BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, CAMP COURT, D.I.KHAN.

Service appeal No. 14/2019

Date of institution ...

18.12.2018

Date of decision

27.03.2019

Muhammad Shakeel son of Muhammad Hussain, R/O Korai, Tehsil and District D.I.Khan Constable No. 8205 FRP D.I.Khan.

(Appellant)

Versus

Inspector General of Police, Khyber Pakhtunkhwa, Central Police, Office, Peshawar and 3 others. ... (Respondents)

Present

Mr. Fazal-ur-Rehman Baloch, Advocate

For appellant.

MR. HAMID FAROOQ DURRANI,

CHAIRMAN

<u>JUDGMENT</u>

HAMID FAROOO DURRANI, CHAIRMAN:-

1. In the instant case an order of removal from service was passed against the appellant on 13.04.2010 by the Superintendent of Police, FRP D.I.Khan Range, D.I.Khan. The appellant preferred a departmental appeal which was rejected by the Commandant FRP, Khyber Pakhtunkhwa Peshawar on 18.06.2010. The appellant thereafter submitted a Mercy Petition before the Provincial Police Officer, Khyber Pakhtunkhwa Peshawar. The said petition was decided on 24.03.2015. In the decision the punishment of removal from service awarded to the appellant through order dated 13.04.2010 was



modified and converted to stoppage of three increments with cumulative effect.

- 2. The record transpires that on 05.09.2018 a second Mercy Petition was preferred by appellant to Inspector General of Police, Peshawar which was decided on 05.11.2018 in terms that the Khyber Pakhtunkhwa Police Rules, 1975 did not contain any provision for preferring second review petition. As the review petition was already processed in the year, 2015 the second petition was not entertainable.
- 3. It is correctly laid in the order dated 05.11.2018 that the relevant rules did not provide for a second review/mercy petition, therefore, the instant service appeal is also not competent. The appellant, if had any grievance against the order of Inspector General of Police Khyber Pakhtunkhwa Peshawar passed on 24.03.2015 could have conveniently approached the Tribunal through service appeal in accordance with law but within time prescribed for the purpose. This was not done by the appellant at an appropriate juncture.
- 4. Resultantly, the appeal in hand is found incompetent which does not merit admission for regular hearing. The same is, therefore, dismissed in limine. File be consigned to record room.

(HAMID FAROOQ DURRANI)
Chairman
Camp Court, D.I.Khan

ANNOUNCED 27.03.2019

S.No	Date of order/ proceedings			
. 1	2	3		
		Present.		
	27.3.2019	Mr. Fazal-ur-Rehman Baloch, For appellant Advocate		
		Vide my detailed judgment of today, the appeal in		
	,	hand is dismissed in limine. File be consigned to the record		
		room.		
		Chairman Camp Court, D.I.Khan		
		ANNOUNCED 27.3.2019		

Form- A

FORM OF ORDER SHEET

Court of		
•		•••
Case No	14/2	2019

	Case No	14/2019
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	04/1/2019	The appeal of Mr. Muhammad Shakeel received today by pos
•	0-7,172013	through Mr. Fazal-ur-Rehman Advocate, may be entered in the
		Institution Register and put up to the Worthy Chairman for proper orde
2-		please. REGISTRAR
		This case is entrusted to touring S. Bench at D.I.Khan fo
		preliminary hearing to be put up there on 27 - 2 - 2019
		CHAIRMAN
27.0	2.2019	None present on behalf of the appellant. Notice be issu
		to appellant and his counsel for attendance and prelimina
		hearing for 27.03.2019 before S.B at Camp Court D.I.Khan.
		(Muhammad Amin Khan Kund Member Camp Court D.I.Khan
',		
	·	
,	•	
	:	
		·

The appeal of Mr. Muhammad Shakeel son of Muhammad Hussain Constable no. 8205 FRP Dera Ismail Khan received today i.e. on 18.12.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal is unsigned which may be got signed by the appellant as well as counsel.
- 2- Annexures of the appeal may be attested.
- 3- Annexures of the appeal may be flagged.
- 4- Copies of first and second departmental appeal mentioned in para-4&5 of the memo of appeal are not attached with the appeal which may be placed on it.

No. 2417 /S.T,

Dt. <u>19 -12 -</u> /2018.

