

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 2613/2023

1. Nowshad Ali, Ex Assistant DC Office, Mardan.....(Appellant)

VERSUS

1. Commissioner Mardan Division Mardan.

2. Deputy Commissioner, Mardan & others.....(Respondents)

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Assistant Establishment
DC Office, Mardan.

13-06-24

S B Peshawar

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 2613/2023

1. Nowshad Ali, Ex Assistant DC Office, Mardan.....(Appellant)

VERSUS

1. Commissioner Mardan Division Mardan.
2. Deputy Commissioner, Mardan & others.....(Respondents)

Respectfully Sheweth:

Khyber Pakhtunkhwa
Service Tribunal

Preliminary Objections:

Diary No. 12948

Dated 23-05-24

1. The appellant has got no cause of action.
2. The appellant has not come to this Hon'ble Tribunal with clean hands.
3. This Honorable Tribunal has got no jurisdiction to adjudicate the matter.
4. The appeal is bad for non-joinder of necessary parties and joinder of unnecessary parties.
5. The appeal hopelessly time-barred.

JOINT PARA-WISE COMMENTS BY RESPONDENT NO.01 & 02

Respectfully Sheweth:

REPLY ON FACTS:

1. Pertains to record, hence no comments are offered.
2. As above.
3. As above.
4. Incorrect. Facts are that it was brought into notice of the competent authority that Nowshad Ali (Assistant) posted in Dispatch Br. had been absent from duties for long time without any prior permission; therefore, vide letter No.262/DC(M)/EA-9, dated 04-02-2022, a notice under section 9 of E&D rulers was served upon him with the direction to resume duties within 15 days failing which action would be taken against him. **(Notice dated 04.02.2022 is Annex-A)**

He submitted his reply on 23-02-2022, stating therein that his absence from duties was due to some domestic issues and requested to be spared, with no clear instance/ explanation of domestic problems due to which he couldn't attend office for such long time. **(Reply dated 23.02.2022 is Annex-B)**

Upon receiving his unsatisfactory reply, a formal inquiry was initiated against him by issuing charge sheet alongwith statement of allegations and Mr. Ibrahim Shah, Addl Assistant Commissioner-V, Mardan was appointed Inquiry Officer, vide office order No. 429/DC(M)/EA-09, dated 01.03.2022. **(Order dated 01.03.2022 alongwith Charge Sheet and Statement of allegations is Annex-C)**

(2)

The Inquiry Officer submitted his report vide No. 146/AAC-V(M)/EO, dated 01.04.2022 stating therein that the accused official repeated the same excuses already offered in response of notice u/s 9. That he personally visited the Diary/Dispatch Branch, where he was posted, and again found him absent without any permission; therefore, the Inquiry Officer concluded that he was deliberately absenting himself from duties without any cogent reason. **(Report dated 01.04.2022 is Annex-D)**

Hence proper show cause notice was issued to Mr. Nowshad Ali (Assistant) vide No. 742/DC (M)/EA-09, dated 26.04.2022, wherein he was informed that the above course of affairs confirmed misconduct on his part and that the competent authority had tentatively decided to impose any of the major penalties provided in R.4 of the Khyber Pakhtunkhwa E&D Rules, 2011. **(Show cause dated 26.04.2022 is Annex-E)**

The appellant submitted reply to show cause notice, dated 28.04.2022, wherein he once again narrated the unexplained excuse of domestic issues. Therefore, vide letter No. 853/DC (M)/EA-09, dated 18.05.2022, he was called for personal hearing on 20.05.2022. During personal hearing, he once again repeated that his absence was not willful but due to domestic issues. Likewise, replying to queries during personal hearing that even during the inquiry proceedings, he was found absent from duty by the Inquiry Officer; and after the enquiry, the undersigned had personally found him absent repeatedly from duties without any permission, he narrated the same story.

(Reply dated 28.04.2022 is Annex-F)

(Letter for personal hearing dated 18.05.2022 is Annex-G)


Since the appellant was neither resuming duties nor did submitted any leave application on any stage; therefore, he was compulsorily retired from service vide order dated 20.05.2022. The appellant accepted the said order and draw all pensionary benefits accruing from the said order.


