

BEFORE THE HONOURABLE SEREVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal.No. 1835/2023

Shafi Ullah

Versus

Provincial Police Officer and others

REJOINDER ON BEHALF OF APPELLANT

I N D E X

S. No.	Description of document	Annexure	Pages
1.	Rejoinder along with Affidavit	--	1-5
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Dated: 30/05/2024

Yours Humble Appellant



Shafi Ullah

Through Counsel



Sheikh Iftikhar ul Haq

Advocate Supreme Court

BEFORE THE HONOURABLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 1835/2023

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Respectfully Sheweth:-

REPLY ON PRELIMINARY OBJECTIONS:-

- a) Incorrect. the appellant has given all the facts, which are known to the appellant, hence, para is denied.
- b) In correct. The appeal is well within time, hence, para is misconceived. Actually the appellant was falsely implicated in FIR#76 u/s 302,324/34 PPC on 01/04/2022. Moreover, the appellant was elder سربراہ of the family and due to dignity and honour and to fair of local police, to save his life. The appellant on the intervention of elders patched up the matter with the complainant of the case and on confirmation of BBA on 07/09/2022 and later on acquitted on 27/10/2022 and thus the appellant came into the knowledge about the impugned order dated 07/09/2022 and on 08/09/2022 submitted departmental appeal to the appellate authority. The appellant was not fugitive from law but as stated above in unavoidable circumstances. The appeal is well within time from the order of revisional authority i.e. IGP KPK dated 28/08/2023, hence, this para is misconceived. A separate application for condonation of delay is annexed.
- c) Para (c) is incorrect. The appellant being dismissed from service, hence, aggrieved person and present appeal is maintainable.

- d) Para(d) is incorrect. The answering respondent does not explained those parties where are not impleaded in the instant appeal, hence, para is denied.
- e) Para (e) is denied.
- f) Para (f) is incorrect detail is given in para (b).
- g) Para (g) is incorrect. The answering respondents have not explained that how the appellant has come to this Honourable Tribunal with unclean hands.
- h) Para (h) is incorrect. The appellant has got clear cut cause of action and locus standi, because the instant appeal is against the dismissal from service.
- i) The answering respondents has not given the parties, which has not been impleaded in the appeal, hence, para is misconceived.

OBJECTIONS ON FACTS:-

1. Para#1 needs no reply.
2. Para#2 needs no reply.
3. Para#3 is incorrect. Actually the appellant never remained absent from duty. As stated above the appellant was elder (سربراہ) of his family thereafter the appellant was falsely implicated in case FIR#76/2022 u/s 302,324,34 PPC P.S Gul Imam District Tank. After the false implication the appellant remained in the safe custody of the village elders due to fear of illegal harassment of police and to sabotage the grace of the appellant, because the appellant having good reputation in the Illaqa being a Pathan Belt, hence, the appellant never absented himself and lastly on the intervention of elders the appellant patched up the matter with the complainant party in the aforesaid FIR, who later on released after acquittal from the concerned court and thus the appellant was not in knowledge of the alleged inquiry. Thus all the proceedings, (although not admitted) of the alleged inquiry officer at the back of the appellant was on the basis of lopsided and slipshod manner, the impugned order has been passed which is not maintainable at any cost and the impugned order is

also against the basic and important maxim Audi Alterm Palterm "no one should be condemn unheard", thus this para is misconceived and the impugned order is not maintainable in any cost in the light of judgment of supreme court PLD 2010 895 titled "Chairman Agriculture Development Bank of Pakistan Vs. Mumtaz Khan" and as per section 194 CSR and FR 54.

4. Para#4 is mis-formulated. Although the detail answer is given in supra paras. The answering respondents have not given an opportunity of hearing to the appellant. Although after false implication of the case it was the futile exercise of law to approach any forum in the attending circumstances due to the dignity and to save from disgrace of his family. Thus the question of answering respondents to join investigation and remained absent does not arise in the prevailing circumstances.
5. Para#5 is admitted by the respondent. Moreover, the rejection order of the appellate authority is not in accordance with law, because they have not considered the aspect as given in supra paras.
6. Para#6 is incorrect, hence, denied. When the appellant was allowed ad interim bail and after coming into the knowledge abruptly submitted departmental appeal. Moreover, the answering respondent have never proved the exact date that the impugned order was conveyed/communicated to the appellant, thus in the attending circumstances it was behind the control of appellant to submit departmental appeal before getting knowledge of the impugned order. Moreover, the appellant submitted departmental appeal well within time after coming into the knowledge from the impugned dismissal order and after releasing from the competent court of law and it was futile attempt on the part of the appellant to challenge his dismissal from service order before its receipt and releasing and acquittal from the case specially and peculiar circumstances of the instant case. Moreover, the appeal of the appellant is well within time after the revisional order of

the IGP. Thus the question of limitation does not arise in the instant case and may kindly be discarded in the peculiar circumstances. Hence, para is squarely denied.

