

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 224/2024

Maisam Ali

Ex-Const: No. 963 District Kohat

..... Appellant

VERSUS


Inspector General of Police, Khyber Pakhtunkhwa, and others

..... Respondents

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DEPONENT


DSP/ Legal,
Kohat.

13-05-2024
Peshawar
S.B.

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**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 224/2024

Maisam Ali

Ex-Const: No. 963 District Kohat

..... Appellant

VERSUS

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12498

Dated 30-04-2024

Inspector General of Police, Khyber Pakhtunkhwa, and others

..... Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Sheweth:-

Parawise comments on behalf of respondents are submitted as under:-

Preliminary Objections:-

- i. That the appellant has got no cause of action to file the instant appeal.
- ii. That the instant appeal is time barred, hence it deserves to be dismissed at this score alone.
- iii. That the appellant has not come to this Honorable Tribunal with clean hands.
- iv. That the appeal is legally bad in the eyes of law, hence it is not maintainable and liable to be dismissed in limine.

Facts:-

1. Pertains to record, hence no comments.
2. Para No. 2 of appeal is incorrect. From the perusal of service record of appellant, he involved himself in 02 murder cases i.e FIR No. 80 dated 23.03.2013 u/s 302/34/109 PPC & FIR No. 37 dated 06.02.2017 u/s 302/34 PPC Police station Usterzai, Kohat. **Copy of FIR No 80 & 164 statements are attached as Annexure A, B, C & D.**
3. Correct to the extent of involvement in murder case, however, as a consequence of his involvement in murder cases, the appellant was dismissed from service after proper departmental enquiry vide order of respondent No. 3 dated 24.11.2020. **Copy of the dismissal order is attached as Annexure E.**
4. Correct to the extent that charge sheet and statement of allegations were served upon the appellant, to which he furnished reply but since it was found unsatisfactory, therefore, proper departmental proceedings were initiated.
5. Pertains to record.
6. Pertains to Court, hence needs no comments.

7. Pertains to Court, hence needs no comments.
8. Correct to the extent of acquittal, the Complainant of FIR No. 80 has instituted an Appeal against his Acquittal before the Honorable Peshawar High Court Peshawar, whereby it was stated in the order that " the accused were acquitted on the same set of evidence. After hearing the learned Counsel, we are of the view that the case requires re-appraisal of evidence. Admit & Notice; implying that his acquittal by the lower court is being contested in the superior court and the matter is still subjudiced before Hon'ble Peshawar High Court, Peshawar. **(Copy of the order of Peshawar High Court, Peshawar dated 15 February 2024 is attached to the comments as Annexure F) .**
9. Appellant was dismissed from service after proper departmental enquiry during which appellant was found guilty. However, criminal and departmental proceedings are two different proceedings, having no bearing on each others.
10. It is well settled principle of administrative law that criminal and departmental proceedings are two different entities, having no bearing on each other hence the appellant has got no cause of action to file the instant appeal. Furthermore, the Complainant of FIR No. 80 has instituted an Appeal against acquittal of the appellant before Honorable Peshawar High Court Peshawar, as discussed in Para No. 8 above.

Grounds:-


- A. Incorrect, both the impugned orders passed by the respondent No. 3 & 2 are quite legal, in accordance with law/ rules and principles of natural justice.
- B. Incorrect, the appellant during enquiry proceedings was associated with the inquiry and given opportunity to defend himself, but he failed, hence was dealt as per law.
- C. Incorrect, as submitted above, the disciplinary proceedings initiated against the appellant were in accordance with law / rules and all codal formalities were observed in letter and spirit, before passing final order.
- D. Reply already given vide Paras above.
- E. Incorrect, during the subsequent enquiry, charge sheet and statement of allegations were served upon the appellant and he was dismissed from service in accordance with law.
- F. Incorrect, proper opportunity of defense was provided during departmental proceedings, however, he failed to prove himself innocent and found guilty hence, dismissed from service as per law/ rules. Appellant had taken law in his hands and committed heinous offence of murder and has no place in Police department. Furthermore, the Complainant of FIR-80 has instituted an Appeal


against acquittal of appellant before Honorable Peshawar High Court Peshawar, as discussed in the above para.