5. Incorrect. He filed a time-barred departmental appeal dated 24.08.2023 (submitted on 28.08.2023); he was summoned time & again to attend office/court of respondent No.01 on the dates fixed but neither the appellant nor did any of his representative/attorney attended the court due to which same was dismissed in default on 09.09.2023. **(Order sheet dated 07.09.2023 is Annex-H)**
6. The appellant has got no cause of action to file the instant appeal.

REPLY ON GROUNDS:

- A. Incorrect. The order is just and in accordance with law & rules.
- B. Incorrect. Before awarding him punishment of compulsorily retirement, proper inquiry was conducted after issuance of charge sheet, show cause notice was issued to him and he was personally heard, as such no step has been skipped while proceeded against him. On the other hand, the appellant could neither produce strong defense for his willful and constant absence, nor did submitted any application for leave before or during the proceedings and nor did attended office even during the proceedings. As such his punishment is just an in accordance with relevant law.
- C. Incorrect. As above.
- D. As explained in reply of para-4 of facts and Para-B of grounds all formalities were fulfilled before proceeding the appellant on compulsorily retirement.
- E. Incorrect. In the instant case, facts finding inquiry was not required as the appellant was working in personal diary/dispatch branch of Deputy Commissioner and he was reported absent. Therefore, proceedings were initiated against him under the relevant law i.e. S.9 of the E& D rules, 2011. His reply to the said notice meant that he was available but was not attending office willfully which was clear charge; therefore, he was charge sheeted. Proper opportunity to explain his stance was provided to him in regular inquiry followed by, show cause notice and personal hearing.
- F. The respondents also seek permission to adduce further grounds during arguments.

In light of the above, the appeal is devoid of merit and law; therefore, it is requested to be dismissed in limine.

Muhammad Faruk Khan
 DEPUTY COMMISSIONER
 Mardan (Respondent#2)


Shaukat Ali
 (COMMISSIONER)
 Mardan Division Mardan
 (Respondent#1)

 SHAIKAT ALI

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 2613/2023

1. Nowshad Ali, Ex Assistant DC Office, Mardan.....(Appellant)

VERSUS

1. Commissioner Mardan Division Mardan.

2. Deputy Commissioner, Mardan & others.....(Respondents)

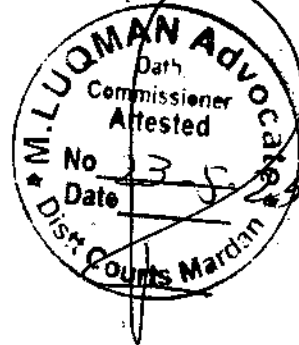
AFFIDAVIT

I, Muhammad Fayaz Khan, Deputy Commissioner, Mardan do hereby solemnly affirm and declare on oath that the contents of the accompanying para-wise comments correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal.

Further affirmed that negligible cost has been imposed nor the respondents have been placed ex.parte.

Deponent

*M. Fayaz Khan
DC Mardan.*



(5)

Annex - A

(THOUGH REGISTERED POST)



OFFICE OF THE DEPUTY COMMISSIONER, MARDAN

No. 262 /DC (M)/EA-09

Dated, Mardan the 04/02/2022

Ph: 0932-9210018-50

Fax No: 0932-9210301

email: dcmmrd0932@gmail.com

To

Mr. Nowshad Ali Office Assistant,
R/O Patai Takkar Tehsil Takht,
District, Mardan.

Subject:- NOTICE U/S 9 OF E&D, RULES FOR WILLFUL ABSENCE FROM DUTIES.

Memo:-

It has been brought into the notice of the undersigned that you have been absent from your official duty for the last couples of weeks without any prior information or submission any of leave application to this office.

In view of the above, you are hereby directed to resume duties within 15 days of issuance of this notice, failing which action shall be taken against you, which may culminate in your removal from service, as envisaged in Rule-9 of the Khyber Pakhtunkhwa (E&D) Rules, 2011.

