

16th June, 2022

Counsel for the appellant present.

Learned counsel for the appellant sought adjournment.
Last chance is given. To come up for preliminary hearing
on 04.08.2022 before S.B.

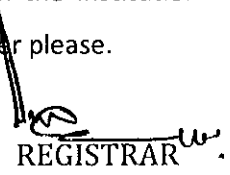

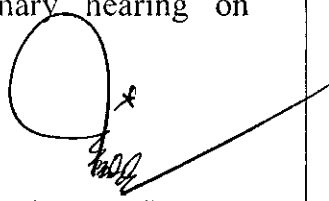


(Kalim Arshad Khan)
Chairman

FORM OF ORDER SHEET

Court of _____

Case No.- 821/2022

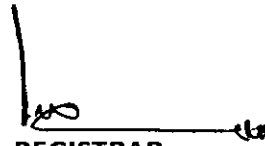
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	23/05/2022	<p>The appeal of Mr. Zubair resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	<p>25-5-22</p> <p><i>Noor Muhammad Khattak</i> 27/5/22</p>	<p>This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put there on <u>30-5-22</u>. Notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p>
	30.05.2022	<p>Learned counsel for the appellant present and requested for adjournment to further prepare the brief. Adjourned. To come up for preliminary hearing on 16.06.2022 before S.B.</p> <p style="text-align: right;"> (Mian Muhammad) Member (E)</p>

The appeal of Mr. Zubair son of Abdus Sattar village Shawangi Mame Khel District Nowshera received today i.e. on 12.05.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of impugned order is not attached with the appeal which may be placed on it.
- 2- Annexure-A of the appeal is illegible which may be replaced by legible/better one.

No. 1041 /S.T,

Dt. 13-5- /2022



REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Noor Muhammad Khattak Adv. Pesh.

objection no. 1.

R. Sir,

The respondents are not willing to provide/communicate the adverse impugned order to the appellant kindly the respondents may be directed to provide the said order to the appellant in light of Rule 27 of Service Tribunal Rules, 1974 after institution & admission of the instant appeal. So for the objections no. 2 is concern the same has been removed. Hence re-submitted to day dated: 23.5.2022.


5
23/5/2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 821 /2022

MR. ZUBAIR

V/S

EDUCATION DEPTT:

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S.N O	DOCUMENTS	ANNEXURE	PAGE
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Dated: ___/.05./2022

APPELLANT

Through:

NOOR MOHAMMAD KHATTAK

ADVOCATE

0345-9383141

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2021

Mr. Zubair s/o Abdus Sattar,
Village Shawangi Mame Khel, District Nowshera

..... **APPELLANT**

VERSUS

- 1- The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The District Education Officer (M), Nowshera.

..... **RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST IMPUGNED INACTIONS OF THE RESPONDENTS BY NOT ALLOWING THE APPELLANT TO SUBMIT ARRIVAL REPORT AND NOT PROVIDING THE ADVERSE ORDER IF ANY AND SUBSEQUENT NON ADJUSTMENT AGAINST THE VACANT POST OF SWEEPER FALL VACANT AFTER AVAILAING EARNED LEAVE BY THE APPELLANT

PRAYER:

That on acceptance of this appeal the respondents may kindly be directed to provide the termination order to the appellant if any or the appellant may be allowed to submit arrival report for duty after availing earned leave by the appellant. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise on the present appeal are as under:

- 1- That the appellant was serving as Sweeper (BPS-01) against a vacant post at GMS Shawangi District Nowshera.

Copy of appointment order is attached as annexureA

- 2- That as evident from the Service Book, the appellant served the respondent department for more than ten years, he was

2

granted earned leave with half pay w.e.f 1-03-2009 to 30-04-2011 vide DEO(M)E&S Nowshera.

Copy of Service Book having service entries is attached as annexure.....B

- 3- That the appellant after availing earned leave submitted his arrival report to the respondent department but neither the report was accepted nor duty was assigned.
- 4- That the appellant used to attend duty but the respondent department is neither posed the appellant at a particular palace of duty nor provided any termination order, if so issued.
- 5- That no notice has been served upon the appellant on his home address so the appellant doesn't believe on heresy/verbal information regarding termination or dismissal from service.
- 6- That despite constant and numerous contacts with the respondent department, but till date the responsible entities of the Education department are reluctant to inform the appellant about the fate of the case.
- 7- That if the appellant has been terminated from service, then the respondent department was required to adjust the appellant against a vacant post of sweeper anywhere in District Nowshera and save him from unemployment.
- 8- That being aggrieved from the above inaction of the respondent department, the appellant filed departmental appeal before the respondent no.3, however, despite lapse of statutory period, the appellant has not been apprised of its outcome.

