

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No 1066/2023

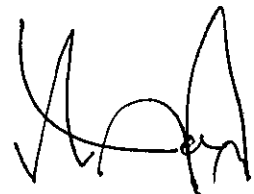
Shams Ullah Khan s/o Shams ur Rahman r/o Paloso Dag, Tehsil Munda, District Dir Lower.....Appellant.

VERSUS.

- 1) Provincial Police Officer, Khyber Pakhtunkhawa Peshawar.
- 2) Regional Police Officer Malakand at Saidu Sharif, Swat.
- 3) Additional IG Headquarter KP Peshawar.
- 4) District Police Officer Dir Lower.
- 5) SP Investigation Dir LowerRespondents. .

INDEX

S. #	Description of documents	Annex.	Pages
1.	Para wise comments	-	1-3
2.	Affidavit	-	4
3.	Power of Attorney		5
4.	Copies of bad entries	"A"	6-16
5.	Copy of FIR	"B"	17
6.	Copy of Finding report	"C"	18
7.	Copy of charge Sheet	"D"	19
8.	Copy of statement of allegation	"E"	20
9.	Copy of removal Order	"F"	21



((DEPONENT)
DSP Legal Dir lower

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No 1066/2023

Shams Ullah Khan s/o Shams ur Rahman r/o Paloso Dag, Tehsil Munda, District Dir Lower.....Appellant.

VERSUS.

- 1) Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
- 2) Regional Police Officer Malakand at Saidu Sharif, Swat.
- 3) Additional IG Headquarter KP Peshawar.
- 4) District Police Officer Dir Lower.
- 5) SP Investigation Dir LowerRespondents.

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS.

- 1) That the service appeal is not maintainable in its present form.
- 2) That the appellant has not come to this honourable Service Tribunal with clean hands.
- 3) That the present Service appeal is badly barred by law and limitation.
- 4) That this honorable Service Tribunal has got no jurisdiction to entertain the present service appeal.
- 5) That the appellant has suppressed the material facts from this honorable service tribunal.

ON FACTS:

1. Pertains to record, hence needs no comments.
2. Incorrect, the appellants service history is tainted with bad entries (copies of bad entries enclosed as annexure "A").
3. Incorrect, the appellant was directly charged in a heinous cognizable offence vide FIR No. 565 dated 25.10.2016 u/s 324/34 PPC Ps Munda by the complainant; hence the department rightly proceeded against the appellant. (Copy of FIR enclosed as annexure "B").
4. Incorrect, the appellant was directly charged in the FIR, therefore he was suspended and ordered enquiry against him. The enquiry officer conducted inquiry and recommended that the enquiry proceeding against the appellant be kept pending till the decision of criminal case and also to restore his services. The competent authority agreed with finding of inquiry officer (Copy of finding report is enclosed as annexure "C")

2

5. Needs no comments..
6. Incorrect, the appellant was directly charged in the FIR by the complainant; therefore he was suspended and closed to headquarter. The competent authority issued charge sheet and statement of allegations to the appellant and inquiry constituted to scrutinize the conduct of appellant and to dig out the real facts.
The inquiry officer conducted proper inquiry and recommended that the enquiry may be kept pending till the final decision of trial Court. The trial court convicted the appellant for 05 years RI vide judgment dated 28.07.2021. On receipt of the judgment, the competent authority awarded major punishment of removal from service of the appellant vide order dated 13.08.2021. (Copy of charge sheet, statement of allegations, enquiry report and removal order enclosed as annexure "D"-E-F")
7. Incorrect, as explained in above para-6.
8. Pertains to record, needs no comments.
9. Incorrect, the appellant has no cause of action to file the instant appeal and failed to bring a prima facie case to the honourable Tribunal may be dismissed inter alia on the following grounds.

