

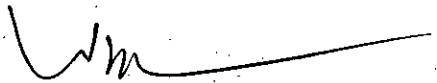
25.03.2021

Counsel for the petitioner and Mr. Kabirullah Khattak learned Additional Advocate General alongwith Muhammad Waqas SI for respondents present.

Representative of respondents stated at the bar that respondents has already submitted conditionally reinstatement order of the petitioner subject to CPLA.

In the circumstances, it will be appropriate to consigned instant proceedings to record with the permission to petitioner to apply for restoration as and when required under the law.

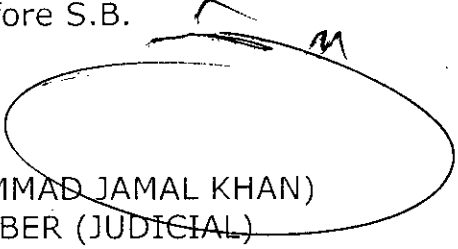
Announced  
25.03.2021

  
(Atiq-Ur-Rehman Wazir)  
Member (E)

26.01.2021

None for the petitioner has forth come at the moment when the execution petition was called for hearing at 02:30 P.M. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Zahid-ur-Rehma, Inspector (Legal), for the respondents are present.

Respondents submitted implementation report whereby the service of petitioner has been conditionally/provisionally restored till the decision of CPLA with immediate effect. The order is placed on file. Let be petitioner is provided opportunity for having any objection/reservation on the same. File to come up for further proceedings on 25.03.2021 before S.B.

  
(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

08.10.2020

Counsel for the petitioner and Addl. AG alongwith Zahidur Rahman Inspector for the respondents present.

The representative of respondents has provided copy of order dated 03.09.2020 passed by the District Police Officer Hangu through which the petitioner has been conditionally/provisionally reinstated in service for the purpose of denovo enquiry against him.

Reading in juxtaposition to the relevant part of the judgment under implementation, the order dated 03.09.2020 does not seem to be in total compliance of the judgment. In the judgment, there is no mention of denovo enquiry to be conducted against the petitioner.

In the circumstances, the respondents are required to issue an amended order of reinstatement of petitioner. The requisite implementation shall be undertaken and completed before next date of hearing in case the judgment of the Tribunal is not suspended or set aside by the Apex Court. Adjourned to 03.12.2020 before S.B.

  
Chairman

03.12.2020

Counsel for the petitioner and Addl. AG alongwith Zahidur Rahman, Inspector for the respondents present.

The representative of respondents has provided copy of order dated 16.10.2020, whereby, the petitioner has been reinstated in service conditionally/provisionally till the outcome of CPLA.

The document is placed on record. To come up for further proceedings on 26.01.2021 before S.B.

  
Chairman

23.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 16.07.2020 for the same. To come up for the same as before S.B.

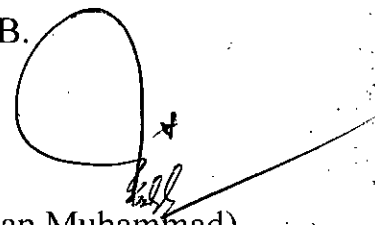
  
Reader

16.07.2020

Counsel for the petitioner and Addl: AG for respondents present.

Implementation report not submitted. Learned AAG seeks time to contact the respondents for submission of implementation report.

Adjourned to 18.08.2020 before S.B.

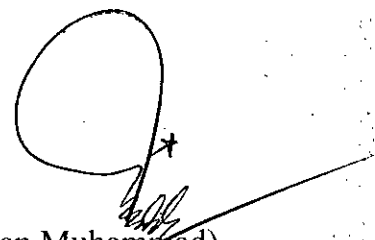
  
(Mian Muhammad)  
Member(E)

18.08.2020

Counsel for the petitioner present. Mr. Ziaullah, DDA for respondents present.

Learned DDA seeks adjournment to contact the respondents for submission of implementation report.

Adjourned to 08.10.2020 before S.B.

