

13.10.2022

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned counsel for the appellant sought adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments before the D.B on 30.11.2022.

(Mian Muhammad) Member (E)

(Salah-ud-Din) Member (J)

30.11.2022

Junior of learned counsel for the appellant present. Mr. Muhammad Raziq, Head Constable alongwith Mr. Muhammad Jan, District Attorney for the respondents present.

As learned Member (Executive) Mr. Mian Muhammad was not feeling well and has proceeded on short leave, therefore, argumentscould not be heard. Adjourned. To come up for arguments on 26.01.2023 before the D.B.

26-1-23

Proper DB is not available,
The Case is adjurned to 10-5-25

Render

(Salah-ud-Din)

#### 09.11.2021 Counsel for appellant present.

Muhammad Riaz Khan Paindakheil learned Assistant Advocate General for respondents present.

Reply of respondents has already been submitted in office. Request for adjournment was made on behalf of appellant; granted. To come up for arguments on 02.03.2022 before D.B.

(Mian Muhammad) Member (E)

(Rozina Rehman) Member (J)

02.03.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 07.06.2022 for the same as before.

propos OB is on Tour, Moregan the cuse is adjourned to 24.8- or for face.

24.08.2022

Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

Learned counsel for the appellant submitted rejoinder, copy of which is handed over to the learned District Attorney. To come up for arguments on 13.10.2022 before the D.B.

(Rozina Rehman) Member(J)

(Salah-Ud-Din) Member(J)

22.06.2021

Appellant in person and Mr. Kabirullah Khattak, Addl. AG alongwith Abdur Razaq, Reader for the respondents present.

Stipulated period Airs submit represent and repluy the responsible office with reply/company to the responsible of the responsi

Respondents have not submitted reply/ comments. Learned AAG seeks time to contact the respondents and submit reply/comments. Learned AAG is required to contact the respondents for submission of written reply/comments in office within 10 days, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 09.11.2021 before the D.B.

Chairman

P.**த** 05.07.2021

Learned Addl: A.G be reminded about the omission and for submission of Reply/comments within extended time of 10 days.

Chairman

Learned counsel stated that the appellant was awarded major penalty of dismissal from service and the period of his absence was treated as "without pay" through impugned order dated 29.05.2017. His departmental appeal, submitted on 03.06.2020, was not responded to hence the instant appeal. Speaking about merits of the case, it was argued that proper departmental proceedings were not conducted against the appellant in accordance with the relevant rules. He was not issued statement of allegations, the charge sheet or proper final show cause notice before passing of impugned order.

Explaining apparent delay between the passing of impugned order and submission of departmental appeal, it was stated that the appellant was subject to enforced disappearance for about three (03) years. A report to that effect was duly lodged by his brother in daily diary dated 27.03.2017. Upon the return of appellant the departmental appeal was preferred by the appellant without wasting any further time.

In view of the available record and arguments of learned counsel the appeal in hand is admitted to regular hearing subject to all just exceptions. Appellant is required to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on \$3.05.04.2021 before S.B.

Chairman

.03.05.2021

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

Reader

Appellant Demosited Security & Process Fee

## Form- A

## FORM OF ORDER SHEET

Court of_	•

	Case No	1/499 /2020
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
. 1-	02/10/2020	The appeal of Mr. Muhammad Arshad presented today by Mr. Javed Iqbal Gulbella Advocate may be entered in the Institution Register and put
		up to the Worthy Chairman for proper order please.
	:	REGISTRAR -
2-	u di L	This case is entrusted to S. Bench for preliminary hearing to be put up there on 16/11/2020.
		CHAIRMAN
	16.11.2020	Appellant in person present.  Requests for adjournment as his learned counsel is not in attendance due to third day of mourning the demise of Honourable Chief Justice, Peshawar High Court.
•		The matter is, therefore, adjourned to 03.02.2021 before
		S.B. Chairman
,		
,		

## BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

In Re S.A /// /2020

Muhammad Arshad

## **VERSUS**

Inspector General of Police and Others

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2.	Affidavit.	*	.8	
3	Addresses of Parties.	`	9	
4.	Copy of Mad Report	"A"	10	
5.	Copies of different Applications	"B"	11-16	
6.	Copy of impugned office order dated: 29-05-2017	"C"	17	
7.	Copy of Departmental Appeal	"D"	18	
8.	Other Documents	"E"	19-21	
9.	Wakalatnama		22	

Dated: 21/09/2020

Appellant

Through

JAVED IQBAL GULBELA

Advocate High Court

Peshawar.

# BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

In Re S.A	A	/2020			
Muhamn	nad A	Arshad Ex-Constab	le No. {	5997 S/o A	\bdu]
Haleem	R/o	Mohallah Ghari	Meer	Rehman	P/O
Khazana	Paya	ın, Tehsil & Distric	t Pesha	war.	
				(Appe	llant)

#### **VERSUS**

- 1. Inspector General of Police, Khyber Pakhtunkhwa.
- 2. Superintendent of Police Headquarter, at Police Line, Peshawar
- 3. Capital City Police Officer, Khyber Pakhtunkhwa, at Police Line Peshawar.

·---· (Respondents).