GROUNDS

- A) Incorrect, the order passed by the respondent is legal and based on law/rules.
- B) Incorrect, the provision of Police Rules 1975 (amended) 2014 have been complied properly with the case of appellant while passing orders. Hence orders of respondents are legal, lawful and in accordance with law/rules.
- C) Incorrect, the appellant was directly charged in the FIR and the trial court convicted the appellant for 05 years RI. The competent authority issued order of removal from service in respect of the appellant for the reasons of his involvement in criminal case, as the appellant failed to advance any solid reasons in self defence. He was charged in a heinous criminal case and later on convicted by the competent court; hence actions of the respondents are quite in accordance with norms of natural justice.
- D) Incorrect, proper departmental inquiry was initiated against the delinquent official and during the course of inquiry, it was recommended by the inquiry officer that since the criminal case against the delinquent official is pending before the trial court, let he may be re-instated, for the time being and departmental proceedings may be kept pending till the decision of the criminal case. After the judgment dated

28.07.2021 by the trial court, the delinquent official was recourse to the same inquiry by the competent authority and awarded him major punishment of removal from service vide order dated 13.08.2021.

- E) Incorrect, as already discussed in preceding paras, that the trial court convicted the accused in criminal case registered against him. Proper inquiry has been carried out and the competent authority after scrutiny of record passed the removal order which is based on facts and is in accordance with rules.
- F) As discussed in preceding paras.
- G) The respondents also seek permission of this honorable Tribunal to rely on additional grounds at the time of arguments/ hearing.

PRAYER:

It is therefore humbly prayed that on acceptance of this Para-wise reply, the Service appeal may graciously be dismissed with cost.

1) Inspector General of Police,
Khyber Pakhtunkhwa Peshawar.

2) Regional Police Officer,
Malakand at Saidu Sharif Swat.

Regional Police Officer,
Malakand Region,
Saidu Sharif, Swat.

3) Additional Inspector General of Police,
Headquarter KP Peshawar.

4) District Police Officer,
Dir Lower.

District Police Officer
Dir Lower

5) Superintendent of Police,
Investigation Dir Lower.

SUPERINTENDENT OF POLICE
INVESTIGATION DIR LOWER

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No 1066/2023

Shams Ullah Khan s/o Shams ur Rahman r/o Paloso Dag, Tehsil Munda, District Dir Lower.....Appellant.

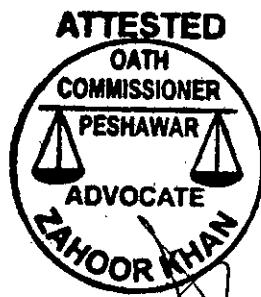
VERSUS.

- 1) Provincial Police Officer, Khyber Pakhtunkhawa Peshawar.
- 2) Regional Police Officer Malakand at Saidu Sharif, Swat.
- 3) Additional IG Headquarter KP Peshawar.
- 4) District Police Officer Dir Lower.
- 5) SP Investigation Dir LowerRespondents.

AFFIDAVIT.

I, Rashid Ahmad DSP Legal Dir Lower, do hereby solemnly affirm on oath, that the contents of accompanying comments on behalf of Respondents is correct to the best of my knowledge and belief. Nothing has been concealed from this honourable Service Tribunal.

(DEPONENT)
DSP Legal Dir lower.



11/9/2023

It is further stated on oath that in this appeal, the answering respondents have neither been placed ex. part nor their defense is struck off/cost



5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No 1066/2023

Shams Ullah Khan s/o Shams ur Rahman r/o Paloso Dag, Tehsil Munda, District Dir Lower.....Appellant.

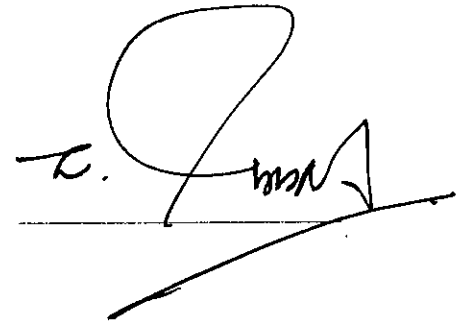
VERSUS.

- 1) Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
- 2) Regional Police Officer Malakand at Saidu Sharif, Swat.
- 3) Additional IG Headquarter KP Peshawar.
- 4) District Police Officer Dir Lower.
- 5) SP Investigation Dir LowerRespondents.

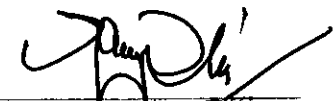
POWER OF ATTORNEY

Mr. Rashid Ahmad DSP Legal Dir Lower is hereby authorized to appear on our behalf and submit all the relevant documents as required by the Honorable Service Tribunal in the above Service Appeal.

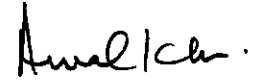
Inspector General of Police;
Khyber Pakhtunkhwa Peshawar.