Mr. Fazal-ur-Rehman Baloch

Advocate High Court D.I.Khan

REGISTRAR

SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA

PESHAWAR.

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No	14	/201 8	2018

Mohammad Shakeel

(APPELLANT)

VERSUS

I.G.P. etc

(RESPONDENTS)

INDEX

S#	Description	Annexure	Page No.
1	Petition	·	1-4
2	Appointment Order	Annexure-A	0-5
3	Charge Sheet '	Annexure-B	0-6
4	Removal Order	Annexure-C	0-7
5	Order dated 18/06/2010 & Appeal Copy	Annexure-D&D-1	8-9
6	Order dated 24/03/2015 & Appeal Copy	Annexure-E&E-1	10-12
7	Mercy Petition	Annexure-F	0-13
8	Impugned Order dated 05/11/2018	Annexure-G	0-14
9	Wakalat Nama (Fazal-ur-Rehman)		0-15
10	Wakalat Nama (Noshair Khan)		0-16

Fazal-ur-Rehman Baloch -Advocate High Court D.I.Khan

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA **PESHAWAR**

Service Appeal No	4	/201 <i>8</i>
	1	1

2018

Mohammad Shakeel S/O Mohammad Hussain, cast Ogahi, R/O Korai, Tehsil & District D.I.Khan Constable No.8205 FRP Dera Ismail Khan (APPELLANT) Constable No.8205 FRP Dera Ismail Constable No.8205 FRP Dera Ismail Constable No.

VERSUS

- Inspector General of Police, Khyber Pakhtunkhwa, Central Police 1. Office, Peshawar.
- Khyber Pakhtunkhwa, Reserve Police. Frontier Commandant. 2. Peshawar.
- Khyber Police Headquarters, of General Inspector Deputy 3. Pakhtunkhwa, Peshawar.
- Superintendent of Police, F.R.P. Dera Ismail Khan.

(RESPONDENTS)

SERVICE APPEAL U/S 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT-1974 AGAINST STOPPAGE OF THREE INCREMENTS WITH CUMULATIVE EFFECT DATED 05/11/2018 ORDER VIDE RESPONDENT NO.1.

Prayer: -

On acceptance of instant service appeal this honourable court may be please to pass an order for setting asite the impugned stoppage of three increments orders No.4476/18 Peshawar 05/11/2018 (Appellant received on dated 19/11/2018) and direct the respondents for issuance of three increments.



Respectfully Sheweth: -

and filed.

1. That Petitioner was appointed as Police Constable in Frontier Reserve Police on 28/07/2007. Copy of Appointment Order Annexed as (Annexure-"A").

2. That due to mother's illness appellant was absented from Re-submitted to -day his duty due to unavoidable circumstance and was

2

charge-sheeted by the respondent No.4. Copy of Charge Sheet as (Annexure-"B").

- 3. That after formal inquiry petitioner was removed from his service and the absentee period was treated as leave without pay. Copy of order dated 13/04/2010 annexed as (Annexure-"C").
- 4. That the feeling aggrieved from the impugned order of removal from service petitioner preferred an appeal to Respondent No.2 against the order of Respondent No.4 and the said appeal was rejected by the Respondent No.2 dated on 18/06/2010. Copy of order and appeal are annexed as (Annexure-"D&D-1").
- 5. The petitioner submitted his departmental appeal to Respondent No.1 against the order of Respondent No.2. Vide order dated 24/03/2015 petitioner was reinstated his service and removal from service is converted into stoppage of three increments with cumulative effect. Copy of order dated 24/03/2015 and copy of appeal are annexed as (Annexure-"E&E-1").
- 6. That petitioner submitted his mercy petition for issuance of increments to Respondent No.1 on 05/09/2018. Copy of petition is annexed as (Annexure-"F").
- 7. That vide order dated 05/11/2018 received by the petitioner on dated 19/11/2018 the set appeal was rejected by the Respondent No.1. Copy of order is annexed as (Annexure-"G").

GROUNDS:-

- 1. That the impugned order dated 05/11/2018 is illegal, void and without lawful authority, thus the same is ineffective upon the rights of the appellant.
- 2. That appellant was charge sheeted on grounds that he was absent from his duty while the absentee of the appellant was not willful but due to his mother's illness

(3)

and the circumstances were beyond the control of appellant. Appellant while appeared before inquiry committee and submitted his reply and narrated that due to unavoidable circumstances which were beyond the control of appellant that's why appellant marked as absent from his duty.

