

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7891/2021

Date of Institution ... 20.12.2021

Date of Decision ... 31.01.2022

Mr. Mursaleen Abbasi, Junior Clerk GHSS Nara Amazai Haripur.

... (Appellant)

VERSUS

The Secretary Elementary & Secondary Education Department Government of Khyber Pakhtunkhwa Civil Secretariat Peshawar and others.

... (Respondents)

Syed Noman Ali Bukhari,
Advocate

... For Appellant

Noor Zaman Khattak,
District Attorney

... For respondents

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

...
...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

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

Brief facts of the

case are that the appellant was appointed as Junior Clerk and posted at GGHS Jabri Haripur, who later on was transferred to GGHS Nara Amazai vide order dated 13-04-2019. In pursuance of the transfer order, the appellant reported arrival but it was found that there was no vacant post; hence, salary of the appellant was also stopped due to non-availability of post. After two years, the appellant was adjusted against in his previous school vide order dated 17-09-2021. The appellant filed departmental appeal for release of his salary for the period from 01-07-2019 to 17-09-2021, but the department instead of granting his salary treated the mentioned period as leave without pay vide order dated 22-

11-2021, hence the instant service appeal with prayers that the impugned order dated 22-11-2021 may be set aside/modified and the period from 01-07-2019 to 17-09-2021 may be treated on full pay with all back benefits.

02. Learned counsel for the appellant has contended that the impugned order is against law, facts and norms of natural justice, as the appellant was kept out of posting for no fault of the appellant and such period was treated as without pay, which is illegal; that the appellant was not adjusted well in time for no fault of the appellant, therefore the appellant is fully entitled to his salary; that the appellant cannot be held responsible for the lapse on part of the respondents; that under section 17 of the Civil Servant Act, 1973, the appellant is legally entitled for his pay, as the appellant remained out of job for the mentioned period; that it was due to fault of respondents, which refrained the appellant from performance of duty; that the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated; that the respondents acted in arbitrary manner by adjusting the appellant against the already filled vacancy.

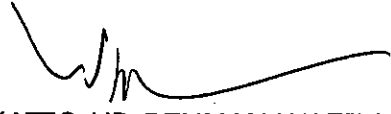
03. The respondents did not submit its comments inspite of repeated reminder, hence their right to submit comments was struck off. We have observed that the appellant was transferred and posted at GGHS Nara Amazai vide order dated 13-04-2019, but it was found that there was no vacant post in that school, hence the appellant remained out of posting for almost two years for no fault of him and after two years, he was adjusted against his previous position in his previous school, but the intervening period was treated as leave without pay. We have observed that for the mentioned period, the appellant was kept out of posting for no fault of him and his intervening period was treated as without pay, which however was not warranted and such action of the respondents was illegal, as the appellant did not voluntarily left himself without posting and he cannot be penalized for fault of the respondents.

04. In view of the foregoing discussion, the instant appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
31.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

ORDER

31.01.2022

Learned counsel for the appellant present. Mr. Noor Zaman Khattak, District Attorney for respondent present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is accepted as prayed for. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

31.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

SA 7891/2021

20.01.2022

Appellant present in person. Mr. Muhammad Adeel Butt, Addl. AG alongwith Muhammad Saleh Mushtaq, ADEO on behalf of the respondents are present.


The comments have not been furnished by the respondents despite directions given in the previous order. Representative of the respondents seeks time. As it has already been observed by previous order that a financial issue of non-payment of salary is involved, therefore, appeal is fixed for a short date at Peshawar with similar observation today. To come up for arguments on 27.01.2022 before the D.B. The respondents are directed to submit their comments in the meantime, failing which their right for reply shall be treated as struck off.


Chairman

27.01.2022

Appellant alongwith his counsel present. Mr. Muhammad Adeel Butt, Addl. AG for respondents present.

The comments have not been submitted despite several directions. Another last opportunity is granted to the respondents to furnish reply/comments on or before the date fixed. Case to come up for arguments before the D.B on 31.01.2022.


(Atiq-Ur-Rehman Wazir)
Member (E)


Chairman

30.12.2021

Counsel for the appellant present. Preliminary arguments have been heard.

