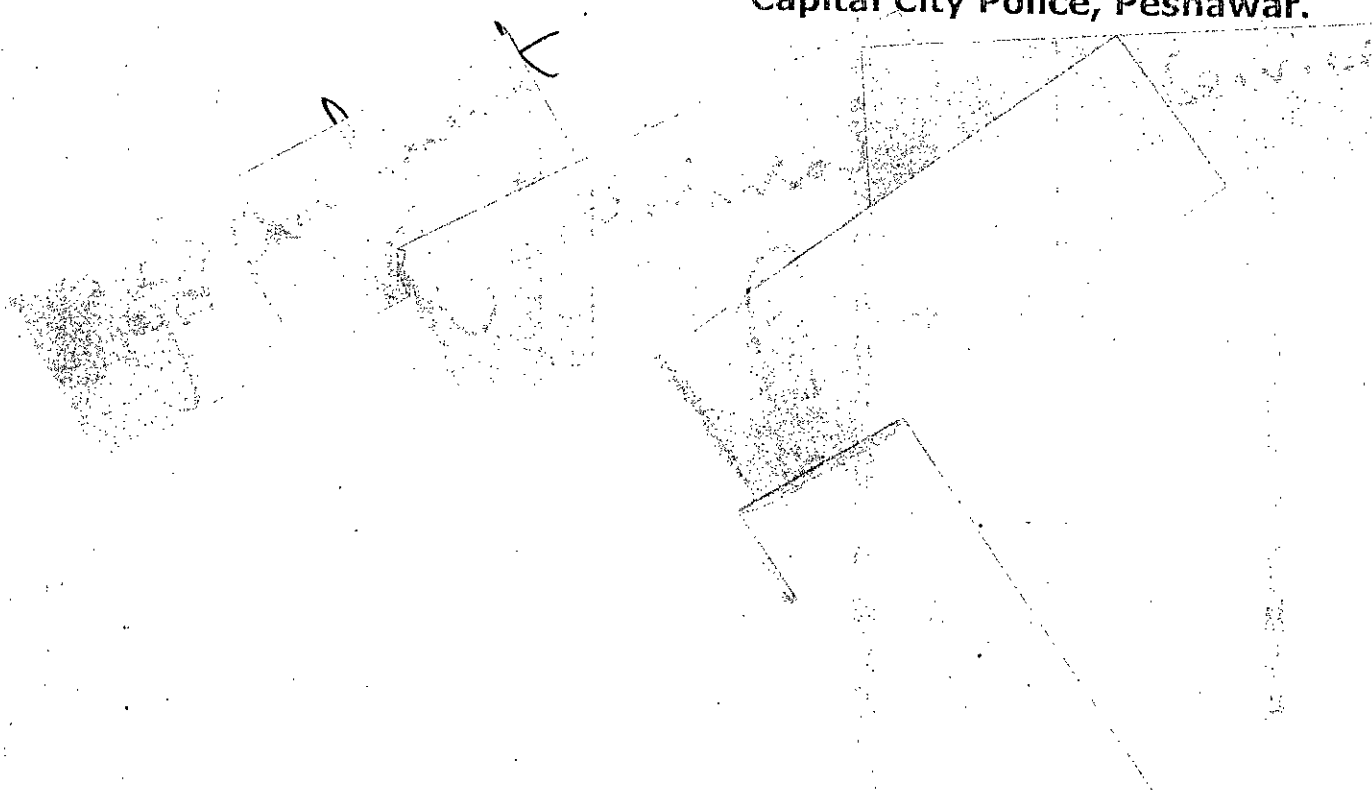
The accused Police official Shafiq Zada managed his BBA from the court of law on 12.09.2019 and 24.09.2019 is fixed for hearing.

RECOMMENDATION.

After thorough examination of case file and circumstances, the accused offic namely IHC Saifur Shah No. 4265 of Police Station Gulberg and LHC Shafiq Zada No. 39 w found guilty for involment in a criminal case and fabrication of _____ innocent person i concocted case.

Submitted please.


**Senior Superintendent of Police,
Investigation
Capital City Police, Peshawar.**





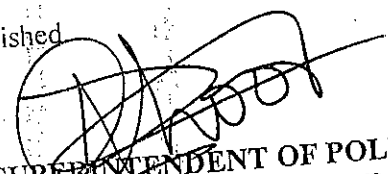
S

OFFICE OF THE
SUPERINTENDENT OF POLICE,
(OPERATIONS),
PESHAWAR
Phone. 091-9213054

E

FINAL SHOW CAUSE NOTICE
(Under Police Disciplinary Rules, 1975)

1. I, Senior Superintendent of Police, Operations, Peshawar as competent authority, under the Police disciplinary Rules 1975, do hereby serve you IHC Saifour Shah No. 4265 of CCP Peshawar as follows:-
2. (i) That consequent upon the completion of departmental enquiry conducted against you by SSP Investigation, CCP Peshawar, who found you guilty of the charges for which you were given the opportunity of personal hearing.
(ii) Ongoing through the findings and recommendations of the inquiry officer, the material on record and other connected papers including your defense before the said officers;
I am satisfied that you have committed the follow misconducts:
That you have been found guilty of the charges leveled against you in the charge already issued to you by the enquiry officer.
3. As a result thereof I, as Competent Authority decided to impose upon you major/minor penalty including dismissal from service under the said Rules.
4. You are, therefore, require to Show Cause as to why the aforesaid penalty should not be imposed upon you.
5. If no reply to this notice is received within 7-days of its delivery, it shall be presumed that you have no defense to put in and in that case an ex-parte action shall be taken against you.
6. You are at liberty to be heard in person, if so-wished


SR: SUPERINTENDENT OF POLICE,
OPERATIONS, PESHAWAR

No. 1173 /PA dated Peshawar the 23/10/19, 2019





KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No. 903 /ST

Dated: 13-4- /2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To

The Senior Superintendent of Police Operations,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 411/2020 MR. SAIFOO/R SHAH.

I am directed to forward herewith a certified copy of Judgement dated 07.04.2022 passed by this Tribunal on the above subject for compliance please.

Encl: As above


REGISTRAR

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR