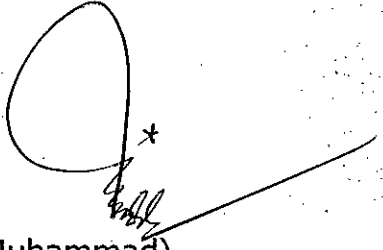


29.09.2021

Petitioner alongwith his counsel present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Suleman Shah, Law Officer for respondents present.

Learned AAG produced a copy of the judgement of august Supreme Court of Pakistan delivered on 24.06.2021 in Civil Appeal No. 139/2021. In the said civil appeal, judgement of this Tribunal dated 15.10.2019 in service appeal No. 1093/2018, had been challenged. The Apex court has set aside judgement of the service Tribunal and original penalty imposed by the department has been restored. As such the execution petition has become infructuous and is filed. File be consigned to the record room.

Announced:
29.09.2021


(Mian Muhammad)
Member (E)

159/2021
89

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

CIVIL APPEAL NO. 139 OF 2021

[Against the judgment dated 15.10.2019, passed by the
Khyber Pakhtunkhwa Service Tribunal, in Service Appeal
No. 1093 of 2018]

Government of Khyber Pakhtunkhwa
through Secretary, Home Department,
Peshawar and others ...Appellants

Versus

Muhammad Nadeem ...Respondent

For the Appellants : Mr. Zahid Yousaf Qureshi,
Addl. Advocate General,
Khyber Pakhtunkhwa
Sheharyar, Sr. Asstt. Supdt. Jail

Respondent : Mr. Salamat Shah, ASC

Date of Hearing : 24.06.2021

ORDER

GULZAR AHMED, CJ.- The respondent was employed as a Warder, Central Prison, Bannu. He was alleged to be supplying narcotics to the prisoners in the Jail. He was issued charge sheet and statement of allegations. Enquiry was conducted. Show Cause Notice was issued to him and thereafter, he was awarded penalty of removal from service vide order dated 30.04.2018. After availing the remedy of departmental appeal, the respondent filed Service Appeal before the Khyber Pakhtunkhwa Service Tribunal, Peshawar (the Tribunal). The Tribunal in the impugned judgment dated 15.10.2019, found that the enquiry

ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

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was rightly conducted against the respondent and the recommendation of the Inquiry Officer that of removal from service and thereafter, the order of penalty was in accordance with law, and that there was no malice or arbitrary or perverse exercise of power. The Tribunal, however, by assigning the reason that the respondent is a very young person proceeded to modify the penalty from removal from service to that of withholding of five annual increments for a period of five years.

2. The learned Additional Advocate General, Khyber Pakhtunkhwa (AAG) contends that the Tribunal did not assign valid reason for exercising the jurisdiction of modification of the penalty and, thus, such modification was not in accordance with law.

3. The learned ASC appearing for the respondent tried to argue the case on merit but the respondent having not challenged the impugned judgment, thus, the question of considering the merit of the case does not arise. He was, however, unable to substantiate or support the impugned judgment, modifying the penalty imposed upon the respondent. This Court has consistently held that the Tribunal cannot exercise jurisdiction of modification of penalty in isolation rather it has to give legal and persuasive reasoning and not to act in a whimsical and arbitrary manner. In this regard, reference is made to the cases of Deputy Postmaster General, Central Punjab, Lahore and another v. Habib Ahmed (2021 SCMR 584), Government of the Punjab through Chief

Secretary v. Muhammad Arshad and 2 others (2020 SCMR 1962)

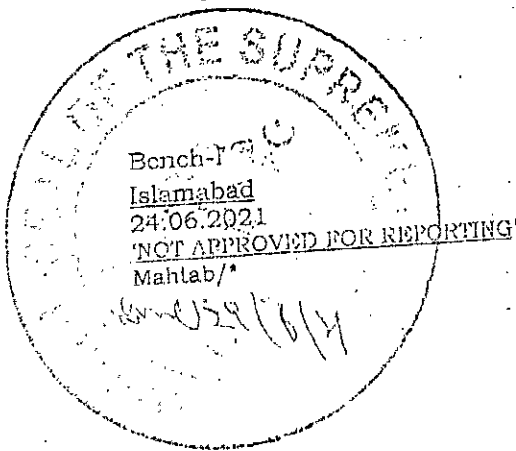
ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

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and Commissioner Faisalabad Division, Faisalabad and another v. Allah Balhsh (2020 SCMR 1418).