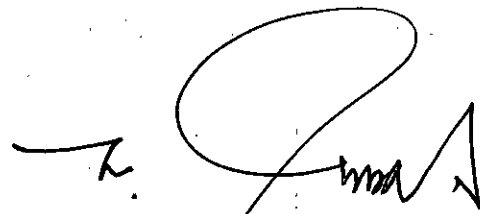
- G. Reply already given vide para above.
- H. Reply already given vide para above.
- I. Incorrect, the appeal of appellant is badly time barred. Appellant has made lame excuses to seek condonation of delay in the instant appeal. The appellant has failed to submit separate application for condonation of delay. Hence, under such circumstances, period of delay in filing the instant appeal does not deserve to be condoned and at this score alone, the instant appeal is liable to be dismissed with costs, being time barred and devoid of merit.
- J. Incorrect, suspension of the appellant is quite legal in accordance with law/ rules hence it cannot be called in question.
- K. The respondents will also raised additional grounds at the time of hearing with permission of Hon'ble Service Tribunal.

PRAYER:-

It is therefore, humbly requested since the appellant has failed to pin point any legal or factual lacuna in the orders of respondents. The appellant being member of a disciplined Force, has earned a bad name to the entire department by committing murders. Therefore, both the orders being lawful may graciously be upheld while appeal of the appellant being time barred, devoid of merits and unsubstantiated may kindly be dismissed with costs.


District Police Officer,
Kohat
(Respondent No. 3)
(MUHAMMAD OMER KHAN) PSP
Incumbent


Regional Police Officer,
Kohat
(Respondent No. 2)
(SHER AKBER) PSP, S.St
Incumbent


DIG / Legal, CPO
For Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 1)
(DR. MUHAMMAD AKHTAR ABBAS) PSP
Incumbent

P-4
WA

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 224/2024

Maisam Ali

Ex-Const: No. 963 District Kohat

..... Appellant

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, and others

..... Respondents

AFFIDAVIT

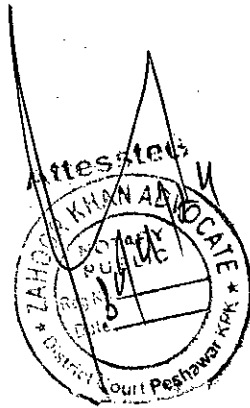
I, Muhammad Omer Khan, District Police Officer, Kohat, respondent No. 3 hereby solemnly affirm on oath that the contents of Para-wise comments on behalf of respondents No. 1 to 3 are correct to the best of my knowledge/ belief. Nothing has been concealed from this Hon'ble Service Tribunal. *Furthermore* *nor any cost neither ex-parte in the instant case.*

Muhammad Omer Khan

District Police Officer,
Kohat

(Respondent No. 3)

MUHAMMAD OMER KHAN) PSP
Incumbent



U.S.A.

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 224/2024

Maisam Ali

Ex-Const: No. 963 District Kohat

..... Appellant

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, and others

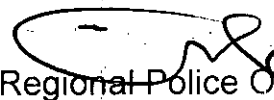
..... Respondents

AUTHORITY LETTER

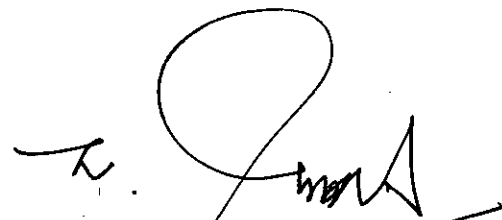
Mr. Usman Ali Khan DSP Legal, Kohat is hereby authorized for submission of reply before the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar and also to defend the above mentioned Service Appeal on behalf of the respondents.