7. Para#7 is denied. Detail reply is given in supra paras.
8. Para#8 is admitted by the answering respondents, hence, needs no reply. Thus it is evident from this para that appeal of the appellants is well within time.
9. Para#8 is incorrect. The appellant has been dismissed from service and aggrieved person, thus cause of action arises to the appellant. Moreover, as evident from para anti 8 the appeal of the appellant is well within time and is liable to be accepted.

OBJECTION ON GROUNDS:

Incorrect and misconceived, hence, denied. The appellant submits the following submission jointly against the points raised by the answering respondents.

The grounds and reasons taken by the appellant in the main appeal may kindly be reiterated. The impugned order has been passed at the back of appellant on lopsided and slipshod manner and the appellant has been made a scape goat after the false implication of the criminal case. Although the appellant has been honourably acquitted from the criminal case and every acquittal of any type is honourable and the appeal of the appellant is liable to be accepted in the light of judgment of this Honourable court. The copies of the judgment of this Honourable tribunal of the same nature are annexed as **Annexure-R/1**.

It is therefore, humbly prayed that appeal of the appellant may kindly be accepted as prayed for in the head note of the main appeal.

Any other relief deems appropriate may please be given to the appellant.

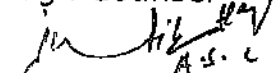
Dated: 30/05/2024

Yours Humble Appellant

شفیق اللہ

Shafi Ullah

Through Counsel


A.S.C.
Sheikh Iftikhar ul Haq
Advocate Supreme Court

BEFORE THE HONOURABLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 1835/2023

Shafi Ullah

Versus

Provincial Police Officer and others

REJOINDER ON BEHALF OF APPELLANT

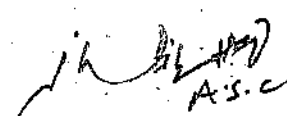
AFFIDAVIT

I, **Shafi Ullah**, the appellant, do hereby solemnly affirm and declare on Oath that contents of the Rejoinder are true and correct to the best of my knowledge and belief; and nothing has been deliberately concealed from this Honourble Court.

Dated: 30/05/2024


DEPONENT

Identified by:


Sheikh Iftikhar ul Haq
Advocate Supreme Court


OATH COMMISSIONER
No. _____
Attested
Dist. Bar, D. KHAN
30/5/24

BECOME THE HONOURABLE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 1835/2023

Shafi Ullah

Versus

Provincial Police Officer and others

APPLICATION UNDER SECTION 5 OF THE LIMITATION
ACT FOR CONDONATION OF DELAY.

Respectfully Sheweth:

The appellant humbly submits as under;

1. That the above titled service appeal is pending adjudication before the worthy Tribunal.
2. That as detail is given in the main service appeal the appellant was falsely implicated in the case FIR#76/2022 u/s 302,324,34 PPC P.S Gul Imam Tank on 01/04/2022 and due to fear and to save his life from disgracing the appellant was with the noble families of his village because the appellant was noble, سربراہ of his own family. After the intervention of the elders, patched up the matter with the complainant party of that FIR and ad interim bail was granted on 07/09/2022 to the appellant and on the next date the departmental appeal was submitted on 08/09/2022 to the appellate authority, which was rejected on the same date i.e. 08/09/2022, which was not communicated to the appellant within time and lastly it was provided to the appellant on 10/04/2023 and the appellant filed the revision petition to the IGP KPK on 04/05/2023, thus, in the attending circumstances the appeal is in time, however, if delay is occurred, may kindly be condoned on the following ground;
 - i. Because the appellant was falsely implicated and was in the safe custody of the noble families of the villagers due to fear and safe the grace of his family and it was futile exercise of law to submit departmental appeal during this time.
 - ii. That after patched up the matter and paying the بدلہ صلح to the complainant party, the appellant was in financial crises and remained hand to mouth with no extra money to pay and engage the counsel and other charges of the appeal.
 - iii. That due to enmity and false implication of the appellant the father of appellant remained seriously ill i.e. paralyzed, Coma and appellant was busy for medical treatment of his father and also spent a lot of money for treatment of his father.
 - iv. That it is pertinent to mention here that the revision petition has not been rejected on the basis of time barred although the appeal of the appellant is within time after the rejection order of the IGP dated 28/08/2023 and as per section 4 of Khyber Pakhtunkhwa service tribunal Act, 1974 the appeal

must be submitted within 30 days after the communication of final/appellate authority order.

