

Service Appeal No. 1334/2018

Date of Institution: 17.10.2018

Date of Decision: 27.11.2018

Najib Ullah

Vs

**The Secretary Elementary & Secondary
Education of Khyber Pakhtunkhwa Peshawar
and 2 others.**

Judgment/Order:

27.11.2018

MUHAMMAD HAMID MUGHAL, MEMBER (J) Appellant
present. Learned counsel for the appellant present.

Appellant who was appointed as Junior Clerk at GHS Adam Dehri on contract basis vide order dated 03.01.2006, has filed the present service appeal on 17.10.2018 against the order dated 10.09.2018 of respondent No.2 whereby the application of the appellant for adjustment was not found tenable and rejected. Prayer of the appellant is for his adjustment on the post of Junior Clerk.

Learned counsel for the appellant argued that the appellant joined the Education Department in the year 2006 as Junior Clerk and he was sanctioned Extra-Ordinary leave w.e.f 01.03.2007 to 28.02.2008, 29.02.2008 to 28.02.2009 and 01.03.2009 to 28.02.2010. Further contended that after the expiry of Extra-Ordinary leave, the appellant submitted many applications to the department for adjustment on his post of Junior Clerk and lastly the appellant filed departmental appeal/application on 14.05.2008, which application was rejected vide order dated 10.09.2018 made impugned in the present service appeal.

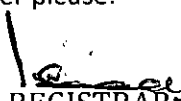

Preliminary arguments heard. File perused.

The appellant has not performed any duty after the expiry of Extra-Ordinary leave. Perusal of the impugned order dated

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1334 /2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	23/10/2018	<p>The appeal of Mr. Najib Ullah resubmitted today by Taimur Ali Khan 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 <u>23/10/18</u></p>
2-	<u>17-11-2018</u>	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>27-11-18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

Service Appeal No.1334/2016

10.09.2018 would show that the same was passed upon the application of the appellant dated 09.08.2018. Had the appellant been serious to join his duties but not allowed by the department, he would have timely approached this Tribunal.

The belated and allegedly successive departmental application dated 09.08.2018 of the appellant, for his adjustment is incompetent, badly time barred and the department also treated the same as not tenable. As such the present service appeal is also not competent. It may also be observed that the appointment order of the appellant available on file reflects that he was appointed on contract basis.

In view of above the present service appeal being not maintainable, is hereby dismissed in limine. No order as to costs. File be consigned to the record room.



(Muhammad Hamid Mughal)
Member

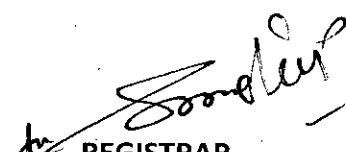
ANNOUNCED.
27.11.2018

The appeal of Mr. Najeebullah Junior Clerk GHS Adam Dehrai Chakdara received today i.e. on 17.10.2018 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 departmental appeal dated 14.5.2018 mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Annexures of the appeal may be attested.
- 3- Annexures of the appeal may be flagged.
- 4- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 2106 /S.T,


Dt. 17-10 /2018.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Taimur Ali Khan Adv. Pesh.

Respected Sir,

- 1- copy of departmental appeal is attached at page-12
- 2- Removed
- 3- Removed
- 4- Removed

Resubmitted after compliance
23/10/18 

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1334/2018

Najibullah

V/S

Education Deptt:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Appeal	-----	01-03
2.	Copy of appointment order	A	04
3.	Copies of order dated 12.03.2007, 29.02.2008 and 25.03.2009	B,C&D	05-07
4.	copies of application dated 25.02.2010 and 01.03.2010	E&F	08-09
5.	Copy of applications, departmental appeal and rejection order	G,H&I	10-13
6.	Vakalat Nama	-----	14

APPELLANT

THROUGH:



**M.ASIF YOUSAFZAI
(ADVOCATE SUPREME COURT),**

&



**TAIMUR ALI KHAN
(ADVOCATE HIGH COURT)**

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1334 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1540

Dated 17-10-2018

Najib Ullah Junior Clerk,
GHS, Adam Dehrai Chakdara.

