

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

**Service Appeal No.830/2023**


Ex-Constable Mursaleen No.3912 of CCP Peshawar..... **Appellant.**

**VERSUS**

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

**I n d e x**

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/ DSP/Legal,  
CCP, Peshawar.

14-12-2023  
Peshawar.

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

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**REPLY BY RESPONDENTS NO. 1, 2&3.**

**Respectfully Sheweth:-**

**PRELIMINARY OBJECTIONS:-**

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 9871

Dated 13-12-2023

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'ble Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi to file the instant appeal.
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 Hon'ble Tribunal.
7. That the appeal is not maintainable being devoid of any merit.

**REPLY ON FACTS:-**

1. Pertains to record. Furthermore, as per record the appellant is a habitual absentee being lack of interest in his lawful duty. The appellant earned 31 bad entries and 12 Minor, 01 major punishment in his credit on the charges of willful absence from duty on different occasions during his short service. Worth mentioning, that appellant was previously dismissed from service on the ground of absence, later on, he was reinstated into service. (Copy of list is annexed as A).
2. Incorrect. The appellant while posted at PS Town absented himself from his lawful duty w.e.f 30.07.2019 till date of dismissal i.e. 09.01.2020 (total 05 months and 09 days) without leave/permission from the competent authority. After fulfilling codal formalities, the charges leveled against him were proved; hence he was awarded major punishment of dismissal from service vide OB No. 119 dated 09.01.2020 under Police Rules 1975 (amended 2014).(copy of punishment order is annexed as B)
3. Incorrect. Proper charge sheet with statement of allegations was issued vide No.239 dated 23.05.2023 to him. SDPO Hayatabad was appointed as Enquiry Officer. During the course of enquiry, the appellant was called time and again through written parwanas, but he did not bother to attend the enquiry proceedings. The enquiry officer has finalized the enquiry and submitted his findings report vide No.170/E/Steno dated 17.10.2019. After receipt of the findings, Final Show Cause Notice was issued vide No.1970/PA/SP/Cantt: dated 23.10.2019 and delivered on his home address which was received by himself, but failed to appear and defend himself. (Copy of Charge sheet, statement of allegations, Enquiry report , parwana & FSCN are annexed as C, D, E , F and G).

4. Incorrect. The appellant filed time barred departmental appeal, which was thoroughly processed and an ample opportunity of hearing was provided to the appellant by appellate authority but the appellant failed to defend himself with plausible/justifiable grounds, hence his appeal was rejected/filed vide No.845-50/PA dated 16.07.2020 on the grounds of facts and limitation. The appellant then preferred revision petition before the Revision Board, which after due consideration was also filed/rejected vide No. 1300/21 dated 24.03.2021 on the same grounds.
5. That appeal of the appellant being devoid of merits and limitation may be dismissed on the following grounds.

**REPLY ON GROUNDS:-**

- A. Incorrect. The punishment orders passed by the competent authority are just legal, lawful and according to norms of natural justice hence, liable to be upheld.
- B. Incorrect. The appellant was provided full opportunity of defense/ personal hearing, but he failed to prove his innocence and no violation of the Article 10 A of Constitution of Pakistan 1973 has been done by the replying respondents.
- C. Incorrect. Para already explained in the facts. The appellant is a habitual absentee and deliberately absented from his lawful duty without any leave /permission. The appellant being not interested in his official duty remained continuously absent from lawful duty for long period without any leave.
- D. Incorrect. Being member of a disciplined force, the appellant was well aware about the proceedings. However he deliberately absented from his lawful duty without any leave or permission. Therefore, the punishment order was passed by competent authority in pursuance of his long absence from official duty, which is not tolerable in the disciplined force.
- E. Incorrect. Regular inquiry was conducted against him and thereafter he was issued final show cause notice and sent him at his home address through local police which was received by the appellant personally, but he deliberately avoided to appear/submit his written reply. Hence after fulfilling all the codal formalities, he was awarded the major punishment of dismissal from service under rules ibid.
- F. Incorrect. The appellant was treated as per Rules ibid and proper departmental enquiry was conducted against him. The punishment order passed by the competent authority is in accordance with law/rules.
- G. Incorrect. The whole enquiry proceedings were initiated purely on merit and in accordance with law/rules. The appellant called time and again to appear, but he failed to appear and defend himself, hence the punishment order passed by the competent authority is just legal and has been passed in accordance with law/rules.
- H. Incorrect. Para already explained in the proceeding paras. Further, he was issued final show cause notice which was received by appellant but failed to appear before the competent authority.
- I. Para already explained in the preceding paras.
- J. Incorrect. Charge sheet with statement of allegations was issued to appellant. Regular inquiry was conducted and thereafter he was issued a final show cause notice, besides, given proper


opportunity of personal hearing and defense, but he failed to defend himself, hence after fulfilling all the codal formalities he was awarded the Major punishment of dismissal from service under rules ibid.