APPEAL U/S 4 OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT 1974 AGAINST
THE IMPUGNED OFFICE ORDER NO. 254752/PA/SP DATED 29-05-2017 OF THE OFFICE
OF SUPERINTENDENT OF POLICE
HEADQUARTER, PESHAWAR, WHEREBY
THE APPELLANT WAS DISMISSED FROM
SERVICE IN A CLASSICAL, CURSORY &
WHIMSICAL MANNER

## Respectfully Sheweth

- 1 That the Appellant is a naturally born bonafide citizen of Islamic Republic of Pakistan and hails, from a respectable family of District Peshawar.
- 2. That after going through the mandatorily required criteria and after being envisaged with the ordeals and inquisition of selection process, the appellant got inducted into Police Force as constable years ago.
- 3. That Appellant has thoroughly been a devoted, punctual, obedient and pragmatic member of the force, who never compromised upon his service and has never left any stone unturned in performance of his duties.
- 4. That it was in the backdrop of 2017, the Appellant was performing his duties in Police Lines, Peshawar that on 25-03-2017, the Appellant was kidnapped by some unknown peoples from Police Lines, Peshawar. (Copy of Mad Report is annexed herewith as Annexure "A").

- the highly security zone and no whereabouts of the Appellant were known to the family of the Appellant. The case of Appellant was one of missing persons case, this fact is evident from the record and the brother of the Appellant moved many applications in this regard to the official concerned but futile. (Copies of different Applications are annexed herewith as Annexure "B").
- 6. That as Appellant was missing from 25-03-2017 and was in illegal detention, but was dismissed from service vide impugned office order No. 2547-52/PA/SP dated: 29-05-2017 of the office of Superintendent of Police Headquarter, Peshawar, which is not only illegal, unlawful but also malicious to the core. (Copy of impugned office order No. 2547-52/PA/SP dated: 29-05-2017 is Annexed as Annexure "C").
- 7. That feeling aggrieved the Appellant moved a Departmental Appeal against the impugned dismissal order but here again the deuce fate of the Appellant prevailed and despite the lapse of statutory period the same was not decided. (Copy of

Departmental Appeal is annexed herewith as Annexure "D").

8. That from the supra mentioned episode the grievances that come into existence and having no other efficacious remedy & forum to be addressed at, the Appellant approaches this Hon'ble tribunal inter alia, on the following grounds.

## GROUNDS:

- A. That the impugned dismissal order is illegal, unwarranted, against the facts and circumstances and is liable to be set-a-side.
- B. That no inquiry whatsoever was ever conducted in presence of the Appellant nor any inquiry dispensation order was ever issued, even then the major penalty was imposed upon the Appellant which is against the law governing the subject & rules therein.
- C. That no charge sheet & no statement of allegations were ever issued to the Appellant & thus the mandatory instruments of law are missing in case of the Appellant.
- D. That even no proper right of defense was ever extended to the Appellant nor was heard in

person & even then the harshest penalty was imposed which on part of the respondent Police department is an unlawful act.

- E. That even no Final Show Cause Notice was ever issued which is a mandatory provision of law even if no inquiry is made or advised or dispensed with.
- F. That the opportunity of personal hearing was also not extended to the Appellant and thus was condemned unheard & because of the same grave violation of the Rules took place in case of the Appellant.
- G. That it pertinent to mentioned here that the case of the Appellant was one of missing persons and whereabouts of the Appellant were unknown till 2020. On 61-06-2020, the Appellant was released and he reported in Police Line, Peshawar. On approaching Police Lines and reporting for duties, the appellant was informed that he has been dismissed for has alleged absence. So on the very next day preferred his Departmental Appeal for reinstatement into service with all back benefits.
- H.That because of the aforementioned uncertainty, the Appellant was unable to join

and performed his duties as he was confined in illegal custody for almost Three (03) years.

- I. That from every angle the impugned dismissal order is wrong illegal unwarranted and is liable to be set-a-side, and the Appellant is entitled to be re-instated into service with all back benefits.
- J. That any other ground not raised here may graciously be allowed to be raised at the time of arguments.

It is therefore, most humbly prayed that on acceptance of the instant Service Appeal, the impugned office order No. 2547-52/PA/SP Dated 29-05-2017 of the Office of Superintendent of Police, Headquarter, Peshawar may kindly be set-aside and by doing so the Appellant may very graciously be reinstated into service with all back benefits.

Any other relief not specifically asked for may also graciously be extended in favor of the Appellant in the circumstances of the case.  $\widehat{7}$ 

Dated: 21/09/2020

Appellant

Through

JAVED IQBAL GULBELA SAGHIR IQBAL GULBELA AHSAN SARDAR

&

TAHIR KHAN

Advocates High Court Peshawar.

## NOTE:-

No such like appeal for the same appellant upon the same subject matter has earlier been filed by me before this Hon'ble Tribunal.

Advocate

## BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

In Re S.A \_\_\_\_\_/2020

Muhammad Arshad

### **VERSUS**

Inspector General of Police and Others

## **AFFIDAVIT**

I, Muhammad Arshad Ex-Constable No. 5997 S/o Abdul Haleem R/o Mohallah Ghari Meer Rehman P/O Khazana Payan, Tehsil & District Peshawar, do hereby solemnly affirm and declare that all the contents of the accompanied appeal is true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.

DEPONENT

CNIC#:

Identified By:

Javed Iqbai Gulbela Advocate High Court Peshawar.

## BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

	In Re S	S.A		/2020
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Muhammad Arshad

### **VERSUS**

Inspector General of Police, Khyber Pakhtunkhwa and Others

## **ADDRESSES OF PARTIES**

### APPELLANT.

Muhammad Arshad Ex-Constable No. 5997 S/o Abdul Haleem R/o Mohallah Ghari Meer Rehman P/O Khazana Payan, Tehsil & District Peshawar.