Regional Police Officer,
Malakand at Saidu Sharif Swat.


Regional Police Officer,
Malakand Region,
Saidu Sharif, Swat.

Additional Inspector General of Police,
Headquarter KP Peshawar..



District Police Officer,
Dir Lower.


District Police Officer
Dir Lower

Superintendent of Police,
Investigation Dir Lower.


SUPERINTENDENT OF POLICE
INVESTIGATION DIR LOWER

6

(A)

ORDER.

Constable Shamsullah No.361 while posted on traffic duty at Bazaar Timergera mis-behaved with Ex-ASI Qadir Jan on 15.7.2001 in the presence of general public and close relatives of the Ex-ASI. On his written complaint an enquiry was conducted through DSP/HQ. The E.O. in his findings submitted that the complainant has pardon him without taking any further action against him. The E.O. in his findings further submitted that the Constable has been warned to be careful in future.

I have gone through the application of the complainant, findings of the Enquiry Officer and have reached at the conclusion that being a member of a discipline force, he has mis-behaved with a notable of the area in the presence of general public in uniform, which is a bad name for the Police Force. Therefore, I, Noorul Huda Khan, Supdt: of Police, Dir Lower at Timergera while exercising the powers vested in me under summary Police proceedings of Police Rules, 1975 award him minor punishment of stoppage of his one next increment with-out cumulative effect.

Order announced.

OB No. ~~877~~ 280
Dated 17.8.2001

[Signature]
Superintendent of Police,
Dir Lower at Timergera.

Sixty
Entry made in his Service Roll.
Jus ALB 2
17-8

Attested
[Signature]
DSP Legal Div (L)

Slr LWC
[Signature]

✓ Articles
B.D.O. Distt
Chunni & Sons
Summit &
Charge sheet

It is placed with
Suspension.
Allegation and
be issues and
Chunni & Sons

Attested
Dsp Legal Bin (V)
4/6/05
HMPS-7/9/05

Handwritten text in Urdu script, appearing to be a legal or official document. The text is written in a cursive style and covers most of the page. It includes various lines of text, some of which are underlined or have other markings. The text is difficult to read due to the cursive style and some fading.

Handwritten signature or initials, possibly "A".

Handwritten text at the bottom center, including a circled number "7" and some illegible characters.

Handwritten circled number "20".

Approved
D.P. / D.R.
2-10-14

Attested
DSP Legal Div (C)
2

25-09-14
SPO - T. Gera

24-09-14
SHO PS. B. Bat

SHO PS. B. Bat
[Signature]

SHO PS. B. Bat
[Signature]

23-09-14
SHO PS. B. Bat
[Signature]

23-09-14
SHO PS. B. Bat
[Signature]

1850
DPC
[Handwritten notes and signatures]

1850

[Signature]

ضلع دیرپائین

پول لائن تھیمبرگرہ

نقل نمبر 48 روزنامہ 4 $\frac{8}{07}$


48 روزنامہ کتنی ملازمان
 رپورٹ غیر حاضری
 نوٹریاں

50 مورخ 4 $\frac{8}{07}$ وقت 18.00 اس وقت گنتی ملازمان
 کیٹی جملہ فارغ از ڈیوٹی ملازمان ماسوائے کنیشیل
 شمس اللہ 361 کے گنتی ہیں موجودیائے جائزہ مذکورہ
 کے خلاف رپورٹ غیر حاضری درج روزنامہ
 کی جاتی ہے۔

2 یوم حاضری

21 حاضری 50 مورخ 6 $\frac{8}{07}$ وقت 06.05 اس وقت کنیشیل شمس اللہ
 361 غیر حاضری شدہ رفتہ بحوالہ رد 48 روزنامہ 4 $\frac{8}{07}$ حاضری کر بیانی
 قید میرے گھر میں بیماری کا بدین و غیر حاضری ہو چکا ہوں
 اب حاضری کر میرا حاضری کیجاوے اور دستخط لکھ کر اپنی مذکورہ
 کی حاضری درج روزنامہ ہو کر نقل عدالت بضرع مناسب حکم
 افسران بالا کے خدمت میں ارسال کی جائیگی جناب عالی