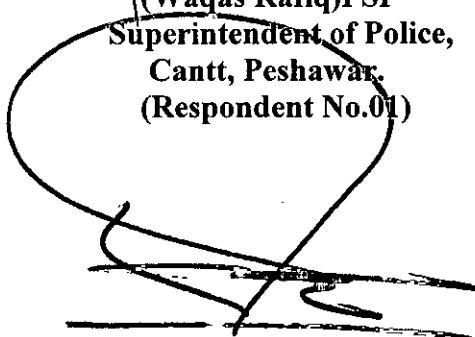
K. Incorrect. The appellant was provided the opportunities of defense, but he willfully avoided to join the enquiry proceedings. The appellant was habitual absentee, hence proper departmental enquiry was conducted against him. The charges of deliberate absence were proved against him. Therefore, the punishment order was passed by competent authority in pursuance of his long absence period which is not tolerable in the disciplined force.

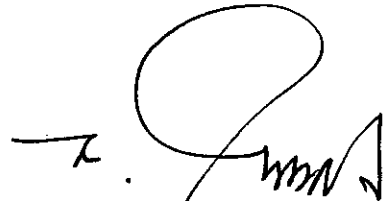
L. Respondents also seek permission of this Honorable Tribunal to raise additional grounds at the time of arguments.

**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.

  
(Waqas Rafiq)PSP  
Superintendent of Police,  
Cantt, Peshawar.  
(Respondent No.01)

  
(Syed Ashfaq Anwar)PSP  
Capital City Police Officer,  
Peshawar.  
(Respondent No.2)

  
(Dr. Muhammad Akhtar Abbas)PSP  
DIG/Legal, CPO  
For Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar.  
(Respondent No.03)

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**VERSUS**

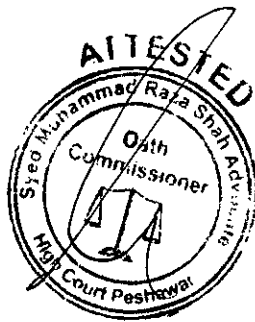
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others..... **Respondents.**

**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 Hon'ble Tribunal. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense have been struck off.

  
**(Waqas Rafiq)PSP  
Superintendent of Police,  
Cantt, Peshawar.  
(Respondent No.01)**

**(Syed Ashfaq Anwar)PSP  
Capital City Police Officer,  
Peshawar.  
(Respondent No.2)**



**11 3 DEC 2023**

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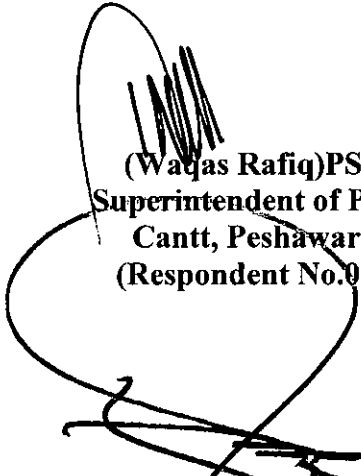
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**VERSUS**

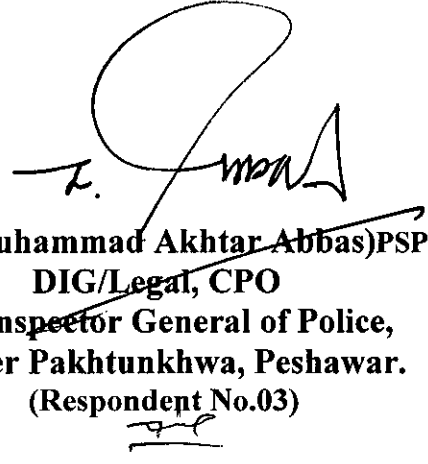
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others..... **Respondents.**

**AUTHORITY.**

I, **Capital City Police Officer, Peshawar**, hereby authorize **Mr.Inam Ullah** DSP legal of Capital City Police, Peshawar to attend the Hon'ble Court and submit written reply, statement and affidavit required for the defense of above service appeal on behalf of respondent department.

