

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.429/2024.


Ex-Constable Zubair Shah No.1769 of CCP Peshawar..... **Appellant.**

VERSUS

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

I n d e x

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DSP/Legal, *20/09*
CCP Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

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Ex-Constable Zubair Shah No.1769 of CCP Peshawar..... **Appellant.**

VERSUS

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

REPLY BY RESPONDENTS NO. 1, 2&3.

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 16207
Dated 01-10-24

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS:-

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
3. That the appellant has not come to Hon'ble Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi to file the instant appeal.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Hon'ble Tribunal.
7. That the appeal is not maintainable in its present forum being devoid of any merit.

REPLY ON FACTS:-

1. Incorrect. Para pertains to record, hence need no comments.
2. Incorrect. The appellant during service proved himself an inefficient official and committed gross misconduct. The performance of the appellant during service was not up to the standard and he earned 28 bad entries including 04 major and 06 Minor punishments on the charges of willful absence from duty on different occasions. From the perusal of service record of the appellant he was previously dismissed 03 times from service and awarded punishment of time scaled on account of absence. (Copy of Punishment details are annexure as A)
3. Appellant admit his willful absence. Appellant being member of discipline force instead of applying for leave availed self sanctioned leave and thereby shows disinterest in his job.
4. Incorrect. The appellant while posted at PS SGH Peshawar was transferred to PS Faqir Abad on 20.02.2022 but he failed to report to PS Faqirabad and absented himself from his place of posting. On account of such misconduct he was issued Charge Sheet with Statement of Allegations vide No. 91/E/PA dated 09.06.2022 by the competent authority, and DSP HQrs: was appointed as enquiry officer. The enquiry officer during the enquiry proceedings repeatedly summoned the appellant vide No. 499/R, dated 18.07.2022, No 574/R, dated 29.07.2022, No.612/R, dated 15.08.2022 No. 691/R, dated 02.09.2022, and No. 700/R, dated 05.09.2022 and also contacted on his personal cell No.0346 2082468 & No. 0344 2257299 to attend the enquiry proceeding however, he did not turn up. The enquiry officers finalized the enquiry proceedings; as Ex-parte submitted findings, wherein the allegations of willful absence were proved against him. Consequent upon receipt of the finding report, the competent authority issued Final Show Cause Notice vide No. 91/PA, SP/HQrs: dated 07.10.2022 which was received by appellant but he did not respond. However, after

fulfillment of all codal formalities, he was awarded major punishment of Dismissal from Service vide OB No. 2915, dated 04.11.2022. ((copy of charge sheet and statement of allegations, summons, Enquiry report, FSCN and order are annexure as B, C, D, E, F & G)


5. Incorrect. The appellant filed departmental appeal, which was examined, but before passing final order appellant was provided an opportunity of personal hearing but the appellant failed to defend himself with plausible/justifiable grounds, hence his appeal was rejected/filed as per law.
6. Incorrect. The appellant preferred revision petition, which was also filed/rejected on same grounds.
7. That the appeal of the appellant being devoid of merits and hit by limitation, liable to be dismissed on the following grounds.