- 3. That Respondent No.4 imposed major penalty to appellant removal from service. It is well setted principal of law and judgment passed by the superior courts that absentee from duty is not a "major misconduct" and punishment removal from service on the ground of absentee is against the law and natural justice and absentee period from his service may be treated as leave without pay but instant case appellant was awarded major penalty of removal from service. Petitioner feeling aggrieved from the impugned removal order preferred an appeal to Respondent No.2 which was also rejected.
 - 4. That appellant submitted his departmental appeal to Respondent No.1 against the impugned order No.2 & 4 which was partially accepted and appellant was reinstate in his service while order of removal from service was converted into stoppage of three increments with cumulative effect.
 - 5. That the impugned order dated 05/11/2018 which is communicated to appellant on 19/11/2018 is non-speaking order as no any proper ground has been given in the impugned order dated 05/11/2018. Thus the same is warranted the set aside.
 - 6. That in the various judgments of the superior courts it is held that if any official founds absent from his duty the absent period may be treated as leave without pay but not to impose the punishment of removal from service.
 - 7. That the alleged impugned order dated 05/11/2018 is not tenable under the law, hence the same is liable to set aside.

8. That appellant counsel may be permitted to raise law points during the course of arguments.

In view of the submissions made above it is humbly prayed that instant appeal of the appellant may be accepted as prayed for in the heading of appeal in the interest of justice and equity.

Your Hymble Petitioner

(Mr. Mohammad Shakeel)
Through Counsel
Fazal-ur-Rehman Baloch
Advocate High Court

D.I.Khan

Dated 18-12-2018.

AFFIDAVIT

I, Mohammad Shakeel S/O Mohammad Hussain, cast Ogahi, R/O Korai, Tehsil & District D.I.Khan Constable No.8205 FRP Dera Ismail Khan, do hereby solemnly affirm that declare on oath that all the contents of this appeal are correct and true to the best of my knowledge and belief and nothing has been concealed.

Deponent

Annesius A ولد صرصت قوم مُراهَاتُی ۔ برکالی ضلع ڈریرہ اسمعیل خان جسکا قد<u>ہ</u> 9–5 10th clai 33 x 34 1 (de) رملاحظہڈاکٹری فٹ ہونے اور تقیدیق جال چلن موزوں پایاجاے کے بعد محکمہ <u>پ</u>ولیس طبعه در مع العمر المان مين مورخ وصد - 7- 24 سے عرصه آزمان تين سال كيلي عارضي بعہدہ تشکیل بھرتی کیاجا کرضلع ہٰذا کاکنشلیلری نمبر<u>2178</u> الاٹ کیاجا تاہے۔ رج آرڈر ک ہووئے. ڈىرەا^{سلى}لىغان Attest

.

191600 Annak = مزیدی . درام مورم شدک می کرده برا مورمی در ر ري والده وي بعاد إلى عدم عدم عدم صالح was in constant the se duran (تيمان والمحاص الله عالى عالى عالى المحالية M. of for confine well cools - of I of ighter of warrant from the Court of whise किन्द्रा रेंग्सिक्स कार्य के प्राचित्र के तिले हैं है 19. 10 se ses in also for por view miles a jujo province les 1262 in i gr روم من زمری اورای می کردی واق اور سام به معدر می 30 10 20 115 - 030 June 00/19 1 2012 2 6/12 de 11 = 6/0120146 de Euchstein it is of the Twenty for les list in the win E 131865 - CHO 2 CHO / 25/52-12010 11 / 1015 2178 X Mested 0000000 20116

ORDER:

Annov = (

This Order will dispose off departmental enquiry

Conducted against Constable Muhammad Shakeel No.2178/FRP. of

D.I.Khan Range, D.I.Khan.

Brief facts are that according to DPO/Kohat vide his letter No.9948/OASI, dated 02.11.2009, he absented himself from law-full duties with effect from 22.08.2009 to 26.01.2010, with-out any leave or permission.

