

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

**SERVICE APPEAL NO. 776/2018**

Date of institution ... 28.05.2018  
Date of judgment ... 12.11.2021

Taleh Shah S/o Maroof Gul r/o Adam Zai Akora Khattak Tehsil and  
District Nowshehra. ... (Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa through Chief Secretary Khyber  
Pakhtunkhwa, Civil Secretariat, Peshawar and three others.

... (Respondents)

**Present:**

Zartaj Anwar,  
Advocate ... For appellant.

Mr. Javedullah,  
Assistant Advocate General ... For respondents.

Mian Muhammad ... Member (Executive)  
Rozina Rehman ... Member(Judicial)

**JUDGEMENT**

**MIAN MUHAMMAD, MEMBER (E):-** The service appeal has  
been filed under Section-4 of the Khyber Pakhtunkhwa Service  
Tribunal Act, 1974 against the inaction of respondent-department by  
stopping the appellant from performing his duties on the ground to  
have attained the age of superannuation and no response within  
statutory period on his departmental appeal dated 06.02.2018.

2. Background and brief facts of the case are that the appellant  
joined the respondent-department as Arabic Teacher (BS-15) under  
2% quota reserved for disabled persons, on 19.06.2008. His date of

birth at the time of joining the service was recorded as 18.09.1956 which was also mentioned in his CNIC/NADRA record. Based on his recorded date of birth he was stopped to work on 22.10.2016 with the plea to have attained the age of superannuation. A declaratory suit for correction in date of birth instituted in civil court, was decreed in his favour vide judgement dated 22.06.2017 and NADRA issued him new CNIC on 08.07.2017 showing his date of birth 18.09.1963. His application to Chief Justice Peshawar High Court, Peshawar converted in to writ petition No. 235-P/2017 was disposed of on 28.02.2017 with direction to the appellant to file a departmental appeal. Similarly, his writ petition No. 4459-P/2017 was dismissed on 16.01.2018 being not maintainable under Article 212 of the Constitution. His departmental appeal submitted to the appellate authority on 06.02.2018 was not responded within the statutory period, hence, the instant service appeal was filed in Service Tribunal on 28.05.2018.

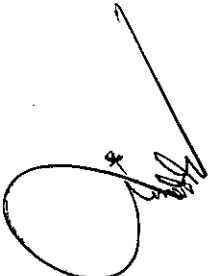
3. Notices were issued to the parties who submitted written replies/comments on contents of the appeal. We have heard learned counsel for the appellant as well Assistant Advocate General and perused the case file with connected documents thoroughly.

4. Learned counsel for the appellant contended that the appellant was appointed in the respondent-department as Arabic Teacher (BS-15) on 19.06.2008. At the initial stage of his appointment in service, his age was recorded as 43 years by appearance in the Medical Certificate duly certified by Medical Superintendent DHQ, Hospital

Nowshera on 19.06.2008. He was performing his duty with zeal and devotion when he was stopped by respondents on 22.10.2016 from performing duty on the sole ground that he had recorded date of birth as 18.09.1956, and as such has attained the age of superannuation on 17.09.2016. The appellant filed declaratory suit in Civil Court for correction in date of birth wrongly mentioned in CNIC which was decreed vide its judgement dated 22.06.2017 and based on it, date of birth was corrected in CNIC as 18.09.1963 by NADRA. The appellant, in order to ascertain his actual age, has gone through medical test for assessment of age through department of forensic Medicine Khyber Medical College Peshawar and as per its report dated 15.11.2017, age of the appellant was determined as 49 to 53 years. Moreover, in pursuance of the Peshawar High Court, Judgement dated 16.01.2018 in his writ petition No. 4459-P/2017, the appellant submitted departmental appeal on 06.02.2018 which was not decided or responded within the stipulated statutory period. The impugned order is not only illegal but violation of Article-4 of the Constitution and is liable to be set aside being not sustainable in the eyes of law.

5. Learned Asst: AG on behalf of official respondents argued that original date of birth of the appellant recorded at the time of his entry into service was 18.09.1956 after medical examination conducted on 19.06.2008 and based on it he stood retired on attaining the age of superannuation on 17.09.2016. If he had recorded incorrect date of birth then he was required to have adopted the prescribed procedure for rectification within two years of

entry into service. The appellant did not make the respondents as party in his declaratory suit and it was basically instituted against NADRA for correction in his date of birth in CNIC. The respondent-department issued retirement order of the appellant on 21.03.2018 against which no departmental appeal was filed by the appellant till date. The declaratory suit was even filed in Civil Court on 10.06.2017 after his date of superannuation i.e 17.09.2016. To strengthen his arguments, he relied on 2021 PLC (CS) 570. Moreover, it was argued that the Service Appeal being devoid of merit, force of law and is baseless, may be dismissed.

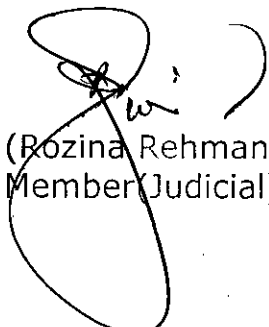


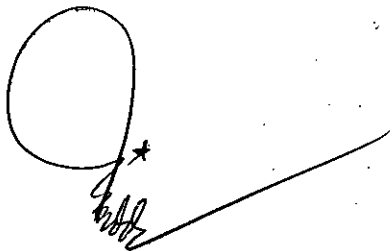
06. Date of birth is such an important information which remains in the memory of an individual and a civil servant at large who has to enter it in initial service documents and is reflected in service book, seniority list and PER's etc. It is however, astonishing that appellant came to know about the wrong date of birth at the verge of retirement; rather after having attained the age of superannuation. It is evident from record and particularly entries made in Medical Certificate based on medical examination carried out by Medical Superintendent, DHQ, Nowshera on 19.06.2008 that date of birth of the appellant was 18.09.1956 and the thumb impression of appellant affixed thereon is an undeniable proof. The appellant challenged his wrong date of birth recorded in CNIC in declaratory suit after retirement despite the fact that the same had been issued by NADRA and was very much in the custody of appellant at the time of entry into service on 19.06.2008. Interestingly, he availed 10 years general age relaxation and further 7 years, 22 days as hardship case

(being disabled person) under Peshawar High Court judgement dated 10.07.2007. It is astonishing that the appellant did not know his correct and accurate date of birth as 18.09.1963 at the time of entry into service in 2008 and which had to be corrected after 9 years through declaratory suit in 2017 after retirement. So much so that the medical test for assessment of age was managed to be conducted independently by the appellant himself, from department of Forensic Medicine Khyber Medical College and the respondent department did never refer him for such test in the year 2017 i.e after retirement! In a nutshell, it can safely be concluded that the appellant woke up from deep slumber and all corrective measures were taken by the appellant after his superannuation though such steps were required to have been taken within two years of the entry into service as per guidelines of the Provincial government circulated under the provisions of GFR-116 on 15.02.1989.

07. As a sequel to the above, we are of the considered opinion that the appeal is devoid of merit and the learned counsel for the appellant could not establish the claim in support for correction in date of birth at belated stage after his retirement. The service appeal therefore stands dismissed. Parties are left to bear their own costs. File be consigned to the record room

ANNOUNCED  
12.11.2021

  
(Rozina Rehman)  
Member (Judicial)

  
(Mian Muhammad)  
Member (Executive)

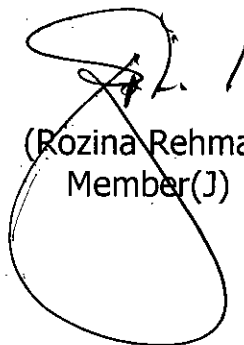
**ORDER**

12.11.2021

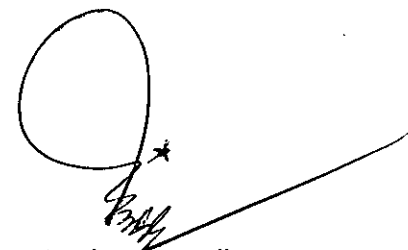
Learned counsel for the appellant present. Mr. Javedullah, Assistant Advocate General for respondents present. Arguments heard and record perused.

Vide our detailed judgement of today placed on file, we are of the considered opinion that the appeal is devoid of merit and the learned counsel for the appellant could not establish the claim in support for correction in date of birth at belated stage after his retirement. The service appeal therefore stands dismissed. Parties are left to bear their own cost. File be consigned to the record room.

Announced:  
12.11.2021



(Rozina Rehman)  
Member(J)



(Mian Muhammad)  
Member(E)

15.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 09.08.2021 for the same as before.

  
Reader

09.08.2021

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General alongwith Masood Khan ADEO for respondents present.

Former made a request for adjournment. Request is accorded. To come up for arguments on 12.11.2021 before D.B.

  
(Rozina Rehman)  
Member (J)

  
Chairman

05.01.2021

Petitioner present through counsel.

Riaz Khan Paindakhel Assistant Advocate General for respondents present.

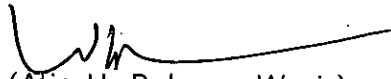
Arguments heard. Record perused.

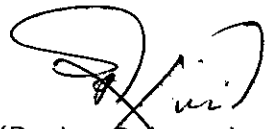
Application in hand was submitted seeking restoration of main service appeal which was dismissed in default vide order dated 22.05.2019.

It was submitted that the date of hearing was mistakenly noted in the diary by the learned counsel as 21.06.2019 instead of 22.05.2019 and that on the same very date, the instant application was filed seeking restoration of main service appeal.

Conversely, learned A.A.G submitted that the application being time barred may kindly be dismissed.

Record shows that the case was dismissed for non-prosecution on 22.05.2019 and it was noted in the diary by the learned counsel as 21.06.2019 and on the same very date, the present application seeking restoration was filed. Law favors adjudication on merits and procedural technicalities should not be allowed to stand in the way of administration of justice. As such, application is accepted and the main service appeal stands restored. It be properly registered. Case be put up for arguments before D.B on 15.04.2021.

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

  
(Rozina Rehman)  
Member (J)



10.03.2020

Petitioner present and submitted application for condonation of delay placed on file. Learned counsel for the petitioner not present. Adjourn. To come up for arguments on 23.04.2020 before D.B.