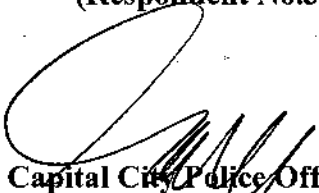
REPLY ON GROUNDS:-

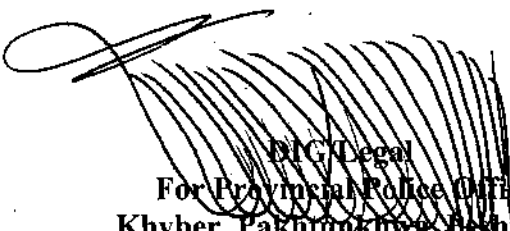

- A. Incorrect. The orders passed by the respondents are strictly in accordance with law/rules.
- B. Incorrect. The appellant was treated in accordance with law/rules and no violation of the Article 4 and 25 of Constitution of Pakistan 1973 has been committed by the answering respondents.
- C. Incorrect. The Punishment order passed by the competent authority is based on justifiable and genuine grounds, without any malafide intension, hence liable to be upheld.
- D. Incorrect. The dismissal order and the appellate orders are just legal and no violation of the Article 38 (e) has been done by the respondents.
- E. Incorrect as explained above.
- F. Incorrect as explained above.
- G. Incorrect. Para already explained in the facts. The appellant is a habitual absentee and willfully absented from his lawful duty without any leave /permission. The appellant being dis interested in his official duty by remained continuously absent from lawful duty for long period without any leave was rightly dismissed from service.
- H. Incorrect. As explained above.
- I. Incorrect. The competent authority before imposing the major punishment had completed all codal formalities and an ample opportunity of self defense was provided, but the appellant failed to rebut the charges leveled against him, hence rightly dismissed from service.
- J. Incorrect. Appellant was treated as per law/rules, however failed to rebut the charges as he was found guilty during enquiry.
- K. That the replying respondents may also be allowed to adduce additional grounds before this Hon'ble Tribunal at the time of arguments.

PRAYERS:-

It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merit and legal footing, may kindly be dismissed with cost please.


Superintendent of Police
HQrs: Peshawar.
(Raham Hussain)
(Respondent No.3)


Capital City Police Officer,
Peshawar
(Qasim Ali Khan) PSP
(Respondent No.02)
Incumbent


DIG Legal
For Provincial Police Officer,
Khyber, Pakhtunkhwa, Peshawar.
(Rizwan Manzoor) PSP
(Respondent No.01)
Incumbent


BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.429/2024.

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VERSUS

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

AUTHORITY.

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

**Superintendent of Police,
HQrs: Peshawar.
(Raham Hussain)
(Respondent No.3)**

**Capital City Police Officer,
Peshawar.
(Qasim Ali Khan) PSP
(Respondent No.02)
Incumbent**

**DIG/Legal
For Provincial Police Officer,
Khyber, Pakhtunkhwa, Peshawar.
(Rizwan Manzoor) PSP
(Respondent No.01)
Incumbent**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

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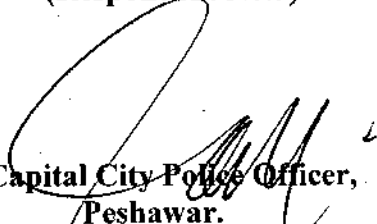
VERSUS

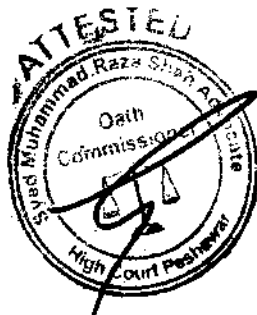
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others..... **Respondents.**

AFFIDAVIT.

we respondent No. 02 & 03 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of my knowledge and belief and nothing has concealed/kept secret from this Hon'ble Tribunal.


**Superintendent of Police,
HQrs: Peshawar.
(Raham Hussain)
(Respondent No.3)**


**Capital City Police Officer,
Peshawar.
(Qasim Ali Khan) PSP
(Respondent No.02)
Incumbent**



30 / 9 / 2024

- A 6
- | | | |
|----|--------------------------|--|
| 1. | Name of Official
R/O | Zubair Shah NO.1769 S/O Abdul Ghafoor
Tarpatar PS Ganigar Distt: Dir Upper. |
| 2. | Date of Birth | 15-04-1975 |
| 3. | Date of enlistment | 30-04-1999 |
| 4. | Education | FA |
| 5. | Courses Passed | Recruit |
| 6. | Total qualifying service | 20 years, 06 Month & 29 days |
| 7. | Good Entries | 02 |
| 8. | Punishment (previous) | |