Learned counsel submits that the appellant was transferred/adjusted vide order dated 13.04.2019 at GHSS Nara Amazai on his own pay and grade in the best interest of public service with immediate effect but the concerned Principal in a letter addressed to the respondent No. 3 submitted that post of Junior Clerk at GHSS Nara Amazai is already filled and there is no vacant post. He further contends that despite several applications submitted by the appellant for his adjustment on a vacant post, he remained without posting due to inaction of the respondents. Ultimately, he was adjusted back at GGHS Jabri on his own pay and grade vide order dated 17.09.2021. However, he has so far not been paid the salary for the period in-between his transfer order dated 13.04.2019 and 17.09.2021. Through this appeal, the appellant after availing departmental remedy seeks relief for salary of the said period. Points raised need consideration. Subject to all just and legal objections, this appeal is admitted for full hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. As financial issue of non-payment of salary is involved, therefore, the appeal is fixed for a short date at Peshawar. To come up for written reply/comments on 20.01.2022 before S.B at Peshawar.

Appellant Deposited
Security & Process Fee

4/1/22

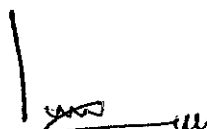

Chairman
Camp Court, A/Abad

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7891/2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	20/12/2021	<p>The appeal of Mr. Mursaleen Abbasi presented today by Uzma Syed Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put there on <u>10/02/22</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECK LIST**

Case Title: Mursaleen Abbasi vs Education Deptt

S.#	Contents	Yes	No
1.	This appeal has been presented by: <u>Syed Noman Akhshah</u>		
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the requisite documents?	✓	
3.	Whether Appeal is within time?	✓	
4.	Whether the enactment under which the appeal is filed mentioned?	✓	
5.	Whether the enactment under which the appeal is filed is correct?	✓	
6.	Whether affidavit is appended?	✓	
7.	Whether affidavit is duly attested by competent oath commissioner?	✓	
8.	Whether appeal/annexures are properly pagged?	✓	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10.	Whether annexures are legible?	✓	
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/clear?	✓	
13.	Whether copy of appeal is delivered to A.G/D.A.G?	✓	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15.	Whether numbers of referred cases given are correct?	✓	
16.	Whether appeal contains cuttings/overwriting?	X	
17.	Whether list of books has been provided at the end of the appeal?	✓	
18.	Whether case relate to this Court?	✓	
19.	Whether requisite number of spare copies attached?	✓	
20.	Whether complete spare copy is filed in separate file cover?	✓	
21.	Whether addresses of parties given are complete?	✓	
22.	Whether index filed?	✓	
23.	Whether index is correct?	✓	
24.	Whether Security and Process Fee deposited? on		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on		
26.	Whether copies of comments/reply/rejoinder submitted? on		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: Syed Noman Akhshah

Signature: [Signature]

Dated: 20-12-2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No. 7891 /2021

Mursaleen Abbasi

V/S

Education deptt;

INDEX

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4.	Copy of applications	C.	09-11
5.	Copy of transfer order/adjustment	D.	12
6.	Copy of arrival report	E.	13
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9.	Vakalat nama	-----	16


APPELLANT

Mursaleen Abbasi

THROUGH:


SYED NOMAN ALI BU

Advocate, High Cou

Peshawar

Date:24/08/2021


UZMA

Advocate

(1)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 7891 /2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 8050

Dated 20/12/2021

Mr. Mursaleen Abbasi Junior Clerk
GHSS Nara Amazai Haripur.

(APPELLANT)

VERSUS

1. The Secretary (E&SE) Deptt Govt of KP, civil Secretariat Peshawar.
2. The Director (E&SE) Deptt Govt of KP.
3. The District Education Officer(M) Haripur.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNALS ACT, 1974, AGAINST THE IMPUGNED FINAL ORDER DATED 22.11.2021 WHEREBY THE PERIOD W.E.FROM 01.07.2019 TO 17.09.2021 IS TREATED AS EXTRA ORDINARY LEAVE WITHOUT PAY.

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 22.11.2021 MAY BE SET-ASIDE/MODIFIED AND THE PERIOD W.E.FROM 01.07.2019 TO 17.09.2021 MAY BE TREATED AS FULL PAY WITH ALL BACK BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant was appointed as Junior clerk, and was performing duties at GGHS Jabri Haripur, with full zeal and zest. The later on appellant was transferred illegally to GHSS Nara Amazai on political influence. Copy of the transfer order is attached as Annexure-A.