(APPELLANT)

VERSUS

1. The Secretary (E&SE) KPK, Peshawar.
2. The Director of Education (E&SE) KPK, Peshawar.
3. The District Education Officer (M) Dir Lower.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 10.09.2018 COMMUNICATED TO APPELLANT ON 18.09.2018, WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR ADJUSTMENT ON THE POST OF JUNIOR CLERK FOR NO GOOD GROUND.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 10.09.2018 MAY BE SET ASIDE AND THE RESPONDENTS MAY KINDLY BE DIRECTED TO ADJUST THE APPELLANT ON THE POST OF JUNIOR CLERK WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filed to the
Registrar
23/10/18

Re-submitted to -day
and filed.

Registrar
23/10/18

RESPECTFULLY SHEWTH:

FACTS:

1. That the appellant joined the education department as junior clerk on 31.01.2006 and since then perform his duty to the entire satisfaction of the superior and no complaint has been filed against him regarding his performance. **(Copies of appointment order is attached as Annexure-A)**
2. That the appellant applied for extra ordinary leave without pay w.e.f 01.03.2007 to 28.02.2008 which was granted by the competent authority on 12.03.2017 and after the expiry of said period, the appellant applied again for extra ordinary leave without pay w.e.f 29.08.2008 to 28.02.2009 which was also granted on 29.02.2008 and after the expiry of said period, the appellant further applied for extra ordinary leave w.e.f 01.03.2009 to 28.02.2010 which was also granted on 25.03.2009. **(Copies of order dated 12.03.2007, 29.02.2008 and 25.03.2009 are attached as Annexure B,C&D)**
3. That the appellant again filed application on 25.02.2010 for extra ordinary w.e.f 01.03.2010 to 28.02.2011, however the department did not responded on that application for extension of leave, therefore appellant after expiry of his extra ordinary leave filed application on dated 01.03.2010 for adjustment on his post of junior clerk, however, the department did not adjust the appellant on his post of junior clerk. **(Copies of application dated 25.02.2010 and 01.03.2010 are attached as Annexure-E&F)**
4. That the appellant visited time and again to the office of respondent No.3 for adjustment on his post and also filed many applications to respondent No.3 for adjustment on his post of Junior Clerk, however the department did not take any action on that applications and lastly the appellant filed departmental appeal on 14.05.2018 to respondent No.2 for adjustment on his post of junior clerk, which was rejected on 10.09.2018 and the same was communicated to the appellant on 18.09.2018. **(Copies of applications, departmental appeal and rejection order are attached as Annexure G,H &I)**
5. That now the appellant wants to file this service appeal for redressal of grievances on the following grounds amongst others.



GROUNDS:

- A) That the impugned rejection order dated 10.09.2018 and not adjustment of the appellant on his post of Junior clerk are against the law, facts, norms of justice and material on record, therefore not tenable.
- B) That the appellant after the expiry of extra ordinary leave submitted his application for adjustment on his post of Junior Clerk, but the respondent department did not adjusted the appellant on his post without showing any reason which shows the arbitrary manner of the respondent.
- C) That the appellant was never removed or dismissed from service and is still on the strength of the department. Therefore it is the responsibility of the department to adjust him on the post of Junior Clerk.
- D) That not adjusting the appellant on the post of junior clerk without showing any reason is the violation of law and rules.
- E) That the appellant is not treated according to law and rules and has been deprived from his legal right of adjustment on the post of junior clerk.
- F) 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.


APPELLANT

THROUGH:


M. ASIF YOUSAFZAI
(ADVOCATE SUPREME COURT),

TAIMUR ALI KHAN
(ADVOCATE HIGH COURT)

&

(ASAD MAHMOOD)
ADVOCATE HIGH COU

A (9)

OFFICE OF THE EXECUTIVE DISTRICT OFFICER SCHOOLS & LIT. DIR. LOWER.