Member



Member

10.06.2020

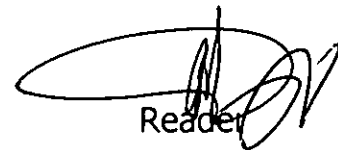
Bench is incomplete as one learned Member (J) is on leave. Therefore, the case is adjourned. To come up for the same on 24.08.2020 before D.B.



Reader

24.08.2020

Due to summer vacation case to come up for the same on 28.10.2020 before D.B.

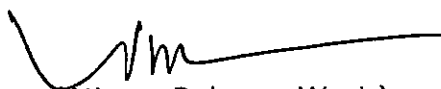


Reader

28.10.2020

Petitioner in person and Asstt. AG for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 05.01.2021 for hearing before the D.B.



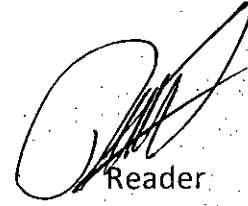
(Atiq-ur-Rehman Wazir)  
Member



Chairman

25.10.2019

Due to tour of the Hon'ble Members to Camp Court  
Abbottabad, To come up for the same on 10.11.2019 before  
D.B.



Reader

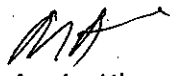
10.12.2019

Appellant in person and Mr. Ziaullah, Deputy District  
Attorney for the respondents present.

Due to general strike of Khyber Pakhtunkhwa Bar  
Council learned counsel for the appellant is not available today.  
Adjourned to 07.02.2020 for reply and arguments on restoration  
application before D.B.



(Ahmad Hassan)  
Member



(M. Amin Khan Kundi)  
Member

07.02.2020

Petitioner in person present. Mr. Kabir Ullah Khattak  
learned Additional Advocate General alongwith Inayat Ullah  
ADO present and submitted reply. Petitioner seeks  
adjournment as his counsel is not available. Adjourn. To come  
up for arguments on 10.03.2020 before D.B.



Member




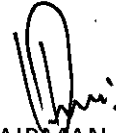

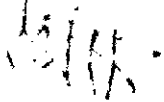

Member

# Form-A

## FORM OF ORDER SHEET

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

Appeal's Restoration Application No. 252/2019

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	21.06.2019	<p>The application for restoration of appeal No.776/2018 submitted by Mr. Zartaj Anwar Advocate, may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR 21/6/19</p>
2	8-07-19	<p>This restoration application is entrusted to D. Bench to be put up there on <u>30-08-2019</u></p> <p style="text-align: right;"> CHAIRMAN</p>
30.08.2019		<p>Counsel for the petitioner present. Mr. Ziullah, DDA for respondents present. Notices of application for restoration of appeal be issued to the respondents for submission of reply. Office is directed to requisition original file from the record room. To come up for further proceedings on 25.10.2019 before D.B.</p> <p style="text-align: center;">  Member             <span style="margin-left: 100px;"></span> <span style="margin-left: 100px;"> Member</span> </p>

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

*Restoration Application no. 252/19*

C.M .No. \_\_\_\_\_/2019

In

Appeal No.776/2018

Taleh Shah.....Appellant

**V E R S U S**

Govt. of Khyber Pakhtunkhwa

Through Chief Secretary & others.....Respondents

**I N D E X**

S.No	Description of Documents	Annex	Pages
1.	Application for restoration		1-2
2.	Affidavit		3
3.	Copy of order dated 22.05.2019		4-5

Appellant

Through

  
**Zartaj Anwar**

Advocate High Court  
Cell No.0331-9399185

Dated: 21.06.2019

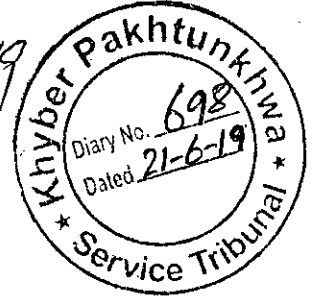
**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

*Restoration Application No. 252/2019*

C.M. No. \_\_\_\_\_/2019

In

Appeal No. 776/2018



Taleh Shah.....Appellant

**V E R S U S**

Govt. of Khyber Pakhtunkhwa

Through Chief Secretary & others.....Respondents

**APPLICATION FOR RESTORATION OF THE  
ABOVE MENTIONED SERVICE APPEAL,  
DISMISSED IN-DEFAULT/ NON-PROSECUTION  
ON 22.05.2019.**

**Respectfully Sheweth:**

1. That the above service Appeal was fixed for 22.05.2019 before this Hon'ble Tribunal and was dismissed for non-prosecution vide order dated 22.05.2019. (Copy of the Order dated 22.05.2019 is attached).
2. That the appellant regularly attended this Hon'ble Tribunal on each and every date but on last date mistakenly noted the next date of hearing in Dairy as 21.06.2019 instead of 22.05.2019.

3. That the mistake of noting the date of hearing was not deliberate or intentional rather was due to the above mentioned facts.
4. That valuable rights of the Appellant are involved in the captioned service Appeal, hence Appellant seeks restoration of his case on the above ground.
5. That there is no legal bar in restoration of the instant Appeal.

It is, therefore, most humbly prayed that on acceptance of this application, the titled Service Appeal may kindly be restored in original number and be heard, in the best interest of justice.

  
Appellant

Through

  
**Zartaj Anwar**  
Advocate High Court

Dated: 21.06.2019

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

C.M. No. \_\_\_\_\_/2019  
In  
Appeal No.776/2018

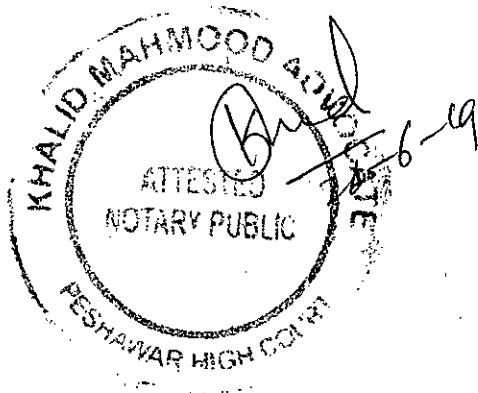
Taleh Shah.....**Appellant**

**V E R S U S**

Govt. of Khyber Pakhtunkhwa  
Through Chief Secretary & others.....**Respondents**

**A F F I D A V I T**

I, Taleh Shah Son of Maroof Gul R/o Adam Zai Akroa Khattak Tehsil & District Nowshera, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



*Taleh Shah*  
**DEPONENT**

19.04.2019

Clerk of counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Clerk of counsel for the appellant seeks adjournment on the ground that learned counsel for the appellant is busy before the Hon'ble Peshawar High Court and cannot attend the Tribunal today. Adjourned to 22.05.2019 for arguments before D.B.

  
(HUSSAIN SHAH)  
MEMBER

  
(M. AMIN KHAN KUNDI)  
MEMBER

22.05.2019

Nemo for the appellant. Mr. Muhammad Jan, DDA for the respondents present.

Despite repeated calls no one is in attendance on behalf of the appellant. The court time is about to over, therefore, the appeal is dismissed for non-prosecution. File be consigned to the record room.

  
Member

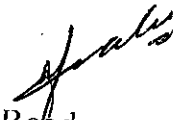
  
Chairman

Announced  
22.05.2019



12.11.2018

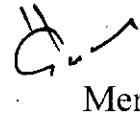
Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 28.12.2018. Written reply <sup>not</sup> received. Mr. Hameed Ur Rehman AD representative of respondents absent.

  
Reader

28.12.2018

Appellant in person present. Mr. Inayat Ullah AD representative of respondent department present and submitted written reply. Adjourn. To come up for rejoinder if any and arguments on 05.03.2019 before D.B.-//





Member

05.03.2019

Appellant in person present. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Appellant submitted rejoinder and request for adjournment. Adjourn. To come up for arguments on 19.04.2019 before D.B.

  
Member

  
Member


20.06.2018

Counsel for the appellant present. Preliminary arguments heard and case file perused. Learned counsel for the appellant argued that the appellant was appointed as Arabic Teacher. (BPS-15) on 19.06.2008. As his date of birth recorded in his CNIC was 18.09.1956, so the respondents on 22.10.2016 took adverse action against him. According to the learned counsel for the appellant, he filed declaratory suit for correction of date of birth, which was decreed vide judgment dated 22.06.2017. That his date of birth was corrected as 18.09.1963; thereafter he filed writ petition no. 235-P/2017 which was disposed of vide order dated 28.02.2017 with the directions to the appellant to file departmental appeal before the competent authority. Another writ petition no. 4459/17 filed by him was dismissed by the Peshawar High Court vide judgment dated 16.01.2018. He filed departmental appeal on 06.02.2018 which was not responded within the stipulated period, hence, the instant service appeal. ~~Second~~ The learned counsel for the appellant further contended that he was not treated according to law and rules.

01/01/18

Appellant Deposited  
Security & Process Fee

Points urged need consideration. Admit, subject to limitation. Appellant is directed to deposit of security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 16.08.2018 before S.B.

  
(AHMAD HASSAN)  
MEMBER

16.08.2018

Appellant Taleh Shah in person present. Mr. Inayatullah, ADO alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply not submitted. The above named representative sought some time to submit the same. Granted. Case to come up for written reply/comments on 21.09.2018 before S.B.

  
Chairman

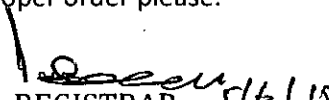

22.9.2018

Due to muharram ul haram vacations the case was not heard on 20.9.2018 adjourned for 12-11-2018.  
READER

Form- A  
FORM OF ORDER SHEET

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

Case No. 776/2018


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	05/06/2018	<p style="text-align: center;">The appeal of Mr. Taleh Shah resubmitted today by Mr. Zartaj Anwar 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 5/6/18</p> <p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>20/6/18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-		<p style="text-align: right;">8/6/18 P. R. R.</p> <p style="text-align: center;"><i>(Faint handwritten notes)</i></p>

The appeal of Mr. Telah Shah son of Maroof Gul r/o Adam Zai Akora Khattak Nowshera received today i.e. on 28.05.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.
- 3- Copy of impugned order is not attached with the appeal which may be placed on it.

No. 1091 /S.T,

Dt. 29/05 /2018.

  
REGISTRAR 29/5/18  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Zartaj Anwar Adv. Pesh.

*Handwritten note:*  
The order impugned, date is not available  
to be impugned.

*Handwritten note:*  
There no such order is available in  
black and white, with the direction  
the High court the appellant approach  
this Honble Tribunal.

