

20.12.2018

Learned counsel for the petitioner present. Preliminary arguments heard.

Having been charged for fraudulent transfer of Zakat Fund, fraudulent withdrawal of Zakat Fund and responsible for loss to the department, the appellant (Ex-District Zakat Officer) has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against the order dated 19.04.2018 whereby he was awarded major penalty of removal from service.

Points urged need consideration. The appeal is admitted for regular hearing subject to all just/valid legal objections. The appellant is directed to deposit security and process fee within 10 days thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 06.02.2019 before S.B.

Appellant Deposited  
Security & Process Fee



Member

06.2.2019

Appellant in person present.

States that his departmental appeal against the impugned order dated 19.04.2018 has been decided whereby the penalty of removal from service awarded to him earlier has been reduced to compulsory retirement. He, therefore, does not wish to further prosecute the appeal in hand and requests for its withdrawal.

Dismissed as withdrawn.





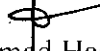
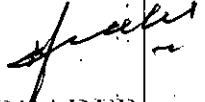
Chairman

ANNOUNCED  
06.02.2019

**Form- A**  
**FORM OF ORDER SHEET**

Court of \_\_\_\_\_

Case No. \_\_\_\_\_ 1063 /2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29/08/2018  <i>29-8-18</i>	<p>The appeal of Mr. Tilawat Khan presented today by Mr. Zartaj Anwar Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"><i>to</i>  REGISTRAR</p>
2-	19.09.2018	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>19-9-2018</u></p> <p style="text-align: right;"> MEMBER</p>
	02.11.2018	<p>Counsel for the appellant present and made a request for adjournment. Granted. Case to come up for preliminary hearing on 02.11.2018 before S.B.</p> <p style="text-align: right;"> (Ahmad Hassan) Member</p>
	02.11.2018	<p>Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 20.12.2018.</p> <p style="text-align: right;"> READER</p>

**BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

Appeal No. 1063 /2018

Tilawat Khan District Zakat Officer (BPS 17) Shangla Khyber  
Pakhtunkhwa.

(Appellant)

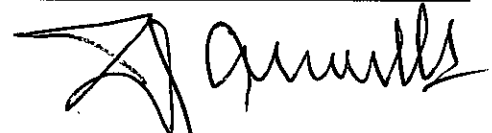
**VERSUS**

Govt Khyber Pakhtunkhwa, through Chief Secretary, Khyber  
Pakhtunkhwa Peshawar and others.


(Respondents)

**INDEX**

S. No	Description of Documents	Annexure	Page No
1	Memo of Appeal and affidavit		1-5
2	Copy of the Charge Sheet along with Statement of Allegations	A	6-7
3	Copy of reply	B	8-14
4	Copy of order dated 19.04.2018	C	15
5	Copies of the Departmental Appeal dated 03.05.2018	D	16-21
6	Vakalatnama.		22

  
Appellant

Through

  
**ZARTAJ ANWAR**  
Advocate, Peshawar

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

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1350

Dated 29/8/2018

Appeal No. 1063 /2018

Tilawat Khan District Zakat Officer (BPS 17) Shangla Khyber Pakhtunkhwa.

(Appellant)

**VERSUS**

1. The Govt Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa Peshawar.
2. Secretary to Govt of Khyber Pakhtunkhwa Zakat, Ushar, Social Welfare, Special Education and Women Empowerment Department Peshawar Khyber Pakhtunkhwa.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the Order Dated 19.04.2018, whereby the appellant was awarded major penalty of Removal from service, against which the Departmental Appeal dated 03.05.2018, has not been responded despite the lapse of 90 days statutory period.

Prayer in Appeal: -

On acceptance of this appeal the impugned orders dated 19.04.2018 may please be set-aside and the appellant may please be reinstated in service with full back wages and benefits of service.

Filed to Day  
Registrar  
29/8/18

Respectfully Submitted:

1. That the appellant was initially appointed as Stenographer BPS 15, Promoted to the post of Superintendent BPS 16, Presently District Zakat Officer BPS 17 in the respondent department and served the department for long 34 years. Ever since my appointment I had performed my duties as assigned with zeal and devotion and there was no complaint whatsoever regarding my performance.

2. That while serving in the said capacity, the appellant while posted as District Zakat Officer Peshawar, the audit team stand audit para, while posted at Peshawar station some irregularities were made by the undersigned.
3. That the appellant was served with show cause notice dated 15.03.2018 containing certain false and baseless allegations, the allegations so leveled are reproduced below:
  - A: That you, while posted as district Zakat Officer Peshawar, collaborated with the principal of National Institute Of Health Science Peshawar, in fraudulently transferring Zakat funds to the personal account of the principal.*
  - B: That you in collaboration with the principal of National Institute Of Health Science Peshawar, had fraudulently drawn Zakat Funds through fake candidates.*
  - C: That during the course of inquiry conducted by the Anti-Corruption Establishment, you were found responsible for loss to the department and reportedly a recovery of Rs 300000/ was also made from you”*  
(Copy of the Charge Sheet along with Statement of Allegations are attached as annexure A)
4. That the appellant duly replied the Show Cause and to the inquiry officer and refuted the allegations leveled against me as false and baseless. (Copy of reply is attached as annexure B)
5. That without following the legal and codal formalities, no proper inquiry has been conducted, the appellant has not been associated with the inquiry proceedings, statements of witnesses if any were never taken in his presence nor he has been allowed opportunity of cross examination, quite illegally the appellant has been awarded the major penalty of **“Removal from Service”** vide order dated 19.04.2018. (Copy of order dated 19.04.2018 is attached as annexure C)
6. That the appellant after obtaining his removal order filed Departmental Appeal dated 03.05.2018, however, it has not been responded despite the lapse of 90 days statutory period. (Copies of the Departmental Appeal dated 03.05.2018, is attached as Annexure D).

7. That the penalty so imposed upon me is illegal unlawful against the law and facts hence liable to be set aside inter alia on the following grounds:

**Grounds of Appeal:**

- A. That the appellant has not been treated in accordance with law, hence my rights secured and guaranteed under the law and constitution is badly violated.
- B. That while awarding me major penalty of removal from service no proper procedure has been adopted neither any opportunity of fair trial while cross examining the evidence, witness if any, while conducting their so called inquiry, nor I have been given a proper opportunity of personal hearing, thus the whole proceedings are defective in the eyes of law.
- C. That replying to allegation no 1 the total amount allocated for training of 150 students was transferred to joint account with the title of Principal National Institute of Health and Management Science Peshawar under the joint signature of principal and the appellant. It is also worth mentioning here that duration of the course in college was 2 years and funds lying in this account were lapsable at the closing of financial year June 2012, and if the funds were lapsed, the course / training students would be remained incomplete and the object of the scheme would not be achieved. It was not basically an irregularity but in accordance with para 7.4 of the procedure approved by the central Zakat Council which says that funds/events to the training institutes will be representative, this action was taken just in accordance with the rules and in the best interest of Mustahiq Zakat trainees, therefore the allegation/charges leveled against the appellant is baseless and unlawful, furthermore the account no 177101 is not personal account of anyone but in the official account of the institute concerned and the record of the entire account is also available with the institute.