## RESPONDENTS:

- Inspector General of Police, Khyber Pakhtunkhwa.
- 2. Superintendent of Police Headquarter, at Police Line, Peshawar
- Capital City Police Officer, Khyber Pakhtunkhwa, 3. at Police Line Peshawar.

Dated: 21/09/2020

Appellant

Through

JAVED ÍQBAL GULBELA

Advocate High Court

Peshawar.

27-01 36,21 37 1 ملح بشاعر رابوست ارسارهان المراكم ومن ١٤١٤م مورام ١٥٦٦ الى دور المراكم مورام المراكم الم وله عمر المحلم حصر 36 سال سان فرام يا يال لشمول مسمور الرقي ول سری مال سا تواند از ای وی جاند از ای ارای ارای از اوالی ایس JEGERAPHICOSHOUNDCONE US UPENSUS 二字写中的人的一起外看的自己的是一个一个人 على الله المالية المالية المالية الموالية الموال سال سے اوسی لائن سی دری سرا ہا کہ سے میں اوا معروف وہ کی تولید طل دىدى اولىدى دى ملائل ئى بۇر دارى بىن الادراسى ئىرىاس NOW WE F 2 17 IN GO 03459223681 @ 03005930248 OFF property of the beautiful of the plant of the order 191,150 CO TU SWEN CONS 00 CON CO (191,500) ONLY 367,8109, Wille 33 206 g 20/2 (87), en 1/2/06/2) والا المري كارون في المري والمري و والسن حرف المرف درلها لا والم وللرجعافل عبد الحالا في اور الكواخرى والحتاج في المال المرس الموافرى زمرد منه (ق) 156 من في المرفع لي لقط العلميده مون (ع المرق) انكوارىعقب قريرفان ٨٨٠ بهيموالا ما تا عقر نقل عموارف العلاق ( Intark mm ps 1842 27-03-017

غنمت صاب مستصمور عبور ماصر مربرس خلفنس از بيرولل (تسين عودما در ارش سے مرسم لعاتی عمد ارش و لاسم اللم سال علم المرض عمرالعاتی عمد ارش و لاسم اللم سال علم المرض عمرالعاتی فراد داکان فزان عمل وفعام بیشا ور کارماکشی سے اور لولس لائن بهنا ورصی بطور سایس بشاور لولیس میں گرشتر 7 سال سے اور لولیس الرب فلیل مرستر 4 سال سے دلوئی کے فرانس سرانیا ) دے ریانیا۔ 94 مار 37/10 كو دات دُلُونى برسًا اورسارى دار دُلُونى سرانام دى مبع ٥٤:٥ بردُلُونى كى بندوق عمع اراتی اور لینئی بر جاتی بین کے لیے گیا۔ اس لیرس کیرانس لایت ہے۔ لولس لائل کے سکررٹی کیم میں جزارش لولس لائن سے ماسم نظارتے ہوتی ہیں دماجے لئے میس سے بیر بار دوا فنے ہوتی ہے کرمیرا الرس ك (نررس م) لابتر ما ليا بي فرار بال احمرا های بولس کاسان می جودن دار محنت مزدوی از ب رسا اور سوم عجول کا گزر سر مردیا تعا اسک 3. کے علی فودل دار ایک ما ب کرما د اگر کے رو تے وقیس مرائے کرم سماری سمر مرح کی فانونی مور ک مانے دور میں ہے کالی کو بازیل کر وارا کا کے . المحتمر المحلى وازمن سوك العارض -اصمان الله ولد ميم الحكيم تح ملن! الحدمره (المان ميم فرادة محمل و هالع ميم اور

منتزية البضرا

وزازمت واقلم بيثل كرائهو فيجمون تبل 717 W (051-9205501) لايتةافرا دككوا كف add 1118 = \_ جن (مردا ورت) همر ر ندب اسلاك و تركسي ق اعوان ودور ترفيت سادى ما حرك المرك يد سراس سرا ورلولس تلي البيت البيت البيت رس منع م3:30 مس من 7:00 كي كورميان نَاءَ لِي لِسِ لِاسَ لِينَا ور فيون على التي كولوليس لائل تركوني المرسل دات دُلوتي المراغ أي رسم الما أي المامي والتي دات دُلوتي المراغ أي الم 6:30 مرسن في دفتر صور عمع كرواني اور كستير عمين حالت يسن أما الس اليلور بع صل كولس التري 06-4-85 Fint 2/10 24 June 10/08/25 30 الحليم ويحل مرمعي عبير رحمان فران و دان با مان تحسل لع بينها ور

## Declaration

1. Ehsan ullah	s/o Abdul Haleem
1/0 Nohallerh, Gashi, Re	han, Khazana, Pestanar
	Rights and public service trust situated at 3 <sup>r</sup>
Floor, Majeed Plaza, Bank Road Saddan	Rawalpindi Pakistan through its
	ard and represent on my behalf the case of
	Muhammed Arshad in any department or court of Pakistan
and to any international organization lik	e Working Group on Enforced or
Involuntary Disappearance, UNO, Gene	va Switzerland.
Deponent	
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(Name)	

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#### COMMISSION OF INQUIRY ON ENFORCED DISAPPEARANCES DIRECTORATE GENERAL CIVIL DEFENCE BUILDING (1<sup>ST</sup> FLOOR) MAUVE AREA, SECTOR G-9/1 ISLAMABAD

(Tele: 051-9106340, Fax: 051-9106344, E-Mail: coioed@gmail.com)