  
(Mian Muhammad)  
Member(E)

09.01.2020 Petitioner in person and Addl. AG for the respondents present.

Learned AAG requests for time to contact the respondents and furnish implementation report. To come up for implementation report on 19.02.2020 before S.B.

  
Chairman

19.02.2020 Counsel for the petitioner and Mr. Kabirullah Khattak, Additional AG for the respondents present. Implementation report not submitted. Learned Additional AG requested for further time to contact the respondents and furnish implementation report. To come up for implementation report on 17.03.2020 before S.B.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

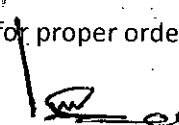

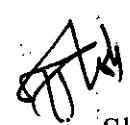
17.03.2020 Petitioner in person present. Mr. Kabirullah Khattak learned Addl. AG for the respondents present. Implementation report not submitted, therefore, notices be issued to the respondents to submit implementation report on the next date positively. Adjourned. To come up for implementation report on 23.04.2020 before S.B.

  
Member

Form- A  
FORM OF ORDER SHEET

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

Execution Petition No. 396/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	29.10.2019	<p>The execution petition of Mr. Shabeh-ul-Hassan submitted today by Mr. Taimur Ali Khan Advocate may be entered in the relevant register and put up to the Court for proper order please:</p> <p> REGISTRAR 29/10/19</p>
2-	30/10/19.	<p>This execution petition be put up before S. Bench on <u>29/11/19</u>.</p> <p> CHAIRMAN</p>
29.11.2019		<p>Petitioner in person present and seeks adjournment that his counsel is not available today. Notices be issued to the respondents for implementation report on 09.09.2020 before S.B</p> <p> (Hussain Shah) Member</p>

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

Execution petition No. 396 /2019  
In Service Appeal No.196/2018



Shabeh ul Hassan, Ex- Constable,  
R/O Village Lodhi Khel, Tehsil & District Hangu.

**PETITIONER**

**VERSUS**

1. District Police Officer, Hangu.
2. Deputy Inspector General of Police, Kohat Region Kohat.
3. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.

**RESPONDENTS**


.....  
**EXECUTION PETITION FOR DIRECTING THE  
RESPONDENTS TO IMPLEMENT THE  
JUDGMENT DATED 11.06.2019 OF THIS  
HONOURABLE SERVICE TRIBUNAL IN  
LETTER AND SPIRIT.**  
.....

**RESPECTFULLY SHEWETH:**


1. That the petitioner has filed an appeal bearing No.196/2018 in this august Service Tribunal against the impugned order dated 25.05.2017, whereby the appellant was discharged from service and against the order dated 21.08.2017 and 22.01.2018 whereby the departmental appeal and revision of the petitioner has been rejected.
2. That the said appeal was finally heard on 11.06.2019 and the Honourable Tribunal was kind enough to accept the appeal, set aside the impugned orders and reinstate the petitioner into service (Copy of judgment dated 11.06.2019 is attached as Annexure-A)

3. That since the announcement of the judgment, the petitioner has waited for more than four months, but the respondents has not taken action on the judgment dated 11.06.2019 till date.
4. That in-action and not fulfilling formal requirements by the respondents after passing the judgment of this august Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
5. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the respondents are legally bound to implement the judgment of this Honourable Service Tribunal in letter and spirit.
6. That the petitioner has having no other remedy except to file this execution petition for Implementation of judgment dated 11.06.2019 of this august Service Tribunal.

It is, therefore, most humbly prayed that the respondents may be directed to implement the judgment dated 11.06.2019 of this august Service Tribunal in letter and spirit. Any other remedy, which this august Service Tribunal deems fit and appropriate may also be awarded in favour of petitioner.