*Filed to-day
was
Registrar.
20/12/2021*

2. That the appellant in compliance submitted arrival report to Principal GHSS Nara Amazai Haripur which was not accepted, in response Principal GHSS Nara Amazai Haripur wrote letter to DEO male Haripur that the no post vacant at GHSS Nara Amazai Haripur . **Copy of the letter is attached Annexure-B.**
3. That, the salary of the appellant was also stopped due to unknown reason, the appellant filed applications for the release of his salaries and for adjustment against his original post but no response received. **Copies of the application is attached as Annexure-C.**
4. That after passing two years the appellant was adjusted against vacant post of junior clerk in his previous school GGHS Jabri vide order dated 17.09.2021. The appellant submitted arrival report and start performing his duties. **Copy of order and charge report is attached as Annexure-D & E.**
5. That thereafter the appellant filed departmental appeal for arrears for the period of non-adjustment of the appellant due to illogical and malafide act of the department, W.E.FROM **01.07.2019 TO 17.09.2021**. but the department instead of granting arrears for the period **w.e.from 01.07.2019 TO 17.09.2021**, treated the period from 01.07.2019 to 17.09.2021 till adjustment as leave without pay vide order dated 22.11.2021 which is against the law and rules. The appellant feeling aggrieved comes to this august Tribunal on the following grounds amongst the others. **Copy of departmental appeal and impugned final order is attached as Annexure-F & G).**

GROUND:

- A) That the order dated 22.11.2017 is against the law, fact, norm of justice and material on record. And need to be modification as period w.e.from **01.07.2019 TO 17.09.2021** to arrival may be treated as with full pay or Leave of Kind due with all back and consequential benefits.
- B) That the appellant was not adjusted by the department is not the fault of the appellant therefore, the appellant is fully entitled to salary.
- C) That if the grievance of the appellant is not resolved then the appellant will face huge financial loss even it will affect the pension of the appellant.

- D) That the appellant cannot be held responsible for the lapse/irregularities committed by the department and in such case the Hon'able Supreme Court of Pakistan has held the department responsible not the appellants.
- E) That the appellant is legally entitled for is pay under section 17 of the Civil Servant Act 1973 of Khyber Pakhtunkhwa Peshawar. Being remained on the strength of the department throughout the period and not a again full employee during that period. Hence the impugned order is liable to be modified.
- F) That the relevant authorities restrain the appellant from performance of duty due there improper exercise of official power, therefore, the appellant cannot be deprived from his legal right of salary.
- G) That the appellant gave his arrival but the department didn't accept the arrival which is not the fault of the appellant so appellant is punished for the fault of department.
- H) That the appellant was not remained gainful employee during the period of not adjustment so the appellant is fully entitled to salaries for that period.
- I) That appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of the Islamic Republic of Pakistan 1973.
- J) That the respondents acted in arbitrary and malafide manner by adjusting the appellant against the already fill vacancy.
- K) That no adjusted appellant in compliance with the order is against the law and rules and malafide on the part of the department.
- L) That the impugned order has not been passed in the interest of public service nor exigency of service, therefore not tenable and liable to be set aside.
- M) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the
appellant may be accepted as prayed for.

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APPELLANT

Mursaleen Abbasi

THROUGH:


SYED NOMAN ALI BUKHARI

Advocate, High Court

Peshawar

Date:17/12/2021

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BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2021

Mursaleen Abbasi

V/S

Education deptt;

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.


DEPONENT

LIT OF BOOKS:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE.
3. Any other case law as per need.


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT

6

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO: _____/2021

Mursaleen Abbasi

V/S

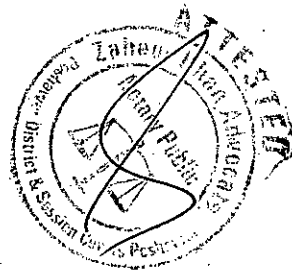
Education deptt;

AFFIDAVIT

I, Mursaleen Abbasi, (Appellant) do hereby affirm that the contents of this service appeal are true and correct, and nothing has been concealed from this honorable Tribunal.


DEPONENT

Mursaleen Abbasi



A (7)

**OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)
HARIPUR**

Office Order:-

As the utilization of autonomy budget at the higher secondary schools is an indicator of District performance.