- D. That in reply to the allegation no 2 which is also baseless and incorrect, the entire record of the students is available with the institute while application forms of the students were dully verified by the respective Chairman of local Zakat committee which was the only forum in Zakat and Usher system and their two years diploma course in health technology also verified and registered with the medical faculty, Govt of Khyber Pakhtunkhwa.
- E. That all these documentary proofs shows that their student were not fake which is also evident from repost of the inquiry officer that a list of 150 students was forwarded to NIHMS for two diploma course and that the said list was fake.
- F. That in response/ reply to allegation no 3 the amount which was paid by me was under extreme compulsion and under protest, as the object and goal of the anti-corruption officer to take the alleged amount with all means without taking into consideration, any documentary proof submitted by the appellant.
- G. That the charges were denied by the appellant, had never admitted the charges leveled not there was any sufficient evidence available to held the appellant guilty of the charges, thus the matter in hand required a full fledge regular inquiry, for the proof of otherwise of the charges in the absence of regular inquiry major penalty cannot be imposed.
- H. That the superior courts have in a number of reported judgments held that in case of awarding major penalty of removal from service regular procedure of holding inquiry cannot be dispensed with that too when the charges are denied by the employee.
- I. That the appellant have never committed any act or omission which could be termed as misconduct the charges leveled against the appellant are false and baseless besides the same are neither probed nor proved albeit the appellant have illegally been dismissed from service.

J. That the alleged recovery made from the appellant has not been proved through the inquiry conducted by the department but illegally and forcefully the recovery has been made from the appellant.

K. That the appellant have an unblemished and spotless service career of about 34 years, the penalty imposed against the appellant is too harsh and is liable to be set aside.

L. That the appellant is jobless since his dismissal from service.

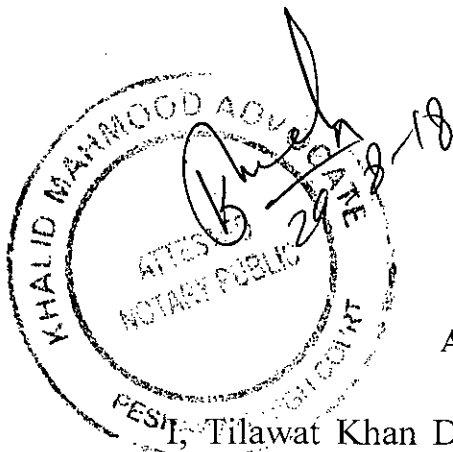
M. That the appellant seeks the permission of this Honourable Tribunal to rely on additional grounds at the hearing of this appeal.

It is therefore prayed that on acceptance the impugned orders dated 19.04.2018 may please be set-aside and the appellant may please be reinstated in service with full back wages and benefits of service.

Appellant

Through

ZARTAJ ANWAR  
Advocate Peshawar



### AFFIDAVIT

I, Tilawat Khan District Zakat Officer (BPS 17) Shangla Khyber Pakhtunkhwa, do hereby solemnly affirm and declare that the contents of the above appeal as well as the application are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

Deponent



6 APPENDIX A

CHARGE SHEET

I, Muhammad Azam Khan, Chief Secretary Khyber Pakhtunkhwa, as Competent Authority, hereby charge you, Mr. Tilawat Khan, District Zakat Officer (B-17), as follows:

- i. That you, while posted as District Zakat Officer Peshawar, collaborated with the Principal of National Institute of Health Sciences Peshawar, in fraudulently transferring Zakat Fund to the personal account of the Principal.
- ii. That you, in collaboration with the Principal of National Institute of Health Sciences Peshawar, had fraudulently drawn Zakat Fund through fake candidates
- iii. That during the course of inquiry conducted by the Anti-Corruption Establishment, you were found responsible for loss to the department and reportedly a recovery of Rs. 300,000/- was also made from you.

2. By reasons of the above, you appear to be guilty of inefficiency & misconduct under Rule 3 of the Khyber Pakhtunkhwa, Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule 4 of the Rules ibid.


3. You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Inquiry Officer / Inquiry Committee as the case may be.

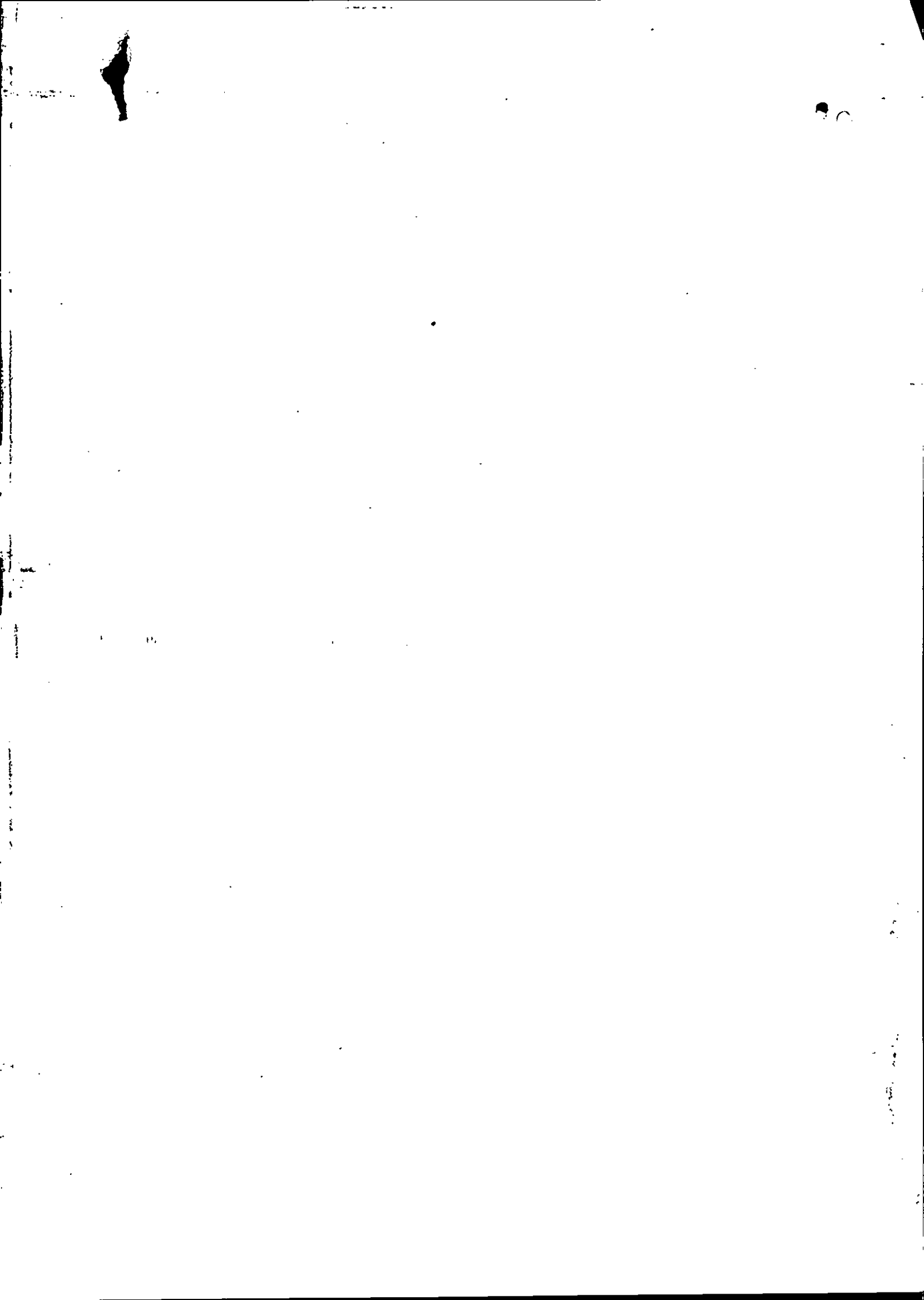
4. Your written defence, if any, should reach the Inquiry Officer / Inquiry Committee within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