نقل بمطابق اصل ہے


 L. T. Gana
 8.07

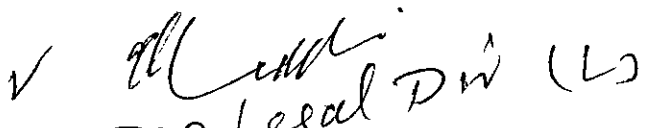
ضلع کنیشیل شمس اللہ 361 وقت 4 $\frac{8}{07}$ اس وقت 6 $\frac{8}{07}$ یوم حاضری

یہ غیر حاضری شدہ سنگین سزا کی سفارش کی جاتی ہے

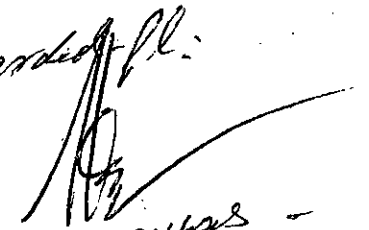
Wakil
 DSP D.I. 207/07


 L. T. Gana
 6.8.07

Attested

✓ 
 DSP Legal Div (L)

Forwarded pl:


 DSP Legal Div -
 07/08/07

ATTESTED
DSP Legal
DIN (L)

State of ...

[Signature]

[Handwritten text in Urdu]

[Signature]

12-4-97

[Signature]
DIN

DIN

[Large block of handwritten text in Urdu]

5/4/97

[Signature]

(10)

2/3

[Signature]

15210-13 / 08-x-05

کنسٹیشن اللہ نمبر 361 جو وہاں ہوتی ہیں۔ کنسٹیشنوں کے
انٹیم ہے۔ اس کے دوران ایف آئی ڈی کے ایچ ڈی اے
مذہبی ایچا کو سرپرستی کی ہے اور ایسی طرح اس نے اس کے
کے ہیں۔ قومی سٹیٹس مین اور ریڈیو ایف ایچ کے سٹیٹس کو ڈرامہ میں

انٹیم سٹیٹس مین کے ساتھ ساتھ اس نے اس کے ساتھ ساتھ
ممبرز کے قتل کی قور کے انٹیم کے ساتھ ساتھ

کنسٹیشن اللہ نمبر 361 کے ساتھ ساتھ اس نے اس کے ساتھ ساتھ
ایف آئی ڈی کے ساتھ ساتھ اس نے اس کے ساتھ ساتھ
ایف آئی ڈی کے ساتھ ساتھ اس نے اس کے ساتھ ساتھ

کنسٹیشن اللہ نمبر 361 کے ساتھ ساتھ اس نے اس کے ساتھ ساتھ
ایف آئی ڈی کے ساتھ ساتھ اس نے اس کے ساتھ ساتھ
ایف آئی ڈی کے ساتھ ساتھ اس نے اس کے ساتھ ساتھ

FMC
File

cc

Attested
Dsp legal Div
11/11/05

To police line
T. gava
27-10-05

CB No. 1092
Dated 3-11-2005

12

CA

نمبر نمبر 9 روزنامہ 5-31-2000

مستند نمبر

مذکورہ حافیہ - 110 کی وقت 20-09-2000 سے وقت 20-09-2000 سے وقت 31-5-2000

شہر رتنہ جوالہ 33 روزنامہ 30-5-2000 عارف عطاء نگر بیانیہ
میں صدر کے لیے بیانیہ تھی۔ یہیں وہ عارف عارف پورے ہوئے۔ اس
حافیہ کے ساتھ حافیہ کے ساتھ 11 دینی انٹرنیٹ کے ذریعہ
حافیہ کے ذریعہ روزنامہ کے ذریعہ ذمہ داری کے ذریعہ
یہ کی خدمت میں مدد ہوگی۔

مذکورہ حافیہ
MHC PS SBagh
3-6-2000

Sins Forwarded
Sins
3-6-2000

مذکورہ حافیہ - 30/2000 تا 31/2000

Attested
Udd
DSP legal Div
6/6/2000

one day period as leave with
absence counted

M. D. U.

183

(13)