District Police Officer,
Kohat
(Respondent No. 3)
(MUHAMMAD OMER KHAN) PSP
Incumbent



Regional Police Officer,
Kohat
(Respondent No. 2)
(SHER AKBER) PSP, S.St
Incumbent

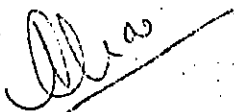


DIG / Legal, CPO
For Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 1)
(DR. MUHAMMAD AKHTAR ABBAS)
PSP
Incumbent


Supplementary Statement of Major Abbas Ali Bangash s/o Ali Muhammad Bangash (deceased) aged about 36/37 years r/o Usterzai Payan Kohat (complainant) u/s 164 Cr.PC on oath:-

Stated that in the FIR , I had charged Zulfiqar Ali alias Bhutto , Riaz Ali, Mazhar Ali s/o Nadir Ali r/o Usterzai Payan for the murder of my father Capt(R) Ali Muhammad Bangash. Through reliable/confirmed sources/information, I have come to know that Constable Maisam Ali of Elite Police Force also fired at my father. Constable Maisam Ali was seen present around the scene of murder of my father around 19.00 hours on 23rd March 2013 by number of people. In order to carry out thorough investigation of the case , it is requested that Constable Maisam Ali of Elite Force be arrested so that Police is able to investigate him. I also produce 3 x photocopies of the complaints of my father which he addressed to various officials/court with regards to the life threats given to him by Zulfiqar Ali alias Bhutto and his brothers. It will amply establish the cause and motive behind the murder of my father. 2 x photocopies of the court proceedings of the legal case on "Illegal occupation of the shamilat" by Zulfiqar Ali alias Bhutto is also enclosed. This is my statement.

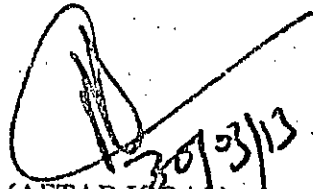
RO&AC
30.03.2013



Major Abbas Ali Bangash
CNIC No. 71103-1779702-1


(AFTAB IQBAL)
JM-VI Kohat

Certified u/s 164 Cr.P.C.


(AFTAB IQBAL)
JM-VI, Kohat

AP/10/10
WAV
28/3/13

2163

بريد حافظت لکھنؤ میں آج کل کے حالات کو دیکھ کر
مخبروں کے ذریعے سے یہ معلوم ہوا ہے کہ اس ملک میں
مذہب کے نام پر جو کچھ ہو رہا ہے اس کی حالت یہ ہے کہ
مذہب کے نام پر جو کچھ ہو رہا ہے اس کی حالت یہ ہے کہ
مذہب کے نام پر جو کچھ ہو رہا ہے اس کی حالت یہ ہے کہ
مذہب کے نام پر جو کچھ ہو رہا ہے اس کی حالت یہ ہے کہ

D. S. 114
114. P. S. 114
G. S. 114

آرٹھریٹری

دستخط
عبد

مذہب کے نام پر جو کچھ ہو رہا ہے اس کی حالت یہ ہے کہ
مذہب کے نام پر جو کچھ ہو رہا ہے اس کی حالت یہ ہے کہ
مذہب کے نام پر جو کچھ ہو رہا ہے اس کی حالت یہ ہے کہ
مذہب کے نام پر جو کچھ ہو رہا ہے اس کی حالت یہ ہے کہ

M. A. D.
11/1/17

17/4/17

~~W/W~~
~~W/W~~
~~W/W~~

Handwritten text in Urdu script, appearing to be a list or a series of notes. The text is written in a cursive style and is somewhat difficult to read due to the handwriting and the quality of the scan. It seems to contain various phrases and possibly names or titles.

(2)

کے تین دن بعد سرنگ 2017 کو 9 سپر اسٹیکس بنا دی گئیں۔
 ان صارفین کے لئے آرڈر ولفے کی تعمیل کے لئے پروجیکٹ کے
 کارروائیوں کو سامنے لیا گیا، جو SP کے سامنے لیا گیا ہے۔
 رپورٹ میں کوئی عیب بھی نہیں ملتا ہے۔
 لیکن اس کے بعد اس کے بارے میں کوئی بھی
 عملیاتی رپورٹ نہیں ملتی ہے۔
 اس کے علاوہ اس کے بارے میں کوئی بھی
 رپورٹ نہیں ملتی ہے۔
 اس کے علاوہ اس کے بارے میں کوئی بھی
 رپورٹ نہیں ملتی ہے۔