4. We have heard the learned counsel for the parties and gone through the record. It seems that the Tribunal exceeded its jurisdiction of modifying the penalty imposed upon the respondent. Thus, to the extent of modification of penalty by the Tribunal in the impugned judgment, the same is set aside and the original penalty imposed by the department on the respondent that of removal from service is restored. The appeal is allowed.



Sd/-HCJ
Sd/-J
Sd/-J
Certified to be True Copy
[Signature]
Senior Court Associate
Supreme Court of Pakistan
Islamabad

CF No: 11009/21 Civil/Criminal
Date of Presentation: 24-6-21
No of Members: 900
No of Pages: 9
Recd. No: 5
Court: 5-58
Date of: 10.58
Date of Birth: 29/6/21
Compart: 16721
Received by: [Signature]

25.02.2021

The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 29.04.2021.


Reader

29.04.2021

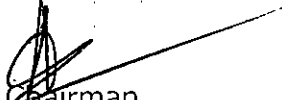
Due to demise of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 22.06.2021 for the same as before.


Reader

22.06.2021

Nemo for the petitioner. Mr. Kabirullah Khattak, Addl. AG present.

On previous two occasions, the case was adjourned through Reader Note. Notices be issued to petitioner as well as respondents. To come up for implementation report on 10.08.2021 before S.B.


Chairman

10.08.2021

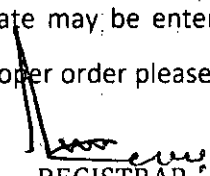

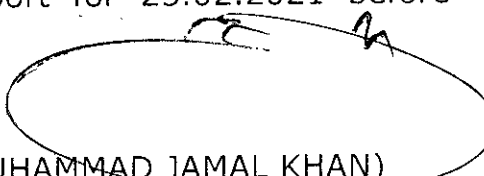
Since 10.08.2021 has been declared public holiday on account of Ist Muharram, therefore, case to come up for the same on 29.09.2021 before S.B.


Reader

FORM OF ORDER SHEET

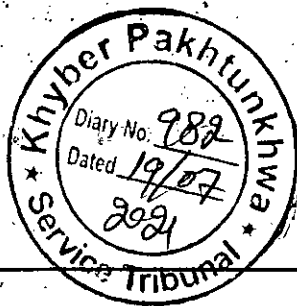
Court of _____

Execution Petition No. 168 / 2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	03.12.2020	<p>The Execution Petition submitted by Mr. Muhammad Nadeem through Mr. Noor Muhammad Khattak Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This Execution Petition be put up before S. Bench on <u>08/01/2021</u></p> <p style="text-align: right;"> CHAIRMAN</p>
08.01.2021	S.B.	<p>Petitioner is present in person. Notice be issued to the respondents for implementation report for 25.02.2021 before S.B.</p> <p style="text-align: right;"> (MUHAMMAD JAMAL KHAN) MEMBER (JUDICIAL)</p>



Tel&Fax#0928-633327
cpbannu@gmail.com



OFFICE OF THE
SUPERINTENDENT
CENTRAL PRISON BANNU
No. 4252 WE
Dated: 16-7-2021

To

The Hon'ble Registrar,
Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Subject: - **APPEAL NO.1093 OF 2018 (MUHAMMAD NADEEM VS SECRETARY HOME DEPARTMENT PESHAWAR & OTHERS).**

Honourable Sir;

Kindly refer to the subject cited appeal, it is submitted that the appellant Ex-Warder Muhammad Nadeem was awarded major penalty of "Removal from Service" vide order No.3334 dated 30.04.2021 and similarly his departmental appeal was also rejected by the worthy Inspector General of Prisons Khyber Pakhtunkhwa Peshawar vide order No.22588 dated 30.07.2018 (copy enclosed as **Annexure-A**).

The appellant filed appeal before the learned Service Tribunal Peshawar which was decided in favour of the appellant on 15.10.2019 and his penalty of Removal from Service was converted into Withholding of Five Annual Increment for a Period Of Five Years.

However, the Prisons Department preferred CPLA before August Supreme Court of Pakistan which was decided on 24.06.2021 wherein it was ordered that learned Service Tribunal exceeded its Jurisdiction of modifying the penalty imposed upon the Ex-Warder Muhammad Nadeem and set aside the order dated 15.10.2019 of the learned Service Tribunal and original penalty imposed by the department in shape of "Removal from Service" on Ex-Warder Muhammad Nadeem is restored and appeal of the department is allowed (Copy attached as **Annexure-B**).