نمبر 28 روزانہ 5 16/2000

CA3

ور 28: حاضر کی 1. ASHO وقت 18.10 2 روز 2 سب سے پہلے شہداء کے اہل 3 کو الہ

ور 29 روزانہ 14.5 2000 عہد حاضر شدہ کی حاضر تھا اگر بیان ہے

سینا لوجم آئندہ ضرورت ہے حاضر ہو گیا ہوں۔ اب حاضر اگر

حاضر کی کیا ہے۔ اس کے لئے اس کے لئے اس کے لئے اس کے لئے

دو دن چھوڑ کر۔ یہ لڑتے ہوئے مناسب کام کی اسٹریٹجی

کسی صورت میں اس سال میرے - جناب عالی

تقریباً اصل - 3

Ab
mlt/ps-5-Bagh
22.5-2000

SIR
forwarded
[Signature]
SHO/ps-5-Bagh
22.5-2000

Attested
[Signature]
Dsp legal div
Lower

نمبر 14/2000 16/2000

641
CB 26/5

OTC
[Signature]
SDP/Jandail
25/5/2000

Two day absent
period is counted
as Leave with
pay. [Signature]

A

پولیس ایٹن ٹیمپل گبرہ

(15)

ضلع دیرپائین

نقل عدمبر 48 روزناچ $4 \frac{8}{07}$

عدمبر 48 کٹی ملازمان

10 مورخ $4 \frac{8}{07}$ وقت 18:00:16 اس وقت گتی ملازمان

رپورٹ غیر حاضری

نوٹریاں

کیٹی جملہ فارغ از ڈیوٹی ملازمان ماسوائے کٹیٹیل

شمس الٹڈ 361 کے گتی ہیں موجود پائے جائے مذکورہ

کے خلاف رپورٹ غیر حاضری درج روزناچ

کی جاتی ہے -

پیم نیر جاوی

عدمبر 21 حاضری 10 مورخ $6 \frac{8}{07}$ وقت 05:06:16 اس وقت کٹیٹیل شمس الٹڈ

361 غیر حاضری شد رفتہ بحوالہ عدمبر 48 روزناچ $4 \frac{8}{07}$ حاضر اکثر بیانی

عقیدہ میرے گھر میں بیماری کا قایدین و غیر حاضری کو چھاپوں

آب حاضر اکثر میرا حاضری کیجاوے اور دستخط (گھر میں) مذکورہ

کی حاضری درج روزناچ ہو کر نقل عدات بعض مناسبت حکم

امٹران بالا سے خدمت میں ارسال کی جائیگی جناب عالی

نقل بمطابق اصل ہے

کٹیٹیل شمس الٹڈ 361 عدمبر $4 \frac{8}{07}$ تا $6 \frac{8}{07}$ کل عدمبر غیر حاضری

پیم نیر جاوی کے گھر میں بیماری کی سہولت کی جاتی ہے



m.m.l. Tgara

6. 8. 07

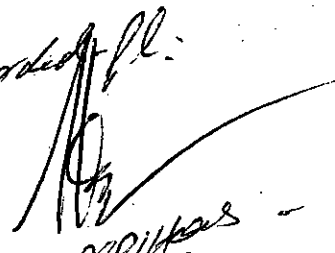
Wakil
D. T. Tgara
20/8/07

Attested



DSP Legal Div (L)

Forwarded Pl:



DSP Legal Div -
07/08/07

m.m.l. Tgara
6. 8. 07

Attested Div (Legal) DSP

دوئیہ

اپنی تصدیق کے لیے

Attested Div (Legal) DSP

دوئیہ

11-17

INVESTIGATION

Handwritten signature and text

درج ذیل کے متعلق...

مقدمہ میں...

مقدمہ میں...

Handwritten signature

Handwritten text

(19)

"D" (19)

No. 2356 /EB/Inv:

Dated: 23/1/2016 /2016.

CHARGE SHEET

1. I, YOUNAS JAVED MIRZA, Superintendent of Police, Investigation Dir Lower at Timergara as competent authority and of the opinion that you FC Shams Ullah No. 1950 while posted as DFC Civil-II Timergara directly charge in Case FIR NO. 656 dated 25.10.2016 u/s 324/34-PPC PS Munda.
2. By reason of the above as sufficient materials is placed before the undersigned; therefore it is decided to precede against you in general police proceeding.
3. You are, therefore require to submit your written reply within 07 days of the receipt of this charge sheet to the Enquiry Officer,
4. Your written reply, if any, should reach the Enquiry Officer within specified period, failing which it shall be presumed that you have no defense to put; in that case, ex-part action shall follow against you.
5. Intimate to whether you desire to be heard in person or not?
6. A statement of allegation is enclosed.