- ① تاحہ عالم خان ولد فریدی
- ② سران ولد راضی علی
- ③ ذوالفقار علی ولد نادر علی
- ④ حجازی ولد تاحہ عالم خان
- ⑤ سعید عزیز
- ⑥ بااثر ہیں لہذا جمعہ ان سے خط بھیجا جائے گا۔
- ⑦ اعلیٰ حجازی و اعلیٰ حجازی

خط: - رضی تاحہ

CNIC: 14301-2342941-0

Sadeeqia Farheen CNIC: farheen shah

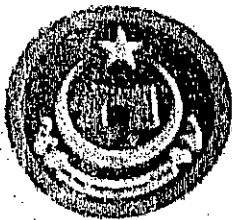
NO 9 A.C.

Research XX

14/12/2017

14/12/2017

Signature



OFFICE OF THE
DISTRICT POLICE OFFICER,
KOHAT

Amr R
R 12
Wah

ORDER

This order will dispose of a regular departmental enquiry initiated against Constable Mehsam Ali No. 963, (hereinafter called accused official), under the Khyber Pakhtunkhwa, Police Rules, 1975 (amendment 2014).

2. Short facts of the case are that the accused official was charged in criminal case vide FIR No. 80 dated 24.03.2013 u/ss 302,109, 34 PPC PS Usterzal, Kohat and facing trial in the court of Sessions Judge Peshawar. On conclusion of trial the accused official is convicted u/s 302 (b), 34 PPC and sentenced to the extent of imprisonment for life as tazir and shall pay Rs: 200,000/- as compensation to legal hires of deceased, in default the accused official shall undergo further six months simple imprisonment, vide judgment dated 13.10.2020.

3. The accused official on bail was arrested and confined to Central Prison Peshawar to undergo the sentence. Hence on the above, a charge sheet alongwith statement of allegations was served upon him through Superintendent Central Prison Peshawar, but no reply was received to this office or enquiry officer

4. The enquiry officer (SDPO HQrs) conducted the proceeding accordingly and examined the relevant witnesses. The enquiry officer held the accused official guilty of the charges.

5. In view of above, Final Show Cause Notice alongwith relevant record was served upon the convicted accused official, through Superintendent Central Prison Peshawar, but no reply is received within prescribed period.

5. In view of above and available record, I, came to the conclusion that the charges leveled against the accused official have been established beyond any shadow of doubt. Record further indicates that the accused official is ill reputed. Therefore, I, Javed Iqbal District Police Officer, Kohat, in exercise of powers conferred upon me under the rules ibid, impose a major punishment of dismissal from service upon convicted constable Mehsam Ali No. 963 with immediate effect. (Kit etc allotted to the accused official be collected)

DISTRICT POLICE OFFICER,
KOHAT

24/11

OB No.

830

Date

24.11.2020

No.

5901-04 /PA dated Kohat the 24-11-2020.

Copy of above for necessary action to the:-

1. Reader/SRC/OHC/LO & Pay officer.
2. Convicted Mehsam Ali through Superintendent Jail concerned for information.


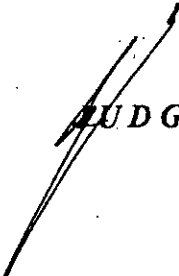
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Anx F
R-13
V/A

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET



Date of Order or Proceedings	Order of other Proceedings with Signature of Judge.
15.02.2024	2
	<p>Cr.A No.1398-P/2023.</p> <p>Present:</p> <p style="text-align: center;">Mr. Hussain Ali, Advocate, for the appellant.</p> <p style="text-align: center;">*****</p> <p><i>Inter-alia</i> contends that in earlier round of litigation, the accused-respondents were convicted and sentenced, however, on remand of the case to the learned trial court, the accused were acquitted of the charges on the same set of evidence. After hearing the learned counsel for the appellant, we are of the view that the case requires re-appraisal of evidence. Admit. Notice.</p> <p>Bailable warrant of arrest in the sum of Rs.50,000/- (fifty thousand rupees) with two sureties each in the like amount be issued against the accused-respondent to the satisfaction of Additional Registrar Judicial of this Court.</p> <p style="text-align: right;">  JUDGE </p> <p style="text-align: center;">33153</p> <p style="text-align: center;">15-02-2024</p> <p style="text-align: center;">5 - P</p> <p style="text-align: center;">20 - W</p> <p style="text-align: center;">20-02-2024</p> <p style="text-align: center;">20-02-2024</p> <p style="text-align: right;">  JUDGE </p> <p style="text-align: right;"> CERTIFIED TO BE TRUE COPY EXAMINER Peshawar High Court, Peshawar Authorized Under Article 8, 7 of the Qanun-e-Shahadat Act 1984 20 FEB 2024 </p>