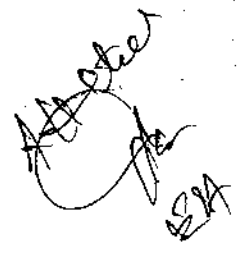

Deputy Commissioner,
Mardan

Endst No. & Date Even:

Copy forwarded to:-

1. The Additional Deputy Commissioner, Mardan.
2. Accounts Officer DC office, Mardan.


Deputy Commissioner,
Mardan



Scanned with CamScanner

(6)

Annex-B

محرمیت جناب ڈپٹی کمشنر صاحب بریل

جناب بریلی

گزارش حسب ذیل ہے۔

یہ کہ اس کی ایک زبردستی اور بطور اسٹنٹ نام کر رہا ہے۔
یہ کہ میرے تعیناتی کے دوران اس کے ساتھ ایک ماہرین کو کسی نہ کسی صوف
ریورٹ ارسال نہیں کی ہے۔

چونکہ میری سب سے بڑی فضا عدالت میں تھی۔ لیکن
گورنر کے رہنمائی کی وجہ سے تھی۔ جسکی وجہ سے میں فضا
دینے سے قاصر رہا۔

لینے آپ کے پاس سے اس کے بارے میں کو اس کے بارے میں
کا موقع دیا ہے۔
سائل اللہ کے لئے آمین ہے۔

23/2/22 Now

AB

آج کا نام فرما لو شاد علی اسٹیٹ ڈی سی افسر بریل

Accepted

(7)

Annex-C

OFFICE OF THE DEPUTY COMMISSIONER, MARDAN

No. 429 /DC(M)/EA-09

Dated, Mardan the 01 /02/2022

Pln/ 0937-9230048-56

Fax No/ 0937-9230303

email: dcwardan0937@gmail.com

OFFICE ORDER

Whereas, it was brought into the notice of the undersigned that Mr. Nowshad Ali Office Assistant of this office was absent from his official duties for the last couple of weeks without any prior permission or submission of leave application to this office,

Whereas, vide letter No.262/DC(M)/EA-9, dated 04-02-2022, a notice under section 9 of E&D rulers was sent to him for his willful absence from his official duties with direction to resume duties within 15 days, failing which action shall be taken against you.

Whereas, Mr. Nowshad Ali office Assistant submitted his reply on 23-02-2022, stating therein that he did not attend the office due to some domestic issues/problems and requested to be pardoned, failing to explain the domestic issue which hindered him from performing his duties.

The above mentioned course of affairs warrants initiating formal inquiry into the matter, therefore, formal inquiry is hereby ordered and Mr. Ibrahim Shah Additional Assistant Commissioner-V, Mardan is appointment as Inquiry Officer to conduct inquiry and submit report within 15 days for further course of action.

Charge Sheet and Statement of allegations is enclosed.


Deputy Commissioner
Mardan

No. & dated even.

Copies forwarded to:-

1. The Additional Deputy Commissioner (G), Mardan.
2. The Additional Assistant Commissioner-V, Mardan for inquiry and report.
3. Mr. Nowshad Ali Office Assistant with the direction to submit written statement within 07 days of receipt of this charge sheet to the inquiry officer.


Deputy Commissioner
Mardan

Accepted
E.A.

8



OFFICE OF THE DEPUTY COMMISSIONER, MARDAN

Phone No: 0937-9230048-56 Fax No: 0937-9230303

Email: dcmardan0937@gmail.com

No. 430 /DC(M)/EA-9

Dated Mardan the: 01/02/2022

2.1, Mr. Habib Ullah Arif, Deputy Commissioner, Mardan, as competent authority, do hereby charge you, Nowshad Ali office Assistant of this office as Follows:-

- i. That it was brought into the notice of the undersigned that you were absent from duties for couple of weeks without any prior permission.
 - ii. That vide letter No.262/DC (M)/EA-9, dated 04-02-2022, a notice under section 9 of E&D rulers, was sent to you for your willful absence from official duties with direction to resume duties within 15 days failing which action would be taken against you.
 - iii. That you submitted your reply on 23-02-2022, stating therein that you did not attend the office due to some domestic issues/problems and requested to be pardoned with no clear instance & explanation of the domestic problem due to which you had absented yourself for such long time, which amounts to misconduct.
6. By reason of the above, you have appeared to be guilty of misconduct under the Khyber Pakhtunkhwa Govt Servants (E&D) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in rules 4 of the rules ibid.
 7. You are, therefore, required to submit your written defence within seven days of the receipt of this Charge Sheet to the inquiry Officer.
 8. Your written defences, if any should, reach to the inquiry officer within the specified period, failing which it shall be presumed that you have no defence to put in and that ex-part action shall be taken against you.
 9. Intimate whether you desire to be heard in person.
 10. Statement of allegation is enclosed.