Younas Javed Mirza

Superintendent of Police,
Investigation Dir Lower.

Attested

M. Uddin
DSP Legal Div (L)

20

"E" (10)

DISCIPLINARY ACTION.

I, YOUNAS JAVED MIR, Superintendent of Police, Investigation Dir Lower at Timergara as competent authority and of the opinion that you FC Shams Ullah No. 1950 while posted as DFC Civil-II Timergara directly charge in Case FIR NO. 656 dated 25.10.2016 u/s 324/34-PPC PS Munda, thus you have committed the following acts/dission as defined in Rules 2 (iii) of Police Rules 1975.

STATEMENT OF ALLEGATION

i. I, YOUNAS JAVED MRZA, Superintendent of Police, Investigation Dir Lower at Timergara as competent authority, and of the opinion that you FC Shams Ullah No. 1850 while posted as DFC Civil-II Timergara directly charge in Case FIR NO. 656 dated 25.10.2016 u/s 324/34-PPC PS Munda have rendered yourself liable to be proceeded under rules 5(3) of the Khyber Pakhtunkhwa Rules 1975 for the following misconduct.

2. Mr. Ghulam Ahad Inspector Headquarter Investigation Dir Lower is appointed as inquiry officer to scrutinizing the conduct of FC Shams Ullah No. 1850 Police Lines Timergara with reference to the above allegations.

3. The inquiry officer shall conduct proceeding in accordance with provision of Police Rules 1975 and shall provide reasonable opportunity of defense personal hearing to the accused officer, record its finding and shall finalize the inquiry proceeding within twenty five (25) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused official.

4. The delinquent official shall join the proceeding on the date, time and place fixed by the Enquiry officer.

[Signature]
Superintendent of Police,
Investigation Dir Lower.

Attested

[Signature]
No. 2357-52 Inv: dt 23/12/16
3. DSP legal DTL Copy forwarded for information to the:-
Inspector Ghulam Ahad Investigation HQrs:
FC Shams Ullah No. 1850.

[Signature]
Superintendent of Police,
Investigation Dir Lower.

21

CFD

ORDER

FC Shams Ullah No.1850 of this investigation was recently re-instated v Regional Police Officer, Malakand at Saidu Sharif, Swat vide order Endst: No.8755-56/E dated 29/07/2021.

The delinquent official was involved in case vide FIR No.565 dated 25-10-2021 u/s 324/337F(V)-F(I)/34 PPC Police Station Munda. Proper departmental enquiry was conducted and Inspector Ghulam Ahad Khan was appointed as enquiry officer.

During the course of enquiry the enquiry officer in his finding recommended to keep pending the enquiry till the decision of leaned court. Upon the direction of worthy Regional Police Officer, Malakand at Saidu Sharif, Swat vide Memo No.6560-76/E dated 01/06/2021, the official concerned was dismissed from service vide this office.OB No.146 dated 02/06/2021

The case was under trial in court of Additional Session Judge Samarbagh Dir Lower, and on 28/07/2021 the delinquent official was convicted in the above mentioned case for five year imprisonment and Rs. 0.2 million fined.

Therefore **I MUSHTAQ AHMAD** Superintendent of Police, Investigation Dir Lower in exercise of power vested under (E &D) Rules 1975 with amendment 2014(section 05 clause (05), awarded him major punishment "**REMOVED FROM SERVICE**" from the date of his conviction awarded by Additional Session Judge Samarbagh Dir Lower i.e. 28.07.2021.

Order announced

(MUSHTAQ AHMAD)
Superintendent of Police,
Investigation Dir Lower

OB No. 2-8 /Inv:
Dated. 13/08/2021

No. 15-93 /Inv: dated 12/08/2021

Copy forwarded for information to the:

- ✓ 1. Regional Police Officer, Malakand at Saidu Sharif, Swat order Endst: No.8755-56/E dated 29/07/2021
- ✓ 2. District Police Officer, Dir Lower
- ✓ 3. District Police Officer, Dir Upper.
- 4. Pay Officer, Investigation Dir Lower
- 5. Establishment Clerk Investigation Dir Lower

Attested
Udd
Dsp legal
Dir lower;

ATTESTED TO BE
TRUE COPY