*Handwritten signature:*  
Jawad Ali

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

Appeal No. 776 /2018

Taleh Shah s/o Maroof Gul r/o Adam Zai Akora Khattak Tehsil  
and District Newshehra.

(Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa through Chief Secretary  
Khyber Pakhtunkhwa, Civil Secretariat, 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 Appointment order dated 10.06.2008	A	6-
	Copy of the Medical Certificate dated 19.06.2008	B	7-
3	Copy of suit, written statement, Judgment and Decree dated 22.06.2017	C	8-17
4	Copy of medical report dated 15.11.2017 and certificate dated 15.11.2017	D & E	18-190
5	Copy of the CNIC <i>ADP Report</i>	F - G	21-22
6	Copy of the judgment and order dated 28.08.2017	H	23-24
7	Copy of w.p no 4459-17 and judgment	I	25-26
8	Copy of Departmental Appeal dated 06.02.2018	J	27-31
9	Vakalatnama		32

*Taleh Shah*  
Appellant

Through

*Zartaj Anwar*  
(ZARTAJ ANWAR)  
Advocate, Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR**

Appeal No. 776 /2018

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1001

Dated 28-5-2018

Taleh Shah s/o Maroof Gul r/o Adam Zai Akora Khattak Tehsil  
and District Newshehra.

(Appellant)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary elementary and secondary Education Govt of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. director elementary and secondary Education Govt of Khyber Pakhtunkhwa, G.T Road, Peshawar
4. District Education Officer (Male) Newshehra.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the inactions of the respondents by stopping the appellant from performing his duties as been attaining the age of superannuation against which departmental appeal was filed on 06.02.2018 but was not responded after the lapse of statutory period of 90 days.

Filed to-day

Registrar

28/5/18

**PRAYER IN APPEAL:**

On acceptance of this appeal the orders of respondents by way of stopping the appellant from performing his duties as been attain the age of superannuation and also not eligible for all, other benefits, which is illegal unlawful, in violation of the law, against the Express provision of law, and thus of no legal effect and denied all the fundamental rights of the appellant secured and grunted by the constitution, , therefore not allowing the appellant to perform his duties is to declared illegal and the appellant may be reinstated with all back wages and consequential benefits of service

Re-submitted to -day  
and filed.

Registrar

31/5/18

Respectfully Submitted:

1. That the Respondent department advertised certain posts in the daily news paper, including the post of Arabic Teacher BPS-15.
2. That the appellant having the required qualification, duly applied for the post of Arabic Teacher BPS-15, he was called for test and interview, accordingly the appellant duly appeared in test interview and remained successful.
3. That the appellant having remained successful in test and interview was appointed as Arabic Teacher BPS-15 disabled 2 % Quota upon the recommendation of the Departmental Selection Committee vide order dated 19.06.2008. **(Copy of the Appointment order dated 10.06.2008 is attached as Annexure A)**
4. That the appellant performed his duties with full zeal and honestly with no complaint what so ever from the superiors till date.
5. That the respondents on 22.10.2016 stopped the services of the appellant allegedly on attaining the age of superannuation as his age was recorded as 18.09.1956 in the CNIC.
6. That the appellant served the department for more then eight (8) years and performed his duties without any complaint.
7. That the appellant at the time of joining the service as Arabic Teacher BPS-15 gone through Medical Examination in Civil Hospital Nowshehra where in his age at that time recorded as 42/43 years. **(Copy of the Medical Certificate dated 19.06.2008 is attached as Annexure B)**
8. That the appellant filed Declaratory suit for correction of date of birth as wrongly been mentioned in the CNIC, which was decreed vide judgment and order dated 22.06.2017 and the date of birth was corrected as 18.09.1963. **(Copy of suit ,written statement, Judgment and Decree dated 22.06.2017 are attached as Annexure C)**
9. That the appellant has gone through medical test for assessment of age in Department of Forensic Medicine, Khyber Medical collage Peshawar, who after thorough medical examination, the age of the appellant was determined as 49 to 53 vide medical report dated 15.11.2017 which was further certified vide certificate dated

*age delimitation*  
 - 10 years - general  
 - 7 years 22 days  
 (hardship case)

1965-66

1964-68

15.11.2017 DHQ Nowshehra. (Copy of medical report dated 15.11.2017 and certificate dated 15.11.2017 are attached as Annexure D & E)

10. That the appellant after fulfilling all the legal requirements, was issued Computerize National Identity Card on 08.07.2017. (Copy of the CNIC is attached as Annexure F)
11. That the appellant filed application before the respondents for not taking any adverse action as the age correction case is pending in the court vide application dated 05.09.2016 which was forwarded to ADO Litigation. (Copy of the application dated 05.09.2016 is attached as Annexure G)
12. That the appellant filed application before the Hon;able chief Justice Peshawar High Court Peshawar which was converted to writ petition no 235-p/2017 and was disposed of vide order dated 28.02.2017, with the direction to the petitioner, first file departmental appeal before the competent authority and may approach the competent forum. (Copy of the judgment and order dated 28.08.2017 is attached as Annexure H )
13. That the appellant filed writ petition no 4459-17 before Hon'ble High Court which was disposed of in terms "On one hand, no order was shown to have been issued by the respondents with regard to the alleged retirement of the petitioner, while on the other hand, the petitioner is admittedly a civil servants and his grievance pertaining to retirement falls within domain of service tribunal as the jurisdiction of this court, in such like matters, are expressly barred by under Article 212 of the constitution." (Copy of w.p no 4459-17 is attached is attached as annexure I)
14. That the appellant filed Departmental Appeal before the competent authority on 06.02.2018 but was not responded within the period of 90 days. (Copy of Departmental Appeal is attached as annexure J)
15. That the appellant felt himself aggrieved of the above act of Respondents, and having no other adequate remedy available in law is constrained to file instant appeal before this Honorable Tribunal inter alia on the following grounds:-



GROUNDS OF APPEAL:

- A. That the petitioner has not been treated in accordance with law and his rights secured and guaranteed under the law have been violated.
- B. That the petitioner has gone through medical test for assessment of age in Department of Forensic Medicine, Khyber Medical collage Peshawar, who after thorough medical examination, the age of the petitioner was determined as 49 to 53 vide medical report dated 15.11.2017 which was further certified vide certificate dated 15.11.2017 DHQ Newshehra.
- C. That the petitioner filed declaratory suit for correction of date of birth as wrongly been mentioned in the CNIC, which was decreed vide judgment and order dated 22.06.2017 and the date of birth was corrected as 18.09.1963.
- D. That the appellant having remained successful in test and interview was appointed as Arabic Teacher BPS-15 disabled 2 % Quota upon the recommendation of the Departmental Selection Committee vide order dated 19.06.2008.
- E. That the appellant performed his duties with full zeal and honestly with no complaint what so ever from the superiors till date and the petitioner served the department for more then eight (8) years and performed his duties without any complaint.
- F. That the appellant never been proceeded against, nor any charge sheet or show cause notice has ever been served against his moreover his services have not been terminated thus he is entitled for the release of salary.
- G. That the appellant has been denied of his livelihood, which amounts to violation of Article-4 of the constitution of Islamic republic of Pakistan, 1973.
- H. That the appellant appointed by the competent authority, duly took over charge of his post and performed his duties since 2008 and have received salaries against his post thus valuable rights have been created in his favour the same cannot be undone or snatched away from him illegally.

- I. That the petitioner seeks the permission of this Honourable tribunal to rely on additional grounds at the hearing of this appeal

It is, therefore, humbly prayed that on acceptance of this appeal the Revised Seniority List of Inspector Legal on list F of Khyber Pakhtunkhwa Police as its stood on 8.11.2013 may please be modified/corrected and the name of the appellant may please be placed above the names of respondents NO. 4 and 5 On one hand, no order was shown to have been issued by the with all consequential benefits.

Copy cut paste



*Taleh Shah*  
Appellant

Through

*Zartaj Anwar*  
Zartaj Anwar  
Advocate Peshawar

**AFFIDAVIT**

I, Taleh Shah s/o Maroof Gul r/o Adam Zai Akora Khattak Tehsil and District Nowshera, do hereby solemnly affirm and declare that the contents of the above appeal 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.

*Taleh Shah*  
Deponent

**NOTIFICATION**

In pursuance of the judgment of Honourable Peshawar High Court, Peshawar dated 05-05-2008 in Cr. M. (COC) No. 7/2008 IN W.P. No.2121/2006 Talch Shah S/O Maroof Gul versus Mr. Tariq Jamil, Secretary School & Literacy and EDO (S & L) Nowshera letter No.5063 dated 27-05-2008 Mr. Talch Shah S/O Maroof Gul is hereby appointed against the vacant post of A.T (BPS-15), GMS Garu with immediate effect under 2% quota reserved for disable persons.

*M. J. J.*  
District Coordination Officer,  
Nowshera.

Endst: Even No. & Date:

Copy forwarded for information to:-

1. The Executive District Officer, (S & L) Department, Nowshera.
2. The Registrar Peshawar Highcourt, Peshawar w/r to his letter No.1393/Judl dated 22-05-2008.
3. The District Accounts Officer, Nowshera.
4. The PS to Zilla Nazim, Nowshera.
5. Mr. Talch Shah, resident of Mohalla Malayan near Muhammadi Masjid, Adamzai, Tehsil & District Nowshera. You are directed to report in the office of EDO (S & L) within 15 days otherwise your appointment will be cancelled.

District Coordination Officer,  
Nowshera.

**ATTESTED**

7 8

Approved B

17201-2265529-9

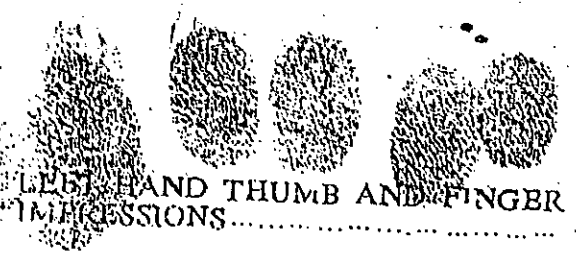
MEDICAL CERTIFICATE.

Name of Official..... Taleh Shah  
 Caste or race..... Afghan Sydan (Syed Quresh)  
 Father's name..... Mazooq Cakil  
 Residence..... Village: Adamzai P.O. Akota Khatak  
T.P. & Dist: District Nowshera  
 Date of birth..... 18-09-1956  
 Exact height by measurement..... 5-17  
 Personal mark of identification..... Cut-mark/Left Hand  
 Signature of the Official..... Taleh Shah (dorsal)  
 Signature of head of office.....