  
(Waqas Rafiq)PSP  
Superintendent of Police,  
Cantt, Peshawar.  
(Respondent No.01)

~~(Syed Ashfaq Anwar)PSP  
Capital City Police Officer,  
Peshawar.  
(Respondent No.2)~~

  
(Dr. Muhammad Akhtar Abbas)PSP  
DIG/Legal, CPO  
For Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar.  
(Respondent No.03)

1. Name of Official MURSALIN GUL No.3912S/OWAHID GUL  
R/O Naqai P.S Daudzai Distt: Peshawar
2. Date of Birth 08.04.1978
3. Date of enlistment 26.07.2001
4. Education 10<sup>th</sup>
5. Courses Passed Recruit
6. Total qualifying service 17 years, 02 months & 19 days.
7. Good Entries Nil
8. Punishment (previous)

Bad Entries (L.W.O Pay, E/Drill & Warning)

1. 05 days leave without pay vide OB No.1746 dt: 16.06.2004
2. 02 days leave without pay vide OB No.310 dt: 20.01.2004
3. 03 days leave without pay vide OB No.1432 dt: 17.05.2004
4. 03 days leave without pay vide OB No.3168 dt: 02.11.2004
5. 03 days leave without pay vide OB No.1467 dt: 25.04.2005
6. 01 day leave without pay vide OB No.2619 dt: 03.07.2005
7. 01 day leave without pay vide OB No.3480 dt: 10.11.2005
8. 06 days leave without pay vide OB No.3423 dt: 31.10.2005
9. 02 days leave without pay vide OB No.236 dt: 28.01.2006
10. 05 days leave without pay vide OB No.329 dt: 07.02.2006
11. 02 days leave without pay vide OB No.419 dt: 31.03.2006
12. 02 days leave without pay vide OB No.418 dt: 31.03.2006
13. 05 days leave without pay vide OB No.1126 dt: 24.04.2006
14. 04 days leave without pay vide OB No.1870 dt: 24.07.2006
15. 07 days leave without pay vide OB No.1896 dt: 26.07.2006
16. 02 days leave without pay vide OB No.2209 dt: 24.08.2006
17. 04 days leave without pay vide OB No.1651 dt: 27.06.2006
18. 02 days leave without pay vide OB No.1829 dt: 19.07.2006
19. 01 day leave without pay vide OB No.198 dt: 01.03.2006
20. 03 days leave without pay vide OB No.3130 dt: 05.11.2007
21. 10 days leave without pay vide OB No.448 dt: 12.02.2009
22. 37 days leave without pay & Fine Rs.1000/- vide OB No.17 dt: 03.01.2011
23. 11 days warning be careful in future vide OB No.2387 dt: 25.06.2011
24. 28 days leave without pay vide OB No.2686 dt: 01.09.2014
25. 06 days leave without pay vide OB No.3223 dt: 16.09.2013
26. 03 days leave without pay vide OB No.3169 dt: 11.09.2013
27. 02 days E/drill vide OB No.4240 dt: 10.11.2015
28. 01 day E/drill vide OB No.3248 dt: 20.09.2016
29. 02 days E/drill vide OB No.2190 dt: 26.05.2017
30. 02 days E/drill vide OB No.3696 dt: 30.11.2018
31. 02 days E/drill vide OB No.4036 dt: 27.12.2018

Minor Punishment

01. 23 days absence period treated stoppage of one year increment without cumulative effect vide OB No.3038 dt: 07.10.2008
02. 13 days without pay & censured vide OB No.1146 dt: 02.04.2010
03. Censured vide OB No.2764 dt: 09.08.2010
04. 05 days Censured & warning be careful in future vide OB No.873 dt: 17.03.2014
05. 23 days leave without pay vide OB No.1767 dt: 05.05.2015
06. 60 days leave without pay & stoppage of 02 years annual increment without cumulative effect vide OB No.4502 dt: 15.12.2015
07. 02 days Quarter Guard vide OB No.1476 dt: 20.04.2016
08. 05 days Quarter Guard vide OB No.1699 dt: 05.05.2016
09. 32 days leave without pay & stoppage of one year annual increment without cumulative effect vide OB No.2501 dt: 22.06.2017
10. Censured vide OB No.402 dt: 29.01.2018
11. Stoppage of 01 year annual increment without cumulative effect & 49 days leave without pay vide OB No.1150 dt: 02.04.2019
12. Censured & 18 days leave without pay vide OB No.1915 dt: 14.06.2019

Arrested  
L. Gul

(6)

(A)

4

Major Punishment

01 Dismiss Form Service on the charged of absence total (02 months & 11 days) and the period he remained absent from is treated as leave without pay vide OB No 2067 dated 21.06.2018 by SP HQrs Peshawar. And the dismissed order by the appellant is set aside and the major punishment is converted to stoppage of 03 annual increments without cumulative effect. The period of absence is treated as leave without pay vide OB No.3122 dated 15.10.2018 by CCPO Peshawar.