5. Intimate whether you desire to be heard in person.

6. A Statement of allegations is enclosed.



  
(Muhammad Azam Khan)  
Chief Secretary  
Khyber Pakhtunkhwa



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DISCIPLINARY ACTION

I, Muhammad Azam Khan, Chief Secretary Khyber Pakhtunkhwa, as Competent Authority, am of the opinion that Mr. Tilawat Khan, District Zakat Officer (B-17) Zakat & Ushr Department has rendered himself liable to be proceeded against, as he committed the following acts/omissions, within the meaning of Rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011:-

STATEMENT OF ALLEGATIONS

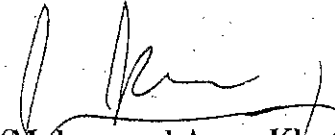
- i. That he, while posted as District Zakat Officer Peshawar, collaborated with the Principal of National Institute of Health Sciences Peshawar, in fraudulently transferring Zakat Fund to the personal account of the Principal.
- ii. That he, in collaboration with the Principal of National Institute of Health Sciences Peshawar, had fraudulently drawn Zakat Fund through fake candidates.
- iii. That during the course of inquiry conducted by the Anti-Corruption Establishment, he was found responsible for loss to the department and reportedly a recovery of Rs. 300,000/- was also made from him.


For the purpose of inquiry against the said accused with reference to the above allegations an Inquiry Officer / Inquiry Committee, consisting of the following, is constituted under rule 10 (1) (a) of ibid rules.

- (i) Mr. Mahmood Ahmad Dy Director  
ESRU, ESSE Deptt.

3. The Inquiry Officer / Inquiry Committee shall, in accordance with the provisions of the ibid rules, provide reasonable opportunity of hearing to the accused, record its findings and make within thirty days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the Inquiry Officer / inquiry Committee.

  
(Muhammad Azam Khan)  
Chief Secretary  
Khyber Pakhtunkhwa





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Approved B

GOVT OF KHYBER PAKHTUNKHWA  
DISTRICT ZAKAT COMMITTEE  
SHANGLA

DZC/SH/No. 1480

Dated 29-11-2017

To,

The Inquiry Officer/  
Deputy Director (ESRU)  
Elementary & Secondary Education Department  
KPK Peshawar.

Subject:

CHARGE SHEET/ STATEMENT OF ALLEGATIONS

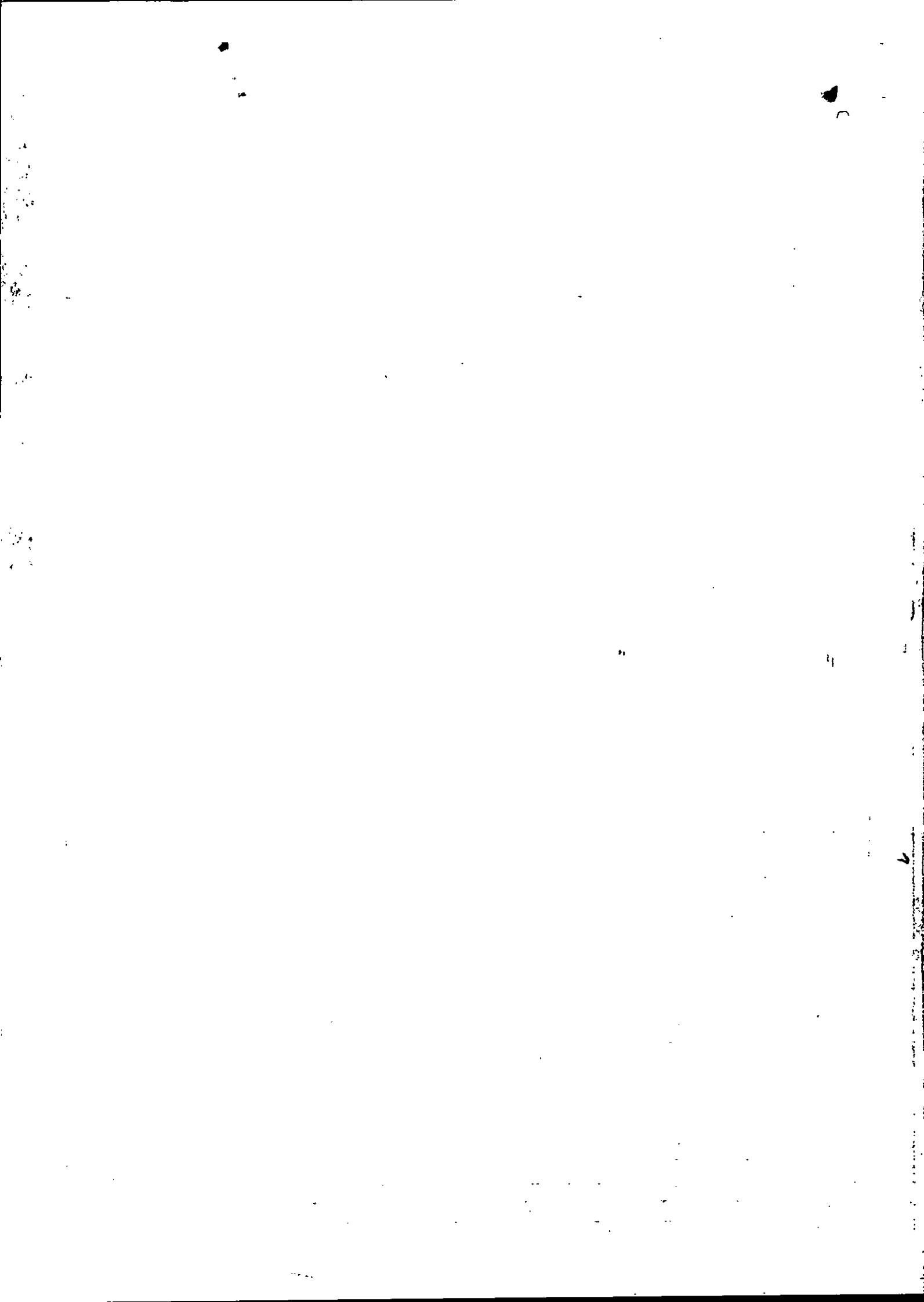
Sir,

Reference notification No, \_SO[Estt]Z/PF/2-4/5235-42 dated 17/11/2017 from the Zakat Ushr, Social Welfare Special Education & women Empowerment Department, where under Charge Sheet /Statement of Allegations were issued to me. The following charges were levelled against me in the Charge Sheet/ Statement of Aleegations :-

- i. That you, while posted as District Zakat Officer Peshawar, collaborated with the Principal of National Institute of Health and Management Sciences Peshawar in fraudulantly transferring Zakat fund to the personal account of the Principal.
- ii. That you, in collaboration with the Principal of National Institute of Health Sciences Peshawar, had fraudulantly drawn Zakat fund through fake candidates.
- iii. That during the course of inquiry conducted by the Anti-Corruption Establishment, you were found responsible for loss to the Department. and reportedly a recovery of Rs.300000/- was also made from you.