Seal of Office.....

I do hereby certify that I have examined Mr. Taleh Shah a candidate for  
 employment in the Office of the Execution District Officer  
 and can not discover that he had any disease communicable or other constitutional  
 affection or bodily infirmity except..... FT

I do not consider this as disqualification for employment in the office of the.....  
 His age according to his own statement..... 42 year and by  
 appearance about..... 43 years.



ATTESTED

B. W. Quresh  
 Medical Superintendent,  
 Civil Hospital.....  
19/6/58  
 Medical Superintendent  
 D.H.Q. Hospital  
 Nowshera

سید صاحب سرورہ جیلان صاحبہ سول جج لاہور

طالع شاہ بیگ نارا

بیت عدالت جناب ایڈووکیٹ سول جج صاحبہ لاہور



طالع شاہ ولد معروف گل ساکن محلہ مولیان، آدم زئی اکوڑہ خٹک تحصیل و ضلع

پیغام

چیز میں نادر ابذر لیب اسٹنٹ ڈائریکٹر انچارج نادر طالع نوشہرہ۔

(مدعا علیہ)

الف۔ دعویٰ استغناء اور یہ حقیقی مدعی کہ من مدعی کی درست تاریخ پیدائش بمطابق میڈیکل سرٹیفکیٹ مورخہ 18-09-1963 ہے جبکہ مدعا علیہ کے جاری کردہ کمپیوٹرائزڈ شناختی کارڈ میں سہواً 18-09-1956 تاریخ تحریر ہے، جو کہ غلط، خلاف قانون و واقعات ہے اور حقوق من مدعی پر کالعدم اور غیر مؤثر ہے۔

ب۔ دعویٰ حکم امتناعی تاکیدی مدعی مضمین کہ مدعا علیہ کو حکم تاکیدی کی جائے کہ وہ اپنے ریکارڈ یعنی قومی کمپیوٹرائزڈ شناختی کارڈ من مدعی کی درست تاریخ پیدائش بمطابق میڈیکل سرٹیفکیٹ 18-09-1963 کا اندراج کر کے ریکارڈ کی درستگی کرتے ہوئے نیا شناختی کارڈ جاری کریں۔

Order No. ....

Handwritten notes and stamps, including a date 15/6/17 and a signature.

نایلت بعرض کورٹ فیس و اختیار سماعت  
برائے جزی الف۔ مبلغ 500+500 روپے  
اندر حدود و اختیار سماعت عدالت حضور پیداشد۔  
مبلغ 500+500 روپے

جناب عالی! مدعی حسب ذیل عرض رساں ہیں۔

۱۔ یہ کہ من مدعی محلہ مولیان، آدم زئی اکوڑہ خٹک ضلع نوشہرہ کا مستقل باشندہ ہے۔

۲۔ یہ کہ مدعا علیہ کی طرف سے جاری شناختی کارڈ میں مدعی کی تاریخ پیدائش غلط طور پر 18-09-1956 ہے۔ جس کی درستگی کے لیے مدعی نے مدعا علیہ سے رابطہ کیا لیکن بے سود۔

۳۔ یہ کہ مدعی کی درست تاریخ پیدائش بمطابق میڈیکل سرٹیفکیٹ 18-09-1963 ہے جبکہ اندراج من مدعا علیہ غلط، خلاف قانون و واقعات اور حقوق من مدعی پر کالعدم اور غیر مؤثر اور قابل رد عمل ہے۔ (میں نے سرٹیفکیٹ لف ہے)۔

ATTESTED

10

ATTESTED

Examiner Copying Agency  
Branch, D.S. 01 JUL 2017



لجروالت جناب سول جج صاحب نوشہرہ

طالچ شاہ بناگ ناررا

مہمور :- جواب دعویٰ بجانب مدعا علیہ

جناب عالی :- جواب دعویٰ بجانب مدعا علیہ حسب ذیل ہے

1۔ یہ کہ دعویٰ مدعی زاہد الحمید ہے

2۔ یہ کہ دعویٰ مدعی بر بہ بنتی و دروخی گوی پر بنی ہے

3۔ یہ کہ دعویٰ Estoppel سے زہم میں آتا ہے

4۔ یہ کہ مدعی نے شناختی کارڈ بنانے وقت خور اپنا تاریخ پیدائش درج کیا ہے

5۔ یہ کہ مدعی نے مدعا علیہ سے ایک فارغ و مہول کہا تھا۔ جو بعد تصدیق

جمع کیا تھا۔ اور اس میں مدعی نے تاریخ پیدائش درج کیا ہے

واقعاتی

Sidra Jalal  
Civil Judge IX  
Nowshera

13-6-12

نفرہ نمبر 1 درست ہے۔ جواب طلب نہ ہے

نفرہ نمبر 2 غلط ہے

نفرہ نمبر 3 بھی غلط ہے

نفرہ نمبر 4 قانونی ہے

نفرہ نمبر 5 غیر قانونی ہے

عروالت حضور میں استہدائی جاتی ہے کہ  
دعویٰ مدعی خارج کیا جائے

محمد حیر ضی

ممانہ ناررا نوشہرہ  
13-06-2012

ATTESTED

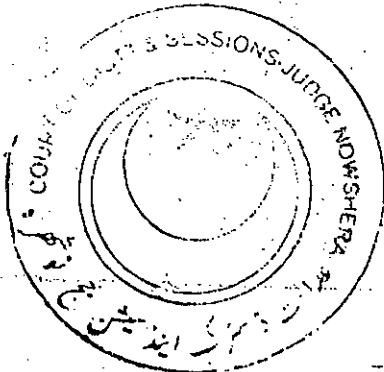
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Branch. O.S.J. Nowshera  
07 JUL 2017

پیر حیدر علی

11

انتخابات جناب محترمہ سرورہ جلال سول جج ایف بی ٹی نوٹیفکیشن  
نمبر 502/1 جو عمر 10<sup>06</sup>/<sub>17</sub> مہینوں 26<sup>6</sup>/<sub>17</sub>

عنوان ب لہذا بلیم ناردر ا



مطلع شاہد ولد معروف گل ساکن خانہ مولیان، آدم پڑی آکرہ ٹیکہ تحصیل ولسوالی نوشہرہ۔

(مدعی)

دیکھا

پتھر میں ناردر ایڈ ریڈ اسٹنٹ ڈائریکٹر انچارج ناردر ا ضلع نوشہرہ۔

(مدعا علیہ)

الف درجہ اولیٰ اہمیت اور وہ حق و عدل سے منہا ہے کہ من مدعی کی درست اور صحیح تاریخ  
پیدائش بمطابق میڈیکل سرٹیفکیٹ مورخہ 18-09-1963 ہے جبکہ مدعا علیہ کے جاری کردہ کپیڈاٹز شناختی  
کارڈ میں سہ ماہی 18-09-1956 درج و تحریر ہے، جو کہ غلط، خلاف قانون و واقعات ہے اور حقوق من مدعی پر  
کالعدم اور غیر مؤثر ہے۔

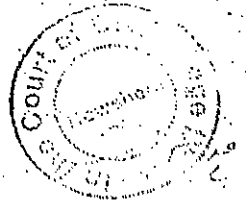
Order

ب درجہ اولیٰ اہمیت اور وہ حق و عدل سے منہا ہے کہ مدعا علیہ کو  
حکم نفاذ کی جائے کہ وہ اپنے ریکارڈ یعنی قومی کپیڈاٹز شناختی کارڈ میں کارڈ درست تاریخ پیدائش بمطابق میڈیکل  
سرٹیفکیٹ 18-09-1963 کا اندراج کر کے ریکارڈ کی درستگی کرتے ہوئے نیا شناختی کارڈ جاری کریں۔

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Branch: D. S. J. Nowshera

Sidra Jaleel  
Ct - R. N. S.



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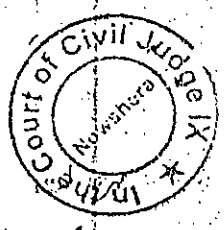


02-08-08

26-06-17

While my detailed judgement of today, consist of 4 pages Separately placed on File. Plaintiff's case of action. The suit is not time barred. Estopped. not proved. Suit is not based on malice. Correct date of birth of Plaintiff is 18-09-1963. The suit of Plaintiff is ~~stated~~ decreed against defendant's and defendant is directed to do the correction in record regarding correct date of birth of Plaintiff.

Sidra Jaleel  
 سید ذریعہ جاوید



فریقہ

فریقہ

8/11

	اسٹامپ برقی ڈیوٹی	
	اسٹامپ عوامی ڈیوٹی	
	اسٹامپ رجسٹریشن	
	فریقہ لاپان	
	فیس الی کمیشن	
NIC	نیزان	NIC

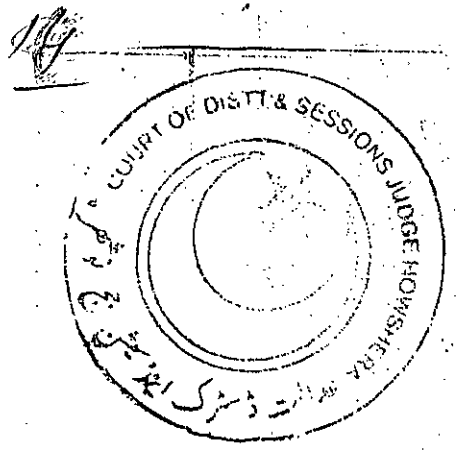
Sidra Jaleel  
 سید ذریعہ جاوید



ATTESTED

Examiner Copying Agency  
 Branch, D.S.J. Nowshera  
 01 JUL 2017

ATTESTED



Or.....08  
26.06.2017

Plaintiff alongwith counsel present. Representative of defendants present.

Statement of Habib Gul recorded as APW-1.

Arguments heard and record perused.

Vide my detailed judgment of today, consist of 04 pages, separately placed on file. Plaintiff has cause of action. The suit is not time barred. Estoppel not proved. Suit is not based on malafide. Correct date of birth of plaintiff is 18.09.1963. The suit of plaintiff is decreed against defendant and defendant is directed to do the correction in record regarding correct date of birth of plaintiff.

File be consigned to record room after completion and compilation.