On the basis of his prolonged absence, he was proceeded against departmentally and served with proper Charge Sheet and Statement of allegations. MR: MUHAMMAD NADEEM SADDIQUI, R.I/FRP D.I.KHAN, was appointed as Enquiry Officer. After completion of all codal formalities, the Enquiry Officer submitted his finding report along-with other relevant papers, where-in he recommended the said Constable for Major Punishment. He was served with Final Show Cause Notice on 09.03.2010, ceply received which was not satisfactory.

Keeping in view the facts stated above, his Prolong absence as well as recommendation of Enquiry Officer,

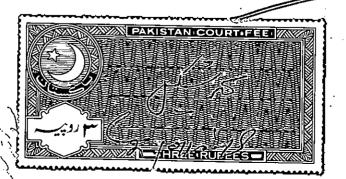
I MR. ASIF JAN KHAN, Superintendent of Police FRP D.I.Khan Range, D.I.Khan, in exercise of powers conferred upon me under the NWFP Removal from Service (Special Power) Ord:- 2000 Amendment Act- 2005, hereby Removed Constable Muhammad Shakeei No.2178/FRP, from service with immediate effect and the period he remained absent i.e 22.08.2009 to 26.01.2010, is treated as leave with-out pay.

ORDER ANNOUNCED.

OB No. <u>33</u>3

Dated /3/06/2010.

(ASIF JAN KHAN) Superintendent of Police, FRP,D.I.Khan Range, D.I.Khan.



Attested

2) Anneven D

ORDER.

This order shall dispose off on the appeal Ex-Constable Muhammad Shakil No.2178 of FRP DIKhan Range against the order of SP FRP DIKhan Range wherein he was removed from service.

Brief fact of the case is that he absented himself from duty with effect from 22.08.2009 to 26.01.2010 total 154 days without any leave/permission of the competent authority. He was issued charge sheet/statement of allegation and RI/FRP DIKhan Range was appointed as enquiry officers. After conducting enquiry, the enquiry officers submitting findings wherein the above named official was recommend for Major punishment.

Keeping in view of the above his absence as well as recommendation of enquiry officer he was removed from service from the date of his first absence by the SP FRP DIKhan Range vide his OB No.333 dated 13.04.2010.

However, from the perusal of record and findings of Enquiry Officer, there are no cogent reasons to interfere in the order of SP FRP DIKhan Range. Therefore his appeal is rejected.



COMMANDANT FRONTIER RESERVE POLI

₩KPK PESHAWAR.

No. 4723-24 /EC dated Peshawar the 181 6 /10

Copy of above is forwarded for information and n/a to:-

Med John Men

Superintendent of Police FRP DIKhan Range w/r to his Memo: No.1047 dated 11.06.2010. His service roll and departmental enquiry file are returned herewith for record in your office.

Ex-Constable Muhammad Shakil S/o Muhammad Hussain No.2178 R/o Korai Bacha Abad Police Station Saddar District DIK.

Anner-D بخدمت جنّاب كماندنث الفير آربي خيبر پختونخواه بيثاور

سروس اپیل برخلاف حکم مورخه13/04/2010

جناب عالی: سائل *حب ذیل عرض گزار ہے۔*

گزارش ہے کہ سائل کی والدہ سخت بیارتھی جس کاعلاج معالجہاور دیکھ بھال کرنے والا کوئی اور فر دگھر برموجو زنہیں تھااور والدہ کی حالت تشویشنا کتھی جو مجھ سے نہیں دیکھی جاتی تھی۔اور والدہ صاحبہ کا علاج معالجہاور دیکھ بھال اپنا فرض سمجھ کر کرنا پڑی۔جس کی وجہ سے من سائل مجبوراً ڈپٹی سے غیرحاضر رہا۔ ابھی تک اُس کی حالت نہیں سدھر فی اور سائل نے مورجہ 26/01/2010 کو تھانہ ٹی کوہاٹ میں حاضری کی تھی۔

سائل اینے افسران بالا کااحتر ام کرتا ہوں اور آئندہ کسی شم کی شکایت کا موقع نہیں دوں گا۔

لہذااستدعاہے کمن سائل پرشفقت فرماتے ہوئے اورمن سائل کی اپیل منظور فرماتے ہوئے نو کری پر بحال کیا جاوے۔

محرشكيل كانشيبل ولدمحمر حسين، قوم او گائي، سكنه كورائي بخصيل وضلع ذيره اساعيل خان_

To,

Sunday, 25 Jan 2015

The Inspecior General of Police.
KhyberPakhtun khwa Peshawar.