- v. Because under section 4 of KPK Service Tribunal Act, 1974, means that u/s 4 being more dominant, powerful and is in the superstation of rules 19 of E&D Rules 2011 empower the competent authority to consider the appeal u/s 11-A Police Rules, 1975 as amended irrespective of the *fact to* compute the limitation from the date of rejection of the appellate authority and thereafter, the appellant accordingly is allowed to seek remedy within 30 days from the receipt of the final order i.e. 28/08/2023 inter alia.

3. That this Honourable Court has vast powers to condone the delay.

It is therefore, humbly prayed that on acceptance of the present application the delay in filing of instant appeal before the worthy tribunal may very graciously be condoned in the interest of Justice.

Dated: 30/05/2024

Yours Humble Appellant

Shafi Ullah

Shafi Ullah

Through Counsel

Sheikh Iftikhar ul Haq

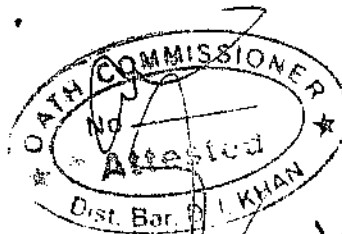
Sheikh Iftikhar ul Haq
Advocate Supreme Court

AFFIDAVIT

I, **Shafi Ullah**, the appellant, do hereby solemnly affirm and declare on Oath that contents of the application are true and correct to the best of my knowledge and belief; and nothing has been deliberately concealed from this Honourable Court.

Shafi Ullah

Deponent



28-Ann-R/13

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

Service Appeal No. 641 /2018



550

12-6-2018

**Rehmat Ullah S/o Aman Ullah Khan Caste Kundi R/o
Gulshan Colony, Tehsil & District Tank.**

.....(Appellant)

VERSUS

1. Provincial Police Officer / Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police / Regional Police Officer, Dera Ismail Khan.
3. District Police Officer, Tank.

.....(Respondents)

**SERVICE APPEAL UNDER SECTION 4
OF KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT 1974.**

PRAYER:-

**ON ACCEPTANCE OF INSTANT APPEAL
THIS HONOURABLE TRIBUNAL BE
PLEASED TO SET ASIDE THE
DISMISSAL ORDER DATED 28/05/2011
PASSED BY THE RESPONDENT NO. 3
AND APPELLATE ORDER DATED
15/03/2018, 31/05/2017 VIDE WHICH
THE DEPARTMENTAL APPEAL OF THE
APPELLANT WAS REJECTED / FILED
PASSED BY THE RESPONDENTS. AND
THE APPELLANT BE REINSTATED AS
CONSTABLE IN THE INCUMBENCY OF
RESPONDENTS AUTHORITY WITH ALL
BACK BENEFITS.**

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ATTESTED

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Respectfully Sheweth:-

Brief facts giving rise to instant appeal are as under:-

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT D.I.KHAN**

Service Appeal No. 641/2018

Date of Institution ... 12.04.2018

Date of Decision ... 28.10.2021



Rehmat Ullah S/o Aman Ullah Khan Caste Kundi R/o Gulshan Colony, Tehsil & District Tank. ... (Appellant)

VERSUS

Provincial Police Officer/Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and two others. ... (Respondents)

Mr. Shaikh Ifikhar Ul Haq, Advocate ... For Appellant

Mr. Muhammad Rasheed, Deputy District Attorney ... For Respondents

ROZINA REHMAN ... **MEMBER (JUDICIAL)**
ATIQU-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that the appellant joined police department as constable on 29-09-2007. During the course of his career, an FIR was lodged against the appellant U/S 302 PPC Dated 26-10-2010. The appellant was proceeded against ex-parte on the charges of his involvement in criminal case and was ultimately dismissed from service vide order dated 28-05-2011. The appellant was acquitted of the criminal charges vide judgment dated 20-06-2016. After his acquittal, the appellant filed departmental appeal, which was rejected vide order dated 31-05-2017. The appellant filed revision petition, which was also rejected vide order dated 15-03-2018. The instant service appeal with prayers that the impugned orders