  
**ABDUL WAHID**  
**ADVOCATE**

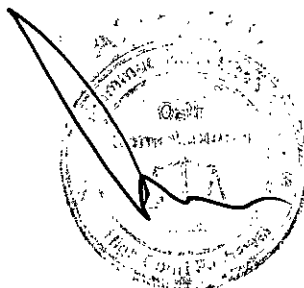
THROUGH:

*Stabih*  
**PETITIONER**  
  
**(TAIMUR ALI KHAN)**  
**ADVOCATE HIGH COURT,**

**(ASAD MAHMOOD)**  
**ADVOCATE HIGH COURT**

**AFFIDAVIT:**

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this august Service Tribunal.



  
**DEPONENT**



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 196/2018

Date of Institution ... 25.01.2018

Date of Decision ... 11.06.2019



Shabeh-ul-Hassan Ex-Constable R/O village Lodhi Khel, Tehsil and District Hangu.  
... (Appellant)

VERSUS

District Police Officer, Hangu and two others. ... (Respondents)

Present.

Mr. Muhammad Yousaf Orakzi,  
Advocate.

... For appellant

Mr. Kabirullah Khattak,  
Addl. Advocate General

... For respondents.

MR. HAMID FAROOQ DURRANI,  
MR. AHMAD HASSAN,

... CHAIRMAN  
... MEMBER

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

**ATTESTED**

*[Signature]*  
MEMBER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

1. The appellant is aggrieved of order dated 25.05.2017 passed by the District Police Officer Hangu, whereby, he was "discharged from service from the date of his suspension i.e. 27.01.2017, with immediate effect". The appellant is also aggrieved of order dated 21.08.2017 and 22.1.2018 through which his departmental appeal and petition under Rule 11-A of the Khyber Pakhtunkhwa Police Rules, 1975 were respectively rejected.

2. The facts, as noted in the memorandum of appeal, are in terms that the appellant joined Police Department as Constable on 01.03.2007. At the relevant time he was posted in Rescue 15 Hangu when got implicated in offence under

**ATTESTED**

*[Handwritten mark]*

Section 9 © CNSA through FIR No. 90 dated 26.01.2017, reported at Police Station Hangu. The appellant was suspended from service on 27.01.2017 and was issued charge sheet and statement of allegations on 31.01.2017 while the final show cause notice was served upon him on 20.02.2017. After submission of enquiry report against the appellant the impugned order dated 24.05.2017 was passed. The appellant submitted departmental appeal against the impugned order which was rejected and similarly a petition to the Provincial Police Officer/Inspector General of Police Khyber Pakhtunkhwa was also dismissed, hence the appeal in hand.

3. We have heard learned counsel for the appellant, learned Addl. AG on behalf of the respondents and have also gone through the available record.

It was the argument of learned counsel that the appellant was acquitted from the case, registered against him, by a court of competent jurisdiction on 12.05.2017, therefore, the basis of allegations against him became non-existent. He was not to be awarded the impugned penalty in the facts and circumstances of the case. It was further argued that the punishment "discharge from service" was nowhere provided in the Khyber Pakhtunkhwa Police Rules, 1975 under which the departmental proceedings were purportedly undertaken against the appellant. The impugned punishment was liable for setting aside on that score alone.

On the other hand, learned Addl. AG argued that the appellant did not submit a review petition under Rule 11-A of the rules ibid and instead preferred a second appeal to the Inspector General of Police which was not competent, hence the appeal in hand was delayed having been submitted on 25.01.2018 against the order in departmental appeal passed on 21.08.2017. It was also the argument of learned Addl. AG that Section 7 of Khyber Pakhtunkhwa Service Tribunal Act,

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ATTESTED

1974 provided for the powers of this Tribunal; inter-alia, for modification of order passed by departmental authority and in view of such provisions the penalty of "discharge from service" could be modified to appropriate penalty under the rules. It was added that the mentioning of "discharge from service" was only a clerical mistake.