Detailed report is submitted for further orders, in the light of Judgement of August Supreme Court of Pakistan dated **24.06.2021**, please.

Endst: No _____ /

Copy of the above is forwarded to the worthy Inspector General of Prisons Khyber Pakhtunkhwa, Peshawar for information with reference to above, please. (Copy of Notice of Learned Service Tribunal is attached).


SUPERINTENDENT
CENTRAL PRISON BANNU


SUPERINTENDENT
CENTRAL PRISON BANNU

Annexure - A



Annex - G

INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR
91-9210334-9210406
In Ward/Orders/ 2288 /-
Dated 30/07/18 /-

10

WHEREAS, Warder Muhammad Nadeem S/O Zafar Ullah Khan while attached to Prison Bannu was awarded the major penalty of "Removal from Service" by the competent Headquarters Prison Bannu vide his office order No. 3354 dated 30-04-2018 due to supply narcotics (Chars) to the prisoners;

AND WHEREAS, the said warder preferred his departmental appeal for setting aside the award to him, which was examined in light of the available records and it was observed that content for the charges of his misconduct upon him and all legal/procedural formalities required under the E&D Rules 2011 have also been observed by the competent authority;

AND WHEREAS, he was afforded an opportunity of personal hearing on 22/8/18. During the course of hearing, he failed to justify his innocence;

NOW THEREFORE, keeping in view the facts on record and the provision of rules in exercise of power conferred under Rule 5 of Khyber Pakhtunkhwa Civil Servants Rules 1986, the decision of the competent authority is upheld and appeal of the warder is hereby rejected being without any substance.

INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR.

No. 22588-92 /-

- Copy of the above is forwarded to:-
- 1. Superintendent, Headquarters Prison Bannu for information and necessary action with reference to his letter No. 4312-WE dated 22-06-2018.
- 2. Superintendent, Central Prison Bannu for information and necessary action.
- 3. Joint Accounts Officer concerned for information.
- 4. All concerned.

Handwritten notes:
1/2/18/PA/1cc
form/all
D
S/R

ASSISTANT DIRECTOR (ADMN)
FOR INSPECTOR GENERAL OF PRISONS,
KHYBER PAKHTUNKHWA PESHAWAR

Handwritten signature

Handwritten notes:
3/16/18
03

Handwritten notes:
NO 22187
17/8/18

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

CIVIL APPEAL NO.139 OF 2021

[Against the judgment dated 15.10.2019, passed by the Khyber Pakhtunkhwa Service Tribunal, in Service Appeal No.1093 of 2018]

***Government of Khyber Pakhtunkhwa
through Secretary, Home Department,
Peshawar and others*** ...Appellants

Versus

Muhammad Nadeem ...Respondent

For the Appellants : Mr. Zahid Yousaf Qureshi,
Addl. Advocate General,
Khyber Pakhtunkhwa
Sheharyar, Sr. Asstt. Supdt. Jail

Respondent : Mr. Salamiat Shah, ASC

Date of Hearing : 24.06.2021

ORDER

GULZAR AHMED, CJ.- The respondent was employed as a Warder, Central Prison, Bannu. He was alleged to be supplying narcotics to the prisoners in the Jail. He was issued charge sheet and statement of allegations. Enquiry was conducted. Show Cause Notice was issued to him and thereafter, he was awarded penalty of removal from service vide order dated 30.04.2018. After availing the remedy of departmental appeal, the respondent filed Service Appeal before the Khyber Pakhtunkhwa Service Tribunal, Peshawar (**the Tribunal**). The Tribunal in the impugned judgment dated 15.10.2019, found that the enquiry

was rightly conducted against the respondent and the recommendation of the Inquiry Officer that of removal from service and thereafter, the order of penalty was in accordance with law, and that there was no malice or arbitrary or perverse exercise of power. The Tribunal, however, by assigning the reason that the respondent is a very young person proceeded to modify the penalty from removal from service to that of withholding of five annual increments for a period of five years.

2. The learned Additional Advocate General, Khyber Pakhtunkhwa (AAG) contends that the Tribunal did not assign valid reason for exercising the jurisdiction of modification of the penalty and, thus, such modification was not in accordance with law.