ColoED No. 4224-K

Islamabad, the 07th August, 2017

To:-

- 1. Director General, Intelligence Bureau, Islamabad
- 2. \*Home Secretary, Khyber Pakitoonkhawa, Peshawar
- 3. Provincial Police Officer, Khyber Pakhtoonkhawa, Peshawar
- 4. Capital City Police Officer, Khyber Pakhtoonkhawa, Peshawar
- 5. Inspector General, FC, Khyber Pakhtoonkhawa, Peshawar
- 6. Director(Legal), Ministry of Defence, Rawalpindi
- 7. Directorate General ISI. Islamabad
- 8. Ml Dte. GHQ, Rawalpindi

Subject:- ColoED NO. 4224-K - MUHAMMAD ARSHAD S/O ABDUL HALEEM

Please find enclosed herewith a copy of Proforma received through Amina Masood Janjua, Chairperson, Defence of Human Rights & Public Service Trust, in respect of the Missing Person cited in the subject.

- 2. In order to trace the whereabouts of Muhammad Arshad s/o Abdul Haleem, Home Secretary, Khyber Pakhtoonkhawa, Peshawar is directed to constitute a JIT which may convene its meeting immediately as provided in the Commission of Inquiry on Enforced Disappearances Regulations, 2011.
- 3. The case may be processed in terms of relevant provisions of the Regulations ibid.
- 4. <u>For PPO Khyber Pakhtoonkhawa only:</u> FIR of the case may be registered immediately in the concerned Police Station and copy thereof be sent to this Commission at an early date.
- 5. The report of JIT be furnished to the Secretary of the Commission on or before 28<sup>th</sup> August, 2017.
- By orders of the Commission.

Encl: (As above)

(Farid Ahmad Khan)

Secretary (ColoED) Fax: 051-9106344

كانى برائة اطلاع:-

1- محترم-احسان الله ،رباکش-محله گزشی،میررتمان خزانه ضلع ،پشادر ( موبائل نمبر9425820-0345) کومطلع کیاجاتا ہے که ایف-آئ-آر کیاندران کے لیےمطلقہ تھانے میں رجوع کریں ٹمیشن میں تاریخ بیش کی اطلاع آپ کے دیے ہوے موبائل پردی جائے گ۔ 2-آمنہ مسعود جنجو بیر پاکمی ڈیٹیس آف ہیو من رائیش۔ تھر ڈفلور مجید یلازہ، بینک ردڈ،راولپنڈی کینٹ۔

(Farid Ahmad Khan)
Secretary (ColoED)



#### ORDER

This office order relates to the disposal of formal departmental enquiry against <u>Gonstable Arshid No.5174</u> of Capital City Police Peshawar on the allegations that he while posted at Police Lines, Peshawar absented himself from lawful duty w.e.f <u>26.03.2017 till date</u> without taking permission or leave.

In this regard, he was issued charge sheet and summary of allegations. DSP H.Qrs: Peshawar was appointed as Enquiry Officer. He conducted the enquiry proceedings and submitted his report/finding that the alleged official has been abroad. Being a government servant he should have to seek departmental permission to proceed abroad but he avoided. Beside, this he deliberately absent from duty w.e.f. 26.03.2017 till date and found guilty of the misconduct. The Enquiry Officer further recommended him for major punishment vides Enquiry Report No.3044/ST dated 15.05.2017.

Upon the finding of E.O, he was issued final show cause notice and delived to him on home address through local Police Station Khazana but he failed to submit his explanation of the said notice in self-defense or appeared before this office as yet.

In light of the finding of E.O & other material available on the record, the undersigned came to conclusion that he is guilty of the misconduct and found unwilling worker. Therefore, he is awarded this major punishment of dismissal from service with immediate effect. Hence, the period he remained absent from 26.03.2017 till date is treated without pay.

E1 (18)

SUPERINTENDENT OF POLICE HEADQUARTERS, PESHAWAR

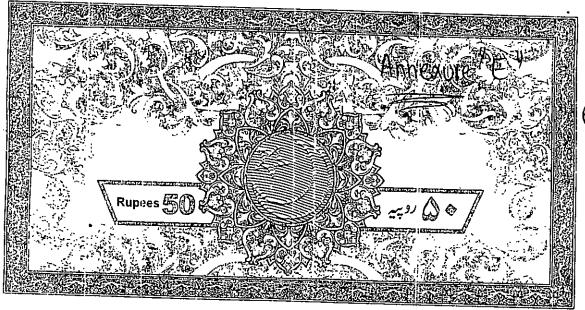
OB. NO. <u>32//</u> / Dated <u>39/</u> <u>5</u> /2017

No. 2545 - 52/PA/SP/dated Peshawar the 29/5 /2017

Copy of above is forwarded for information & n/action to:

- ✓ The Capital City Police Officer, Peshawar.
- ✓ DSP/HQrs, Peshawar.
- ✓ Pay Officer
- ✓ OASI, CRC & FMC along-with complete departmental file.