4. Before proceeding further in the matter we consider it appropriate to attend to the argument of learned Addl. AG regarding submission of second appeal by the appellant. The record suggests that on 28.08.2017, the appellant submitted petition to the Inspector General of Police Khyber Pakhtunkhwa, wherein, it was clearly noted that the appellant had not committed any act of misconduct while he stood acquitted from the charge under Section 9(c) CNSA from the court of Addl. Sessions Judge-I, Hangu on 12.05.2017. A request for reinstatement in service was also made in the petition. The petition was treated as appeal under Rule 11-A of the Rules ibid by respondent No. 3 and was decided on 22.01.2018. It is, therefore, held that the appeal in hand is competent requiring decision on merits.

5. Adverting to the merits of the case of appellant, it shall be useful to reproduce hereunder the allegations levelled against him in the charge sheet as well as statement of allegations dated 31.01.2017:-

*"You are directly charged/arrested in case FIR No. 90 dated 26.01.2017 u/s 9©CNSA, P.S City Hangu. Being a police official your this act is bad name for Police department which shows your negligence, disinterest and also amounts to great gross misconduct on your part."*

The allegations clearly suggest that the basis of departmental proceedings was involvement/arrest of appellant in case FIR No. 90 dated 26.01.2017. Examining the impugned order dated 24.05.2017 in juxtaposition to the allegations, it becomes sufficiently comprehensible that the penalty awarded to the appellant was

**ATTESTED** **ATTESTED**

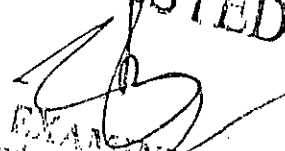
solely on account of criminal case against him. It is also an undeniable fact that the appellant, in his departmental appeal dated 16.06.2017, had clearly submitted that he stood acquitted from the criminal charge by a court of competent jurisdiction. This fact was, however, not attended by the Regional Police Officer, Kohat/departamental appellate authority. Similarly, the ground of his acquittal was duly taken in his petition before respondent No. 3 under Section 11-A of Rules ibid which was dealt with in the order passed on 22.01.2018, in the following terms:-

*"Perusal of record revealed that petitioner was discharged from service on the allegation of involvement in criminal case FIR No. 90, dated 26.01.2017 u/s 9 (c) CNSA, Police Station City, Hangu. He was acquitted from the charges u/s 265-K Cr.P.C by the court of Addl. Sessions Judge-I, Hangu vide judgment dated 12.05.2017.*

*Petitioner service dossier contains 22 bad entries. He was involved in narcotics case and he has admitted his involvement during departmental proceedings. Therefore, acquittal from criminal charge is no ground for absolving from departmental charge. Therefore, the Board decided that his petition is hereby rejected."*

It is clear from the entire record that the substratum of allegations and departmental proceedings against the appellant was no more in existence at the time of recording of impugned order dated 24.05.2017. Pertinently, the fact of acquittal of appellant was brought into the notice of respondents firstly through departmental appeal preferred on 16.06.2017 and secondly, through petition before respondent No. 3 on 28.08.2017. We are of the view that the acquittal of appellant warranted the consideration that he had committed no offence because the competent criminal court had cleared him from accusation or charge of crime. Reliance is placed on 1998-SCMR-1993.

**ATTESTED**

**ATTESTED**  
  
 DEAN  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

6. We consider it worth-noting that the rejection of petition of appellant under Rule 11-A of the Rules *ibid* was also on the count of previous bad entries in the dossier of appellant. The said ground was not available to the respondents while proceeding against the appellant as his previous omissions could not be made the justification for subsequent penalty. Attending to the other ground prevailing with the respondent No. 3 in terms of admission of involvement of appellant in the criminal case during departmental proceedings, it is sufficient to note that there was no such admission on the part of appellant in the entire record. We have been provided a copy of statement of appellant wherein, during cross examination by the enquiry officer, it was admitted that the narcotics were recovered from his possession, however, in response to another question it was duly stated that the appellant was not in the knowledge of contents of the bag containing narcotics which was handed over to him by one Nishat Ali for delivering the same to Mir Akbar. In the said context, we are of the view that the statement/cross-examination of the appellant was to be read and interpreted as a whole and not in piecemeal. In the part of statement, tagged as admission by the respondents, the appellant had clearly indicated his lack of knowledge regarding the possession of narcotics.