3. The learned ASC appearing for the respondent tried to argue the case on merit but the respondent having not challenged the impugned judgment, thus, the question of considering the merit of the case does not arise. He was, however, unable to substantiate or support the impugned judgment, modifying the penalty imposed upon the respondent. This Court has consistently held that the Tribunal cannot exercise jurisdiction of modification of penalty in isolation rather it has to give legal and persuasive reasoning and not to act in a whimsical and arbitrary manner. In this regard, reference is made to the cases of Deputy Postmaster General, Central Punjab, Lahore and another v. Habib Ahmed (2021 SCMR 584), Government of the Punjab through Chief Secretary v. Muhammad Arshad and 2 others (2020 SCMR 1962).

and Commissioner Faisalabad Division, Faisalabad and another v. Allah Bakhsh (2020 SCMR 1418).

4. We have heard the learned counsel for the parties and gone through the record. It seems that the Tribunal exceeded its jurisdiction of modifying the penalty imposed upon the respondent. Thus, to the extent of modification of penalty by the Tribunal in the impugned judgment, the same is set aside and the original penalty imposed by the department on the respondent that of removal from service is restored. The appeal is allowed.

Sd/-HCJ

Sd/-J

Sd/-J

Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad

Bench-I
Islamabad
24.06.2021

NOT APPROVED FOR REPORTING
Mahtab/*

393-P/A

CR No.	393-P/A	Civil/Criminal
Date of Presentation	1-7-21	
No of Pages	900	
No of Exhibits	8	
Registration Fee	500	
Cost of Printing	500	
Cost of Stationery	1000	
Date of Filing	06/7/21	
Date of Disposal	08/7/21	
Completed by		
Received by		

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. _____/2020

In

Appeal No. 1093/2018

MUHAMMAD NADEEM

VS

PRISON DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE NO.
1-	Memo of petition	1- 2.
2-	Affidavit	3.
3-	Judgment	A	4- 6.
4-	Vakalat nama	7.

PETITIONER/APPLICANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

MOBILE NO.0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 168 /2020

In

Appeal No. 1093/2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1014

Dated 03/12/2020

Mr. Muhammad Nadeem, Warder (BPS-05)
Central Prison, Bannu.

..... PETITIONER

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Secretary Home Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Inspector General of Prison's, Khyber Pakhtunkhwa, Peshawar.
- 3- The Superintendent Circle Headquarters Prison, Bannu.

.....PETITIONERS

IMPLEMENTATION PETITION FOR DIRECTING
THE RESPONDENTS TO OBEY THE JUDGMENT
DATED 15.10.2019 IN LETTER AND SPIRIT

R/SHEWETH:

- 1- That the petitioner filed Service appeal bearing No. 1093/2018 before this august Service Tribunal against the impugned order dated 30.07.2018.
- 2- That the appeal of petitioner was finally heard by this august Tribunal on 15.10.2019 and was decided in favor of the petitioner vide judgment dated 15.10.2019 with the view that ***"However in the circumstances of the case and in view of the fact that the appellant is a very young person, for the purpose of safe administration of justice, the punishment of removal from service is modified and converted into withholding of five (05) annual increments for a period of five years. Intervening period shall be treated as extraordinary leave without pay. The authority shall however keep a vigilant eye over the activities of the appellant. The present service appeal is accepted in the above noted items"***. Copy of the judgment is attached as annexure.....**A.**
- 3- That after obtaining attested copy of the judgment dated 15.10.2019 the petitioner submitted the same before the respondents for implementation but till date the judgment of

this Tribunal has not been implemented by the respondent in letter and spirit.

- 4- That the petitioner has no other remedy but to file this implementation petition.

It is therefore, most humbly prayed that on acceptance of this implementation petition the respondents may be directed to implement the judgment dated 15.10.2019 in letter and spirit. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

PETITIONER



MUHAMMAD NADEEM

THROUGH:



NOOR MOHAMMAD KHATTAK

&



**MIR ZAMAN SAFI
ADVOCATES**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. _____/2020

In

Appeal No. 1093/2018

MUHAMMAD NADEEM

VS

PRISON DEPTT:

AFFIDAVIT

I Noor Mohammad Khattak, Advocate on behalf of the petitioner, do hereby solemnly affirm that the contents of this **implementation petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.