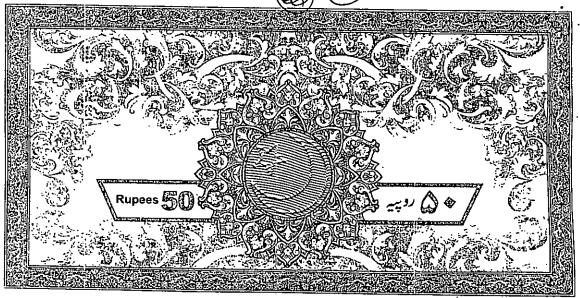
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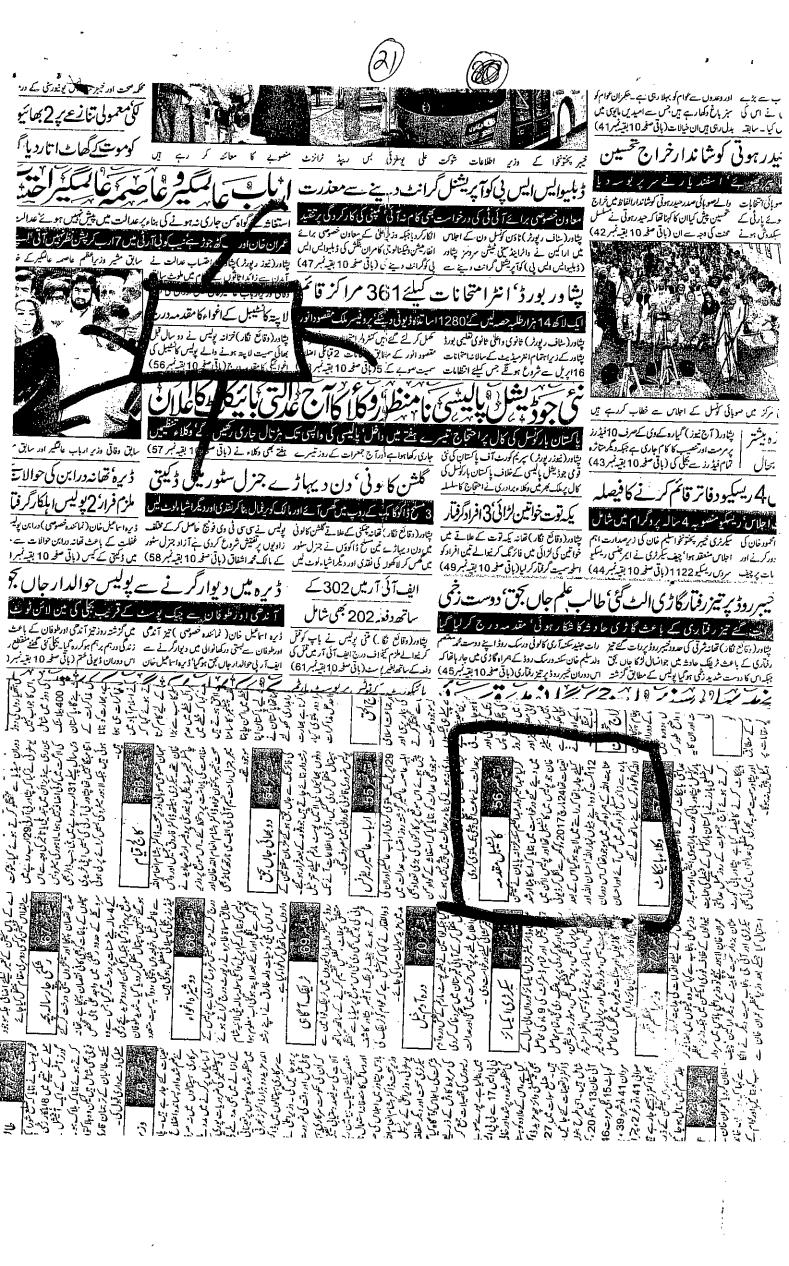


5/21 ( Rilso Lix delilis) من نوانده ( نوانع کی عوالم کی کافی از کافی الم کیال کی Endad unifordation range about as all suffer Coprantito y Mon de prochangines mis कार्ड देर रियर ए उत्तर्थि महत्त्व रिया है के वि of M12 state be interested to 128 174 je مي اود عم م توسيطري سال سے لوگو الاق ساویوں 395 (345) 2017 polity, cu, ly 19m دولي در فا حل مي اور ؛ بوق ميل مون مر لولي وردف دِ الله الم الله والحيا لين آما أور إس و والل جواد الله SNE OEL ( OE SOER ED SIED SED IN L'ASON مناح می رسی سمی شد و سل به بای میان املی الف بخوا الم وراس مورا قار من مولة عاصاف قدا - on 12 /10