Announced  
22.06.2017.

Sidra Jalal  
Civil Judge-IX  
Nowshera  
Sidra Jalal  
Civil Judge IX  
Nowshera

**ATTESTED**

Examiner Copying Agency  
Branch, D.S.J. Nowshera.  
03 JUL 2017

**ATTESTED**

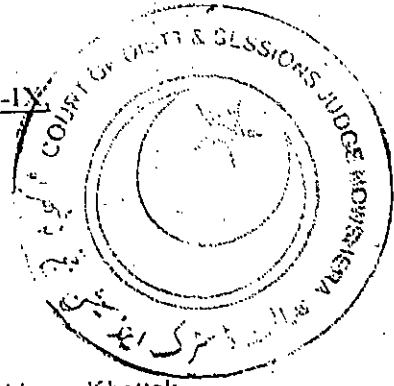
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IN THE COURT OF SIDRA JALAL, CIVIL JUDGE-IX  
NOWSHERA

Civil Suit No .....502/1  
Date of institution .....10.06.2017  
Date of Decision:.....22.06.2017



Taleh Shah s/o Maroof Gul r/o Mohallah Molyan Adam Zai Akora Khattak  
Tehsil and District Nowshera. (Plaintiff)

VERSUS

Chairman NADRA through Assistant Director Incharge NADRA, District  
Nowshera. (Defendant)

JUDGMENT  
23.06.2017

Through this judgment court aimed to dispose off the suit filed by the plaintiff against defendant/NADRA for declaration and mandatory injunction.

Brief facts of the case are that plaintiff filed a suit for declaration through which he challenged his date of birth which has been wrongly incorporated in defendant record as 18.09.1956, while correct date of birth of plaintiff as per medical certificate is 18.09.1963. Plaintiff has also prayed for mandatory injunction to incorporate the correct date of birth in defendant's record.

Defendant was summoned, who appeared before the court through his representative namely Rasool Muhammad who submitted authority letter and written statement through which defendant raised some legal as well as factual objections to deny the contents of plaint.

In the light of pleadings, following issues were framed by the court.

ISSUES

1. Whether plaintiff has got any cause of action?
2. Whether the suit is time barred?
3. Whether the plaintiff is estopped to sue?
4. Whether the suit is based on malafide?

Sidra Jalal  
Civil Judge IX  
Nowshera

~~ATTESTED~~

Examinee - Computer Agency  
Branch: D.S.J. Nowshera  
Date: 22.06.2017

ATTESTED

- 5. Whether the correct date of birth of plaintiff is 18.09.1963 while defendant has wrongly incorporated it as 18.09.1956?
- 6. Whether plaintiff is entitled to the decree as prayed for?
- 7. Relief.

Opportunity provided to both the parties to produce on record their evidence.

Plaintiff produced following witnesses.

PW-1 Niaz Anwar "representative of DHQ Nowshera MS" deposed to produce the record of plaintiff medical record ExPW1/1. According to PW-1 record, plaintiff age is 53 years.

PW-2 Taleh Shah, "plaintiff himself" deposed that his correct date of birth is 18.09.1963. Defendant asked him to bring the medical certificate for correction of record but later on refused to correct the date of birth, hence the instant suit. PW-2 submitted an affidavit regarding his correct date of birth.

PW-3 Hamid Shah "plaintiff younger brother", deposed supporting plaintiff's version.

PW-4 Manzoor Ahmad, village Nazim, deposed that he personally know the plaintiff and his correct date of birth is 18.09.1963.

APW-1 Habib Gul "elder brother of plaintiff" deposed and produced his CNIC Ex.APW1/1, second brother Qasim Shah, CNIC Ex.APW1/2, third brother "Taleh Shah" CNIC Ex.PW2/1 and younger brother CNIC Ex.APW1/3 and CNIC of plaintiff's mother Ex.APW1/4. APW-1 deposed that plaintiff is about 5 years younger than second brother "Qasim Shah".

DW-1 Fazal Malik "representative of defendant", deposed that today printer was out of order therefore not able to produce the copy of CNIC of plaintiff. According to his record correct date of birth of plaintiff is 18.09.1956 and closed his evidence.

Sidra Siddique Jodles  
Civil Judge IX  
Nowshera

**ATTESTED**

Examiner Copying Agency  
Branch. D.S.J., Nowshera  
01 JUL 2017

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**ATTESTED**

17

Arguments heard and record perused.

The nutshell of above discussion in form of issues wise findings are as follow:

ISSUE NO.2

Whether the suit is time barred?

Defendant alleged that suit of plaintiff is not within time however record transpires that the suit is well within time and not hit by limitation. Hence issue is decided in negative.

ISSUE NO.3

Whether the plaintiff is estopped to sue?

Perusal of court record reveals that plaintiff has not performed any such act which estopped him from filing the present suit and defendant also failed to produce cogent and reliable evidence, hence issue decided in negative.

ISSUE NO.4:

Whether the suit is based on malafide?

Defendant did not lead any evidence on this issue. Issue repelled for want of proof.

ISSUE NO.5

Whether the correct date of birth of plaintiff is 18.09.1963 while defendant has wrongly incorporated it as 18.09.1956?

Defendant has alleged that plaintiff himself has entered his date of birth as 18.09.1956. In support of his contention defendant representative, recorded his statement as DW-1 and stated that plaintiff date of birth is 18.09.1956 according to NADRA record. Defendant failed to produce the CNIC form of plaintiff. DW-1 also admit that they do not have any proof regarding plaintiff date of birth.

Record reveals that plaintiff is an illiterate person. Birth certificate of plaintiff is also not present. All the PWs supported the fact that plaintiff date of birth is 18.09.1963. The medical certificate (age assessment) Ex.PW1/1 supports the plaintiff's version. Plaintiff has also submitted an affidavit that his correct date of

Sidra Jaleel  
Civil Judge IX  
Nowshera

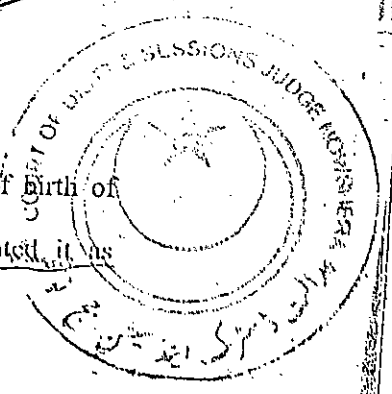
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Examiner Court  
Sd/- O.S.J. Nowshera  
17 JUL 2017

ATTESTED

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17



birth is 18.09.1963. Therefore it is held by the court that correct date of birth of plaintiff is 18.09.1963 while defendant/NADRA has wrongly incorporated it as 18.09.1956.

ISSUES NO.1 & 6

Whether the plaintiff has got any cause of action?

Whether the plaintiff is entitled to the decree as prayed for?

What has been discussed, it is clear that plaintiff has got a valid cause of action and is entitled to decree as prayed for?

RELIEF

Plaintiff has cause of action.

The suit is not time barred.

Estoppel not proved.

Suit is not based on malafide.

Correct date of birth of plaintiff is 18.09.1963.

The suit of plaintiff is decreed against defendant and defendant is directed to do the correction in record regarding correct date of birth of plaintiff.

File be cosigned to the record room after its necessary completion and compilation.

Announced  
22.06.2017

*Sidra Jalal*

Sidra Jalal  
Civil Judge-IX  
Nowshera

CERTIFICATE

Civil Judge IX  
Nowshera

It is certified that this judgment consists of 04 pages; each page has been read over, checked and signed by me.

~~ATTESTED~~

Examining Agency  
Branch, D.S. Nowshera

*Sidra Jalal*

Sidra Jalal  
Civil Judge-IX  
Nowshera

Civil Judge IX  
Nowshera

8

ATTESTED

19 Attested: D 18



**DEPARTMENT OF FORENSIC MEDICINE & TOXICOLOGY**  
**KHYBER MEDICAL COLLEGE PESHAWAR**  
**NOT VALID FOR COURT PROCEEDINGS**

NO 722/FM/KMC/2016

DATED 15/11/2016

From:-  
The Head,  
Department of Forensic Medicine,  
Khyber Medical College  
Peshawar.

To  
The Medical Superintendent, D H B Hosp  
Police and Services Hospital,  
DHQ Hospital Peshawar *Nowshera*

SUBJECT:- AGE ASSESSMENT

MEMO:

Reference your letter No 208 dated 09/11/2016 regarding assessment of age in respect of Talib Khan sib/daughter of Muhammad Gul Resident of Delwar Zai Nowshera

Bearing the following identification marks:-

- 1- Moles on neck. Left side measuring 0.1 cm
- 2- A Black mole near right eye, 1-1 cm

Heshe was examined for assessment of age. From physical examination, secondary sex character, dental status and x-rays, his/her age is 49-53 years. *Forty nine, fifty three*



*H. S.*  
HEAD  
DEPARTMENT OF FORENSIC MEDICINE  
KHYBER MEDICAL COLLEGE PESHAWAR

ATTESTED

19

**OFFICE OF THE MEDICAL SUPERINTENDENT**

**D.H.Q Hospital, Nowshera**

Reference No. 208 /ESTB/SEC.

Dated. 09-11-16

To,

The Head, Department of Forensic Medicine  
Khyber Medical College  
Peshawar

Subject: AGE ASSESSMENT/OPINION

R/Sir,

I have the honour to inform your good self that this hospital has not the complete board for assessment of the medical age.

Therefore, the applicant Mr/Mrs

Fateh Shah S/D/W/O Manoof Gul  
is sent to your institution for assessment of the medical age.

  
MEDICAL SUPERINTENDENT  
D.H.Q HOSPITAL NOWSHERA

ATTESTED



20 ~~15/11/16~~ E 

# OFFICE OF THE MEDICAL SUPERINTENDENT

D.H.Q Hospital, Nowshera

Reference No. 225 /ESTB/SEC.

Dated. 15/11/16

TO WHOM IT MAY CONCERN

It is certified that Mr/Mrs.