2

3

**Copy of departmental appeal and post office receipt
are attached as annexureC&D**

- 9- That the appellant after being highly aggrieved from the inaction of the respondent department by not acting upon the departmental appeal and having no other remedy the appellant filed this appeal on the ground interalia as under:-

GROUND:

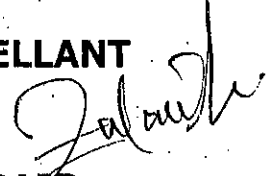
- A- That the impugned inaction of the respondent department by not accepting the arrival report and non-assigning of duties and provision of termination order, issued if any, is against law, facts, and norms of natural justice, hence not tenable in the eye of law and liable to be set aside.
- B- That the appellant has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondents are duty bound either to inform the appellant about the fate of the case, and in case of termination from service, it devolve upon the Education Department to adjust the appellant against a vacant post anywhere in Nowshera District keeping in view long period of unblemished service of the appellant.
- D- That according to Article 38 (e) of the Constitution of Islamic Republic of Pakistan, 1973 the state is bound to reduce disparity in the income and earning of individuals including persons in the services of the federation, therefore in light of the said Article the appellant is fully entitle for service under the supervision of respondent department.
- E- That the appellant has been discriminated on the subject noted above and as such the respondents violated the principle of natural justice.
- F- That appellant seeks permission to advance other 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 with all back benefits.

④ ④

Dated: -04-2022

APPELLANT



ZUBAIR

THROUGH:

**NOOR MOHAMMAD KHATTAK
ASC**

**UMAR FAROOQ MOHMAND
&
KHAZAD GUL
ADVOCATES**

④ ⑤

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. _____/2022

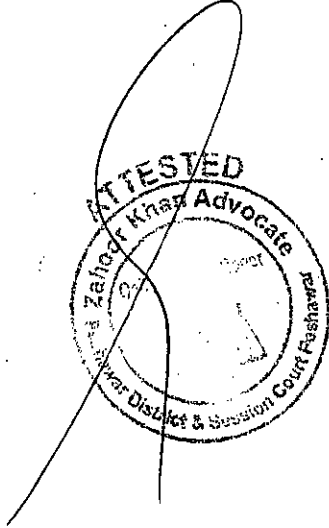
Mr ZUBAIR

V/S

EDUCATION DEPTT:

AFFIDAVIT

Stated on oath that the contents of the accompanying service appeal are correct to best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal.



Zubair
DEPONENT

CERTIFICATE:

Certify that no earlier service appeal has been filed by the appellant in the instant matter before this Honorable Service Tribunal.

Zubair
CERTIFICATION

Office of the District Education officer (M&) secondary NowsheraAPPOINTMENT,

Appoint of the following persons are here by ordered against the post of sweeper on temporary basis in BPS No. 01 Rs. (1245-35-1770) PM plus usually allowances as admissible under the rule with effect from the dated of taking over charges against the vacant post on the term & condition noted below:-

<u>S.NO.</u>	<u>NAME AND ADDRESS</u>	<u>POSTED AT</u>	<u>REMARK</u>
1.	Zubair S/o Abdus Sattar Village: Shawngi Mama khel. Nowshera	GMS Shawangi Mama Khel (Newly Up-Grated)	Against vacant Sweeper Post

Note:- He will make Chowkidar and will be reasonable for all kind of

TERMS AND CONDITIONS/

- 1- The appointment is purely, temporary and liable to termination at any time without assigning any order or notice.
- 2- In case of resignation they will have to submit one month prior notice to the department forfeit one month pay from the government servant.
- 3- They are required to produce Health and age certificate from the Medical Authorities concerned before taking over charge in case they are not government servant.
- 4- They are not allowed to take over charge if their age is less than 18 years and above 45 years.
- 5- ALL ORIGINAL Educational character and detail marks certificate must be verified from head of the institutions concerned before handing over charge.
- 6- If they fail to take over charge of the post within one month from the issued of this order the appointment will be automatically considered as cancelled.
- 7- Charge report submitted to all concerned.
- 8- No TA/DA etc: is Allowed
- 9- He will work s chokidar & responsible for School Future and other equipment

Muhammad saleem
DISTRICT EDUCATION OFFICER
(M&F) SECONDARY NOWSHERA.

