

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Amendment appeal

In

Service Appeal No.1277/2022

Waqar Ali Ex Constable Belt No. 3171 R/O Police Line Quarter
Peshawar. **Appellant**

VERSUS

The Provincial Police Officer and others KPK Peshawar.

Respondents.

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Appellant

Through



Hamad Hussain
Advocates High Court Peshawar
Mobile No. 03120952763

Dated; 19/03/2024

21/05/2024

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Amendment appeal

In

Service Appeal No.1277/2022

Waqar Ali Ex Constable Belt No. 3171 R/O Police Line Quarter
Peshawar.

..... Appellant

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12008

Dated 29-03-2024

VERSUS

1. The Provincial Police Officer KPK Peshawar.
2. The Chief Capital City Police Officer Police Line Peshawar.
3. The Senior Superintendent of Police Operation Police Line
Peshawar.

..... Respondents

**AMENDEMENT SERVICE APPEAL UNDER SECTION 4
OF THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE ORIGINAL
IMPUGNED ORDER DATED 13/09/2021 AND THE
DEPARTMENT APPEAL PREPARED BY THE
APPELLANT VIDE IMPUGNED ORDER DATED
25/03/2022 SUBSEQUENTLY THE APPEAL FILE
REVISION PETITION UNDER RULE 11-A OF POLICE
RULE 1975 AMENDED 2014 VIDE ORDER DATED
9/02/2023 DURANING THE PENDENCY OF THE
INSTANT SERVICE APPEAL.**

PRAYER:

**ON ACCEPTANCE OF THE INSTANT APPEAL, THE
IMPUGNED OFFICE ORDERS DATED 13/09/2021
,25/03/2022 AND DATED 9/02/2023 MAY**

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GRACIOUSLY BE SET ASIDE AND APPELLANT MAY ALSO BE REINSTATED IN SERVICE WITH ALL BACK BENEFITS.

ANY OTHER ADEQUATE REMEDY WHICH IS NOT PRAYED BY THE APPELLANT IN FACTS / GOURDS DEEMED FIT MAY ALSO BE GRANTED

Original Impugned order date 13/09/2021

Departmental appeal date 15/09/2021.

Date of rejection of Departmental Appeal. 25/03/2022

Rejection order against Revision petition against the order dated 9/02/2023.

RESPECTFULLY SHEWETH,

FACTS:-

- 1 That appellant was appointed as Constable in police department on 05/09/2008. And his service the appellant performed his duty with great zeal and punctuality.
- 2 That vide office order No 1894-1902/PA dated 13/09/2021 the appellant was dismissed from service under by the Senior Superintendent of police Operation Peshawar, without proper procedure and codal formalities as against the law and Rules (copy of Dismissal order is annex "A")
- 3 That on 15/09/2021 the appellant filed departmental appeal against the impugned order dated 13/09/202 to the Chief Capital City Police Officer Peshawar , but the same was also rejected by the C.C.PO Peshawar [Respondent No. 02] Peshawar

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on 25/03/2022 .(copy of departmental appeal & Rejection order dated 25/03/22, as annex "B"

- 4 That on 29/03/2022 the appellant filed a revision petition under Rule 11-A to the Provincial Police Officer Khyber Pakhtunkhwa, Peshawar which was also rejected vide order dated 9./2/2023 and the copy of the rejection order delivered to the appellant on dated 31/10/2023 in reply submitted by the respondents department in this service tribunal during pendency of the instant appeal. **Copy of revision petition and order dated 9/02/2023 as annex "C".**
5. That feeling aggrieved from the impugned orders the appellant now failing the instant appeal on the following grounds inter Alia.