# ﴿ وكالت نامه ﴾

منجانب ريسه مرين وعوي

21.8.2020

ـ ( آنکـــه مقدرمه مندرجه مالاعنوان انخطرف َ<del>سا</del>وا بيط پيرو مقرر کیا ہے۔ کہ میں ہرپیثی کاخود یا بزریعہ مختار خاص رو بروعدالت حاضر ہوتار ہونگا۔اور بُونت یکا صاحب موصوف کواطلاع دے کر حاضر عدالت کرونگا، اگر پیشی یرمن مظہر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور برمیرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذیمددار نہ ہونگے۔ نیز وکیل صاحب موصوفہ مقام کچبری کی کسی اورجگہ یا کچبری کےمقرر ہاوقات ہے پہلے یا پیچیے یا بروز تعطیل پیروی کرنے کے ذمہ دارنہ ہو نگے۔اگر مقد مه علاوہ صدر مقام کچہری کے کسی اور جگہ ساعت ہونے یا بروز تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر من مظہر کوکوئی نقصان پنچیتو اس کے ذمہ داریااس کے واسطے کسی معاوضہ کے اداکر نے یا مختارانہ واپس کرنے کے بھی صاحب موصوف ذمه دارنه ہوئے۔ مجھے کوکل ساختہ پر داختہ صاحب موصوف مثل کردہ ذات خود منظور وقبول ہوگا۔اور صاحب موصوف کوعرضی دعویٰ وجواب دعویٰ اور درخواست اجرائے ڈگری ونظر ثانی ابیل ونگرانی ہرتیم کی درخواست پردستخط و تصدیق کرنے کابھی اختیار ہوگا اور کسی تھم یا ڈگری کے اجراء کرانے اور ہرتتم کے روپیدوصول کرنے اور رسیددیے اور داخل کرنے اور ہرفتم کے بیان دینے اورسپر و ثالثی وراضی نامہ فیصلہ برخلاف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا۔اور بصورت اپیل وبرآ مدگی مقدمه یامنسوخی ڈ گری یکطرفه درخواست تھم امتناعی یا قرقی یا گرفتاری قبل ازاجراء ڈ گری بھی موصون كوبشرطا دائيكي عليحده مختارانه پيروي كااختيار بوكا \_اوربصورت ضرورت صاحب موصوف كوبھي اختيار ہوگايا مقدمه مذكوره يا اس کے سی جزوکی کاروائی کے واسطے یا بصورت اپیل ، اپیل کے واسطے دوسرے وکیل یابیرسٹرکو بجائے اپنے یا اپنے ہمراہ مقرر کریں اورا پیے مثیر قانون کے ہرامردہی اوروپیے ہی اختیارات حاصل ہونگے جیسے کے صاحب موصوف کو حاصل ہیں۔اورد وران مقدمہ میں جو پچھ ہر جانہ التواءیڑے گا۔اورصاحب موصوف کاحق ہوگا۔اگروکیل صاحب موصوف کو یوری فیس تاریخ بیشی سے پہلے ادانہ کرونگا تو صاحب موصوف کو بوراا ختیار ہوگا کہ مقدمہ کی پیردی نہ کریں اورائی صورت ۔ مف**ھو**ن مختار نا مہن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

## REFORE THE KHYRER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

## Service Appeal No.11499/2020.

## VERSUS.

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others..... Respondents.

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## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

### Service Appeal No.11499/2020.

#### **VERSUS**

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. 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 and proper 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.

#### **REPLY ON FACTS:-**

- (1) Para pertains personal information of appellant.
- (2) Para pertains to record.
- (3) Para pertains to record.
- (4) Incorrect and misleading. Infact the appellant while posted at Police Lines Peshawar absented himself from official and lawful duty w. e. from 26.03.2017 till the date of dismissal from service i.e 29.05.2017 without prior permission or leave from the competent authority. In this regard he was issued charge sheet with statement of allegations. DSP HQrs: was appointed as enquiry officer. The enquiry officers finalized the enquiry and submitted findings report that the appellant has been gone to abroad (Afghanistan). Being a member of disciplined force he should have to seek permission/leave to proceed aboard, but he avoided and deliberately absented himself from lawful duty. After receipt of the findings report, Final Show Cause Notice was issued to him and sent him on home address, but he avoided to appear and defend himself. After observing all codal formalities, he was awarded major punishment of dismissal from service (copy of charge sheet, statement of allegations, enquiry report, Final Show Cause Notice are annexure as A,B,C,D)

- (5) Incorrect. Infact the appellant willfully absented himself from lawful duty without any prior permission or leave. The appellant was not interested in official duty and enjoying his long absence period without any leave permission. The enquiry officer after conducting the enquiry submitted his finding report that the appellant intentionally absented himself from his lawful duty and went to Afghanistan, wherefrom he make a call bearing No.0093730952549 to Muharrar ASI Sajjad Siraj on his cell No.030.5968840 and stated that I have gone to Afghanistan, further stated that the salaries of Police is unlawful. After fulfilling all the codal formalities, he was awarded the major punishment of dismissal from service vide order dated 29.05.2017. (Statement of Sajjad is annexure as E).
- (6) Incorrect. Para already explained in detail in the above para. However he deliberately absented himself from his lawful duty without leave /permission. After completion of all codal formalities the punishment order was passed by competent authority in pursuance of his long absence period which is not tolerable in the disciplined force.
- (7) Incorrect. As per record the appellant did not filed departmental appeal before the appellate authority. Legally, the appellant was required to file departmental appeal before the appellate authority, but having no defendable grounds, he irrespective of law, filed Service Appeal before the Honorable Service Tribunal.
- (8) Incorrect. The allegations against the appellant was proved and after fulfilling all the codal formalities he was rightly awarded the major punishment. The appeal of the appellant being devoid of merits may kindly be dismissed.

#### **GROUNDS:-**

- A. Incorrect. The appellant was treated as per law/rules. After fulfilling all the codal formalities, he was awarded the major punishment of dismissal from service and liable to be upheld.
- B. Incorrect. Proper departmental enquiry was conducted against him. The enquiry officer conducted thorough probe into the matter and found the appellant guilty of the charges. The whole enquiry was conducted purely on merit.
- C. Incorrect. Charge sheet with statement of allegations was issued to him. Regular inquiry was conducted and thereafter, he was issued a final show cause notice hence after fulfilling all the codal formalities he was awarded the major punishment of dismissal from service.
- D. Incorrect. Para already explained in detail in the above paras.
- E. Incorrect. After completion of the enquiry proceedings, the appellant was issued final show cause notice.
- F. Incorrect. The appellant was treated as per law/rules. After completion of all codal formalities he was awarded appropriate punishment as per law/rules.