APPOINTMENT.

Mr, Najibullah S/O Late Mohfoozur-Rahman H/Headmaster
GHS Dehri Talash Resident of Ziarat Talash Tehsil Timergara Distt;
Dir Lower, is hereby appointed as Junior Clerk at GHS Adan Dehri
in BPS No, 5 on contract basis - @ Rs; ~~2555-110-875~~ ²⁴¹⁵⁻¹¹⁵⁻⁸³⁵ plus usual
allowances, under the rules, from the date of his taking over the
charge on deceased employee sea quota, subject to the following
terms and condition:-

TERMS AND CONDITIONS:-

1. No TA/DA is allowed being 1st appointment.
2. His appointment is purely on temporary basis, liable to termination at any time without any notice. In case leaving the department, he is directed to submit one month prior notice, or deposited one month pay in lieu thereof.
3. He is required to produce his Health & Age certificate from the civil Surgeon Dir at Timergara.
4. He is required to take over the charge within 15 days of the issue of this order, if he failed in taking over the within the stipulated period. His appointment shall stand cancelled automatically.
5. His age may not exceeds 45 years or below 18 years.
6. The Drawing and disbursing Officer is directed to check/verify their documents from the concerned Boards/institutions.
7. The Drawing and disbursing Officer is further directed to obtained/sign the agreement form from the candidate and kept on record.

EXECUTIVE DISTRICT OFFICER
SCHOOLS & LIT. DIR. LOWER

Order No, 5733-37 / Dated Timergara the 31/01/2006.

Copy of the above is forwarded to:-

1. The Dir; Coordination Officer Dir Lower.
2. The Distt; Accounts Officer Dir Lower.
3. The Distt; Officer (S) S&L I/Office.
4. The Headmaster concerned.
5. The Candidate concerned.

EXECUTIVE DISTRICT OFFICER
SCHOOLS & LIT. DIR. LOWER

A

B (5)

OFFICE OF THE EXECUTIVE DISTT: OFFICER SCHOOLS & LIT: DIR LOWER.
OFFICE ORDER.

Sanction is hereby accorded to the grant of Extra-ordinary leave without ^{pay} w.e.f 1/3/2007 to 28/2/2008 (365) days, in favour of Mr, Najibullah J/Clerk GHS Adam Behri, as admissible to him under the rules.

Note;- Necessary entry to this effect should be made in his S/Book and leave Accounts form, accordingly.

(ZARAWAR KHAN)

EXECUTIVE DISTT: OFFICER
SCHOOLS & LIT: DIR LOWER

Endst; No, 20251-54 / Dated Timergara the 12/3/2007.

- Copy of the above is forwarded to:-
1. The Distt; Accounts Officer Dir Lower.
 2. The Distt; Officer (M) S&L I/office.
 3. The Headmaster GHS Adam Behri.
 4. The official concerned.

Attested
[Signature]

Head Master
Govt High School
Adam Behri Dir (b)

[Signature]
EXECUTIVE DISTT: OFFICER
SCHOOLS & LIT: DIR LOWER

ATTESTED

GA

C (6)

OFFICE OF THE EXECUTIVE DISTRICT OFFICER SCHOOLS & LITERACY DIR LOWER.

OFFICE ORDER:-

Sanction is hereby accorded to the grant of Extra Ordinary leave without pay wof: 29/2/2008 to 28/2/2009 (366 days) in favour of Mr. Najibullah d/ clerk GHS: Adam Dheri Dir Lower as admissible to him under the rules.

Note:- Necessary entry to this effect should be made in his service book and leave account form accordingly.

(RAFI MUHAMMAD IBRAHIM)
EXECUTIVE DISTRICT OFFICER(S&L)
DIR LOWER.

Order No. 3942-45 / Dated/Timergara the 29/2/2008.