Deputy Commissioner
Mardan

No. & dated even

Copies forwarded to:-

1. The Additional Deputy Commissioner Mardan.
2. The Assistant Commissioner for inquiry and report.
3. Mr. Nowshad Ali office Assistant with the direction to submit written defence within 7 days of receipt of the Charge Sheet, to the inquiry officer.

Deputy Commissioner
Mardan

Attested
EA/Arif

9

DISCIPLINARY ACTION

1. I, Mr. Habib Ullah Aml, Deputy Commissioner, Mardan, as competent authority, am of the opinion that Mr. Nowshad Ali Office Assistant of this office has rendered himself liable to be proceeded against, as he has committed the following acts/omission within the meaning of rule 3 of the Khyber Pakhtunkhwa Govt: Servants Efficiency & Discipline rules, 2011.

STATEMENT OF ALLEGATIONS.

- i. That it was brought into the notice of the undersigned that Nowshad Ali office Assistant had been absent from duties for couples of weeks without any prior permission
 - ii. That vide letter No.262/DC(M)/EA-9, dated 04-02-2022, a notice under section 9 of E&D rulers were sent to him for his willful absence with the direction to resume duties within 15 days, failing which action would be taken against him.
 - iii. That he submitted his reply on 23-02-2022, stating therein that he did not attend the office due to some domestic issues/problems and requested to be pardoned, failing to explain the domestic issue which hindered him from performing duties.
2. The above course of affairs shows that Mr. Nowshad Ali is guilty of misconduct, which warrants disciplinary action against him under the E & D Rules, 2011.
 3. For the purpose of the above report against the said accused with reference to the above mentioned allegations, Mr. Ibrahim Shah Additional Assistant Commissioner-V, Mardan is hereby appointed as inquiry Officer under rules 10(1)(a) of the ibid rules as:
 4. The inquiry officer shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record his findings and report, within 15 days of the receipt of this order, recommendations as to punishments or other appropriate action against the accused.
 5. The accused Office Assistant shall join the proceedings on the date time and place fixed by the inquiry Officer.

Deputy Commissioner
Mardan..

Attested
EA

(10)

Annex-D

OFFICE OF THE
ADDITIONAL ASSISTANT COMMISSIONER-V
MARDAN.

No. 146/AAC-V(M)/EO
Dated: 01-03-2022.

To:

The Deputy Commissioner,
Mardan.

SUBJECT: DEPARTMENTAL ACTION AGAINST NOWSHAD ALI ASSISTANT.

INQUIRY REPORT

Reference your memo: No. 429/DC(M)/EA-09 dated 01-03-2022, whereby the subject inquiry along with charge sheet and allegations, was entrusted to this office to probe into the matter and submit report.

Nowshad, accused, is working in the District Establishment as Assistant but he remained absent from duty for last couple of weeks without any prior permission or any request of leave. In this regard, a notice was also served to him vide letter No. 262/DC(M)/EA-9, dated 04-02-2022 under section 9 of E&D rules for appearance to office duty, in response thereof he submitted his reply and shown the domestic problems for his absence. Since the reply and reasons were unsatisfactory, therefore the competent authority/DC Mardan framed charge sheet and the AAC-V (Mardan) was appointed as inquiry officer vide No. 429/DC(M)/EA-09 Dated 01-03-2022.

In compliance with order of DC Mardan he appeared before the AAC-V (M) and submitted his reply on 07-03-2022, in which he cited the same reasons as mentioned in his earlier reply.

As the accused is working in the dispatch branch of the deputy Commissioner office Mardan, the AAC-V (M) visited the office and was still found absent without any written application.

DC OFFICE MARDAN	
Dairy No.	3932
ADC (Inv)	
ADC (R&P)	
AC (AI)	
AC (F&D)	
AAC	
AO	
Supd	1/27
T'S	

Amesher
[Signature]

(11)

Perusal of the charge sheet, statement of allegations, the written statement and his absence from the office revealed that his absence was deliberate and he has no clear stance to present in his defense, hence he was found irresponsible.