Talib Shah S/D/W/O Muhammad Gul  
resident of Tehsil & District Nowshera appeared before the undersigned  
on 15-11-2016

According to the opinion of Head Deptt. Of Forensic Medicine,  
Khyber Medical College Peshawar letter No 722  
dated 15-11-16 His/her age is 49-53

  
MEDICAL SUPERINTENDENT  
D.H.Q HOSPITAL NOWSHERA

  
ATTESTED

21

22 *Attested F*



**PAKISTAN** National Identity Card  
ISLAMIC REPUBLIC OF PAKISTAN

Name  
Taleh Shah



Father's Name  
Marjaf Gul



Gender: Country of Stay  
M Pakistan

Identity Number: 17201-2265529-9 Date of Birth: 18.09.1963

Date of Issue: 08.07.2017 Date of Expiry: 08.07.2027

Holder's Signature

17201-2265529-9



101951078404  
138-56-153070

Ministry of Information Technology  
Government of Pakistan

گمشدہ کارڈ ملنے پر قریبی لیو بکس میں ڈال دیں

*Attested*  
**ATTESTED**

Approved: G

(6)

22

~~(6)~~

ADD

Investigation

Examine

under the

rules

obj  
at

To

District Education Officer (M)

Nowshera

SUBJECT: WRONG DATE OF BIRTH WITH NADRA

Respected Sir,

I am hereby informing you that my case regarding wrong date of birth with NADRA is in progress in the Honorable Session Court Nowshera.

Therefore I am requesting you to kindly cessate action about my service till the decision of Honorable Session Court Nowshera.

Your Cooperation in the stated matter will be highly appreciated.

Thanks

Story No. 27-10115-92016

Applicant

Taleh Shah

TALEH SHAH

(5/9/16)

Court documents attached:

- I) Appointment notification
- II) Medical Certificate
- III) Change Report
- IV) Court Decision

ATTESTED

*(Signature)*

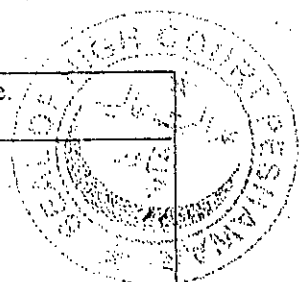
23 28

26

ANNEX-H

PESHAWAR HIGH COURT, PESHAWAR.

ORDER SHEET



Date of Order/ Proceedings	Order or other Proceedings with Signature of Judge.
<u>28/02/2017.</u>	<p><u>WP No. 235-P/2017</u></p> <p><b><u>Present:</u></b> Petitioner in person.</p> <p style="text-align: center;">Ms. Abida Safdar, AAG, for the respondents.</p> <p style="text-align: center;">====</p> <p><b><u>WAQAR AHMAD SETH, J.-</u></b> Short facts of the case are that the petitioner submitted an application to the Hon'ble Chief Justice of this Court alleging therein that he was appointed as Arabic Teacher (BPS-15) against 2% disabled quota in Education Department on 19.6.2008 and after serving the department for more than eight (08) years, <u>his services were stopped on 22.10.2016 according to his age recorded in CNIC as 18.9.1956;</u> hence, <u>he was not entitled for pension/gratuity being not eligible.</u></p> <p>The said application was converted into present Writ Petition.</p> <p>2. Arguments heard and record perused.</p> <p>3. The claim of the petitioner regarding pensionary benefits cannot be entertained due to eight (08) years length of service, however, according to the opinion of Head Department</p>

ATTESTED



*Q*

of Forensic Medicine, Khyber Medical College, Peshawar, available on record, the age of petitioner is 49-53 years. The petitioner is directed to first file departmental appeal before the competent authority regarding his age and if his grievance is not redressed, he may approach the proper forum for the same.

4. With the above observations, this Writ Petition is disposed of.

*Sd/- Major Arif Khan*

**JUDGE**

*Sd/- Muhammad Asif*

**JUDGE**

CERTIFIED TO BE TRUE COPY

Peshawar Bench of the High Court of Peshawar  
 Article 23 of the Constitution of Pakistan  
 The Government of Punjab Order 1984

37613

Date of Presentation of Application *14/6/12*

No of Pages *32*

Copying fee

Present Fee *- Nawab Shah*

Post *12-00*

Date of Preparation of Copy *21/6/12*

Date Given For Delivery *21/6/12*

Date of Delivery of Copy *18/7/12*


*Talib Shah*

**ATTESTED**

25  
1  
APPROVED I

**PESHAWAR HIGH COURT, PESHAWAR.**

**FORM 'A'**  
**FORM OF ORDER SHEET**

Date of order.	Order or other proceedings with the order of Judge
<p><b><u>ORDER</u></b> 16.01.2018</p>	<p style="text-align: right;"></p> <p><b><u>Writ Petition No.4459-P/2017</u></b></p> <p>Present:- Mr. Zartaj Anwar, Advocate for the petitioner.</p> <p style="text-align: center;">*****</p> <p><b><u>ROOH-UL-AMIN KHAN, J.-</u></b> By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the Constitution), Taleh Shah, who is an Arabic Teacher in respondents' department/Education Department, Peshawar, (petitioner herein), seeks issuance of a writ to declare the act of respondents with regard to his retirement from service on attaining the age of superannuation, as illegal, without lawful authority and without jurisdiction.</p> <p>2. The grievance of the petitioner is that his actual date of birth was <u>18.09.1963</u>, but the same was wrongly recorded as <u>18.09.1956</u> in his <u>National Identity Card</u>, for correction of which, he filed a declaratory suit, which was decreed in his favour vide judgment and decree dated 22.06.2017. Accordingly, his date of birth was corrected as 18.09.1963, but the respondents-department, taking into consideration his wrong date of birth are hell-bent to</p>

M.Siraj Afridi PS

DB of Mr. Justice Rooh ul Amin Khan and Mr. Justice Muhammad Younis Thaheem.

**ATTESTED**  
**EXAMINER**  
Peshawar High Court  
20 JAN 2018

retired him on the pretext of attaining the age of superannuation.

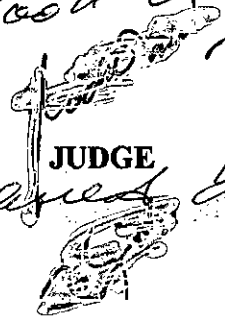
3. Learned counsel for the petitioner heard at length and record perused.

4. On one hand, no order was shown to have been issued by the respondents with regard to the alleged retirement of the petitioner, while on the other hand, the petitioner is admittedly a civil servant and his grievance pertaining to retirement falls within terms and conditions of his service which squarely falls within the domain of Service Tribunal as the jurisdiction of this Court, in such like matters, are expressly barred by under Article 212 of the Constitution.

5. Accordingly, this petition being not maintainable is hereby dismissed in limine.

Announced:  
16.01.2018

*Mr. Rooh ul Amin Khan*



JUDGE

*Mr. Mohammad Younis Taseem*

JUDGE



No. 7508

Date of Presentation of Application 20/1/18

No of Pages 87

Copying Fee .....

Urgent Fee .....

Total 32 - 00

Date of Preparation of Copy 20/1/18

Date of Delivery of Copy 20/1/18

Received By .....

CERTIFIED TO BE TRUE COPY

Examiner  
Peshawar High Court, Peshawar  
Authorized Under Article 8.7 of  
The Qanun-e-Shahadat Order 1984

20 JAN 2018

GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Block "A" Civil Secretariat, Peshawar

Phone No. 091-9223540

Dated February 12<sup>th</sup>, 2018

No. SO(Comp.)E&SED/KPK/1-7/2018/Talib Shah/SE-170

Approved J  
27

To

The Director,  
Elementary & Secondary Education Department,  
Khyber Pakhtunkhwa, Peshawar

Subject: DEPARTMENTAL APPEAL AGAINST THE ORDER OF COMPULSORY  
RETIREMENT NOT COMMUNICATED TO THE APPELLANT

I am directed to refer to the subject noted above and to enclose herewith (in original) an application/complaint received from Talib Shah s/o Maroof Gul, R/o Adam Zai Akora Khattak, Teh. & District Nowshera along with its enclosure addressed to the Secretary, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar for necessary action as per rules/policy.

Encl: As Above:

Encl: of even number & date:

*M. Talib Shah*  
SECTION OFFICER (COMPLAINT)

Copy of the above is forwarded to the PA to Deputy Secretary (A/B), E&SE Department, Peshawar.

SECTION OFFICER (COMPLAINT)

dt 12-2-18

time 1300

Diary

No.

ADD (20)

1419 dt 13-2-18

(Complaint) Section

ATTESTED



To

The Worthy Secretary,  
Department of Elementary & Secondary Education Govt of  
Khyber Pakhtunkhwa Peshawar.

Subject: Departmental appeal against the order of compulsory  
retirement not communicated to the appellant.

Prayer in departmental appeal:

On acceptance of this appeal the order not communicated,  
may please be set aside and the applicant may kindly be  
allow to perform his duties.

Respected Sir,

The applicant very humbly submits the following few lines for  
your kind and sympathetic consideration:

1. That the appellant having the required qualification, duly applied for  
the post of Arabic Teacher BPS-15, he was called for test and  
interview, accordingly the appellant duly appeared in test interview  
and remained successful.
2. That the appellant having remained successful in test and interview  
was appointed as Arabic Teacher BPS-15 disabled 2 % Quota upon  
the recommendation of the Departmental Selection Committee vide  
order dated 19.06.2008. (Copy of the Appointment order dated  
10.06.2008 is attached as Annexure A)
3. That the appellant performed his duties with full zeal and honestly  
with no complaint what so ever from the superiors till date.
4. That the respondents on 22.10.2016 stopped the services of the  
appellant allegedly on attaining the age of superannuation as his age  
was recorded as 18.09.1956 in the CNIC.
5. That the appellant served the department for more then eight (8) years  
and performed his duties without any complaint.
6. That the appellant at the time of joining the service as Arabic Teacher  
BPS-15 gone through Medical Examination in Civil Hospital

ATTESTED

Nowshehra where in his age at that time recorded as 42/43 years. (Copy of the Medical Certificate dated 19.06.2008 is attached as Annexure B)