- Copy of the above is forwarded to:-
1. The District Accounts Officer Dir Lower.
 2. The District Officer(M)S&L L/Office.
 3. The Headmaster GHS: Adam Dheri.
 4. The Official concerned.

[Signature]
EXECUTIVE DISTRICT OFFICER
SCHOOLS & LITERACY DIR LOWER.

ATTESTED
[Signature]

27

OFFICE ORDER/EXTENSION:-

Sanction is hereby recorded to the grant of Extra Ordinary Leave with effect from 1.03.2009 to 28.2.2010 (365 days) leave w
with out pay in favour of Mr. Najibullah, J/Clerk GHS Adam Dherai District
Dir Lower as admissible to him under the leave rules.

Note:- Necessary entries to this effect should be made in his Service
Book and leave account form accordingly.

(SASED KEAN)
EXECUTIVE DISTRICT OFFICER,
(ELEM. & SECY. EDU.) DIR. LOWER.

Andst: No. 5009-12 / Dated Timergara the 25 / 03 / 2009.

Copy of the above is forwarded for information to:-

1. The District Officer (M) (Elem. & Secy. Edu.) Dir Lower at Timergara.
2. The District Accounts Officer Dir Lower at Timergara.
3. The Head Master Govt. High School Adam Dherai District Dir Lower,
alongwith original Service Book.
4. The official concerned.

Attested
Muztawir
ASSISTANT DISTRICT OFFICER
TIMERGARA
DIR. LOWER

Muztawir
Executive District Officer,
(Elem. & Secy. Edu.) Dir,
Lower at Timergara. 2/130309

ATTACHED
Q

EB

To ,

The Executive District Officer ,
Elementary & Secondary Education.
Dir Lower at Timergara .

Subject ; Extension in Extra Ordinary Leave wef 01/03/2010 to 28 /02/2011 365days.

Respected Sir ,

It is requested in gracious honour as under .
I am Serving in Elementary & Secondary Education Department as a Junior Clerk since 31/01/2006 , I Proceeded on Extra Ordinary Leave wef 01/03/2007 to 28/02/2008 and then extended 28/02/2009 to 28/02/2010.

Now my home circumstances are such that I am Unable to performe my duties in Education Department . There fore it is requested in your honour to grant me Extension in Extra Ordinary Leave wef 01/03/2010 to 28/02/2011 please .

I shall be very thankfull to you for this act of kindness.

Dated 25/02/2010.

Yours Obediently,
Najibullah J/C GHS AdamDherai.

No; 0049/leave ----- Dated 25/02/2010

Forwarded to the Executive District Officer Elementary & Secondary Education Distt, Dir Lower at Timergara along with S/Book for favourable consideration please .

25/2/2010
Head Master,
GHS Adam Dherai
Distt; Dir Lower.
~~Head Master~~
G.H.S. Adam Dherai

ATTESTED

To,

The District Education Officer ,
Elementary & Secondary Education,
District Dir Lower at Timergara.

Subject; Application for the Re-Adjustment of Vacant Post of Junior Clerk Education Department.

Respected Sir,

With esteem veneration it is stated that I have done B.Sc Civil Engineering Technology (Bachelor in Technology / B.Tech (Honr;)) and working in Education Department as a Junior Clerk in Government High School Adam Dehari Chakdara since 31/01/2006. I was selected as a Junior Clerk on Deceased Quota . During my appointment time my education was in progress. After the demise death of my father, I jumped immediately toward the job as I was having no other source of income as the whole family was dependent upon me. After my appointment I felt an intense need to continue my Education as well as I was having some domestic problems.

So I took the long period leave without pay in order to continue my education and to overcome on my domestic problems.

Therefore, I request you now to please do direct him to re-adjust me on any vacant post in education department.

Thanking you in anticipation.

Hoping for positive and favorable response.