2. Before submitting my replies to the above allegations, I want to submit a brief history of the scheme for imparting technical training to deserving persons out of Zakat fund. In the year 2003, the Central Zakat Council in its meeting held on 19.4.2003, launched a scheme for creation of income generating opportunities for the poor students by providing appropriate vocational or technical training to them out of Zakat fund. For this purpose, the Council also approved a detailed procedure (Annex-A). In order to select market oriented trades for the beneficiaries of this scheme, the National Institute for





Health and Management Sciences Peshawar was selected for imparting two years Diploma course in the Medical technology to the Zakat students. According to Zakat and Ushr Department letter No. SO-V[Zakat]/Ushr/3700-23 dated 8.3.2008 (Annex-B), the Central Zakat Council enhanced the monthly rate of stipends to the students from Rs.1000 to Rs.2500 per student. Similarly, according to letter No: SOII[Z]/CCC/3992-4016 dated 13.10.2003 (Annex-C), out of the monthly scholarship of student, 30 percent will be paid to the training Institute as cost of training/administrative charges.

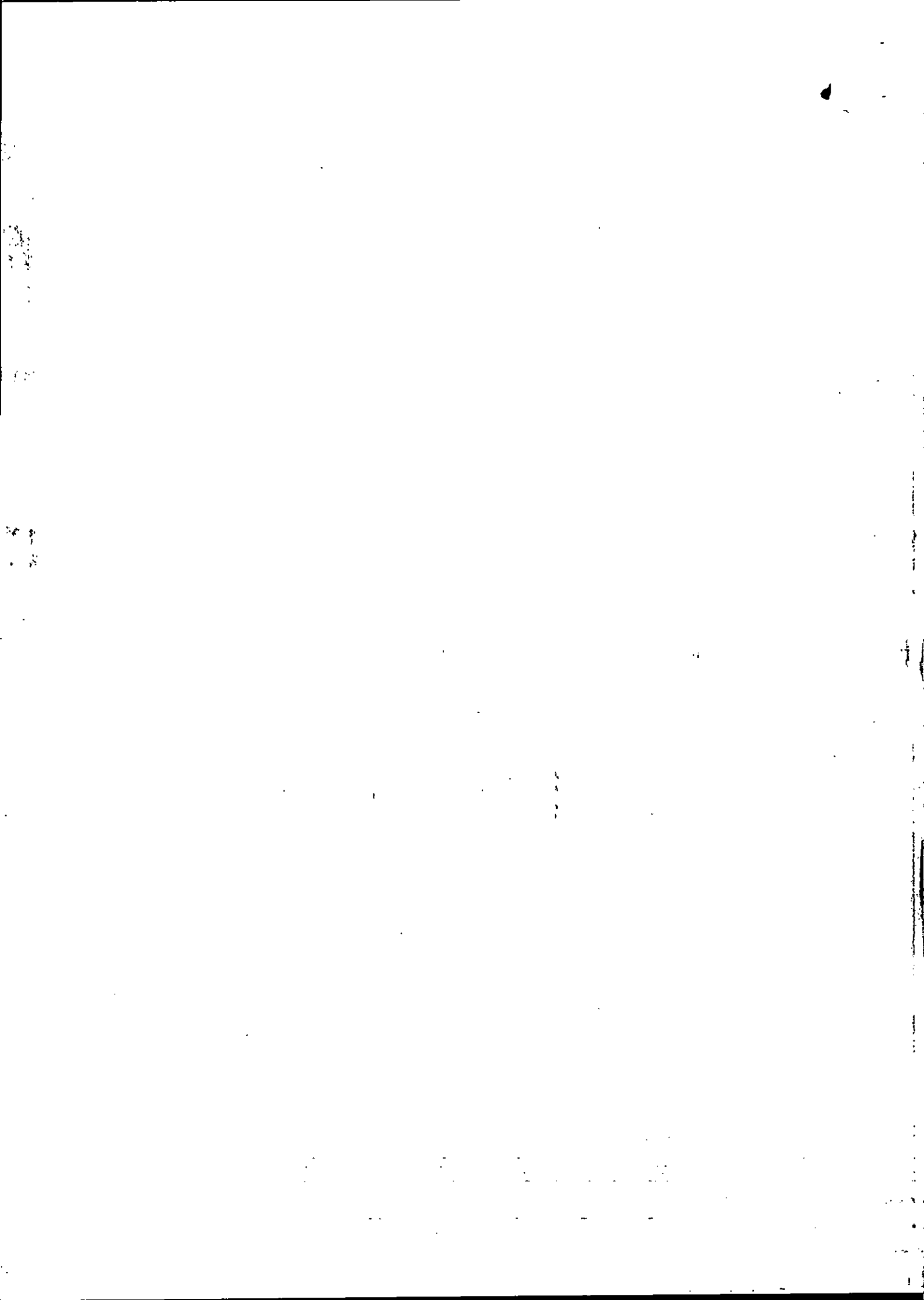
3. In the light of the above procedure/instructions of the Department, the cost of two years Diploma course for one student was coming to Rs.60,000 (2500x24). Out of this amount Rs.42,000 was to be paid to the student as stipend, whereas the remaining Rs.18,000 (30 percent) was to be paid to the training Institute as cost of training. This was a very huge cost and Department could not afford it due to paucity of fund. Therefore, the management of the Institute were negotiated and it was agreed that the Institute would charge Rs.15,000 instead of Rs.18,000 per student as cost of training. Thus, the District Zakat Committee selected 150 candidates for the Diploma course and released a total amount of Rs.2250,000/- to the National Institute of Health and Management Sciences Peshawar. So no amount for payment of stipend to the student was released keeping in view the importance of the training course and its duration.