NOOR MOHAMMAD KHATTAK
ADVOCATE

A-4



Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or
1	2	3
<p align="center">BEFORE THE KYBER PAKHTUNKHWA SERVICE TRIBUNAL Service Appeal No. 1093/2018</p> <p>Date of Institution 04.09.2018 Date of Decision 15.10.2019.</p> <p>Mr. Muhammad Nadeem Ex-Warder (BPS-05), Central Prison, Bannu. Appellant</p> <p align="center">Versus</p> <ol style="list-style-type: none"> The Government of Khyber Pakhtunkhwa, through Secretary Home Department Khyber Pakhtunkhwa Peshawar. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar. The Superintendent Circle Headquarters Prison, Bannu. Respondents <p>Mr. Muhammad Hamid Mughal-----Member(J) Mr. Hussain Shah-----Member(E)</p> <p><u>JUDGMENT</u> <u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> Appellant present. Learned counsel for the appellant present. Mr. Riaz Paindakheil learned Assistant Advocate General alongwith Sulaiman Law Officer present.</p> <p>2. The appellant (Ex-Warder) has filed the present service appeal, u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 30.04.2018 whereby he was awarded punishment of removal from service and against the order dated 30.07.2018 through which his departmental appeal against the punishment order was rejected.</p>		

15.10.2019

ATTESTED

[Signature]
Khyber Pakhtunkhwa Service Tribunal, Peshawar

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3. Learned counsel for the appellant argued that the appellant was the employee of the respondent department; that vide impugned order dated 30.04.2018 major penalty of removal from service was imposed upon the appellant on the allegation that the appellant supplied narcotics (charas) to the prisoners; that the departmental action was conducted on the back of appellant; that no charge sheet/statement of allegation was served upon the appellant, similarly, the appellant received the Show Cause Notice on the day the impugned punishment order was issued; that no opportunity of defense, cross-examination and personal hearing was granted to the appellant; that the punishment awarded to the appellant is extremely harsh & excessive.

4. As against that learned AAG argued that the appellant committed serious crime by supplying narcotics (charas) to the inmates of prison; that the punishment was awarded to appellant after observing all the legal formalities; that charge sheet/statement of allegation was issued, inquiry officer was appointed; that inquiry officer gave his findings against the appellant and thereafter Show Cause Notice was also issued to the appellant; that convicted prisoners testified in their statements that narcotics were supplied to them by the appellant; that contact number of the appellant was found in the recovered/confiscated mobile phone of prisoner; that the appellant remained involved in supply of narcotics in the past and a disciplinary case was initiated against him however he was exonerated due to lack of evidence.

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

6

5. Arguments heard. File perused

6. Copy of statement of allegation, inquiry report and Show Cause Notice is available on file. In the inquiry report, the inquiry officer gave his finding against the appellant and recommended his removal from service. In his report, the inquiry officer has also mentioned that after the occurrence of incident, the appellant disappeared from the scene and avoided the situation by fleeing from jail premises.

7. Learned counsel for the appellant could not demonstrate that the findings of inquiry officer are actuated with malice, arbitrary or perverse. However in the circumstances of the case and in view of the fact that the appellant is a very young person, for the purpose of safe administration of justice, the punishment of removal from service is modified and converted into withholding of five (05) annual increments for a period of five (05) years. Intervening period shall be treated as extraordinary leave without pay. The authority shall however keep a vigilant eye over the activities of the appellant. The present service appeal is accepted in the above noted terms. Parties are left to bear their own costs. File be consigned to the record room.

SD/-

(Hussain Shah)
Member

SD/-

(Muhammad Hamid Mughal)
MemberANNOUNCED
15.10.2019Date of Presentation of Application 30-11-2020Number of Words 1200Copying Fee 14.00Urgent 4.00Total 18.00Name of Copyist [Signature]Date of Completion of Copy 30-11-2020Date of Delivery of Copy 30-11-2020

Certified to be true copy

MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2020

Muhammad Nadeem

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Prison Deptt.

(RESPONDENT)
(DEFENDANT)

I/We Muhammad Nadeem

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

CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK

SHAHZULLAH YOUSAFZAI

MIR ZAMAN SAFI

&

AFRASIAB KHAN WAZIR
ADVOCATES

OFFICE:
Flat No.4, 2nd Floor, Juma Khan
Plaza, near FATA Secretariat,
Warsak Road, Peshawar.
Mobile No.0345-9383141