Subject:

MERCEY PETITION IN R/O EX: POLICE CONSTABLE MUHAMMAD SHAKEFL F.R.P. DIKHAN RANGE.

Respectfullt Sneweth,

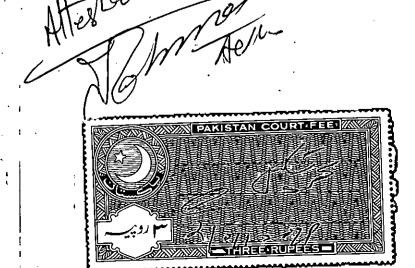
The appellant very humbly submits as under.

FACTS

- That appellant was appointed as constable on july, 2007 and was performing his duties to the best of his ability and with devotion.
- That during march-2010 appellant was subjected to departmental inquiry on the allegation of absance from duties (154) days, the result of the inquiry appellant recommended award of major punishment (Removal from service)
- S.P /FRP DIKhan range agree with inquiry report and appellant removed from service vide order (OB-333/FRP) dated 13-04-2010. Copy is attach in (Annex: A)
- That on 13-04-2010 Appellant submitted in departmental appeal aginst the order OB-333 dated 13-04-2010 passed by S.P /FRP DIKhan range/ Which was rejected vide order No:- 4723-24 /EC dated Peshawar the 18-06-2010 by Commandent FRP, KPK, Peshawar. Copy is attached in (Annex: B)

GROUND'S,

- That absence from cuty was neither willfull nor intentional but was due to compelling circumtances of illness of the mother.
- That mother of the appellant become seriousely ill and as no one except appellant to carry out her look after was in the faimly.



(HZ)

- That inquiry was not conducted into the allegations as per the mandate of law
 as no statment of any concerned was recorded for appellant was afforded
 oppertunity of cross examination, so the order impugend is ab-initio void and of
 no legal effect.
- That the inquiry officer was not legally competant to make inquiry into the matter, so theorder was with out lawful autho.
- The appellant was not dealt with as per the mandate of law, so the impugend order are not only illegal but also ab-initio void.
- The appellant resumed his duty on 26-01-2010 again at police station city Kohat vide mud ho. 30 dated 26-01-2010, yet this aspect of the case was not taken into consideration by authority.

Now, keeping in view with above facts, it is requested in your kind honour to consider my mercey petition that the impugned appellate order dated 18-06-2010 is modified and the appellant re-instated / re-oppoint into service, on the humanitarian ground being a poor and low paid constable.

I will pray for you and your faimly.

THANKS

Your Obediently,

Muhammad Skakeel

Ex: Police constable (2178)
S/O Muhammad Husain R/o Village Kurai, P.O.Box
Bacha abad, Tank road Teh: & Distt: DIKhan.

Mobile # 0345-9820694







caniloted 縣 OFFICE OF THE

INSPECTOR GENERAL OF POLICE KHYBER PAKHTUNKHWA CENTRAL POLICE OFFICE, PESHAWAR

ORDER

This order is hereby passed to dispose off departmental appeal under Rule 11-a of Khyber Pakhtunkhwa Police Rule-1975 submitted by Exconstable Muhammad Shakil No. 2178 of FRP DIKhan against the Punishment order i.e Removal from service passed against the appellant by SP/FRP DIKhan vide his order Book No. \$33 dated 13.04.2010.

In the light of recommendations of Appeal Board meeting held on 12.03.2015, the board examined the enquiry in detail & other relevant documents. It revealed that the appellant was served with Charge Sheet/Statement of Allegations and punishment order was announced on the basis of reply to the Charge Sheelland Statement of Allegations.

The appellant was heard in person and record perused. His punishment i.e. Removal from service is converted into stoppage of 03 increments with cumulative effect, subject to report from Special Branch and medical fitness certificate. The period of absence is treated as leave without pay

Order announced in the presence of appellant.

Sd/-Masir Khan Durran! nspector General of Police, 源Khyber Pakhtunkhwa Peshawar.

No. 3630-34 /E-IV dated Peshawarthe 24/03 /2015

Copy of above is forwarded to the:-

1. Commandant FRP Khyber Pakhtunkhwa, Peshawar. The service Roll, Fauji Missal and Enquiry File of the above named official are returned herewith.