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

1. 02 days leave without pay vide OB No.637 dt:01-10-2003
2. Warned to be careful in future vide OB No.213 dt:19-04-2001
3. 02 days leave without pay vide OB No.05 dt:05-01-2004
4. 01 day leave without pay vide OB No.320 dt:11-05-2004
5. 02 days leave without pay vide OB No.715 dt:16-10-2002
6. 01 days leave without pay vide OB No.751 dt:03-11-2004
7. 02 days leave without pay vide OB No.92 dt:16-02-2005
8. 06 days leave without pay vide OB No.312 dt:20-05-2005
9. 10 days leave without pay vide OB No.3762 dt:05-12-2005
10. Warned to be careful in future vide OB No.3895 dt:14-12-2005
11. 09 days leave without pay vide OB No.3697 dt:29-11-2005
12. 08 days leave without pay vide OB No.702 dt:08-03-2006
13. 03 days leave without pay vide OB No.421 dt:31-03-2006
14. 05 days leave without pay vide OB No.1298 dt:17-05-2006
15. 06 days leave without pay vide OB No.1126 dt:25-04-2006
16. 03 days leave without pay vide OB No.681 dt:22-04-2006
17. 02 days leave without pay vide OB No.3865 dt:12-12-2005
18. 08 days leave without pay vide OB No.1907 dt:28-07-2006
19. 04 days leave without pay vide OB No.194 dt:31-01-2007
20. 02 days leave without pay vide OB No.2628 dt:12-10-2006
21. Warend and 02 days E/drill vide OB No.2709 dt:31-10-2006
22. 01 day leave without pay vide OB No.2871 dt:16-11-2006
23. Awarded 03 days E/drill vide OB No.823 dt:29-03-2007
24. 13 days leave without pay vide OB No.3544 dt:17-12-2007
25. Awarded 02 days E/drill vide OB No.2721 dt:03-09-2014
26. Awarded 01 day E/drill vide OB No.4240 dt:10-17-2015
27. Awarded 01 day E/drill vide OB No.1619 dt:10-05-2019
28. 02 days leave without pay vide OB No.175 dt:11-02-2020

Minor Punishment

1. Stoppage of 01-year annual increment without cumulative effect and 148 days leave without pay vide OB No.1630 dt:04-05-2016
2. Censured and 28 days leave without pay vide OB No.1441 dt:13-04-2016
3. Censured and 47 days leave without pay vide OB No.1252 dt:04-04-2016
4. Censured and 52 days leave without pay vide OB No.2771 dt:06-09-2018
5. Stoppage of 01-year annual increment without cumulative effect and 34 days leave without pay vide OB No.2301 dt:29-10-2020

Attested


6. Stoppage of 01-year annual increment without cumulative effect for 23 days without pay vide OB No. 680 dt: 16-03-2020

Major Punishment

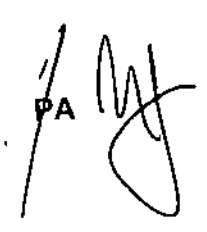
- 1. Dismissed from service on the charges of absence (04 months & 23 days) vide OB No. 2157 dt: 31.07.2007 and re-instated in service from the date of dismissal and the period he remained absence/out of service is treated as leave of kind due vide OB No. 2456 dt: 23-03-2008
- 2. 63 days absence, time scale for three years vide OB No. 727 dt: 28.03.2008
- 3. Dismissed from service on the charges of involvement in criminal case u/s 353/506/148/149/189 vide OB No. 710 dated 07.06.2013 and re-instated given effect from the date of dismissal vide Order No. 4819-21/PA dated 09-04-2014
- 4. Awarded punishment of dismissed from service on the charges of absence (04 months & 23 days) by SP/HQrs: Peshawar vide OB No. 3228 dated 24.08.2017 and re-instated in his service the intervening period and absence period as treated leave without pay vide OB No. 248 dt: 18-01-2019

09. Punishment (Current)

- Awarded major punishment dismissed from service vide OB No. 2315 dated 04.11.2022 by SP/HQrs Peshawar.

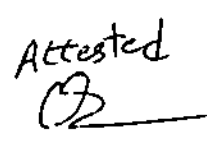
10. Leave Account

<u>Total leave at his credit</u>	<u>Availed leaves</u>	<u>Balance</u>
984	Nil	984

PA 

Law
CRC
9/2

WICCPO

Attested


B 8

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, do hereby, charge you Constable Zubair Shah No.1769 of Capital City Police Peshawar with the following allegation.

"It has been reported by OASI, you Constable Zubair Shah No.1769 while posted at SGH, Peshawar were transferred to PS Faqirabad on 24.02.2022 but you failed to report at PS Faqirabad & missing from your place of posting. This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit to this office or the Enquiry Officer your written reply within 07-days of the receipt of this charge sheet.

Your written defence, if any, should reach this office of the Enquiry Officer within the specified period, failing which it shall be presumed that you have nothing to put in your defence and in that case an ex-parte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

Attested



PA D.S.PHQrs

DISCIPLINARY ACTION

NO: 1573

Date: 10.06.2022

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Zubair Shah No.1769 has rendered himself liable to be proceeded against under the provision of Police Disciplinary Rules, 1975

STATEMENT OF ALLEGATION

"It has been reported by OASI, you Constable Zubair Shah No.1769 while posted at SGH, Peshawar was transferred to PS Faqirabad on 24.02.2022 but he failed to report at PS Faqirabad & missing from his place of posting. This amounts to gross misconduct on his part and is against the discipline of the force."