4. I submit my Allegation wise replies to the Charge Sheet/Statement of Allegations as under:-

ALLEGATION NO. (i)

In the Allegation it has been Alleged that a sum of Rs, 1800,000/- has been transferred to the personal Account of the Principal National Institute of Health and Management Sciences Peshawar. Actually, a total Amount of Rs,2250,000/- allocated for the training of 150 Students was Transferred to Account No.91502000182501 maintained in the Askari Bank G.T.Road Branch, Peshawar, wide Cheque No. A 152699 Dated 15-05-2012. Amounting to Rs, 1125,000/- and Cheaque No A155585 dated 19-06-2012 Amounting to Rs,1125,000/- the title of this Account was "the Principal National Institute of Health and Management Sciences Peshawar". this Account was operative with the joint Signatures of the Principal NIHMS and the District Zakat Officer Peshawar. It is worth mentioning here that duration of the Diploma Course in the College was Two Years and funds lying in this Account was Lapsable at the close of the financial year (i.e 30 June 2012). Had the fund been lapsed, training of the Students would have remained incomplete and objective of the scheme would not have been achieved. keeping this apprehension in view, the funds was transferred to another official Account of the institute (No.177101) on 28-06-2012. this was not an irregularity, but was just in accordance with para 7.4 of the procedure approved by the central Zakat Council, which says that funds/Grants to the training Institute will be released through payee Account cheque only drawn in favour of the Principal or his authorized representative. this action was taken just in accordance with the rules and in the best interest of Mustahiq Zakat Trainees. Therefore the Aleegation/ Charg levelled against me is baseless and unlawful. It is submitted that account no.177101 is not personal account of anyone but is the official account of the institute concerned.

So for record of utilization of Rs,450000/- is concerned, it is submitted that record pertaining to the entire amount is available with the Institute.





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ALLEGATION NO (ii)

This allegation is totally baseless and incorrect. The students were not fake. The scheme was advertised in two local newspapers i.e Daily Paighaamaat and Daily Frontier News (Annex-D & E). applications forms received from students were duly verified by the respective Chairmen of Local Zakat Committees, which is the only forum in the Zakat and Ushr system to determine Istihqaq of any person. A list of 150 students was prepared and sent to NIHMS Peshawar for two years Diploma course in Health Technology out of Zakat fund, Placed at the disposal of the Institute concerned (Annex-F).

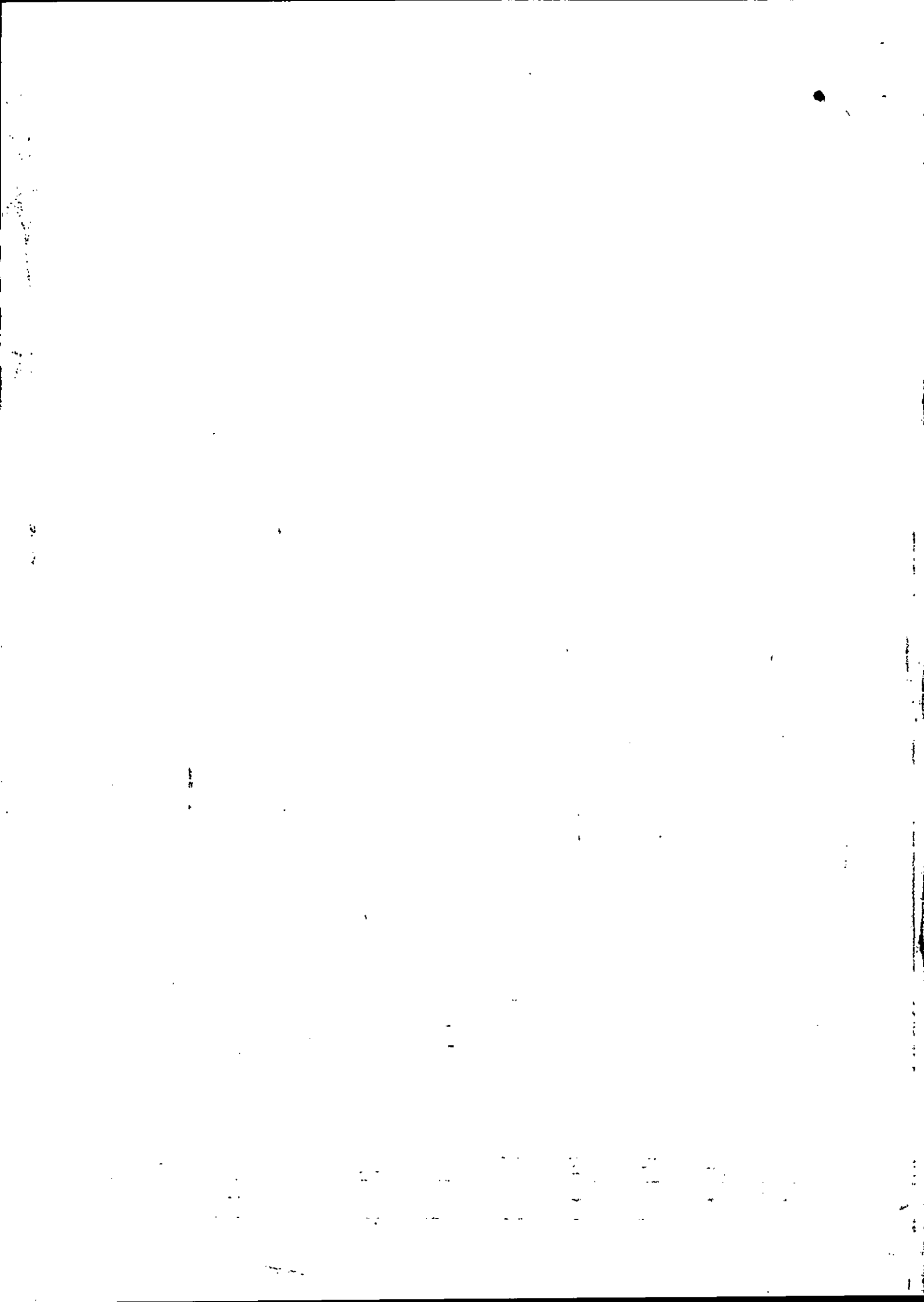
List pertaining to Admissions/enrolment in the Medical Faculty, Government Of KPK is at Annex G. Semester wise results of all the four semesters, issued by the Medical Faculty, Government of KPK Peshawar are at Annex H, I, J, & K respectively. All these documentary proofs shows that the students were not fake. Actually the report submitted by the Auditor Anti-Corruption Establishment Peshawar (Annex-L) was not based on factual grounds but was rather formulated on malafide intentions and without examining any record as explained in the following paras :-

- (a) The Zakat and Ushr Department (vide Annexure-M) forwarded to the Anti-Corruption Establishment Audit para no.6 regarding transfer of funds to the personal account of the Principal of the Institute for verification and further actions, but in the report of the Auditor ACE, there is no single word about this amount. It means that he did not touch the actual case in his Inquiry/audit, but submitted an irrelevant and irresponsible report.
- (b) His irresponsible and malafide attitude is very much evident from his report when he clearly says that the advertisement for inviting applications was published in one newspaper and then pasted on another through photocopier. This is just a joke with the future of other people. Both the newspapers( i.e. The Daily Paighamaat and The Daily Frontier News) containing the advertisement are available with me in original and can be produced for perusal as and when required.
- (c) In his report, the Auditor alledged that the Daily Paighamaat is not a registered newspaper with the government. Registration No 525 is clearly mentioned on the logo of the newspaper and can be further verified from Information Department if required.