Endst No./-8797-8801/F.No__/Apptt:/Dated Nowshera the ____/1999
Copy forwarded to information & n/a to the :-

- 1- P.A to Director Secondary Education (S),NWFP, Peshawar.
- 2- District Account Officer, Nowshera.
- 3- Head master/ Candidate concerned.
- 4- A.D.E.O (A), Local Office.

DISTRICT EDUCATION OFFICER
(M&F) SECONDARY NOWSHERA

OFFICE OF THE DISTRICT EDUCATION OFFICER (M&F) SECONDARY NOWSHERA.

APPOINTMENT.

Appointment of the following persons are hereby ordered against the post of Sweeper on temporary basis in BPS No. 01. (Rs. 1245-35-1770) plus usual allowances as admissible under the rules with effect from the date of taking over charge against the vacant post on the terms & conditions noted below:-

S.NO.	NAME AND ADDRESS	POST	REMARKS
1.	Zubair S/o Abdus Sattar Vill: Shawangi Mama Khel, Nowshera.	Shawangi Mama Khel, (Newly Graded).	Against vacant Sweeper Post.

Note:- He will work as Chowkidar and will be responsible for all kind of school property.

TERMS AND CONDITIONS/

- The appointment is purely temporary and liable to termination at any time without assigning any reason or notice.
- In case of resignation the candidate has to submit one month prior notice to the Deptt: for a month pay from the Govt: Servant.
- They are required to produce Medical and age certificate from the medical authorities concerned before taking over charge in case they are not Govt: Servant.
- They are not allowed to take over charge if their age is less than 18 years and above 45 years.
- All original Educational character and detail marks certificate must be verified from the Head of institutions concerned before handing over charge.
- If they fail to take over charge of the post within one month from the issued of this order the appointment will be considered as cancelled.
- Charge report should be submitted to all concerned.
- No TA/DA etc: is allowed.
- He will work as Chowkidar & responsible for school furniture and other equipment.

(MOHAMMAD SALEM)
DISTRICT EDUCATION OFFICER,
(M&F) SECONDARY NOWSHERA.

Inst: No. 8797-331 /F.No. /Appl: /Dated Nowshera the 18/3 /99.

Copy forwarded for information & n/a to the:-

1. P.A to Director Secondary Education (S), NWFE, Peshawar.
2. District Accounts Officer, Nowshera.
- 3-4. Head Master/Candidate concerned.
5. A.B.E.O. (A), Local Office.

DISTRICT EDUCATION OFFICER
(M&F) SECONDARY NOWSHERA.

M. Idrees Hashmi
M.A.B.Ed

INTEREST

SERVICE BOOK

ANNEX B

(7)

1/11/09

12/09

Zubair G
Gandapur
Designation *Gandapur*
Department *Public Works*

Price : Rs. 30/-

PRINTED BY MANAGER
STATIONERY & PRINTING DEPARTMENT, GOVERNMENT OF N.W.F.P. PESHAWAR

ATTESTED

8

Note: The entries on this page should be renewed or re-attested at least every five years and the Signature (o lines 9 and 10 should be dated.

Name: Zubair Khan

Race: Afghan

Residence: Vill. e.p.o Sharangi Teh. & Dist. N.W.F.P.

Father's name and residence: Abdul Sattar As above

Date of birth by Christian era as nearly as can be ascertained: 01-03-1979 (1st March
11th Seventy nine)

Exact height by measurement: 5-6

Personal marks for identification: Wound scar on left hand

Left hand thumb and Finger impression of (Non-Gazetted) officer:

Little Finger:



Ring Finger:



Middle Finger:



Fore Finger:



Thumb:



Signature of Government Servant:

[Handwritten signature]

Signature and designation of the Head of the office, or other Attesting Officer.