7. The argument of learned counsel for the appellant regarding misapplication of law/rules to the case of appellant also has much force. The Khyber Pakhtunkhwa Police Rules, 1975 provide for punishment to be awarded to an official in case of misconduct. Rule 4 specifies both minor and major punishments wherein "discharge from service" finds no mention. On the other hand, under the Police Rules 1934 an official can be discharged from service, while still on probation, on account of reasons provided therein.

ATTESTED

ATTESTED

KHYBER PAKHTUNKHWA  
POLICE SERVICE

8. The record is also suggestive of the fact that, on 20.02.2017, the enquiry against the appellant was entrusted to Mr. Umar Hayat DSP H.Qs while in the final show cause notice of even date it was noted that Mr. Zulfiqar Ahmad Tanoli, S.P Investigation, Hangu was appointed as enquiry officer who submitted his findings on 16.03.2017, in which the appellant was held guilty. The vital discrepancy between the date of final show cause notice and of submission of enquiry report also speaks volumes about the slackness in proceedings against the appellant.

9. For what has been discussed above, we allow the appeal in hand. Impugned orders dated 24.05.2017, 21.08.2017 and 22.1.2018 passed by respondents are hereby set aside and the appellant is reinstated in service. The period he remained out of service shall be treated as leave of the kind due.

Parties are left to bear their respective costs. File be consigned to the record room.

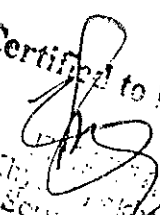
  
(AHMAD HASSAN)  
MEMBER

**ATTESTED**

  
(HAMID FAROOQ DURRANI)  
CHAIRMAN

ANNOUNCED  
11.06.2019

Date of Payment of Fee ..... 14.6.19  
Number of Pages ..... 2400  
Copying Fee ..... 14:00  
Utility ..... 2:00  
Total ..... 16:00  
Name of .....  
Date of ..... 14-6-19  
Date of delivery of Copy ..... 14-6-19

**Certified to be true copy**  
  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

# بعدالت

سروس ٹریڈ سوسائٹی لٹیاور

2، منجانب

مورخہ

Shabeh ul-Kassan V/S Police Deptt

دعویٰ

جرم

## باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام لٹیاور کیلئے سیموٹس منان، اسمد محمود اور عبدالواہد انہری کی

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائین پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی ہمد مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

Accepted

20

ماہ

المرقوم

العبد العبد العبد

کے لئے منظور ہے۔

Shabeh

مقام



OFFICE OF THE  
DISTRICT POLICE OFFICER,  
HANGU

Tel: No. 0925-623878 & Fax No. 0925-620135  
Email: dpohangu8@gmail.com

**ORDER**

In the light of Hon'ble Service Tribunal Khyber Pakhtunkhwa, Peshawar order announced on 11.06.2019, Ex-Constable Shabeh-ul-Hassan No. <sup>819</sup>196 is hereby conditionally/provisionally reinstated in service for the purpose of De-novo enquiry against him till the outcome of CPLA.

  
DISTRICT POLICE OFFICER,  
HANGU

OB No. 2.2

Dated 03/09/2020.

**OFFICE OF THE DISTRICT POLICE OFFICER, HANGU.**

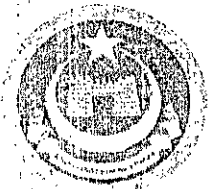
No. 9438-39/EC, dated Hangu, the 03/09/2020.

Copy of above is submitted for favour of information to the:-

1. Deputy Inspector General of Police, E&I, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Kohat Region, Kohat.
3. Assistant Inspector General of Police, Legal, Khyber Pakhtunkhwa Peshawar w/r to his office Memo. No. 4496/Legal, dated 27.08.2020.
4. Pay Officer, Reader, SRC & OHC for information and necessary action.