ALLEGATION NO (iii)

It is correct that I along with the Chairman District Zakat Committee Peshawar and the owners of the Institute made recovery of a total amount of Rs.1880,000/- out of which Rs.3,00,000/- was paid by me but this does not mean that we accepted the contents of the report submitted by Auditor of the ACE. On the basis of this report, recovery was made as discussed in the reply to Allegation No (ii). We strongly opposed the contents of the report in our long discussions with Assistant Director ACE for 3-4 days, but he was not ready to hear any word or accept any documentary proof from our side. His only goal was to make recovery and show progress to the government. He even did not bother to see the original copies of the two newspapers and pressurized us harshly for the recovery. In the circumstances, we had no other option to save our dignity but to refund the amount in a protest.

*Alleged*



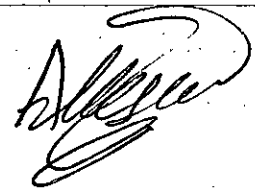
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5. In view of the position explained above, it is humbly requested that the allegations levelled against me in the Charge Sheet/Statement of Allegations, may be withdrawn, being baseless and un-authentic, and I may be exonerated of all these charges because:-

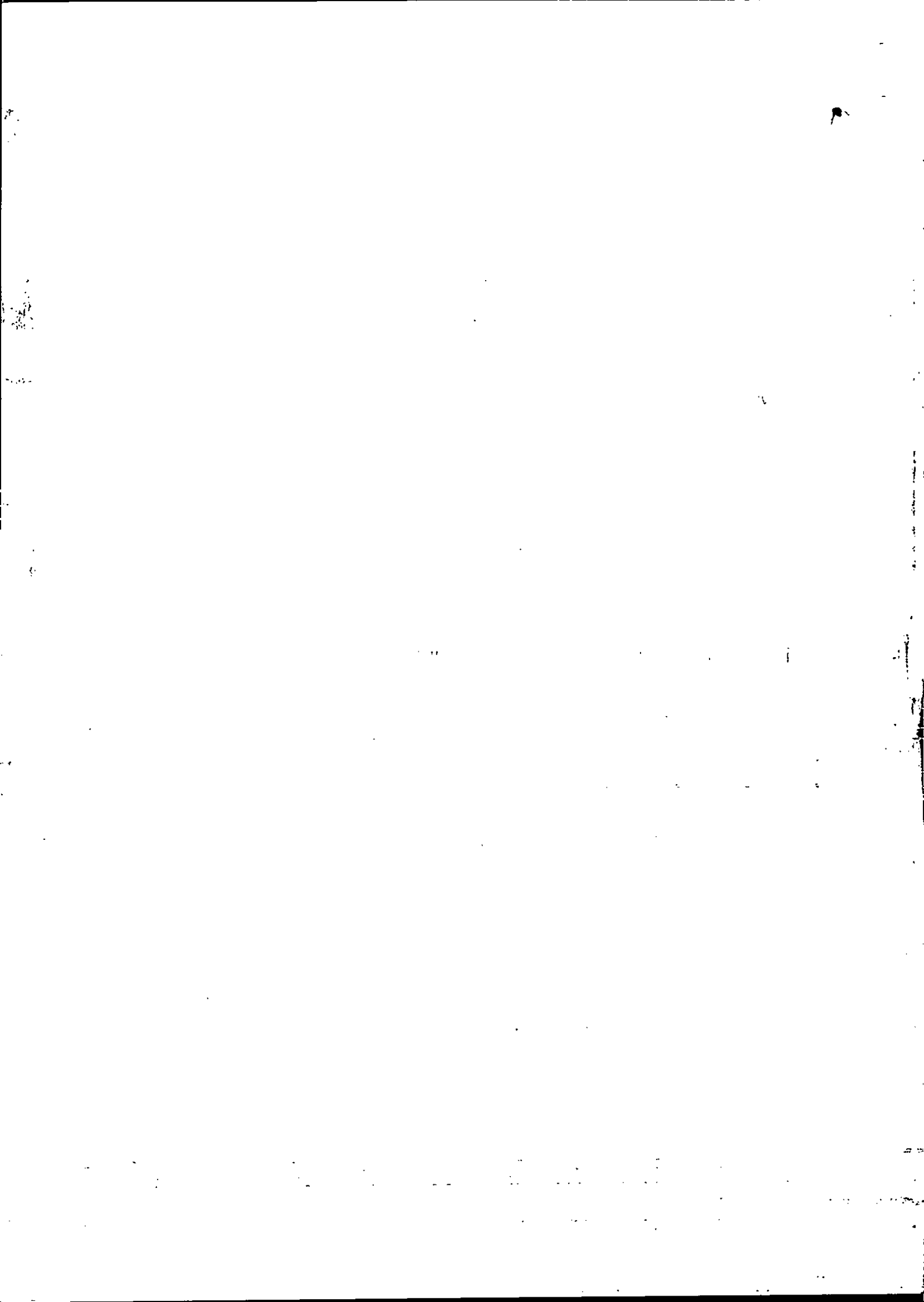
- (a) The recovery was made by four persons including me, but this chapter has been closed for the other three persons, whereas I am still under fire in this case and facing inquiries, which is unjust.
- (b) besides, recovery was also a penalty imposed by ACE forcibly, whereas another penalty in the same case will be a bit harsh action on the part of the provincial government against its employee whose only fault is that he was a government servant.
- (c) The recovery was made on the basis of three Audit/Inquiry reports i.e Audit para of the Directorate of Zakat Audit Islamabad, report of Departmental Inquiry Committee and report of the Auditor ACE, but non of these reports have any conformity with each other so far the allegation is concerned. For example the original audit para says that Rs. 1800000 were transferred to personal account of the Principal NIHMS. The departmental committee complains for non-production of record and students, whereas the auditor ACE termed all the candidates/students as fake. In this position when all the three audit parties have different opinions, the benefit of doubt should go to the accused.
- (d) I have served the Zakat and Ushr department for long 33 years with devotion and hard work.

6. I would, however be able to explain my position more in detail, if a chance of personal hearing is given to me.

Yours faithfully



(TILAWAT KHAN)  
District Zakat Officer  
Shangla



13

**GOVT OF KHYBER PAKHTUNKHWA  
DISTRICT ZAKAT COMMITTEE  
SHANGLA**

DZC/SH/No/1685

Dated 27-03-2018

To,

**The Chief Secretary,  
Khyber Pakhtunkhwa,  
Peshawar.**

Secy: ZO, SW, SE & WE Deptt

Diry No

5270

Date

29.03.18

Subject: **SHOW CAUSE NOTICE**

Dear Sir,

Kindly Refer to Zakat Ushr , Social Welfare Special Education & women Empowerment Department letter No. SO(Estt)/PF/2122-23 dated 15/03/2018, whereby a Show Cause Notice was received.

2. In this connection, it is submitted that The following charges were levelled against me in the Charge Sheet/ Statement of Allegations dated 17.11.2017:-

- (i) That you, while posted as District Zakat Officer Peshawar, collaborated with the Principal of National Institute of Health and Management Sciences Peshawar in fraudulently transferring Zakat fund to the personal account of the Principal.
- (ii) That you, in collaboration with the Principal of National Institute of Health and Management Sciences Peshawar, had fraudulently drawn Zakat fund through fake candidates.
- (iii) That during the course of inquiry conducted by the Anti-Corruption Establishment, you were found responsible for loss to the Department and reportedly a recovery of Rs.300000/- was also made from you.