- G. Incorrect. Para already explained in para No.05 and 07.
- H. Incorrect. Being a member of a disciplined force, the appellant was well aware about the proceedings. However he deliberately absented from his lawful duty without leave /permission. Therefore, the punishment order was passed by competent authority in pursuance of his long absence period which is not tolerable in the disciplined force.
- I. Incorrect. The punishment order passed by the competent authority is just legal and has been passed in accordance with law/rules and liable to be upheld.
- J. Respondents also seek permission of this Honorable Tribunal to raise additional grounds at the time of arguments.

#### Prayers:-

Keeping in view the above stated facts & reasons it is, most humbly prayed that the appeal of the appellant being devoid of merits and limitation, may kindly be dismissed with costs please.

Provincial Police Officer, Khyber Pakhyunkhwa, Peshawar.

Capital City Police Officer, Peshawar.

Superintendent of Police, HQrs: Peshawar.

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

#### Service Appeal No.11499/2020.

#### **VERSUS.**

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. 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 Rakhtunkhwa, Peshawar.

Capital City Police Officer, Peshawar.

Superintendent of Police, HQrs: Peshawar.

## (6)

## **CHARGE SHEET**

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Arshid No.5174 of Capital City Police Peshawar with the following irregularities.

"That you <u>Constable Arshid No.5174</u> while posted at Police Lines, Peshawar were absent from duty w.e.f. <u>26.03.2017 till date</u> without taking permission or leave. This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

Your written defence, if any, should reach the Enquiry Officer/Committee within the specified period, failing which it shall be presumed that have no defence to put in and in that case ex-parte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.

SUPERINTENDENT OF POLICE, HEADQUARTERS, PESHAWAR

## **DISCIPLINARY ACTION**



I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Arshid No.5174 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

## STATEMENT OF ALLEGATION

Policeline "That Constable Arshid No.5174 while posted at PS Sarband, Peshawar absented himself from duty w.e.f.26.03.2017 till date without taking permission or leave. This amounts to gross misconduct on his part and is against the discipline of the force."

For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and \_\_\_\_is appointed Officer.

- 2. The Enquiry Officer shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.
- The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.

NDENT OF POLICE, HEADQUARTERS, PESHAWAR No. 102-E /E/PA, dated Peshawar the 21/4

finalize the aforementioned departmental proceeding within \_\_\_is directed to stipulated period under the provision of Police Rules-1975.

Official concerned

Dated 18.05.2017.

Enclosures (9).

### DEPARTMENTAL ENQUIRY REPORT.

3

Please refer to your Office Order No.102/E/PA dated 21.04.2017 against FC Arshid No.5174. This enquiry has been initiated on the basis of the following allegations:-

That Constable Arshid No.5174 while posted at Police Lines Peshawar absented himself from duty w.e.f. 26.03.2017 till date without taking permission or leave. This amounts to gross misconduct on his part and is against the norms of discipline force.

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In order to scrutinize the conduct of said official with reference to the above allegations an enquiry was ordered and the undersigned has been appointed as enquiry officer in the matter.

### Proceedings:-

During enquiry proceedings, accused official i.e. Constable Arshid No.5174 was summoned vide No.1362, dated 24.04.2017, No.1396, dated 26.04.2017 & No.1442, dated 01.05.2017 but he failed to complay the orders. In this regard Line Officer-I & ASI Sajjad Siraj have also been contacted and their statements recorded as under:-

#### Statement of ASI Sajjad Siraj:-

ASI Sajjad Siraj stated that Incharge RP HC/Ghaffar Khan informed him that Constable Arshid No.5174 absented himself from lawful duty vide DD No.08, dated 26.03.2017 till date without seeking permission or leave. He further stated to have received a call on 14.09.2017, details of which have been scribed in Daily Diary No.46, dated 15.04.2017.

#### Line Officer-I:-

He stated that Constable Arshid No.5174 absented himself from his lawful duty vide DD No.08, dated 26.03.2017 without seeking permission or leave. The Moharrar/ΛSI Sajjad Siraj of Police Lines informed him that the said constable had gone to Afghanistan. The report has been entered in Daily Diary vide No. 46, dated 15.04.2017.

#### **FINDINGS:**

From the foregoing circumstances, statements recorded and other material available on record, it came to light that the defaulter constable intentionally went absent without seeking permission or leave from his seniors which has been verified by ASI Sajjad Siraj and Line Officer-I Ihsanullah Khan in their statement duly supported by DD reports No.08, dated 26.03.2017 & No.46, dated 15.04.2017. Both the statements duly verified/attested by RI/HQrs: Razi Khan Police Lines Peshawar. Reportedly he has gone to Afghanistan where from he make a call bearing No.0093730952549 to ASI Sajjad Siraj on his cell No.0300-5968840 vide DD No.46, dated 15.04.2017. Being a government servant he should have sought departmental permission to go abroad which he avoided and thus held guilty of charges. He is therefore, recommended for major punishment and strict departmental action.

Submitted please

Dy: Superintendent of Police

HQrs: CCP Peshawar.

W/SP/HQrs:

palos find Sc.

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## FINAL SHOW CAUSE NOTICE

I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Arshid No.5174 the final show cause notice.

completion after H.Qrs: DSP maior Officer, Enquiry has recommended you for The Constable Arshid No.5174 the proceedings, departmental charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you <u>Constable</u> <u>Arshid No.5174</u> deserve the punishment in the light of the said enquiry report.

I, competent authority, have decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975.9

- 1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
- 2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.

SUPERINXENDENT OF POLICE, HEADQUARTERS, PESHAWAR

No. Of G /PA, SP/HQrs: dated Peshawar the 18 05/2017.