(Under Seal) "20" Honble Mr. Justice Shahid Ahmad and Honble Mr. Justice Waseem Ahmad

Alid
all
patent

P-14
UZA

(A)

IN THE PESHAWAR HIGH COURT PESHAWAR
OPENING SHEET FOR CRIMINAL BRANCH

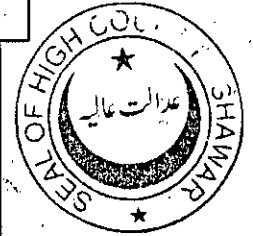
Case Type

Case NO

Date of Filing
2/10/2023

District: Peshawar

Cri.Appeal	Cri. Revision	Cri.Misc	T.A (Cri)	I.C.A
1. Category Code				Review In
(Categories & sub-Categories are given at back of the opening Sheet)				



Case lies against	FIR#/ Police Station (in state case)	Decided by Court / Forum	Date of Decision	Result/ sentence	Whether decision are concurrent or at variance
Original Order/ proceedings	FIR NO 80 P.S Ustarzal Kohat	Session Judge Peshawar	16/9/2023	Respondents were acquitted	
Review	Revision	Appeal			

Particulars of Petitioner/ Appellant & Respondent.

Appellant(s)/ Petitioner(s) * (Accused/ complainant/
Abbas Ali Bangash s/o Ali Muhammad Bangash
R/o ustarzal payan Tehsil & Distt: Kohat
 \Mobile No _____
 Name of Jail in which appellant/ pet/ Respondent confined/ custody : NIL

2. Appellant (s) Petitioner(s) Counsel *(Accused/ Complainant),
 Mobile No 0333-9105258 E-mail hussalnlawchamber15a@yahoo.com
 Address 16-B Rehman Plaza Peshawar
 Name of Jail in which appellant/ pet/ Respondent confined. If in custody: _____
 Respondents (s) (Accused/ Complainant):
 1) **Roiiaz Ali s/o Nadar Khan**
 2) **meisam Ali s/o Riaz Ali**
 3) **Zulfiqar Ali alias Bhutto s/o Nadar Ali**
All R/o Ustarzal Payan Tehsil & Distt: Kohat

Name of Jail in which Respondent confined, if in custody _____

Relevant Law (s) (name of the law (s))	Relevant section (s)/ clause (s) Sub-Section (s)/ sub-clause(s)
PPC	302/34/109-ppc
ATA	
Special Law (give name of enactment)	

Prayer : It is therefore, humbly prayed that on acceptance of this appeal, judgment and order impugned herein, be set aside and Respondents -#1 to 3, may please be convicted and sentenced U/S 302/34/109-PPC by awarding them punishment in the interest of justice.

Signature of Appellant/ Petitioner or Counsel: _____ Dated 2/10/2023

*use extra sheet if required. (No of extra sheets used)

** Copy to be attached

Note: Any suggestion to improve the proforma will be appreciated

Muhammad
UZA
D. K. Khan

ATTESTED
EXAMINER
Peshawar High Court
Peshawar

P-15
M.A.

(C)

BEFORE THE PESHAWAR HIGH COURT PESHAWAR.