3. The Deputy Director (ESRU), Elementary and Secondary Education Department, who was appointed as Inquiry Officer in this case conducted a detailed inquiry and submitted a report to your goodself. In his report, all the three allegations have been discussed. In the findings of the Inquiry Report, the Inquiry Officer has stated that Charge No. 1 i.e. transfer of Rs.1800000 to the personal account of the Principal National Institute of Health and Management Sciences, Peshawar stands proved, which is not a justice because:-

- (a) Account No.177101 was not personal account of any one but it was the official account of the National Institute for Health and Management Sciences Peshawar as confirmed by the Askari Bank G.T. Road Peshawar vide their letter No: Ref/0020/AKBL/IBB/715 dated 27/12/2017 [Annex-A], and mentioned at page 12 of the Inquiry Report.
- (b) Transfer of funds to the official account of a training institute is not violation of any rule or procedure rather it was in accordance with rule 7.4 of the Zakat Disbursement Procedure, approved by the Central Zakat Council, which says that funds/grants to the training institutes will be released through payee's account cheques only drawn in favor of the Principal or his authorized representative (Annex-B).
- (c) The only reason for the transfer of funds from joint account to the official account of the Institute was that funds lying in the joint account were lapsable and had it lapsed on 30/6/2012, the training of students would have remained incomplete and the goal of imparting technical training to deserving students would not had been achieved. Therefore, the funds were transferred to the official account of the Institute, which was not lapsable account.

A.S 2  
28.3.18



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(d) The Inquiry Officer has stated in his report that 107 students of the Institute were registered in the Faculty for Medical Technology and Allied Sciences Peshawar, as confirmed vide their letter at Annex-C. Had there been any malafide intention in transferring the funds to the account of training Institute, these 107 students would not have got the training as confirmed by the Faculty of Medical Technology and Allied Sciences Peshawar.

4. The most important charge in the Charge Sheet/Statement of Allegations was Charge No. [ii], which was about the fake candidates and according to the Inquiry Report, this charge has not been proved because out of 150 students, 107 have successfully completed that training.

5. It is correct that I along with the Chairman District Zakat Committee Peshawar and the owners of the Institute made recovery of a total amount of Rs.1880,000/- out of which Rs.3,00000/- was paid by me but this does not mean that we accepted our fault or misuse of Zakat fund. On the basis of a report from the Auditor of Anti-Corruption Establishment, recovery was made by the Anti-Corruption Establishment forcefully. We strongly opposed the contents of the report in our long discussions with Assistant Director ACE for 3-4 days, but he was not ready to hear any word or accept any documentary proof from our side. His only goal was to make recovery and show progress to the government. He even did not bother to see the original copies of the two newspapers, wherein advertisements for the training course were published, and pressurized us harshly for the recovery. In the circumstances, we had no other option to save our dignity but to refund the amount as a protest. The recovery was made by four persons including me, but this chapter has been closed for the other three persons, whereas I am still under fire in this case and facing inquiries, which is injustice. The recovery was made on the basis of three Audit/Inquiry reports i.e Audit para of the Directorate of Zakat Audit Islamabad, report of Departmental Inquiry Committee and report of the Auditor ACE, but none of these reports have any conformity with each other so far the allegation is concerned. For example the original audit para says that Rs. 1800000 were transferred to personal account of the Principal NIHMS. The departmental committee complains for non-production of record and students, whereas the auditor ACE termed all the candidates/students as fake. In this position when all the three audit parties have different opinions in the same case, the benefit of doubt should go to the accused.

6. I have served the Zakat and Ushr department for long 34 years with devotion and hard work.

7. In view of the position explained above, it is humbly requested that the allegations levelled against me in the Charge Sheet/Statement of Allegations, are baseless and un-authentic, and I may be exonerated of all these charges.

It is further requested that a chance of personal hearing may also be given to me.

Yours faithfully



(TILAWAT KHAN)  
District Zakat Officer.  
Shangla



0333-9453535

Tilawat B.

15  
Approved - C

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ZAKAT, USHR, SOCIAL WELFARE, SPECIAL EDUCATION  
AND WOMEN EMPOWERMENT DEPARTMENT**

Peshawar, Dated the 19.04.2018

**ORDER**

NO: SO-I (Z)/2-4/PF/9174-79 WHEREAS, Mr. Tilawat Khan, District Zakat Officer (B-17) Shangla was proceeded against under the Khyber Pakhtunkhwa Govt: Servants (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the Statement of Allegations.

AND WHEREAS, Mr. Mahmood Ahmad (PMS BS-18), Deputy Director, ESRU, Elementary & Secondary Education Department was appointed as Inquiry Officer to conduct inquiry against the said officer.

AND WHEREAS, the Inquiry Officer, after having examined the charges, evidence on record and explanation of the accused officer, submitted report;

NOW THEREFORE, the Competent Authority, after having considered the charges, evidence on record, the explanation of the accused officer, findings of the Inquiry Officer, personal hearing and exercising his powers under sub rule (5) of Rule 14 of the Khyber Pakhtunkhwa Govt: Servants (Efficiency & Discipline) Rules 2011, has been pleased to impose the major penalty of "Removal from Service" on the accused officer.

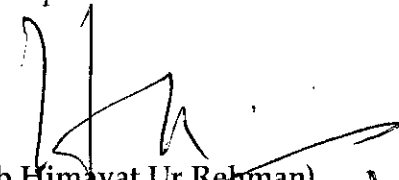
Sd/-

Secretary to Govt: of Khyber Pakhtunkhwa  
Zakat, Ushr, Social Welfare, Special Education  
And Women Empowerment Department

**Endst No & Date Even:-**

Copy forwarded to the:-

- 1). PSO to Chief Secretary, Khyber Pakhtunkhwa Peshawar.
- 2). District Accounts Officer Shangla.
- 3). Mr. Tilawat Khan, District Zakat Officer Shangla.
- 4). PS to Secretary Establishment Department Khyber Pakhtunkhwa Peshawar.
- 5). PS to Secretary Zakat, Ushr, Social Welfare, Special Education & Women Empowerment Department.
- 6). Personal File.

  
(Arbab Himayat Ur Rehman)  
Section Officer (Estt)  
Zakat & Ushr

19/4/18





10 Approved D

To

The Hon'ble Chief Minister,  
Govt. of Khyber Pakhtunkhwa  
Peshawar.

Subject: DEPARTMENTAL APPEAL AGAINST THE ORDER  
DATED 19.04.2018, WHEREBY THE APPELLANT HAS  
BEEN AWARDED THE MAJOR PENALTY/  
PUNISHMENT OF REMOVAL FROM SERVICE

**Prayer in Department Appeal**

On acceptance of this appeal the order dated  
19.04.2018 may please be set aside and the  
undersigned may kindly be reinstated into  
service with all back benefits.

**Respected Sir**

The undersigned very humbly submits the following few  
lines for your kind and sympathetic consideration.