GROUNDS:-

- A. That the impugned office orders is against law, facts circumstances unconstitutional and void -initio hence not sustainable in the eye of law as there is no proper procedure has been adopted , hence the impugned order liable to set aside.
- B. Thatthe impugned office order has been issued on presumption against the appellant as the appellant was not provided fair opportunity for depending himself, which is against the golden principle of natural justice that no one should be condemned unheard.
- C. That in the instant case no proper and regular inquiry has been conducted by the respondent department while no cross

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examination and opportunity of personal hearing has been extended to the appellant which is against the law and rules hence the original impugned order dated 13/09/2021 rejection order departmental appeal dated 25/03/2022 and revision petition under rule 11-A order dated 09/02/2023 are liable to be set aside.

- D. That the appellant was not served final show cause notice nor given opportunity of personal hearing before the competent authority i.e. SSP Operation neither the appellant was cross examine by the enquiry officer and the impugned order was passed in harsh manner but not in accordance with law and rules as well in the instant case publication in two leading newspaper was also not been followed by the respondent department which is mandatory in the case.
- E. That the dismissal from service on the score of a video viral on social media and was not fulfilled the criteria neither statement of any social media person was recorded nor any documentary proof available on record but the appellant was falsely charged for committing misconduct.
- F. That a post already viral on social media from the name of account of another person and was not from the appellant social media account. As the respondent not been examined the concerned social media account person for recording statement against the appellant which is against the law and rules and sustainable in the eye of law.
- G. That as per judgments of the superior courts that and on the bases of media reports departments could not be given

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punishment to any employee, thus the impugned order is against the law and rules relied upon judgment 2018 PLC (C S) Note 36. Besides that any news or reports could not be produced as witness until and unless the concerned reporter would not produce before the court of law for confirmation of its report or news relied upon judgment 1995 PCRLJ 313.

- H. That no opportunity of personal hearing was afforded to the appellant, which is also the mandatory requirement of law as well as principle of natural justice. The appellant was condemned unheard and accordingly the impugned orders void, ab-initio, arbitrary and hence not sustainable.
- I. That the whole departmental proceedings against the appellant was based on personal ill will and with ill intention and harsh illegally major penalty was awarded to the appellant.
- J. that is a settled law that no major penalty can be imposed without holding a regular and detailed enquiry wherein the delinquent official is to be fully associated with all stages of proceedings and be provided fully opportunity of defense but in the case in hand the respondents failed to conduct a full-fledged enquiry rendering the impugned orders as nullity in the eye of law as per judgments of the superior courts.
- K. That any other ground may be adduced during the course of argument, the kind permission of this Honorable Tribunal.

It is, therefore, most humbly prayed that the instant appeal of the appellant may graciously be accepted and the

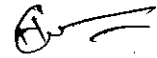
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impugned office order dated 13/09/2021, rejection order dated 25/02/2022 and order of revision petition dated 9/02/2023 may also be set aside & the appellant may kindly be re-instated into service with all back benefits.

Any other relief as deemed appropriate in the circumstances of the case not specifically asked for may also be granted to appellant.

Appellant

Through



Hamad Hussain

&



Naveed Jan

Advocates High Court Peshawar

Cell No: 0312-0952763

Dated: 19/03/2024

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. _____/2022

Waqar Ali Ex Constable Belt No. 3171 R/O Police Line Quarter
Peshawar. **Appellant**

VERSUS

The Provincial Police Officer and others KPK Peshawar.

APPLICATION CONDONATION OF DELAY

Respectfully Shewth:

1. That the appellant has filed service appeal under section 4 of the Service Tribunal Act Against the impugned office order on dated 13/09/2021, whereas the appellant was dismissed from the service.
2. That the appellant had submitted departmental appeal with in time on dated 15/03/2021 to the respondent No 2, which was decided on 25/03/2022 hence the present the appellant filed revisional petition under rule 11 A to the Provincial Police Officer within time but the said revision petition is not deciding with in the stipulated period hence the petitioner filed service appeal before this honorable court.