ATTESTED

[Signature]
ROZINA REHMAN
Member (Judicial)
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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dated 28-05-2011, 31-05-2017 and 15-03-2018 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned orders are against law, facts and circumstances of the case as the appellant never remained absent from duty; that the appellant has not been treated in accordance with law, as no inquiry was conducted against the appellant and the impugned order has been passed in slip shod manner, which is not sustainable in the eye of law; that ex-parte action was initiated against the appellant and the appellant was kept deprived of personal hearing; that the appellant was acquitted of the same charges by the court of law, upon which the appellant was dismissed from service; that there remains no ground with the respondents to dismiss the appellant as the appellant had already been acquitted of the charges.

03. Learned Deputy District Attorney for the respondents has contended that the appellant was charged in a murder case and FIR to this effect was lodged against the appellant U/S 302 Dated 26-10-2010; that after registration of FIR against him, the appellant went in hiding and did not join disciplinary proceedings; that the appellant was proceeded against ex-parte and all the codal formalities were fulfilled; that charge sheet/statement of allegations were sent at his home address and an inquiry was also conducted against the appellant, but the appellant did not turn up, hence he was proceeded ex-parte and was awarded with major punishment of dismissal from service vide order dated 28-05-2011; that the appellant was acquitted of the charges due to compromise between the parties vide judgment dated 20-06-2016.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant was charged in a murder case and was departmentally proceeded against on the charges of his involvement in criminal
 The appellant was ultimately dismissed from service on the same charges. In

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a situation, principle of natural justice demands that respondents must have waited for decision of a criminal court, which is also supported by section 194-A of CSR. It is also settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152. As is evident from their comments, the respondents proceeded the appellant in haste and did not afford appropriate opportunity of defense as was required under the provisions of law and rules, rather conducted ex-parte proceedings only to the extent of fulfillment of codal formalities. Hence the appellant was condemned unheard. In case of imposing major penalty, principle of natural justice requires that a regular inquiry be conducted in matter and opportunity of defense may be provided to civil servant proceeded against. Moreover, if a civil servant is dismissed from service on account of his involvement in criminal case, then he would have been well within his right to claim re-instatement in service after acquittal from that case. Reliance is placed on 2017 PLC (CS) 1976. In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with the authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR 57, 1993 PLC (CS) 460.

TESTED 06. The appellant however was acquitted of the criminal charges vide judgment dated 20-06-2016, thereafter he filed departmental appeal, which cannot be termed as barred by time, as the Supreme Court of Pakistan in its judgment reported as PLD 2010 SC 695 has held that it would have been a futile attempt on part of civil servant to challenge his removal from service before earning acquittal in the relevant criminal case. Moreover, it is a well settled legal proposition that


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 Civil Servants
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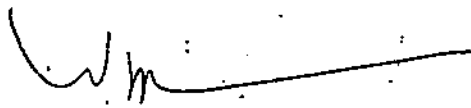
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technical reason including ground of limitation. Reliance is placed on 2004 PLC (CS) 1014 and 1999 SCMR 880.

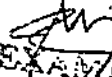
07. In view of the foregoing discussion, the instant appeal is accepted. The appellant is re-instated in service. The intervening period is treated as leave without pay. Parties are left to bear their own costs. File be consigned to record room.

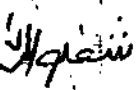
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28.10.2021


(ROZINA REHMAN)
MEMBER (J)
CAMP COURT, D.I.KHAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)
CAMP COURT, D.I.KHAN

Date of Presentation of Application 15/11/21
Number of Words 2000
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EXAMINER
Khyber Pakhtun Khwa
Service Tribunal
Peshawar

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-13- Service Appeal No.87/2019



Date of Institution ... 21.01.2019
Date of Decision ... 27.07.2021

Kaleem Ullah Ex-Constable No.16 District Police, Tank.
... (Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar and
two others. ... (Respondents)

Taimur Ali Khan,
Advocate ... For appellant.

Kabir Ullah Khattak,
Additional Advocate General ... For respondents.