FINDINGS:

In view of whatever discussed above I am of the considered opinion that Mr. Nowshad Ali is not able to perform duty on the existing post and has to be proceeded on compulsory retirement.

RECOMMENDATION:

As the willful absence of the accused official amounts to his misconduct, hence, I recommend action under E&D rules, 2011, against him. Report submitted please.

**Addl: Assistant Commissioner-V/EO
Mardan**

*Assesed
EA*

12

Annex - E



OFFICE OF THE DEPUTY COMMISSIONER, MARDAN

Phone No: 0937-9230048-56 Fax No: 0937-9230303

Email: dcmardan0937@gmail.com

No. 742 /DC(M)/EA-9

Dated Mardan the: 26/04/2022

To

Mr. Nowshad Ali,
Assistant, DC Office,
Mardan.

Subject: SHOW CAUSE NOTICE

Whereas, it was brought into the notice of the undersigned that you were absent from your official duty for the couple of weeks without any prior permission; and

Whereas, vide letter No.262/DC(M)/EA-9, dated 04-02-2022, a notice under section 9 of E&D rulers were sent to you for your willful absence from official duties with direction to resume duties within 15 days failing which action shall be taken against you; and

Whereas, you submitted your reply on 23-02-2022, stating therein that you were absent from office due to some domestic issues/problems and requested to be pardoned with no clear instance and explanation of domestics problem due to which you had absented yourself for such long time; and

Whereas, founding your reply unsatisfactory, a formal inquiry was initiated against you by issuing proper charge sheet and Mr. Ibrahim Shah, Addl Assistant Commissioner-V, Mardan was appointed Inquiry Officer, vide this office order No. 429/DC(M)/EA-09, dated 01.03.2022; and

Whereas, the Inquiry Officer submitted his report vide No. 146/AAC-V (M)/EO, dated 0.04.2022, stating therein that in your reply you repeated the same excuses already offered in response of notice u/s 9. That he personally visited the Diary/Dispatch Branch where you were posted and again found you absent without any permission, therefore, he concluded that you deliberately absented yourself from duties without any cogent reason; and

Whereas, the above course of affairs confirms misconduct on your part which warrants strict action against you.

Keeping the aforementioned in view, the undersigned has tentatively decided to impose any of the major penalties provided in R.4 of the Khyber Pakhtunkhwa E&D Rules, 2011 which may be dismissal, removal from service, compulsorily retirement & reduction in pay scale.

You are, therefore, directed to show cause as to why any of such penalty may not be imposed upon you. Your reply should reach to the undersigned within 07 days after issuance of this notice; failing which it shall be presumed that you have nothing to offer in your defence and an ex-parte action shall be taken against you.

Also inform whether you want to be heard in person or otherwise.


DEPUTY COMMISSIONER
MARDAN

Endst No. & Date Even:

Copy to:

1. Commissioner Mardan Division, Mardan.
2. Additional Deputy Commissioner (G), Mardan.
3. Assistant Commissioner Mardan/Takht Bhai.


DEPUTY COMMISSIONER
MARDAN

Handwritten notes:
As per
the
EP

Handwritten signature

20/12/2019
20/12/2019
20/12/2019

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12- *Handwritten text*

(14)

Annex - G^c



OFFICE OF THE DEPUTY COMMISSIONER, MARDAN

No. 853 /DC (M)/EA-09

Dated, Mardan the 18/05/2022

Ph# 0937-9230048-56

Fax No# 0937-9230303

email: dcmardan0937@gmail.com

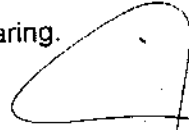
To

Mr. Nowshad Ali Assistant
DC office Mardan.

Subject: - DEPARTMENTAL ACTION AGAINST NOWSHAD ALI ASSISTANT.

Memo:-

I am directed to refer to the subject noted above and to ask you to appear before the worthy Deputy Commissioner, Mardan on the subject noted inquiry on 20-05-2022 at 10.30 AM for personal hearing.