09. Punishment (Current)

- Awarded major punishment of dismissed from service on the charges of absence w.e.f 30.07.2019 to till date vide OB No.119 dated 09.01.2020 by SP/Cantt: Peshawar.

10. Leave Account

<u>Total leave at his credit</u>	<u>Availed leaves</u>	<u>Balance</u>
824 days	125	699 Days

*Attested  
D Daw*

*PAK  
14/7*

*CRC  
14/07/2020*

W/CCPO



ORDER

'B'

7

This office order will dispose off the departmental proceedings against Constable Mursaleen No. 3912 who while posted to Police Station Town, absented himself from his lawful duty with effect from 30.07.2019 to till date.

Under Police Rules 1975 (amended 2014) proper charge sheet alongwith summary of allegation were issued against Constable Mursaleen No. 3912 and SDPO Hayatabad was appointed as enquiry officer to scrutinize the conduct of Constable Mursaleen No. 3912.

The enquiry officer submitted finding and recommended the Constable Mursaleen No. 3912 for major punishment after issuing final show cause notice as he did not join the enquiry proceedings. Hence, he was issued final show cause notice, and sent to the alleged constable through his home address. He received final show cause notice but did not submit reply nor appear before the undersigned within specified period. This shows his lack of interest in official duty and shows negligence. He is continuously absent from duty, neither joined enquiry/proceedings nor appeared before the undersigned.

Keeping in view of the above and recommendation of Enquiry Officer, I, Tassawar Iqbal (PSP), SP Cantt, Peshawar being a competent authority, agreed with the recommendation of the enquiry officer. Therefore, **under Police Disciplinary Rules 1975, Constable Mursaleen No. 3912 is hereby awarded major punishment of dismissal from service, with immediate effect.**

*Accepted  
Z. Khan*

119  
9-1-2020

(TASSAWAR IQBAL) PSP  
SUPERINTENDENT POLICE,  
CANTT: PESHAWAR

No. 121 /SP/Cantt: dated Peshawar, the 10/01/2020.

Copy for information and necessary action to the:-

1. The Sr. Superintendent of Police, Operation, Peshawar.
2. The Superintendent of Police Headquarter: Peshawar.
3. SDPO Hayatabad enquiry officer.
4. Pay Officer.
5. CRC,
6. OASI branch.
7. Fauji Missal branch with enquiry file for record.
8. Official concerned.

**CHARGE SHEET**

I, Superintendent of Police, Cantt:, Capital City Police Peshawar, as a competent authority, hereby, charge that **FC Mursalin No. 2912** of Capital City Police Peshawar with the following allegations.

"You **FC Mursalin No. 2912** while posted to PS Town remained absent from lawful duty w.e.f **30.07.2019 to till date** without permission from your senior. This amounts to gross misconduct on your part and 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.

*Accepted  
Z. Qureshi*

*Muhammad Ashfaq*  
**MUHAMMAD ASHFAQ**  
SUPERINTENDENT OF POLICE,  
CANTT, PESHAWAR

DISCIPLINARY ACTION

D'9

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I, Superintendent of Police, Cantt., Capital City Police Peshawar as a competent authority, am of the opinion that **FC Mursalin No. 912** has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975.

STATEMENT OF ALLEGATION

"That **FC Mursalin No. 912** while posted to Police Station Town remained absent from his lawful duty w.e.f **30.07.2019 to till date**. This amounts to gross misconduct on his part and 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 SDPO H.A. Khan is appointed as Enquiry 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.

3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.

Attended  
Lawa

PA  
Call him in OR

SDPO Hayatabad Circle  
Peshawar

Mohammad Ashfaq  
MOHAMMAD ASHFAQ  
SUPERINTENDENT OF POLICE,  
CANTT, PESHAWAR

No. 239 /E/PA, dated Peshawar the 23/7 /2019.

1. SDPO H.A. is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.
2. Official concerned

Contd



12

OFFICE OF THE

22 'E' 10

ASSIST: SUPERINTENDENT OF POLICE,

HAYATABAD SUB-DIVISION, PESHAWAR.