Your's Sincerely ,
Engr ; Najib Ullah Junior Clerk
Bachelor in Technology (B.Tech Honour Civil Engineering)
S/O Mahfooz ur Rahman (Ex Head Master)
VPO Ziarat Talash Tehsil Timergara.
Cell # 03459532838
Dated ;01/03/2010

ATTESTED

A

To,
The District Education Officer ,
Elementary & Secondary Education,
District Dir Lower at Timergara.

Subject; Application for the Re-Adjustment of Vacant Post of Junior Clerk Education Department.

Respected Sir,

With esteem veneration it is stated that I have done B.Sc Civil Engineering Technology (Bachelor in Technology / B.Tech (Honr;)) and working in Education Department as a Junior Clerk in Government High School Adam Dehari Chakdara since 31/01/2006. I was selected as a Junior Clerk on Deceased Quota . During my appointment time my education was in progress. After the demise death of my father, I jumped immediately toward the job as I was having no other source of income as the whole family was dependent upon me. After my appointment I felt an intense need to continue my Education as well as I was having some domestic problems.

So I took the long period leave without pay in order to continue my education and to overcome on my domestic problems.

Therefore, I request you now to please do direct him to re-adjust me on any vacant post in education department.

Thanking you in anticipation.

Hoping for positive and favorable response.

Your's Sincerely ,
Engr ; Najib Ullah Junior Clerk *24/12/2017*
Bachelor in Technology (B.Tech Honour Civil Engineering)
S/O Mahfooz ur Rahman (Ex Head Master)
VPO Ziarat Talash Tehsil Timergara.
Cell # 03459532838
Dated ;24/12/2017

ATTESTED

AS

To,

The District Education Officer ,
Elementary & Secondary Education,
District Dir Lower at Timergara.

Subject; Application for the Re-Adjustment of Vacant Post of Junior Clerk Education Department.

Respected Sir,

With esteem veneration it is stated that I have done B.Tech (Honr;) Bachelor in Technology which is equal to B.Sc Civil Engineering and working in Education Department as a Junior Clerk in Government High School Adam Dehari Chakdara since 31/01/2006. I was selected as a Junior Clerk on Deceased Quota . During my appointment time my education was in progress. After the demise death of my father, I jumped immediately toward the job as I was having no other source of income as the whole family was dependent upon me. After my appointment I felt an intense need to continue my Education as well as I was having some domestic problems.

So I took the long period leave without pay in order to continue my education and to overcome on my domestic problems.

Firstly, I took the leave for one year w.e.f 1.03.2007 to 28.02.2008, Then I extended my leaves from 29.02.2008 to 28.02.2009, furthermore I extended it from 1.03.2009 to 28.02.2010.

Therefore, I request you now to please do direct him to re-adjust me on any vacant post in education department.

Thanking you in anticipation.

Hoping for positive and favorable response.

Your's Sincerely,
Engr ; Najib Ullah Junior Clerk
Bachelor in Technology (B.Tech Honour Civil Engineering)
S/O Mahfooz ur Rahman (Ex Head Master)
VPO Ziarat Talash Tehsil Timergara.

Cell # 03459532838

Dated ;06/01/2018

ATTESTED
BR

12

H

To,
The Director,
Elementary & Secondary Education,
KPK Peshawar.

Subject: Application for the Re-Adjustment of Vacant Post of Junior Clerk Education Department.

Respected Sir,

With esteem veneration it is stated that I have done B.Tech (Honr;) Bachelor in Technology which is equal to B.Sc Civil Engineering and working in Education Department as a Junior Clerk in Government High School Adam Dehari Chakdara since 31/01/2006. I was selected as a Junior Clerk on Deceased Quota. During my appointment time my education was in progress. After the demise death of my father, I jumped immediately toward the job as I was having no other source of income as the whole family was dependent upon me. After my appointment I felt an intense need to continue my Education as well as I was having some domestic problems.

So I took the long period leave without pay in order to continue my education and to overcome on my domestic problems.