PS
Deputy Commissioner
Mardan

Attested -

EA

بیان نوٹس دہلی آفس اسٹینٹ ایجوکیشن ڈائری جنرل ڈیپارٹمنٹ
20/5/2022

بیان نوٹس دہلی آفس اسٹینٹ ایجوکیشن ڈائری جنرل ڈیپارٹمنٹ
صفحہ 5-29-2022

بیان نوٹس دہلی آفس اسٹینٹ ایجوکیشن ڈائری جنرل ڈیپارٹمنٹ

کہہ دینے کے لئے اسٹینٹ ایجوکیشن ڈائری جنرل ڈیپارٹمنٹ

میں اسٹینٹ ایجوکیشن ڈائری جنرل ڈیپارٹمنٹ

جو کہ اسٹینٹ ایجوکیشن ڈائری جنرل ڈیپارٹمنٹ

اسٹینٹ ایجوکیشن ڈائری جنرل ڈیپارٹمنٹ

اسٹینٹ ایجوکیشن ڈائری جنرل ڈیپارٹمنٹ

اسٹینٹ ایجوکیشن ڈائری جنرل ڈیپارٹمنٹ

اسٹینٹ ایجوکیشن ڈائری جنرل ڈیپارٹمنٹ

20-5-22

اسٹینٹ ایجوکیشن ڈائری جنرل ڈیپارٹمنٹ

PT.5

Attest

EA

سوال نمبر: ۱۔ خطبہ انوار سے اپنے رپورٹ میں عکس کی سہولت، مگر یہ وہاں
رپورٹ کو اس کے اپنے رپورٹ کا دورہ کیا۔ سب سے پہلی صورت
سے عکس کا نسخہ۔

صورت ۱۔ میں نے اپنے عکس کا بیان تفصیل دی ہے۔ مگر میرے
مگر یہ سب سے پہلے ہے۔ صبح کے وقت میں بعض اوقات اپنی
اپنی ڈیوٹی سے عکس کا نسخہ سونے سونے، جو میرا قبیلہ ہے۔

سوال نمبر: ۲۔ میں نے بتایا ہے کہ آپ نے اپنی ڈیوٹی سے عکس کا نسخہ لیا ہے
کیا وہ ہے۔

جواب: ۱۔ جواب میں میں نے اپنی عکس کا بیان کیا ہے۔
جو کہ درست ہے۔

~~Signature~~
AB

20-5-22

Accepted
for
E.A.

50
9210

Form "A"
FORM OF ORDER SHEET

Court of قضاء دكا

Case No. 101 of 101

Serial No. of Order or Proceedings 1	Date of Order or Proceedings 2	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or council where necessary 3
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Sir,
 This is an appeal against the office order dated 20.05.2022 of the Deputy Commissioner Mardan whereby the appellant has been retired compulsorily from service. Copy of the said order is attached. The appeal is time barred. Report is submitted please.

[Signature]
 Receives.
 29.08.2023

29.08.2023. The case be entered in the relevant register. The appellant be summoned and the case be fixed for preliminary arguments on 07-09-2023.

[Handwritten notes in Urdu]

[Signature]
 Mardan.

|| | | | |




Attested
[Signature]
 BA

18

as junior
ilities required
action of your

at h...

10/10

Serial No. of Order or Proceedings 1	Date of Order or Proceedings 2	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or council where necessary 3
	07-09-2023	<p>The case was called for so many times, lastly at 2.30 PM but no one on behalf of the appellant attended the court.</p> <p>Therefore, in view of the above the appeal in hand is hereby dismissed in default. No order as to cost.</p> <p>Approved. 07-09-2023.</p> <p style="text-align: right;">  Commissioner Madras.  </p> <p style="text-align: right; margin-top: 20px;">  Asst. Secy EA </p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 2613/2023

1. Nowshad Ali, Ex Assistant DC Office, Mardan.
.....(Appellant)

VERSUS

1. Commissioner Mardan Division Mardan.
2. Deputy Commissioner, Mardan & others
..... (Respondents)

AUTHORITY LETTER

Mr. Hussain Akbar (Assistant Estt) DC Office Mardan is hereby authorized to attend office of the Registrar Khyber Pakhtunkhwa Service Tribunal and file comments in the above-titled service appeal.

DEPUTY COMMISSIONER
MARDAN (Respondent No.02)



COMMISSIONER
MARDAN DIVISION MARDAN
(Respondent No.01)