Cr. Appeal # 12023

Abbas Ali Bangash s/o Ali Muhammad Bangash
R/o Ustarzai Payan, Tehsil & Distt: Kohat Appellant

VERSUS

- 1) Riaz Ali
 - 2) Zulfiqar Ali alaias Bhutto sons of Nadar Khan
 - 3) Meisam Ali s/o Riaz Ali
All R/o Ustarzai Payan , Tehsil & Distt: Kohat
 - 4) The State
- Respondents

FIR # 80 Dated 24/3/20213
U/S 302/34/109-PPC
P.S Ustarzai (Kohat)

=====
Criminal appeal u/s 417(2-A) CrPC , against
the Judgment and order dated 16/9/2023 passed by
Session Judge Peshawar vide which respondents
1 to 3, (Accused in case FIR as mentioned
above) have been acquitted of the charges u/s
302/34/ 109- PPC
=====

Prayer in Appeal:

On acceptance of this appeal , the judgment and order
Dated 16/9/2023 impugned here in, be set aside to
the ends of justice and the Respondents # 1 to 3 ,
may please be convicted and sentence
u/s 302/ 34/109 PPC by awarding them punishment in
according to Law.
=====

GRONDS OF APPEAL.

- 1) That the impugned Judgment and order of acquittal of respondents
1 to 3 , dated 16/9/2023 passed by Session Judge Peshawar
manifestly against law and facts , hence untenable.
- 2) That the impugned order passed by the trial court is wholly un-
reasonable and untenable . That the evidence produced by the
prosecution has not been considered in the proper perspective.
- 3) That the ocular testimony had a ring of truth around it, inspired
confidence and from evidence produced and material brought

CRA1398-2023 ABBAS ALI VS RIAZ ALI CF PG89

M.A. Ali
M.A. Ali
M.A. Ali

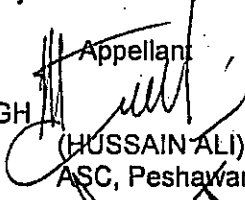


ATTESTED
EXAMINER
Peshawar High Court
Peshawar

2

on record, overwhelming proof of committing, the offence by the Respondents #1 to 3, were apparent on the face of the record but still the order of acquittal has been passed entailing the judgment /order on complete misreading of evidence indicating great miscarriage of justice in reasons and conclusion arrived at beside artificial are erroneous.

- 4) That the learned trial court did not appreciate the evidence as per principle laid down by the superior courts from time to time and has gravely erred to discard the direct evidence and as such, acquittal order passed by the lower court.
- 5) That the ground which prevails with the trial court qua acquittal of the Respondents # 1 to 3, are whimsical and unwarranted under the law.
- 6) That the prosecution has established its case beyond the reasonable doubt particularly to extent of involvement of Respondents # 1 to 3, in the case rather prosecution case is in proper sequence least to say about direct statement of PWs before the trial court which could not be rebutted in any manner what-so-ever but even then the learned trial court while acquitting the Accused /Respondents -#1 to 3, have committed grave miscarriage.
- 7) That the accused / respondents were earlier convicted by the trail court on 13/10/2020 and against the said order appeal was filed before this Hon:ble Court, the case of the accused were remanded to the trail court for examination of the defense witness already examined during the previous trail or to place on file triplicate copies of the statement of the defense witness only.
- 8) That as per the law the domain of the trail court after the remand was only to the extent that the direction of this Hon:ble Court be complied with to the extant of rectifying and identified the plea of the accused to the extant of their defense evidence only.

It is therefore, humbly prayed that on acceptance of this appeal, judgment and order impugned herein be set aside and Respondents -#1 to 3, may please be convicted and sentenced U/S 302/34/109-PPC by awarding them punishment in the interest of justice.

Appellant
 THROUGH 
 (HUSSAIN ALI)
 ASC, Peshawar.
 & 
 (Rehmat Ullah)
 & 
 (Abdul wahab)

ATTESTED
EXAMINER
 Peshawa High Court
 Peshawar

M.A.D.
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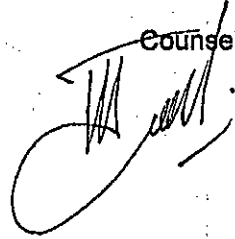
P-17
WAW

3

CERTIFICATE.

Certified that the appellant has not filed an appeal in this August Court earlier to this one

Counsel



~~CERTIFIED TO BE TRUE COPY
BY EXAMINER
Peshawar High Court, Peshawar
Authorized Under Article 8, 7 of
the Qanun-e-Shahadat Act 1984
20 FEB 2024~~

Abbas Ali
vs
Riaz Ali