1. That I was initially appointed as stenographer BPS-15  
and lastly promoted BPS-17 as a District Zakat Officer in  
respondent department, ever since my appointment, I  
have performed my duties as assigned with great Zeal  
and devotion and there was no complaint whatsoever  
regarding my performance.
2. That while serving in the said capacity, I while posted  
as a District Zakat Officer BPS-17 posted at Peshawar  
station, the audit team stand audit Para, that I while

*Chishti*  
03.05.18

*Approved*

posted at Peshawar station some irregularities were made by the undersigned.

3. That thereafter I was served with a show cause notice dated 15.03.2018 containing certain false and baseless allegations, the allegations so leveled are reproduced below:

i. That you, while posted as District Zakat Officer Peshawar, collaborated with the principal of National Institutes of Health Services Peshawar, in fraudulently transferring Zakat Fund to the personal account of the principal.

ii. That you, in collaboration with the principal of National Institute of Health Services Peshawar, had fraudulently drawn Zakat Fund through fake candidates

iii. That during the course of inquiry conducted by the Anti-Corruption Establishment you were found responsible for loss to the department and reportedly a recovery of Rs.300,000/- was also made from you.

4. That all duly replied the show cause notice and refused the allegations leveled against me as false and baseless. (Copy of reply is attached).

5. That without following all the legal and codal formalities and without conducting any regular



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inquiry while providing a fair opportunity ~~while~~ rebutting the charges level against me, by ~~cross~~ examining the statement /witness if any, quite illegally I have been awarded the major penalty of removal from service vide order dated 19.04.2018. (Copy of order dated 19.04.2018 is attached).

6. That the penalty so imposed upon me is illegal, unlawful against the law and facts hence liable to be set aside inter alia on the following grounds:

#### GROUND S

- A. That I have not been treated in accordance with the law hence my rights secured and guaranteed under the law and constitution is badly violated.
- B. That while awarding me major penalty of removal from service no proper procedure has been adopted neither any opportunity of fair trial while cross examining the evidence, witness if any, while conducting their so called inquiry, nor I have been given a proper opportunity of personal hearing, hence, I have been condemned unheard.
- C. That replying to allegation No.1 the total amount allocated for training of 150 students was transferred to joint account with the title of Principal National Institute of Health and Management Sciences Peshawar under the joint signature of principal and undersigned.



It is also worth mentioning here that duration of the course in college was 2 years and funds lying in this account were lapsable at the closing of financial year June 2012, and if the funds were lapsed, the course/training student's would be remained incomplete and the object of the scheme would not be achieved. It was not basically an irregularity but in accordance with Para 7.4 of the procedure approved by the central Zakat Council which says that funds/events to the training institutes will be representative, this action was taken just in accordance with the rules and in the best interest of Mushtahiq Zakat Trainees, therefore the allegation/charge leveled against me is baseless and unlawful, it is submitted that account No.177101 is not personal account of anyone but in the official account of the institute concerned and the record of the entire account is also available with the institute.

- D. That in reply to the allegation No.2 which is also baseless and incorrect, the entire record of the students is available with the institute while application forms of the student were dully verified by the respective Chairman of local Zakat Committee which was the only forum in Zaka and usher system and their two years diploma course in health technology also verified and registered with the medical faculty, govt. of Khyber Pakhtunkhwa. (Competent forum).



- E. All these documentary proofs shows that their students were not fake which is also evident from report of the inquiry officer that a list of 150 students was forwarded to NIHMS for two year diploma course and that the said list was not fake.
  
- F. In rebutted to the allegation No.3, the amount which was paid by me was under extreme compulsion and under protest, as the object and goal of the Anti-Corruption Officer to take the alleged amount with all means without taking into consideration, any documentary proof submitted by the undersigned and the institute.
  
- G. That the charges were denied by the undersigned had never admitted the charges leveled nor there was sufficient evidence available to held the undersigned guilty of the charges, thus the matter in hand required a full fledged regular inquiry, for the proof or otherwise of the charges in the absence of regular inquiry major penalty cannot be imposed.
  
- H. That the superior courts have in a number of reported judgments held's that in case of awarding major penalty of removal from service regular procedure of holding inquiry cannot be dispensed with that too when the charges are denied by the employee.
  
- I. That I have never committed any act or omission which could be termed as misconduct the charges

*Accepted*



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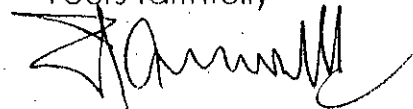
levelled against me are false and baseless besides the same are neither probed nor proved albeit I have illegally been removed from service.

J. That I have at my credit an unblemished and spotless service career of long 34 years, the penalty imposed upon me is too harsh and is liable to be set aside.

K. That I am jobless since my removal from service.

It is; therefore humbly prayed that on acceptance of this appeal the order dated 19.04.2018 may please be set aside and the undersigned may kindly be reinstated into service with all back benefits.

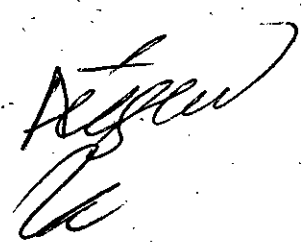
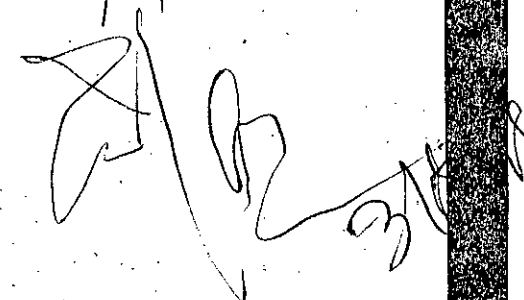
Yours faithfully



**Tilawat Khan**

District Zakat Officer

3/5/18



POWER OF ATTORNEY

In the Court of SPC Sindh Federal PC  
Talawat Khan

} For  
} Plaintiff  
} Appellant  
} Petitioner  
} Complainant

VERSUS

Smt of Mr and Mrs

} Defendant  
} Respondent  
} Accused  
}

Appeal/Revision/Suit/Application/Petition/Case No. \_\_\_\_\_ of \_\_\_\_\_  
Fixed for \_\_\_\_\_

I/We, the undersigned, do hereby nominate and appoint

ZARAJ ANWAR ADVOCATE, my true and lawful attorney, for me in my same and on my behalf to appear at Mehar to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromise or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or sub-poena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at \_\_\_\_\_  
the \_\_\_\_\_ day to \_\_\_\_\_ the year \_\_\_\_\_

Executant/Executants \_\_\_\_\_  
Accepted subject to the terms regarding fee \_\_\_\_\_

Zartaj Anwar  
Advocate High Courts

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT  
FR-3-4, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt  
Ph.091-5272154 Mobile-0331-9399185



گورنمنٹ سروس کمیشن، اسلام آباد

Khyber Pakhtunkhwa Service Tribunal

Diary No. 181

Dated 6-2-2019

گورنمنٹ سروس کمیشن

گورنمنٹ سروس کمیشن، اسلام آباد

گورنمنٹ سروس کمیشن، اسلام آباد

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گورنمنٹ سروس کمیشن، اسلام آباد

APPEAL NO-1063/2018

Tilawat Khan

VS

Govt. of K.P.

[Signature]

[Signature]