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3. That during the pendency of the case the respondent submitted his reply before the court in which they submitted the revisional rejection order dated 09/02/2023 through which the appellant has got knowledge about the said order hence the petitioner been aggrieved from the said order That way in the main appeal the above mentioned order dated 09/02/2023 has not been discussed or challenged is the same was issued after filing the appeal therefore it is new development had been made.
4. That it has been the consistent view of the supreme courts that cases should be decided on merits rather on technicalities including the limitation. The same reported in 2004 PLC (CS) 1014 and 2003 PLC (CS) 76.

It is, therefore, humbly prayed that on acceptance of the instant condo -nation application may kindly be allowed.

Date: 19/03/2024

Appellant

Through



Hamad Hussain
ADVOCATE High Court
Mobile No. 0312095276

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Amendment appeal

In

Service Appeal No.1277/2022

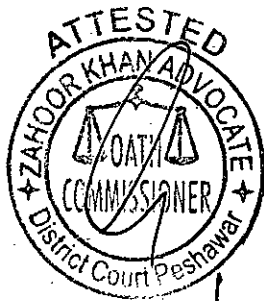
Waqar Ali Ex Constable Belt No. 3171 R/O Police Line Quarter
Peshawar. **..... Appellant**

VERSUS

The Provincial Police Officer and others KPK Peshawar.

AFFIDAVIT

I, Waqar Ali Ex Constable Belt No. 3171 c/o SSP Operation
Police Line Quarter Peshawar, do hereby solemnly affirm and declare
that the contents of the instant appeal is true and correct to the best
of my knowledge and belief and nothing has been concealed from this
Honorable Tribunal.



29/3/22

DEPONENT



OFFICE OF THE
SENIOR SUPERINTENDENT OF POLICE,
OPERATIONS,
PESHAWAR

(9)

ORDER

1. Constable Waqar No. 3171 while posted to Brass Band CCP Peshawar was placed under suspension and proceeded against departmentally vide this office No. 624/PA dated 17.08.2021 on account of a religious video went viral on social media where he made a provocative remarks against the companions (صحابہ کرام) of the Prophet (ﷺ) which triggered an uninterrupted criticism between Ahle-Sunnat and Ahle Tashee community on mainstreaming and social media platforms; thus it caused a lot of pernicious, detrimental situations to the entire police force.
2. Charge sheet along with summary of allegations was issued to him and DSP Suburb was appointed as Inquiry Officer who after conducting a thorough probe into the allegations submitted his findings on 24.08.2021 wherein he held the accused official guilty for the charges leveled against him; the under inquiry official also confessed his guilt and accepted his negligence. The E.O suggested/recommended that he may be dismissed from services.
3. On receipt of the findings, Final Show Cause Notice was issued to the delinquent official vide No. 1853/PA dated 06.09.2021 to which he submitted his reply. The same was perused and found unsatisfactory. He was called in OR and cross examined on 13/09/2021. He failed to put forward any plausible explanation in rebuttal of the charges leveled against him. Therefore, the undersigned being competent do agree with the findings of the Inquiry Officer. He is hereby awarded the major punishment of 'Dismissed from service.

Order announced.

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(YASIR AFRIDI)^{PSP}
Senior Superintendent of Police,
(Operations) Peshawar

No. 1894-1902 /PA dated Peshawar, the 13/09/2021.
Copy for information and necessary action to:

1. The Capital City Police Officer, Peshawar.
2. SP HQs, CCP, Peshawar.
3. DSP HQs CCP Peshawar.
4. AD IT CCP Peshawar.
5. DSP Suburb CCP Peshawar (E.O).
6. OASI/CRC/FMC/PO.
7. I/C Brass Band CCP Peshawar.
8. Official concerned.

TESTED

ATTACHED

(9-A)

Legible/Better Copy

**OFFICE OF THE
SENIOR SUPERINTENDING OF POLICE
OPERATIONS,
PESHAWAR**

ORDER

1. Constable Waqar no.3171 while posted to Brass Band CCP Peshawar was placed under suspension and proceeded against departmentally vide this office 624/PA dated 17.08.2021 on account of a religious video went viral on social media where he made a provocative marks against the companions () of the Property () which triggered an uninterrupted critics between Ahle-Sunat and Ahle Tashee Community on mainstreaming and social media platforms, thus it cause a lot of pernicious, detrimental situations to the entire police force.