7. That the appellant filed Declaratory suit for correction of date of birth as wrongly been mentioned in the CNIC, which was decreed vide judgment and order dated 22.06.2017 and the date of birth was corrected as 18.09.1963. (Copy of, suit, written statement, Judgment and Decree dated 22.06.2017 are attached as Annexure C)
8. That the appellant has gone through medical test for assessment of age in Department of Forensic Medicine, Khyber Medical collage Peshawar, who after thorough medical examination, the age of the appellant was determined as 49 to 53 vide medical report dated 15.11.2017 which was further certified vide certificate dated 15.11.2017 DHQ Nowshehra. (Copy of medical report dated 15.11.2017 and certificate dated 15.11.2017 are attached as Annexure D & E)
9. That the appellant after fulfilling all the legal requirements was issued Computerize National Identity Card on 08.07.2017. (Copy of the CNIC is attached as Annexure F)
10. That the appellant filed application before the respondents for not taking any adverse action as the age correction case is pending in the court vide application dated 05.09.2016 which was forwarded to ADO Litigation. (Copy of the application dated 05.09.2016 is attached as Annexure G)
11. That the appellant filed application before the Hon;able chief Justice Peshawar High Court Peshawar which was converted to writ petition no 235-p/2017 and was disposed of vide order dated 28.02.2017, with the direction to the petitioner, first file departmental appeal before the competent authority and may approach the competent forum. (Copy of the judgment and order dated 28.08.2017 is attached as Annexure H)
12. That the appellant filled writ petition no 4459-17 before Hon'ble High Court which was disposed of in terms "On one hand, no order was shown to have been issued by the respondents with regard to the alleged retirement of the petitioner, while on the other hand, the petitioner is admittedly a civil servants and his grievance pertaining to

ATTESTED

retirement falls within domain of service tribunal as the jurisdiction of this court, in such like matters, are expressly barred by under Article 212 of the constitution." (copy of wp no 4459-17 is attached as annexure)

13. That the appellant felt himself aggrieved of the above act of Respondents, and having no other adequate remedy available in law is constrained to file instant departmental appeal inter alia on the following grounds:-

Grounds of departmental Appeal:

- A. That the appellant has not been treated in accordance with law and his rights secured and guaranteed under the law have been violated.
- B. That the appellant has gone through medical test for assessment of age in Department of Forensic Medicine, Khyber Medical collage Peshawar, who after thorough medical examination, the age of the appellant was determined as 49 to 53 vide medical report dated 15.11.2017 which was further certified vide certificate dated 15.11.2017 DIHQ Nowshehra.
- C. That the appellant filed declaratory suit for correction of date of birth as wrongly been mentioned in the CNIC, which was decreed vide judgment and order dated 22.06.2017 and the date of birth was corrected as 18.09.1963.
- D. That the appellant having remained successful in test and interview was appointed as Arabic Teacher BPS-15 disabled 2 % Quota upon the recommendation of the Departmental Selection Committee vide order dated 19.06.2008.
- E. That the appellant performed his duties with full zeal and honestly with no complaint what so ever from the superiors till date and the petitioner served the department for more then eight (8) years and performed his duties without any complaint.
- F. That the appellant never been proceeded against, nor any charge sheet or show cause notice has ever been served against his moreover his

~~ATTACHED~~

services have not been terminated thus he is entitled for the release of salary.

- G. That the appellant has been denied of his livelihood, which amounts to violation of Article-4 of the constitution of Islamic republic of Pakistan, 1973.
- H. That the appellant appointed by the competent authority, duly took over charge of his post and performed his duties since 2008 and have received salaries against his post thus valuable rights have been created in his favour the same cannot be undone or snatched away from him illegally.

On acceptance of this appeal the order not communicated, may please be set aside and the applicant may kindly be allow to perform his duties.

Yours Obediently,

*Talib Shah*

Talib Shah s/o Maroof Gwal r/o  
Adam Zai Akora Khattak  
Tehsil and District Nowshera

Dated 06.02.2018

**ATTESTED**

Complaint

16-2-18

10/11/33

Discontinue fish.

POWER OF ATTORNEY

In the Court of Before the Service Tribunal K P A Peshawar

Taru Khan } For  
} Plaintiff  
} Appellant  
} Petitioner  
} Complainant

VERSUS

Gouty Kiplu and others } Defendant  
} Respondent  
} Accused  
}

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

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

ZARTAJ ANWAR ADVOCATE, my true and lawful attorney, for me in my same and on my behalf to appear at \_\_\_\_\_ 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 2012  
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

1

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal NO. 776/2018**

**Taleh Shah..... Appellant**

**VERSUS**

**1:- Govt: of Khyber Pakhtunkhwa and others.....Respondents**

**Written comments on behalf of respondents are as under.**

**Respectfully Sheweth**

**Preliminary Objections**

1. That the appellant has no cause of action to file the instant appeal.
2. That this Honorable Tribunal has got no jurisdiction to entertain the present appeal.
3. The present appeal is bad for mis-joinder and non-joinder of necessary parties.
4. That the appellant is estopped by his own conduct, by deed and by law to file the instant appeal.
5. That the instant appeal is barred by law.
6. That the appeal is time barred.
7. The appellant has no locus stand to file the instant appeal.

**Factual Objections:-**

1. Pertains to record.
2. Pertains to record.
3. Pertains to record.
4. Pertains to record.
5. Correct. Moreover retirement order of the appellant was passed on 21-03-018
6. Pertains to record.
7. Pertain to record.
8. Correct to extant date the suit was decreed in favor of appellant against NADRA, but respondent were neither party to the suit nor any direction was issued by the Honorable Court to the respondents to change the Date of Birth of the appellant in Service record. The respondents have their own laws/ service rules for changing of Date of Birth in service record. According to

Section 116 of General Financial rules the Date of Birth when once recorded in the Service Book could not be altered/changed after rendering of two years' Service. Moreover any alteration/change in the Date of Birth after two years will be in the violation of the Supreme Court Judgments.

- 9. Incorrect. If the exact Date of Birth of the appellant 18-09-1963, then why did he apply for second time age relaxation in upper age limit after availing automatic age relaxation by TEN years.
- 10. Pertains to record.
- 11. Incorrect. The respondent were neither party to the suit nor any stay order/restraining order was Passed by the Honorable Court. The respondent/department passed retirement order of the appellant on 21-03-2018 against which no appeal was filed by the appellant till date.
- 12. Pertains to record.
- 13. Pertains to record.
- 14. Incorrect. The appeal was not address to proper appellate forum moreover appeal was also time barred.
- 15. Incorrect. No departmental appeal was filed against the final order dated 21-03-2018.

**GROUND**

- A. Incorrect. The appellant was treated in accordance with law rules and policy.
- B. Incorrect. The appellant at the time of joining Service was examined by the Medical Superintendent and recorded Date of Birth in the medical certificate as 18-09-1956 and the respondent on the basis medical certificate and on the basis of CNIC recorded Date of Birth in the Service record as 18-09-1956.
- C. Correct to extent that the suit was decreed in favor of appellant against NADRA, but respondent were neither party to the suit nor any direction was issued by the Honorable Court to the respondents to change the Date of Birth of the appellant in Service record. The respondents have their own laws/ service rules for changing of Date of Birth in service record. According to Section 116 of General Financial rules the Date of Birth when once recorded in the Service Book could not be altered/changed after rendering of two years' Service. Moreover any alteration/change in the Date of Birth after two years will be in the violation of the Supreme Court Judgments.



- D. Pertains to record.
- E. Pertains to record.
- F. Pertains to record.
- G. Incorrect. As explained in the above paras.
- H. Incorrect. As explained in the above paras.
- I. The respondents may also be permitted to advance order arguments at the time of hearing.

It is, therefore, requested that the present Service Appeal is being meritless, devoid of force and baseless, may kindly be dismissed.

~~Respondent No. 1~~

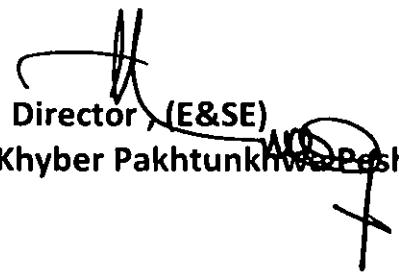
Respondent No. 1 & 2


~~Respondent No. 3~~

  
Secretary,  
E&SE KPK Peshawar.

Respondent No. 3

Respondent No.4

  
Director, (E&SE)  
Khyber Pakhtunkhwa Peshawar

  
District Education Officer,  
(M) Nowshera.

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

(4)

Appeal No. 776/2018

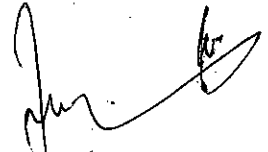
Taleh Shah .....Appellant

VERSUS

Govt of KPK & Others..... Respondents



**AFFIDAVIT**

I Fayaz Hussain, District Education Officer (M) Nowshera do solemnly affirmed and declare on oath that the contents of Par wise comments/ reply on behalf of respondent are true and correct to the best of my knowledge and that nothing has been concealed from this Honourable Court/Tribunal.

  
Deponent

5

UV6Z2Z خانہ دار کبیرہ 17201-2265529-9  
 ممبر سوسائٹی اکرم زئی ڈاکا گزہ اکوڑہ ٹنک، تحصیل و ضلع نوشہرہ  
 13866 4070  
 31/03/2017 تاریخ سرجی 16/04/2007  
 گھنٹہ کارڈ جسے پر قریبی ستر میں تین ڈال دیں

حکومت پاکستان  
 حکومتی شناختی کارڈ  
 17201-2265529-9  
 نام: طارق شاہ  
 جنس: مرد  
 (ان کا نام) بیروت مکی  
 18/09/1956  
 تسلیم حسین  
 اسٹوڈنٹ سٹارٹ اپ  
 2




NOTIFICATION

In pursuance of the judgment of Honourable Peshawar High Court, Peshawar dated 05-05-2008 in Cr.,M. (COC) No. 7/2008 IN W.P. No.2121/2006 Taleh Shah S/O Maroof Gul versus Mr. Tariq Jamil, Secretary School & Literacy and EDO (S & L) Nowshera letter No.5063 dated 27-05-2008 Mr. Taleh Shah S/O Maroof Gul is hereby appointed against the vacant post of A.T (BPS-15),GMS Garu with immediate affect under 2% quota reserved for disable persons.

*M. J. J.*  
District Coordination Officer,  
Nowshera.

Endst: Even No. & Date:

Copy forwarded for information to:-

1. The Executive District Officer, (S & L) Department, Nowshera.
2. The Registrar Peshawar Highcourt, Peshawar w/r to his letter No.1393/Judl dated 22-05-2008.
3. The District Accounts Officer, Nowshera.
4. The PS to Zilla Nazim, Nowshera.
5. Mr. Taleh Shah, resident of Mohalla Malayan near Muhammadi Masjid, Adamzai, Tehsil & District Nowshera. You are directed to report in the office of EDO (S & L) within 15 days otherwise your appointment will be cancelled.