For the purpose of scrutinizing the conduct of said accused with reference to the above allegations, an enquiry is ordered and DSP-HQrs is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Police Disciplinary Rules, 1975, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.

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

[Signature]
SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 91 /E/PA, dated Peshawar the 9-10-2022

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

Attested
[Signature]



OFFICE OF THE DEPUTY SUPERINTENDENT OF POLICE
HQRS: CCP PESHAWAR.



No. 2600 /PA.
FL9

dated Peshawar the 16 September-2022.

To: The Superintendent of Police HQrs.,
Peshawar.

Subject:- **DEPARTMENTAL ENQUIRY REPORT AGAINST CONSTABLE ZUBAIR
SHAH NO.1769.**

Memo: Kindly refer to your office Dy: No.91/E/PA dated 09/06/2021 on the subject
cited above.

ALLEGATIONS:-

"That Constable Zubair Shah No.1769 while posted at SGH Peshawar was
transferred to PS Faqirabad on 24/02/2022 but failed to report at PS Faqirabad & missing
from his place of posting. This amounts to gross misconduct on his part and is against the
discipline of the force".

PROCEEDINGS:-

To dig out real facts, the alleged FC Zubair Shah No.1769 was summoned
time and again vide this office Parwana No.499/R, dated 18.07.2022, No.574/R, dated
29.07.2022, No.612/R, dated 15.08.2022 and No.691/R, dated 02.09.2022 and
No.700/R, dated 05.09.2022 etc: but he took deaf ear on it and not attended the enquiry
proceedings deliberately. Furthermore, he was also contacted at his Cell No.0346-2082468,
& No.0344-2257299 from this office Land line No.091-9213523 but he did not respond
bravely.

The Moharrar Police Lines, SGH & Shahpur was also asked through Parwana
regarding the presence of alleged official and he reported that the said constable named
Zubair Shah No.1769 has been informed while transfer to various places time to time.
However, he did not interested in the said inquiry.

CONCLUSION:

Keeping in view of the above facts and figures it came to the conclusion that
the alleged constable Zubair Shah No.1769 is not interested in his official duties/Enquiry
and took deaf ear on it and not attended the enquiry proceedings deliberately. Therefore,
in the light of above mentioned circumstances, Ex-parte departmental action may be
taken against the alleged FC Zubair Shah No.1769, if agreed.

Submitted please.

Issue P.S.N

Dy: Superintendent of Police
HQRS: CCP Peshawar.

Deputy Superintendent of Police
HQRS: CCP Peshawar.

Attested

3

FINAL SHOW CAUSE NOTICE

I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Zubair Shah No.1769 the final show cause notice.

The Enquiry Officer, DSP-HQrs, after completion of departmental proceedings, has recommended you for ex-parte decision for the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you Constable Zubair Shah No.1769 deserve the punishment in the light of the above said enquiry report.

And as competent authority, has decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975.

1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.

SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

No. 91 /PA, SP/HQrs: dated Peshawar the 29 / 10 / 2022

Copy to official concerned

Received
[Signature]

29/10/2022

1769

03138086552

1760/1163/2022
Junaid Khan
Chairman
Pirah Unmanned

29/10/22

Asst
[Signature]
28/10/22

Attested
[Signature]

No-1534-1/MS/PL

26/8/22

پر وائے نمبر 4

664 RiHQ
16.8.22

بوساعت SHO، تھانہ شہید گفٹ حسین (SGH)

حوالہ نمبر: 612 ریڈر مورخہ 15.08.2022

اعلویٰ بر خلاف کنشیل زیر شاہ نمبر 1769 :-

تحریر کا سرکار نے کہ آپ محرر، پولیس لائن کو ہدایت مناسب کی جاتی ہے کہ کنشیل زیر شاہ نمبر 1769 کو مطلع کریں کہ وہ دفتر زیر دستگی اپنی حاضری کو مورخہ 17.08.2022 بوقت 11:00 بجے صبح یقینی بنائے تاکہ انکو کوئی نوکریاں نہ لگ جائیں۔ دیگر حالات میں ایک طرف کارروائی عمل میں لائی جائیگی۔