DEO (M) Secy;
DEO MSR

ATTESTED

9

9

1	2	3	4	5	6	7	8	9
Name of Post	Substantive Whether substan- tive or officiating and whether permanent or temporary.	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional pay for officiating	Other emolument falling under the term "pay"	Date of Appointment	Signature of Government servant	and Designation of the officer treating officer station of posts 1 to 8
Inspector GMS Shikoff		BPS-01- (B.1245-35-1270)						
			B.1245/2			31/1/99		
			B.1230/2			01/12/99		
Do	Do		B.1315/2 PM			1/12/2000		
		BPS-01- (B.1870-55-3570)						
Do	Do		B.2035/2 PM			1/12/2001		
Do	Do		B.2090/2 PM			1/12/02		
Office of the Accountant General N.W.F.F. Peshawar. the revised Basic Pay Scale 2001 2001 ACCOUNT OFFICER								
								1-12-2002
								From The G.O.

10

8 Signature of Government servant	9 Post and Designation of the office (notation of posts 1 to 8)	10 Date of termination or appointment	11 Reason of termination (such as promotion, transfer, dismissal, etc.)	12 Signature of the head of the office or other attesting officer	13 Leave		14 Signature of the head of the office or other attesting officer	15 Reference to any recorded punishment or censure, or reward or praise of the Government Servant
					Nature and duration of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government		
					Period	Government to which debitable		
<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>		Appointed against vacant post in BPS-07 (61245-35-1770) as BMS showing 12400/- under DDO (M) Secy, Govt. of Punjab, No: 134-85 dated 05-1-99	<i>[Signature]</i>	
<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>		Revision of pay scale	<i>[Signature]</i>	
<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>		Service verified w.e.f 31-1-98 to 30-11-99 from the Accounts roll of other records of this office	<i>[Signature]</i>	
<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>		Service verified w.e.f 1-1-99 to 30-11-2000 from the Accounts roll of other records of this office	<i>[Signature]</i>	
<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>		Service verified w.e.f 1-12-2000 to 30-11-2001 from the Accounts roll of other records of this office	<i>[Signature]</i>	
<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>		Service verified w.e.f 1-12-2001 to 30-11-2002 from the Accounts roll of other records of this office	<i>[Signature]</i>	
				<i>[Signature]</i>			<i>[Signature]</i>	

ATTESTED

11

1	2	3	4	5	6	7	8	9
Name of Post	Whether substantive or officiating and whether permanent or temporary.	If officiating, state: (i) substantive appointment, or (ii) Whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional pay for officiating	Other emolument falling under the term "pay"	Date of Appointment	Signature of Government servant	Signature and Designation of head of the office or attesting officer in attestation of columns 1 to 8
Sansefer								
BPS Shrivastava			Rs. 2145/-			1 12/03		S.O. DBA
do			Rs. 2200/-			1 12/04		DBA
		BPS-01 Scale Revised in (Rs. 2100 - 45 - 4100)						
do			Rs. 2540/- PM			01 07/05		S.O. D.
do			Rs. 2605/- PM			01 12/05		D
Ganeshwar BPS Shrivastava			Rs. 2670/- PM			1 12/06		
		BPS-02 (Rs. 2530 - 85 - 5080)						
do			Rs. 23125/- PM			1 7/07		
do			Rs. 3210/- PM			1 12/07		
		BPS-02						
		N. W. P. Pashawar						
		used in the revised pay scales 1981						
		(B)						
		STATE OF J & K						
		11/1991						

Signature of Government Officer	Name and Designation of the head of the office or other attesting officer in attestation of columns 1 to 3	Date of termination or appointment	Reason of termination (such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer	Leave		Signature of the head of the office or other attesting officer.	Reference to any recorded punishment or measure, or reward or praise of the Government Servant.
					Nature and duration of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debitable to another Government		
					Period	Government to which debitable		
	D.O. (M/1/ESSE) Nowshera DDCM	30/11/04	A/govt.	D.O. (M/1/ESSE) Nowshera	Service verified wef 01-12-2002 to 30-11-03		From the Acquaintance roll & other record of this office	(12)
	D.O. (M/1/ESSE) Nowshera DDCM	30/05	Revision of pay scale	D.O. (M/1/ESSE) Nowshera				
	D.O. (M/1/ESSE) Nowshera DDCM	30/11/05	A/govt.	D.O. (M/1/ESSE) Nowshera	Service verified wef 1-12-03 to 30-11-04		From the Acquaintance roll & other record of this office	
	D.O. (M/1/ESSE) Nowshera DDCM	30/06	Annual grant	D.O. (M/1/ESSE) Nowshera				
	D.O. (M/1/ESSE) Nowshera DDCM	30/07	Revision of pay scale	D.O. (M/1/ESSE) Nowshera	Service verified wef 1-12-04 to 30-11-05		From the Acquaintance roll & other record of this office	
	D.O. (M/1/ESSE) Nowshera DDCM	30/11/07	A/govt.	D.O. (M/1/ESSE) Nowshera	Service verified wef 1-12-05 to 30-11-06		From the Acquaintance roll & other record of this office	
	D.O. (M/1/ESSE) Nowshera DDCM	30/08	Revision of pay scale	D.O. (M/1/ESSE) Nowshera				
					Service verified wef 1-12-07 to 30-11-07		From the Acquaintance roll & other record of this office	