Copy to official concerned

سلول 15 4 - alie 46 res بخاله ما الماروزيافي لم 13 للبرزار في دو لم دهوب واليما آيا - در الم صور من ورم الما أو كو ورد منو) سوريا عقادم بوس ١٦:١٥ الرسير الله وباشل عَمَا ورهِ مَن مَن أَمَا الْمَان الْمان الْمَان الْمَان الْمَان الْمَان الْمَان الْمَان الْمان الْ اور پولس فی ژنیم آسی و ایمی و سی ف بر واب المعنى إرسراود الله المي ماسم المعنى المعالم المي ماسم المعالم المي ماسم المعالم المي ماسم المعالم الم المسترين من المالي من المالي من المالي المال ارسى المائ في المائد ال من انسان الا ک وشی سی لاما جار دور ن اصالح e relingi The Charles 17/4/17 SO/HO Siri

## BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES' TRIBUNAL PESHAWAR

<u>In S.A 11499/2020</u>

m. Arshad Khan

**Versus** 

Inspector General of K.P.K & Others

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2.	Affidavit.		5

Dated: 06/10/2021

Appellant

Through

JAVED OBAL GULBELA, Advocate, Supreme Court of Pakistan

Off Add: <u>B-1</u>, <u>Al-Nimrah Centre</u>, <u>Govt College Chowk Peshawar</u>

## BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

In S.A 11499/2020

## M . Arshad Khan Versus

Inspector General of K.P.K & Others

# REJOINDER ON BEHALF OF THE APPELLANT TO THE COMMENTS FILED BY THE RESPONDENTS NO. 01 TO 03

Respectfully Sheweth,

Reply to Preliminary Objections:

#### Para 1 to 7:

All the preliminary objections raised & agitated by the Respondents are false, concocted, misleading, & hypocritic, hence are denied sternly. Not only the Appellant has got a good prima facie case having locus standi, to file the instant Appeal, but the instant Appeal is also strictly as per law & has rightly been moved against the impugned order dated 29-05-2017. The Service Appeal moved by the Appellant is well in time. Moreover this Hon'ble Tribunal has got the jurisdiction to entertain the instant service Appeal. The appellant did not conceal any fact from this Hon'ble Tribunal, And nock the door of this Hon'ble Tribunal for acknowledgement, recognition, protection and enforcement of his fundamental rights in shape of re-instatement into service with all back benefits.

#### On Facts:

- 1. Para "1" of the comments need no reply.
- Para "2" of the Reply is hypocritic, hence denied.While the corresponding Para of the main appeal is true and correct.
- 3. Para "3" of the Reply is hypocritic, hence denied. While the corresponding Para of the main appeal is true and correct.
- 4. Para "4" of the Reply is incorrect, false, misleading, illegal and unlawful, hence sternly denied. Moreover true, correct, and detail picture is portrait in the main appeal of the appellant.
- 5. Para "5" of the Reply is incorrect, wrong, misconceiving, illegal and void-ab-initio; therefore sternly denied. Moreover true, correct, and detail picture is portrait in the corresponding Para of the main appeal.
- 6. Para "6" of the Reply is incorrect, misleading, wrong, misconceiving, illegal, unlawful and void-ab-initio; therefore sternly denied. Moreover true, correct, and detail picture is portrait in the corresponding Para of the main appeal.
- 7. Para "7" of the Reply is incorrect, wrong, misconceiving, illegal and void-ab-initio; therefore sternly denied. Moreover true, correct, and detail picture is portrait in the corresponding Para of the main appeal. It is pertinent to mention here that when the Appellant was release from "illegal confinement of unknown culprits", then he directly reported to his police department, wherein he was inform about his dismissal from service, thereafter

the appellant moves Departmental appeal, but inspite of laps of statutory period his departmental appeal was not decided, Hence the instant service appeal to this Hon'ble Tribunal in accordance with law.

8. Para "8" of the Reply is incorrect, false, misleading, illegal and unlawful, hence sternly denied. Moreover true, correct, and detail picture is portrait in the main appeal of the appellant.

#### On **Grounds**:

- A. Para "A" of the Reply is incorrect, false, misleading, illegal and unlawful, hence sternly denied.
- B. Para "B" of the Reply is incorrect, false, misleading, illegal and unlawful, hence sternly denied. While the corresponding Para of the main appeal is true and correct.
- C. Para "C" of the Reply is incorrect, false, misleading, illegal and unlawful, hence sternly denied. While the corresponding Para of the main appeal is true and correct.
- D. Para "D" of the reply is incorrect and denied, while that of the main appeal is correct.

Para "E" to "J" of the reply are incorrect, false, concocted, illegal, unlawful and against the law as well as hypocritic; therefore sternly denied. Moreover True, legal, lawful, correct and detailed picture has already been portrayed in the main appeal as well as in the preceding paras.

It is, therefore, humbly prayed that on acceptance of the instant rejoinder, the appeal of the Appellant may graciously be allowed, as prayed for therein.

Dated: 03/06/2022.

Appellant

Through

Javed Igbal Gulbela

Saghir Iqbal Gulbela

æ

Ahsan Sardar

Advocates, High Court

Peshawar.

### BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

In S.A 11499/2020

M. Arshad Khan

**Versus** 

Inspector General of K.P.K & Others

#### **AFFIDAVIT**

I, the Appellant, do hereby solemnly affirm and declare that all the contents of the accompanied rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.

DEPONENT

CNIC: 17301-74568959

Cell No. 0318- 3295955

Identified By:

Javed Iqbal Gulbela

**ASC**