Firstly, I took the leave for one year w.e.f 1.03.2007 to 28.02.2008, Then I extended my leaves from 29.02.2008 to 28.02.2009, furthermore I extended it from 1.03.2009 to 28.02.2010. In January 2018 I have submitted my Application along with Original Service Book & other documents in District Education Officer, Lower Dir at Timergara. But up to now I have not received any response from the office.

therefore, I request you now to please do direct him to re-adjust me on any vacant post in Education department.

Thanking you in anticipation.
Hoping for positive and favorable response.

Yours Sincerely,
Engr: Najib Ullah Junior Clerk
Bachelor in Technology (B.Tech Honour Civil Engineering)
S/o Mahfooz ur Rahman (Ex Head Master)
VPO at Talash Tehsil Timergara.
Cell #03159532838

Najib Ullah
14/05/18

Attested
Mahfooz ur Rahman
ASSISTANT RESEARCH OFFICER
RR & MTL C&W
CIRCLE DIR LOWER

AD Admin
PR DED
The office for
Commander
14/05/18

ATTESTED

At

I (13)

Directorate of Elementary & Secondary Education,
Khyber Pakhtunkhwa, Peshawar.

No. _____ /F.No. A-23/MS/Dir (L) vol-iv
Dated Peshawar the 21/9 /2018

To

The District Education Officer
(Male) Dir Lower

Subject: APPLICATION FOR ADJUSTMENT

Memo:

I am directed to refer to your letter No. 9377-dated 09/08/2018 on the subject noted above and to state that the appeal of Mr. Najib Ullah Junior Clerk GHS Adam Dehrai Chakdara Dir Lower was considered but not found tenable and rejected so applicant concerned may be informed accordingly.

Assistant Director (Admin)
Directorate of E&SE K.P, Peshawar

761A-21

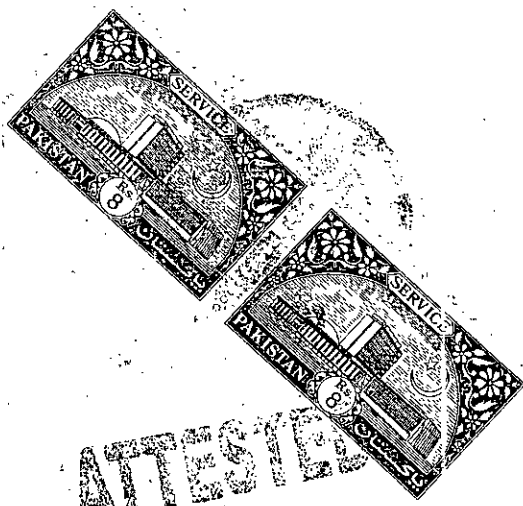
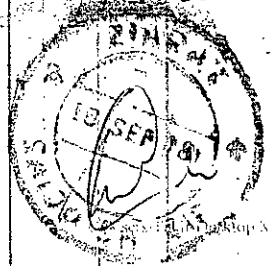
Endst. No. _____
Copy forwarded to the:-

1. Headmaster GHS Adam Dehrai Chakdara Dir Lower.
2. Mr. Najib Ullah Junior Clerk S/O Mahfooz ur Rehman (Ex- Head Master) VPO Ziarat Tarash Tasseh Timergara Dir Lower.
3. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

RECEIVED
DIRECTOR (ADMIN)
K.P.E. PESHAWAR

[Signature]
Assistant Director (Admin)
Directorate of E&SE K.P, Peshawar

Hand over to Mr. Najibullah



ATTESTED

[Signature]

VAKALAT NAMA

NO. _____/2018

IN THE COURT OF Service Tribunal Peshawar

Najibullah (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Education Deptt (Respondent)
(Defendant)

I/We Najibullah

Do hereby appoint and constitute **M.Asif Yousafzai, 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 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

(Signature)
(CLIENT)

ACCEPTED

(Signature)
M. ASIF YOUSAFZAI
Advocate

(Signature)
TAIMUR ALI KHAN
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240