2. Cause sheet along with summary of allegations was issued to him and DSP suburb was appointed as Inquiry Officer who after conducting a thorough probe into the allegations submitted his findings on 24.08.2021 wherein he held the accused official guilty for the charges levied against him, the under inquiry official also confessed his guilt and accepted his negligence the E.O suggested/recommended that he may be dismissed from service.

3. On receipt of the findings, Final Show Cause Notice was issued to the delinquent official vide No.1852/PA dated 05.09.2021 to which he submitted his reply. The same was perused and found unsatisfactory. He was called in OR and cross examined on 13.09.2021. he failed to put forwarded any plausible explanation in rebuttal of the charges leveled against him. Therefore, the undersigned being competent dos agreed with the findings of the inquiry officer. He is hereby awarded the major punishment of Dismissal from Service.

Order pronounced

Sd/

YASIR AFRIDI

Senior Superintendent of Police,
(Operations) Peshawar

No.1894-1902/PA dated Peshawar, the 13/09/2021
Copy for information and necessary action to

1. The Capital City Police Officer, Peshawar
2. SP HQR, CCP, Peshawar
3. DSP HQrs CCP Peshawar
4. AD IT CCP Peshawar
5. SDSP Suburb CCP Peshawar (E.O).
6. OASI/CRC/FMC/PO.
7. I/C Brass Band CCP Peshawar
8. Official concerned.

(۱۵)
بہضور جناب چیف کیپٹل سٹی پولیس آفیسر صاحب پشاور

اپیل برخلاف حکم جناب SPP پریشن بحوالہ حکم نمبری 1894-1902
مورخہ 13/09/2021-

جناب عالی! اپیل مندرجہ بالا حکم کے OB No.2360 مورخہ 17/06/2021 کے خلاف کی جاتی ہے۔

حکم کو منسوخ فرمایا جا کر بحالی ملازمت پر بھی حکم جاری کیا جائے۔

(۱) یہ کہ من سائل کا والد صاحب محکمہ پولیس میں بطور کنشیل تعینات تھا۔ اور مورخہ 17/01/2008 کو شہید/وفات پایا۔

(۲) یہ کہ بعد از وفات والد صاحب من سائل کو محکمہ پولیس میں بطور کنشیل مورخہ 05/09/2008 کو Disease سن کوہ میں بھرتی کیا۔

(۳) یہ کہ من سائل نے تیرہ سال اپنی ایمانداری اور آفران بالا کے حکم سے ڈیوٹی کیا ہے۔ اور کبھی کسی قسم کی شکایت من سائل کے خلاف نہیں ہوئی ہے۔

(۴) یہ کہ سوشل میڈیا پر ایک ویڈیو دائر ہوئی تھی جس پر لوگوں نے کمنٹس کیا تھا۔ اور محکمہ نے من سائل کے خلاف انکو سزای کی تھی۔ اور من سائل کو مذکورہ بالا آرڈر اور تاریخ پر محکمہ سے Dismiss کیا۔

(۵) یہ کہ من سائل قانون کا پاسدار ہے۔ اور کبھی بھی کسی قسم کی Religion کے حوالے سے کوئی بھی غیر اخلاقی بات نہیں کر سکتا جس پر مذہب کے مابین لڑائی جھگڑے اور انتشار پھیل جائے

(۶) یہ کہ من سائل نے کوئی گناہ نہیں کیا ہے۔ اور اگر مجھ سے میرے محکمہ کے آفران بالا ناراض ہے تو من سائل اپنے آفران بالا سے معافی مانگنے کو تیار ہوں۔

(۷) لہذا استدعا ہے کہ بوجوہات بالا کی بناء پر میری اپیل کو منظور فرمایا جا کر حکم عنوان بالا کو منسوخ فرمایا جائے۔ نیز دیگر ادرسی جو قرین انصاف ہو وہ بھی مرحمت فرمائی جائے۔
سائل آپ کے لئے اور آپ کے اہل و عیال کیلئے دعائیں کرتا رہے گا۔

مورخہ 15/09/2021

وقار کنشیل نمبر 171
ساکن: پولیس اسٹیشن کوارٹر پشاور
موبائل نمبر 0316-3703771

433-9206474



OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

ORDER.