  
DISTRICT POLICE OFFICER,  
HANGU





OFFICE OF THE  
DISTRICT POLICE OFFICER,  
HANGU

Tel: No. 0925-623878 & Fax No. 0925-620135  
Email: dpohangu8@gmail.com

**ORDER**

In the light of Hon'ble Service Tribunal Khyber Pakhtunkhwa, Peshawar order announced on 11.06.2019, Execution Petition No. 396/2019 in Service Appeal No. 196/2018, Ex-Constable Shabeh-ul-Hassan No. 196 is hereby conditionally/provisionally reinstated in service till the outcome of CPLA with immediate effect.

OB No. 236

Dated 18/10/2020.

  
DISTRICT POLICE OFFICER,  
HANGU

**OFFICE OF THE DISTRICT POLICE OFFICER, HANGU.**

No. 10868-7/EC, dated Hangu, the 16/10 /2020.

Copy of above is submitted for favour of information to the:-

1. Deputy Inspector General of Police, E&I, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Kohat Region, Kohat.
3. Assistant Inspector General of Police, Legal, Khyber Pakhtunkhwa Peshawar w/r to his office Memo: No. 4496/Legal, dated 27.08.2020.
4. Pay Officer, Reader, SRC & OHC for information and necessary action.

  
DISTRICT POLICE OFFICER,  
HANGU



OFFICE OF THE  
DISTRICT POLICE OFFICER,  
HANGU

Tel: No. 0925-623878 & Fax No. 0925-620135  
Email: dpohangu8@gmail.com

**ORDER**

In the light of Hon'ble Service Tribunal Khyber Pakhtunkhwa, Peshawar order announced on 11.06.2019, Execution Petition No. 396/2019 in Service Appeal No. 196/2018, Ex-Constable Shabeh-ul-Hassan No. 196 is hereby conditionally/provisionally reinstated in service till the outcome of CPLA with immediate effect.

OB No. 256

Dated 16/10/2020.

  
DISTRICT POLICE OFFICER,  
HANGU

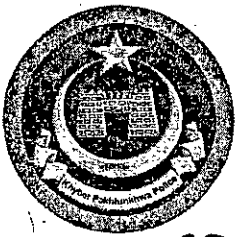
**OFFICE OF THE DISTRICT POLICE OFFICER, HANGU.**

No. 10868-7/EC, dated Hangu, the 16/X /2020.

Copy of above is submitted for favour of information to the:-

1. Deputy Inspector General of Police, E&I, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Kohat Region, Kohat.
3. Assistant Inspector General of Police, Legal, Khyber Pakhtunkhwa Peshawar w/r to his office Memo: No. 4496/Legal, dated 27.08.2020.
4. Pay Officer, Reader, SRC & OHC for information and necessary action.

  
DISTRICT POLICE OFFICER,  
HANGU



Office of the  
Inspector General of Police  
Khyber Pakhtunkhwa, Peshawar.

No. 1323-25 /CPO/IAB, dated Peshawar the 03/11/2020

To:  The District Police Officer,  
Hangu

Subject: DENOVO DEPARTMENTAL ENQUIRY AGAINST  
EX- FC SHABEH-UL-HASSAN NO.196

Please refer to your office letter No.11082/L.B dated 22.10.2020, on the subject cited above.

2. As per your request vide your office letter reference above, this office letter No.1290/CPO/IAB dated 15.10.2020 regarding the nomination of the enquiry officer for conducting denovo departmental enquiry against Ex-FC Shabeh-ul-Hassan No. 196 may be considered as withdrawn.

*W. Amin*  
AIG

Complaint & Enquiry  
Internal Accountability  
Khyber Pakhtunkhwa,  
Peshawar

No:- 1323-25 /CPO/IAB,

Copy of above is forwarded for information to:

1. The Regional Police Officer, Kohat
2. Mr. Aslam Nawaz Khan, SP Investigation (District Complaint Officer) Hangu

*Susp: legal*

*EC*

*Ex: n/aukij*

*D.P.O Hangu  
05/11/2020*