AHMAD SULTAN TAREEN ... CHAIRMAN
ROZINA REHMAN ... MEMBER (J)

JUDGMENT

ROZINA REHMAN, MEMBER (J) : The relevant facts leading to the filing of the instant appeal are that appellant joined Police Force as Constable. He stood charged in a criminal case and faced trial. Later on, he was acquitted on the strength of compromise. After earning acquittal, he received order dated 29.12.2011, whereby, he was dismissed from service. He filed departmental appeal which was also rejected.

2. We have heard Taimur Ali Khan Advocate learned counsel for appellant and Kabir Ullah Khattak learned Additional Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

TESTED
BY
SECRETARY
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

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Ullah

3. Taimur Ali Khan Advocate appearing on behalf of appellant, inter-alia, contends that departmental proceedings were initiated against the appellant in pursuance of F.I.R No.815 dated 06.10.2011 and that it was clearly noted in the impugned order dated 29.12.2011 that it was the outcome of the proceedings taken under the provisions of Khyber Pakhtunkhwa Government Servants Removal from Service (Special Powers) Ordinance, 2000. He submitted that the said Ordinance stood repealed on 15.09.2011 i.e. much before the date of lodging of F.I.R and initiation of proceedings against the appellant. He, therefore, argued that the impugned order is *coram non-judice* and not sustainable on that count. He further argued that the appellant was acquitted by court of competent jurisdiction on 12.01.2018 and thereafter, he submitted departmental appeal which was rejected. He argued that the appellant was never proceeded departmentally for his absence rather he was proceeded against departmentally for being involved in a criminal case but he has now been acquitted and that the appellant was condemned unheard.

4. Conversely, learned A.A.G submitted that the appellant was proceeded departmentally for misconduct and that acquittal by a court does not affect departmental proceedings as criminal proceedings and departmental proceedings can run side by side. He argued that the charge sheet was properly issued and departmental inquiry was conducted under Khyber Pakhtunkhwa Government Servants Removal from Service (Special Powers) Ordinance, 2000 and after fulfilling of codal formalities, impugned order was passed. He submitted that departmental appeal was rightly rejected being badly time barred.

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ATTESTED

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5. Record shows that appellant Kaleem Ullah was charged in a criminal case vide F.I.R No.815 dated 06.10.2011 U/S 302/324/34 P.P.C Police Station Shaheed Mureed Akbar, Tank. The allegations which were pressed into service for disciplinary action against the appellant in formal course, are copied below from statement of allegations annexed with the charge sheet by the departmental authority:

You, Constable Kaleem Ullah No.16 were found involved in criminal case vide F.I.R No.815 dated 06.10.2011 U/S 302/324/34 P.P.C Police Station Shaheed Mureed Akbar Tank which amounts to gross misconduct on your part and punishable under the rules, hence, the statement of allegations is issued.

6. It was because of the occurrence reported in the above mentioned F.I.R that appellant was proceeded against departmentally. A departmental inquiry was conducted through an Inquiry Officer to conduct proper departmental inquiry under N.W.F.P Government Servants Removal from Service (Special Powers) Ordinance, 2000 Amendment Act, 2005. The disciplinary proceedings culminated into dismissal of the appellant from service under R.S.O, 2000 vide order bearing endorsement No.1573 dated 29.12.2011. Admittedly, the impugned order was the outcome of the proceedings taken under the provision of R.S.O, 2000. The said Ordinance stood repealed on 15.09.2011 i.e. much before the date of lodging of F.I.R (F.I.R No.815 dated 16.10.2011) and of initiation of the proceedings against the appellant. There is nothing on file which could show that the appellant was departmentally proceeded against for the absence period, therefore,

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OFFICE OF THE
INQUIRY OFFICER
TANK

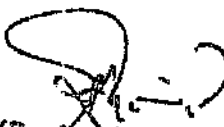
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the impugned order is *coram non-judice* and is not sustainable on that account.

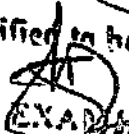
7. As a sequel to above, this appeal is accepted. Consequently, the impugned orders are set aside and it is directed that the appellant be reinstated into service with immediate effect. Absence period shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
27.07.2021


(Ahmad Sultan Tareen)
Chairman


(Rozina Rehman)
Member (J)

Date of Presentation of Application 05/8/21
 Number of Words 2000
 Copying Fee 22/-
 Urgent 4/26/-
 Total _____
 Name of Copyist _____
 Date of Completion of Copy 05/8/21
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Service Tribunal
Peshawar

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