This order will dispose of the departmental appeal preferred by Ex-Constable Waqar Ali No. 3171 who was awarded the major punishment of "Dismissal from Service" under PR-1975 by SSP/Ops: Peshawar vide order No.1894-1902/PA, dated 13.09.2021.

2- Short facts leading to the instant appeal are that the accused official while posted at Brass band Police Lines, Peshawar a religious video went viral on social media where he made a provocative remarks against the companion (صحابہ کرام) of the Prophet ﷺ which triggered an uninterrupted criticism between Ahle-Sunnat and Ahle-Tashi community on mainstreaming and social media platforms, thus it caused a lot of pernicious, detrimental situations to the entire Police force.

3- He was issued proper Charge Sheet and Summary of Allegations by SSP/Ops: Peshawar. DSP Suburb Peshawar was appointed as inquiry officer to scrutinize the conduct of the accused official. The inquiry officer after conducting proper inquiry submitted his findings and recommended him for major punishment of Dismissal from Service. The competent authority in light of the findings of the inquiry officer awarded him the above major punishment.

4- He was heard in person in O.R and the relevant record along with his explanation perused. During personal hearing the appellant failed to submit any plausible explanation in his defence. He contended that he do not made any proactive remarks against the companion (صحابہ کرام) of the Prophet ﷺ, himself but the same was viral by his children's from his mobile. His dope screening test was also conducted which was received negative for any drug/sedative. The punishment awarded to him by the competent authority is commensurate with the gravity of allegations. Therefore, his appeal for setting aside the punishment awarded to him by SSP/Ops: Peshawar vide order No. 1894-1902/PA, dated 13.09.2021 is hereby rejected/filed.

(MUHAMMAD IJAZ KHAN) PSP
CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 960-67/PA,

dated Peshawar the 25 / 10 / 2022

Copies for information and necessary action to the:-

1. SSP/Operations, Peshawar.
2. SP/HQrs: Peshawar.
3. AD-IT CCP Peshawar
4. PO. CRC and OASL.
5. FMC along with complete fouji missal.
6. Official concerned.

بخدمت جناب آئی جی پی سی خیبر پختونخوا پشاور

ایپل بر خلاف جناب SSP Operation بحوالہ حکم نمبری 1894-1902

مورخہ 13/09/2021

جناب عالی: ایپل مندرجہ بالا OB No. 2360 مورخہ 17/06/2021 کے خلاف کی جاتی ہے۔

حکم کو منسوخ فرمایا جا کر بحالی ملازمت پر حکم جاری کیا جاوے۔

(1) یہ کہ من سائل کا والد صاحب محکمہ پولیس میں بطور کنسٹیبل تعینات تھا مورخہ 17/01/2008 کو شہید/وفات ہوا۔

(2) یہ کہ من سائل کی 15 سال اپنی ایمانداری اور آفسران بالا کے حکم سے ڈیوٹی سرانجام دی ہے اور کبھی کسی قسم کی شکایت من سائل کے خلاف نہیں ہوئی ہے۔

(3) یہ کہ سوشل میڈیا پر ایک ویڈیو وائرل ہوئی تھی جس پر برہمنوں نے کنٹینس کیا تھا اور محکمہ نے من سائل کے خلاف انکو آڑی کی تھی اور من سائل کو مذکورہ بالا آرڈر اور تاریخ کو محکمہ سے Dismiss کیا۔