رڈی ایس پی، ہیڈ کوارٹرز

ملک سعد شہید پولیس لائن، پشاور۔

کاپی برائے اطلاع یابی:

1. جناب ایس پی صاحب، ہیڈ کوارٹرز، پولیس لائن پشاور، بحوالہ نمبر 91/E/PA مورخہ 09.06.2022۔

کونسل
1769
شہید گفٹ حسین
رڈی ایس پی
پشاور

MAJ - SGH
15-8-22

LO/MAJ
For n/action
For RiHQ
16.8.22

PTO

Attested

26/8/22
A. J. Khan

0346. 2082468

موسم
145,000
6/6/2022

1769

1769

1769

1769

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1769

503

503

پر وائے نمبر 05

13

ڈی ایس پی، ہیڈ کوارٹرز
پولیس لائن پشاور
پشاور

02.09.2022 مورخہ 69/1

انکوائری برخلاف کنشیل زیر شاہ نمبر 1769 :-

تحریر یکا سرکار ہے کہ آپ محرم، پولیس لائن کو ہدایت مناسب کی جاتی ہے کہ کنشیل زیر شاہ نمبر 1769
کہ وہ دفتر زیر دستخطی اپنی حاضری کو مورخہ 05.09.2022 بوقت 11:00 بجے صبح یقینی
کے ساتھ بیان ریکارڈ کرایا جائے۔ دیگر حالات میں یک طرفہ کارروائی عمل میں لائی جائیگی۔
یہ سب کے سب دفتر زیر دستخطی ارسال کریں۔

سنا ڈی ایس پی، ہیڈ کوارٹرز
ملک سعد شہید پولیس لائن، پشاور

برائے اطلاع یابی

ڈی ایس پی صاحب، ہیڈ کوارٹرز، پولیس لائن پشاور، بحوالہ نمبر 91/E/PA مورخہ 09.06.2022

مدیر ایف ڈی ایف

Attested
ASHTO PS S
3-9

Attest

09/09/2022
S. S. S. P. S.
5

1769
میں
میں
میں

09.06.2022

میں
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میں

09-9-2022
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میں

1769
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میں
میں

05.09.2022
700

SHO
میں

میں
میں

06

ORDER

This is a formal departmental proceeding against **Constable Zubair Shah No.1769** on the allegations/charges that he while posted at PS SGH Peshawar was transferred to PS Faqirabad on 20.02.2022 but he failed to report at PS Faqirabad & missing from his place of posting.

In this regard, he was issued charge sheet & summary of allegation. DSP-HQrs was appointed as E.O. He conducted the enquiry & submitted his report/findings that the alleged official did not attend the enquiry proceedings. The E.O further recommended for taking ex-parte decision against the defaulter official

Upon the finding of E.O, he was issued final show cause notice but he failed to receive and submit reply of the said notice within stipulated period of 07-days or appear before this office as yet. Beside the above, a letter has also been addressed to DPO Chasadda to inform and served final show cause notice upon him vide letter No.3339/PA dated 16.10.2022 (attached)

Note: In this regard, reports of Moharrir PS Faqirabad and PS Shahpur have been obtained. They both provided DD reports stated therein that FC Zubair shah-1769 was transferred from PS SGH to P.S Faqirabad but he failed. The Moharrir PS Shahpur has also been reported that the alleged official failed to report arrival in P.S Shahpur as yet (attached)

Keeping in view the recommendation of the E.O and circumstance of the entire case, I the undersigned, being competent authority do hereby impose major punishment against Constable Zubair Shah No.1769 and he is dismissed from service under Police Rules- 975 with immediate effect. Hence, the period he remained absent w.e.f 22.02.2022 till date is treated without pay.


SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

OB. NO. 2915 / Dated 08/11/2022

No. 3394 /PA/SP/dated Peshawar the 4/11/2022

Copy of above is forwarded for information & n/action to:
Copy of above is forwarded for information & n/action to:

1. The Capital City Police Officer, Peshawar.
2. DSP/HQrs, Peshawar.
3. PA to W/CCPO, Peshawar
4. Pay Officer, OASI,
5. CRC & FMC along-with complete departmental file.
6. Official Concerned

Attested