And the post of both the clerks i.e S/C and J/C are laying Vacant at GHSS Nara Amazi, so the utilization of the autonomy budget of GHSS Nara Amazi is not up to the required level, therefore to cope with the matter Mr. Mursaleen Abbasi GGHS Jabri Haripur is hereby adjusted at GHSS Nara Amazi Haripur on his own pay and grade in the best interest of public service with immediate effect.

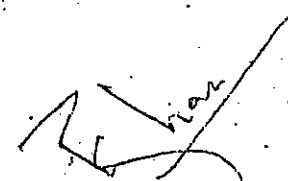
Note: - No TA DA is allowed
Charge report should be submitted to all concerned

.....sd/.....
District Education Officer
Male Haripur

Endst:No 2697-2702 3-1/GB dated 13 /04/2019.
Copy forwarded for information to:-

1. The District Monitoring Officer Haripur.
2. The District Account Officer Haripur
3. The District Education Officer Female Haripur with reference to his NOC
- ✓ 4. Principal /Headmistres concerned
4. The EMIS Branch Local Office.
5. Office Record File.

GGHS
Jabri


Asst:District Education Officer
Male Haripur.

ATTESTED

8

Office of the principal G.H.S.S. Nara Amazal
To The DEO Male Haripur
Respected Sir

It is submitted that the post of T/c
at G.H.S.S. Nara Amazal is already fill
There is no any post of T/c vacant at G.H.S.S.
Nara Amazal Haripur

D. N. D.
PRINCIPAL
Govt. High. Secondary School
Nara Amazal (Haripur) 16/7/19

ATTESTED

09

کتابخانه جامعہ اسلامیہ

کتاب

مضامین و مقالات

نمبر 4 13 کوئی کتاب نمبر 2697-2702
2019

کتاب نمبر 2697-2702

مضامین و مقالات

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کتابخانه DED زمانہ صدری کراچی

(11)

ذیل کے نام سے

آفس ڈیپوٹیشن کے تحت

تاریخ 04/13/2019 کو

2697-2702 کے تحت 9483 نمبرہ انگریزی کی

ذیل کے نام سے (J/L) ڈیپوٹیشن کے تحت

ذیل کے نام سے

cancel کے تحت ڈیپوٹیشن کے تحت

ذیل کے نام سے

ذیل کے نام سے
19/12/19
5/1
9483
13/1

ATTESTED



Q/A (19)

OFFICE OF THE
DISTRICT EDUCATION OFFICER (FEMALE)
HARIPUR

Phone No. 0995-920154, Fax No. 0995-920155

TRANSFER/ADJUSTMENT:

Mr. Mursleén Abbassi J/C GHSS Narra Amazai is adjusted/Transfer against vacant Post of J/Clerk at GGHS Jabri on his own pay & grade in the interest of public service w.e.f the date of taking over charge.

1. Charge reports should be submitted to all concerned.
2. No TA/DA is allowed.

Sammad Hussain
District Education Officer Female
Haripur

Endst No

6055

Dated Haripur the

17/9/2021

Copy to the:-

1. The Director E&SE Khyber Pakhtunkhwa Peshawar,
2. The District Accounts Officer, Haripur.
3. District Monitoring Officer Haripur.
4. Principal/Headmistress concerned.
5. Official concerned.
6. Office file.

Sammad Hussain
District Education Officer Female
Haripur

8
ATTESTED

E (13)

OFFICE OF THE HEADMISTRESS OF GOVT GIRLS HIGH SCHOOL JABRI DIST ,HARIPUR.

CHARGE REPORT

1. Certified that I MR MURSLEEN ABBASI J/C BPS 11 have this day before/after noon respectively made over transfer of my charge at the office of HM GGHS JABRI ,HARIPUR against the vide office order NO 6055 . Dated .17/09/2021.
2. Particulars of cash and impotent secret and confidential documents handed over or noted on the reverse.

[Signature]
Sig Of arrival EMP
Designation. J/C BPS 11

SIG Of relieved . Vacant Post
Designation. J/C BPS 11

Station GGHS JABRI,HARIPUR.

Copy to .