No. 170 /E/Steno, dated Pesh: the 17/10/2019.

To The Superintendent of Police,  
Cantt, Peshawar.

Subject: DEPARTMENTAL ENQUIRY

Please refer to your office Endt: No.239/E/PA, dated 23.09.2019 pertaining to departmental enquiry against FC Mursalin No. 2912. 3972

Short facts are that accused Constable Mursalin No. 2912 while posted at police station Town, Peshawar remained absent from lawful duty w.e.f 30.07.2019 to till date without approval and prior permission from the competent officer.

The accused Constable could not submit his reply within stipulated period despite the fact that he was summoned three times to join the enquiry proceedings. It amounts to abdication of official duty and shows lack of interest on the part of accused constable Mursalin No. 2912.

In the light of above circumstances, I recommend that the Constable Mursalin No. 2912 be awarded suitable punishment after issuing final show cause notice.

All relevant documents are attached herewith.

Submitted for further approval please.

Attested  
Law

HASSAN JAHANGIR (PSP)  
Enquiry Officer,  
Assist: Superintendent of Police,  
Hayatabad: Sub-Division,  
Peshawar.

Pa

Issue final show  
cause notice.

of  
Sp Comli  
21/10-2019



OFFICE OF THE  
ASSISTANT SUPERINTENDENT OF POLICE,  
HAYATABAD: SUB-DIVISION, PESHAWAR.

No. 161 /PA, dated Pesh: the 02-10 /2019.

CF'11

To: MASI Town

Subject: SUMMON

Memo:

It is to state that this office is conducting enquiry against FC Murselin 2912 for which his statement is required to finalize the enquiry proceedings.

It is, therefore, requested to inform the said official to attend this office on 04-10-19 1100H and his signature/thump expression ought to be sent to this office. In case of non-compliance MASI will be responsible.

P.A to ASP Hayatabad.  
Peshawar.



OFFICE OF THE  
ASSISTANT SUPERINTENDENT OF POLICE,  
HAYATABAD: SUB-DIVISION, PESHAWAR.

No. 170 /PA, dated Pesh: the 09-10 /2019.

To: MASI Town

Subject: SUMMON

Memo:

It is to state that this office is conducting enquiry against FC Murselin 2912 for which his statement is required to finalize the enquiry proceedings.

It is, therefore, requested to inform the said official to attend this office on 11.10.2019 at 1100 hours and his signature/thump expression ought to be sent to this office. In case of non-compliance MASI will be responsible.

P.A to ASP Hayatabad.  
Peshawar.

Attested  
R. K. W.

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FINAL SHOW CAUSE NOTICE

I Superintendent of Police, Cantt, Capital City Police, Peshawar as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve you FC Mursalin No. 3912 of Capital City Police, Peshawar as follows.

1 (i) That consequent upon the completion of enquiry conducted against you by the enquiry officer for which you were given opportunity of hearing.

(ii) On going through the findings and recommendation of the enquiry Officer, the material on record and other connected papers produced before the E.O. ✓

I am satisfied that you have committed the following acts/omissions specified in Police Disciplinary Rules 1975 of the said Ordinance.


"That you FC Mursalin No. 3912 while posted at PS Town, Peshawar were absented from 30.07.2019 to till date without taking permission or leave. This act amounts to gross misconduct on your part and against the discipline of the force"

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under Police Disciplinary Rules 1975 for absence willfully performing duty away from place of posting.

3. 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.

4. If no reply to this notice is received within 7 days of its delivery, 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 be taken against you.

5. The copy of the finding of the enquiry officer is enclosed.

  
(MOHAMMAD ASHFAQ)  
SUPERINTENDENT OF POLICE,  
CANTT: PESHAWAR

No. 1970 /PA, SP/Cantt: dated Peshawar the 23/10 /2019.

Copy to official concerned

Attested  


رہنمائی

178

Handwritten signature and circular stamp.

رند 3-88-6483988-17301

موسیقی مارواڑی اور خان سائیکس

Circular stamp.

0313-9148825

17301-180519

مہاراجہ اور عبدالقدوس خان

مہاراجہ

روبوٹ اور تھوڑا سا ٹرانس سنسٹریٹس میں سے 3912 سے تیسری صوبہ اور اعلیٰ درجہ

دائیں ارسال کرنا

Handwritten mark.

Dr. P. D. Za

27-10-2019