ATTESTED

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1	2	3	4	5	6	7	8	9
Name of Post	Whether substantive or officiating and whether permanent or temporary.	If officiating, state (i) substantive appointment, or (ii) Whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional pay for officiating	Other emolument falling under the term "pay"	Date of Appointment	Signature of Government servant	Grade and Designation of the officer or attesting officer attestation of columns 1 to 8 Date terminating appointment
<i>Sweeper</i> <i>GMS Chaudhary</i>		BPS-02 (No 3035-100-6096)	Rs. 3935/- PM			12/08	<i>[Signature]</i>	<i>[Signature]</i> 20/11/2015 DOCA
<i>[Signature]</i>			Rs. 3935/- PM			12/08	<i>[Signature]</i>	DOCA
		<i>[Signature]</i>						

Office of the Accountant General
 Khyber Province, Peshawar
 Pay Fixed in the Revised Basic Pay Scales
 Pay Fixed @ Rs. _____ w.e. 01-07-2015
 R.B.P.S. _____ B
 Pay Fixed @ Rs. _____ w.e. 01-07-2015
 Date of Next increment is on 01-12-2015

Accountant General
 Peshawar

ATTESTED

ANNEX "C"

16

To

The Director (E&SE) Department,
Khyber Pakhtunkhwa,
Peshawar.

Subject: **DEPARTMENTAL APPEAL AGAINST THE INACTION OF
THE RESPONDENT BY NOT ADJUSTING/ALLOWING THE
APPELLANT TO JOIN HIS DUTY.**

Respected Sir,

It is most humbly stated that I was appointed as Sweeper at GMS, Shawangi District Endorsement No,184-185 Nowshehra and took over charge/appointment at GMS dated 25-1-1999. That due to avoidable domestic circumstances I applied for the "Earned leave" for half pay with effect from the period 1-3-2009 to 30-4-2011 which was granted by EDO (E&S) Education, Nowshehra No,257-59 dated 31-3-2009.

That the appellant, while coming back to the service to the concerned GMS, Shawangi, district nowshehra after earned leaving, the concerned authority told me that my service has terminated and I was no more employ of the education Department.

That let me explain that neither call notice was sent to me on my home address nor any notice was published in any news paper and above all and there was no termination order provided to me.

In view of above, it is earnestly desired that my case may be looked into and my termination order if available may be done away with being illegal and I may be adjusted anywhere in District Nowshehra against the vacant post.

In case my adjustment is not possible I may be sent on compulsory retirement as I have already completed more than 10 years service.

Your gracious action will enable me to earn lively hood for my family and obliged.

Dated: 13.01.2022

OBEDIENTLY YOUR'S

ZUBAIR

GMS, Shawangi, District nowshehra

ATTESTED

17

No. 382

For Insurance purposes only. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed by the Post Office. Write on the back and acknowledge.

Rs. 50 Ps.

Received a registered* addressed to _____

Date-Stamp 2/11

Initials of Receiving Officer _____ *Write "letter", "postcard", "packet" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) _____ (in words) _____

Insurance fee Rs. _____ Ps. _____ (in words) } Weight } Kilo Grams

Name and address of sender } _____

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO: _____ OF 2022

Mr Zubair (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Deptt (RESPONDENT)
(DEFENDANT)

I/We Mr Zubair
Do hereby appoint and constitute **NOOR MUHAMMAD KHATTAK Advocate, 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 cost. 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.

Dated. ____/____/2022

Zubair

CLIENTS

ACCEPTED

NOOR MUHAMMAD KHATTAK

UMER FAROOQ MOHMAND

KAMRAN KHAN

HAIDER ALI

&

**KHANZAD GUL
ADVOCATES**