2. SP/FRP DIKhan.

3. PSO to IGP/Khyber Pakhtunkhwa Peshawari

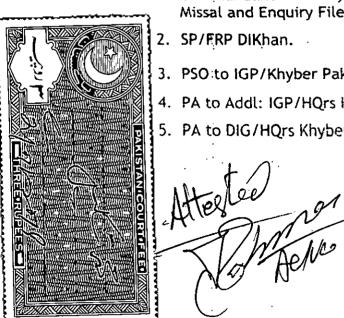
4. PA to Addl: IGP/HQrs Khyber Pakhtunkhwa#Peshawar.

PA to DIG/HQrs Khyber Pakhtunkhwa, Peshawar.

AIG/Establishment For Inspector General of Police,

Khyber Pakhtunkhwa

Peshawar. .



بَخد مت جناب انسپکٹر جنرل آف بهلی خیبر پختونخواه ضلع پشاه

بوساطت جناب! ايس يى اليف آريى صاحب ضلع درواساعيل خان

علم ملكم رقم ولا ندائيل (Mercy Pation) برائے بحالی انگر يمنٹس Stopege Year 2015)

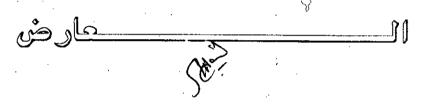
شناه حالي:

نہایت مود باندالتماس ہے کہ سائل ایک غریب کانشیبل ہے اور محکم پولیس ایف آرپی میں اپناعرصہ ملازمت نہایت ہی ایما نداری سے سرانجام دے رہا ہے۔ مورخہ 2015-03-12 کوسائل کو جناب IGP صاحب ناصر خان درانی نے سائل پر مرحمت فر ماتے ہوئے۔ سائل کوسروس پر بحال کیا اور سائل کے 13کریمنٹس With Cumulative Effect

بذركرديئے۔ سائل ايك غريب آدمي ہے ادنی مختاط ہے اور چھوٹے چھوٹے بچے ہيں رحم كى استدعا كرتا ہے۔

لہذا سائل آنجنا ہے بذر بعہ درخواست رحم کی اپیل کرتا ہے کہ سائل کے بچوں پررحم فرماتے ہوئے سائل کے بندشدہ انگریمنٹس بحال کر بے متاطاد نی پراحسان فرما ئیں۔ آرڈ رنقل کا پی بندشدہ انگریمنٹس ہمراہ لف ہے۔

فقط مورخه: 2018-09-20



كانشيبل محدثكيل بلث نمبر 8205ايف آر بي DIK متعينه پوليس پوسٹ اللدداوضلع ڈررہ اساعیل خان موبائل نمبر: 9820694-0345

Sir

Forwarded Please

LO.FRP DIK





OFFICE OF THE INSPECTOR GENERAL OF POLICE KHYBER PAKHTUNKHWA ANY CENTRAL POLICE OFFICE,

PESHAWAR.

No. S/ 4476 /18, dated Peshawar the 65/6/2018.

The

Commandant,

Frontior Reserve Police.

Khyber Pakhtunkhwa, Peshawar

Subject:

APPEAL.

Memo:

Please refer to your office Memo: No. 10483/SI Legal, dated 22.10.2018.

In this connection it is communicated that the appeal of Constable Muhammad Shakeel No.8205 has already been processed in the Appellate Board Meeting held on 12.03.2015. and his punishment of removal from service was converted into stoppage of 03 increments with cumulative effect vide CPO order Endst: No.3630-34/E-IV, dated 24.03.2015.

According to Rule 11 (3) of Khyber Pakhtunkhwa Police Rules 1975 there shall be only one appeal against the original order. The departmental appeal as well as review petition of the petitioner has already been processed and there is no provision of second review petition in the Rules.

(SADIQ BALOCH) PSP

AIG/Establishment, For Inspector General of Police,

Khyber Pakhtunkhwa, Peshawar.

OFFICE OF THE COMMANDANT FRP, KP, PESHAWAR.

No. 11488 /si legal, dated 14/11/2018.

copy of the above is forwarded to SP FRP D) (hun Rounge; DI Khan for information & necessary action plans His service record alongwith O-file sent herewith

Attested

For Commandant PRP NEP Part