(4) یہ کہ من سائل قانون کا پاسدار ہے اور کبھی بھی کسی قسم کی Religion کے حوالے سے کوئی بھی غیر اخلاقی بات نہیں کر سکتا جس پر مذہب کے مابین لڑائی جھگڑا پیدا ہوں۔

(5) یہ کہ من سائل نے کوئی گناہ نہیں کیا اور اگر مجھ سے محکمہ کے آفسران بالا ناراض ہیں تو من سائل اپنے آفسران بالا سے معافی مانگنے کو تیار ہے۔

لہذا استدعا ہے کہ بوجوہات بالا کی بناء پر میری ایپل کو منظور فرمایا جا کر حکم عنوان بالا منسوخ فرمایا جائے نیز دیگر دادرسی جو قرین انصاف مرحمت فرمائی جائے۔ سائل آپکے لیے اور آپکے بچوں کے لیے تمام عمر دعا کرتا رہے گا۔

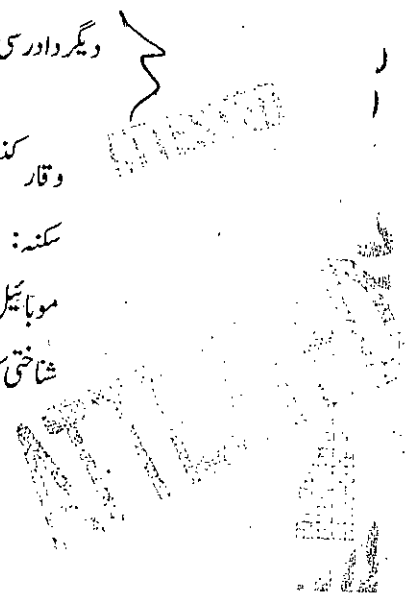
مورخہ: 29/03/2022

وقار کنسٹیبل ہیٹ نمبر 3171

سکنہ: زیڈ ٹاؤن ملتان

موبائل نمبر: 03163703771

شناختی کارڈ نمبر: 17301-4867103-1





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OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

ORDER

This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted by Ex-FC Waqar Ali No. 3171. The petitioner was dismissed from service by SSP/Operations, Peshawar vide order Endst: No. 1894-1902/PA, dated 13.09.2021 on the allegations that he while posted at Brass Band Police Lines, Peshawar, a religious video went viral on social media where he made a provocative remarks against the companions (صحابہ کرام) of the prophet ﷺ which triggered an un-interrupted criticism between Ahle-Sunnat and Ahle-Tashi community on mainstreaming and social media platforms, thus it caused a lot of pernicious, detrimental situations to the entire Police force. His appeal was rejected by Capital City Police Officer, Peshawar vide order Endst: No. 960-67/PA, dated 25.03.2022.

Meeting of Appellate Board was held on 19.01.2023 wherein petitioner was heard in person. Petitioner denied the allegations leveled against him.

The Board examined the enquiry papers which reveal that the petitioner was found guilty and the Enquiry Officer recommended that FIR should be registered against him. Perusal of the record reveals that he was earlier dismissed from service on 01.01.2016 on the allegation of absence from duty. During hearing petitioner failed to advance any plausible explanation in rebuttal of the charges. Therefore, the Board decided that his petition is hereby rejected.

Sd/-

SABIR AHMED, PSP
Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar.

No. S/ 276-82 /23, dated Peshawar, the 9-02 /2023.

Copy of the above is forwarded to the:

1. Capital City Police Officer, Peshawar. One Service Roll, one Fauji Missal and one enquiry file of the above named Ex-FC received vide your office Memo: No. 7901/CRC, dated 20.04.2022 is returned herewith for your office record.
2. Senior Superintendent of Police, Operations, Peshawar.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
5. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV CPO Peshawar.



Assistant II
For n. action

(DR. ZAHID ULLAH) PSP
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.