1. Director (E&SE) Education ,KPK
2. DEO (E&SE) Education ,Haripur.
3. Dist Account Officer ,Haripur.
4. Office Copy.

No. 1019-22 Dated. 18-9-21

[Signature]
HEADMISTRESS
Head Mistress
GGHS Jabri Haripur
HARIPUR

ATTESTED

19

بخدمت جناب ڈسٹرکٹ ایجوکیشن آفیسر زنانہ، ہرپور

اپیل

موضوع

جناب عالیہ

عرض یہ پیش خدمت ہے کہ سائل کا چاہل مورخہ 13/04/2019 کو گورنٹ ہائی اسکول نازہ امانی میں آرڈر نمبر 2697-2702 مورخہ 13/04/2019 کو ہوا سائل مذکورہ سکول میں حاضری کے لئے گیا لیکن وہاں پوسٹ خالی نہیں تھی۔


اب سائل کو آرڈر نمبر 6055 مورخہ 17/09/2021 کے تحت گورنٹ گرلز ہائی سکول جیری میں ٹرانسفر کر دیا گیا ہے۔ لہذا عرض یہ پیش خدمت ہے کہ مہربانی فرمائیں کی تنخواہ مورخہ 01/07/2019 سے 17/09/2021 جاری کرنے کا حکم صادر فرما کر اپنا منگوا ٹھہرائیں۔ تاہم تا عمر آپ کی خدمت میں دعا گو رہے گا۔
شکریہ

العارض

مرسلین عباسی جو نیر کلرک
گورنٹ گرلز ہائی سکول جیری
ہرپور

No Dated

submitted in original to District Education Officer Female, Haripur for necessary action please .


District Education Officer
Female
Haripur

TESTED



OFFICE OF THE DISTRICT EDUCATION OFFICER (M)

HARIPUR

Ph. No. 0995-920150, 920151, 920152

Email: deomalehrn@yahoo.com

G 15



Grant of Leave:

Sanction is hereby accorded to the grant of Extra Ordinary leave w.e.f 01-07-2019 to 17-09-2021 (807Days) without pay to Mr. Mursaleen Abbasi Junior Clerk GHSS Nara Amazai Haripur as due & admissible to him under the revised leave rules 1981.

Note: Necessary entry to this effect should be made in his Service Book etc.


-----Sd/-----

**District Education Officer (Male)
Haripur**

Endst: No. ⁷⁰⁰⁹⁻¹² /F.No.11-3/G.B/Ministerial Staff Leave Dated Haripur the 22/11/2021.

Copy for information to:

1. The Senior District Account Officer Haripur.
2. The District Monitoring Officer Haripur.
3. The Principal GHSS Nara Amazai/Headmistress GGHS Jabri Haripur.
4. Office record file.


**District Education Officer (Male)
Haripur**

ATTESTED

VAKALAT NAMA

NO. _____/20

IN THE COURT OF KP Service Tribunal Peshawar

Mursaleen Abasi

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Education

(Respondent)
(Defendant)

I/We, Mursaleen Abasi

Do hereby appoint and constitute **SYED NOMAN ALI BUKHARI Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated 20/12/2021



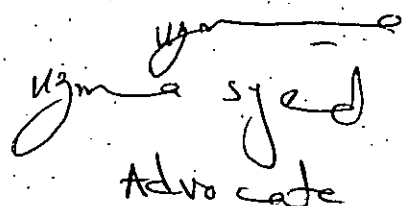
(CLIENT)

ACCEPTED



SYED NOMAN ALI BUKHARI
Advocate High Court Peshawar.

Cell: (0306-5109438)



Advocate

Before the KP Service Tribunal, Peshawar.

Appeal No: 7891/2021

Subject: Application for early hearing instead
of 10/02/2022.

Respectfully sheweth:

1. That the above mentioned Appeal ^{is} filed for Salaries in which the date ~~was~~ ^{is} fixed for Preliminary hearing on 10.2.2022.
2. That the date fixed for hearing in Preliminary hearing is too long a matter of delay is involved.
23-12-2021
3. That if the ~~very~~ appeal may be fixed to early date in next week at Abbottabad Bench being related to Abbottabad in interest of Justice.

It is, therefore, most humbly requested that kindly allowed this application and the appeal may be fixed before Abbottabad Bench in next week for Preliminary hearing.

[Signature]
Appellant
In Person.

Date 23-12-2021

Be fixed at coming town of Camp Court, Abbottabad.