District Coordination Officer,  
Nowshera.

Annexure "D" (14)

(7)

MS-102, M.S. No. 4

GS&PD-NWFP-27 PS-2000 P of 100-29 195-(16)

17201-2265529-9

MEDICAL CERTIFICATE

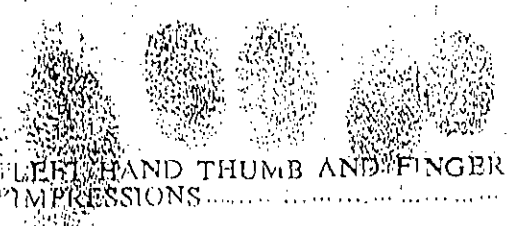
Name of Official..... Taleh Shah  
 Caste or race..... Afghani, Syedan (Syed Qureshi)  
 Father's name..... Mazooq Caud  
 Residence..... Village: Adamzai P.O. Akona Khatak  
 T.P. & Dist..... Nowshera  
 Date of birth..... 18-09-1956  
 Exact height by measurement..... 5' 11"  
 Personal mark of identification..... Cut-mark/Left Hand  
 Signature of the Official..... Taleh Shah (dorsal)  
 Signature of head of office.....

Seal of Office

I do hereby certify that I have examined Mr. Taleh Shah a candidate for  
 employment in the Office of the Executive District Officer  
 and can not discover that he had any disease communicable or other constitutional  
 affection or bodily infirmity except Fit

I do not consider this as disqualification for employment in the office of the  
 His age according to his own statement 42 year and by  
 appearance about 43 years.

LEFT HAND THUMB AND FINGER IMPRESSIONS



[Signature]  
 Medical Superintendent,  
 Civil Hospital  
 19/6/58  
 Medical Superintendent  
 D.I.Q. Hospital  
 Nowshera



(8)

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

0923-9220228 , 0923-9220228  
No. 13737-38 Dated. 9 / 19 / 2017

To

Taleh Shah S/O Maroof Gul  
Moh: Mullayan P/O Akora Khattak Adamzai  
Nowshera

Subject: **CHANGE OF DATE OF BIRTH.**

Memo:

Reference your application dated 14/7/2017 on the subject cited above, it is stated that you filed civil suit against NADRA. The suit was decreed against NADRA on 26/06/2017. NADRA was directed for correction in the CNIC and other relevant record to issue fresh CNIC to the applicant. The Education Department was neither party to the suit nor any relief was asked against Education Department.

As for as the date of birth recorded in the service book is concerned it cannot be changed belatedly stage specially beyond the period of two years of joining of service. At the end of service career of the applicant he forwarded application for the change of his date of birth, any alteration of his date of birth will be in violation of the Supreme Court Judgements (1998 SCMR 1386, 1998 SCMR 1494, 1999 SCMR 1544).

In the light of the above application/appeal of the applicant is rejected.

District Education Officer (M)  
Nowshera

*Ends: of Even No. & Date:-  
Copy for information to the:-*

1. Principal / Head Master GHS Khawrai
2. Official Concern

District Education Officer (M)  
Nowshera

(9)

## SUMMARY FOR CHIEF MINISTER KHYBER PAKHTUNKHWA

Subject:- IMPLEMENTATION / EXECUTION OF JUDGEMENT DATED 1-10-2010  
IN SERVICE APPEAL NO. 1853/09 TALEH SHAH ARABIC TEACHER  
S/O MAROOF GUL GOVT. MIDDLE SCHOOL GARU NOWSHERA.

One Mr. Taleh Shah resident of District Nowshera was appointed as Arabic Teacher against disabled quota on the direction of the Peshawar High Court Peshawar contained in its judgement dated 10-07-2007 (F/A). His appointment order was issued on 10-6-2008 vide notification (F/B). He assumed the charge and has been performing his duties since his appointment. He could however not draw his pay due to being overage. He filed an appeal in the Service Tribunal Khyber Pakhtunkhwa against non granting of salary to him wef; 10-6-2008. The Service Tribunal Khyber Pakhtunkhwa remanded his case to Elementary & Secondary Education Department with the direction to finalize the matter regarding relaxation in upper age limit within two months and submit compliance report (F/C). As per report of the Executive District Officer Elementary & Secondary Education Nowshera date of birth of the teacher concerned is 18-9-1956 and prescribed age limit for recruitment of disabled person is 43 years. His upper age if reckoned on 30-9-2006, being last date of receipt of application exceeds the prescribed age limit by 07 years and 22 days as reported by the Executive District Officer Elementary & Secondary Education Nowshera (F/D).

2. The Elementary & Secondary Education Department referred the case of the teacher concerned for relaxation in upper age limit to the Secretary Establishment Department. The Establishment Department has clarified vide letter (F/E) that at the time of submission of application for the post of Arabic Teacher i.e. 30-9-2006, the recruitment policy 1993 vide (F/F) was in vogue. Moreover as per notification of the Establishment Department vide (F/G) an overage candidate shall be entitled to only one age concession whichever is beneficial to him. Thus the official had already availed 10 years automatic relaxation as disabled person and further relaxation of 07 years and 22 days was not admissible to him under the then prevailing rules.

3. Since the teacher was appointed on the direction of the Peshawar High Court Peshawar and the Service Tribunal vide its judgement (F/C) has remanded the case to Elementary & Secondary Education Department with the direction to finalize the matter regarding age relaxation of the appellant within two months and directions of the then Tribunal have to be implemented, this Department is of the view that being hardship case the upper age of the teacher is required to be relaxed by 07 years and 22 days over and above the 10 years automatic relaxation.

②  
10

4. The Chief Minister Khyber Pakhtunkhwa being competent authority is requested to accord sanction to upper age limit by 07 years and 22 days in favour of the teacher concerned so that his pay is released and decision of the Service Tribunal is implemented.

*Mushtaq 31.3.12*  
(MUHAMMAD MUSHTAQ JADOON)  
SECRETARY  
ELEMENTARY & SECONDARY  
EDUCATION DEPARTMENT

CHIEF SECRETARY  
KHYBER PAKHTUNKHWA.

5. Please examine.

*J. 2*  
*3.4.72*  
CHIEF SECRETARY

SECRETARY ESTABLISHMENT

*Next page*



3  
11

6. At the time of submission of applications for the post of Arabic Teacher i.e. 30.09.2006, the Recruitment Policy, 1993 was in vogue wherein an overage candidate was entitled to only one age concession whichever was beneficial to him. The teacher had already availed 10 years automatic relaxation in age as disabled person, therefore, further relaxation of 07 years and 22 days is not admissible under the then prevailing policy.

7. The teacher was appointed on the directions of the Peshawar High Court, Peshawar (F/A) and the Service Tribunal, Khyber Pakhtunkhwa had issued orders regarding release of his salary w.e.from 10.06.2008 (F/C), but it was required by the Education Department to fulfill the basic eligibility criteria of age, educational qualification and experience prescribed by Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, prior to the appointment. It is also clear from the High Court order at (F/A) that the representative of the Department stated in the court that some vacancies are already there and the petitioner could be accommodated if ordered. This means that the correct position was not brought before the court by the representative of the Department. Had the correct position been explained before the court, the judgment would have been different.

8. Being a hardship case and to implement the directions of Peshawar High Court and Service Tribunal, Khyber Pakhtunkhwa, it is proposed that:-

- i) Proposal contained in para-4 of the summary may be approved.
- ii) Disciplinary action may be taken against, the officers/officials responsible for not placing the correct position before the court regarding his ineligibility on account of being overage inspite of availing age relaxation under the policy.

(Shahrukh Arbab)  
Secretary Establishment  
April 17, 2012

~~Chief Secretary,  
Khyber Pakhtunkhwa.~~

9. Para 8 for approval please.

10' para 8 approval.  
~~CHIEF MINISTER~~  
Secy. E&SE

*(Signature)*  
17/4/12

CHIEF SECRETARY  
CHIEF MINISTER  
KHYBER PAKHTUNKHWA

Chief Secretary  
A-11  
23-7-12



OFFICE OF THE DISTRICT EDUCATION  
OFFICER(MALE) NOWSHERA

(Office Phocce#0923-9220228, Fax#0923-9220228)

No. 4633-36/DEO (M) Estab: Secy: Branch NSR the 21/13/2017

**RETIREMENT ORDER**

Under the provision of Government of Khyber Pakhtunkhwa Finance Department letter No.FD (SR-VI) Vol.II dated: 24-08-1983, Sanction is hereby accorded to the grant of leave encashment /Retirement from Govt: Service, and he is not entitled for pension/Commutation. Detail given below.

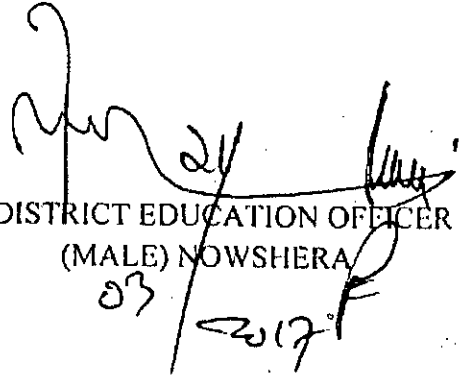
S.	Name of Officials & School	Date of Retirement	Date of Birth	Date of Ist Apptt:	Encasement of LPR	Total Service Y- M-D	Remarks
1	Mr, Taleh Shah A.T S/O: Maroof Gul GHS, Khawrai (NSR) P.O No: 00713304	17-9-2016 A.N	<u>18-9-1956</u>	19-06-2008	99 days	08-02-28	Age of Superannuation, But his service is less then ten years.

(FAYAZ HUSSAIN)  
DISTRICT EDUCATION OFFICER  
(MALE) NOWSHERA

Endstt: No 4633-36/DEO (M) NSR/EA-S/File.No:2/Retirement of A.T Dated (NSR) the 21/10/2017

Copy forwarded for information to the:-

- 1:- Senior District Accounts Officer Nowshera.
- 2:- Principal/Head Master Concerned.
- 3:- EMIS Local Office.
- 4:- Official concerned.
- 5:- Office Copy.

  
DISTRICT EDUCATION OFFICER  
(MALE) NOWSHERA  
03/2017

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

Appeal No.776/2018

Taleh Shah s/o Maroof Gul r/o Adam Zai Akora Khattak Tehsil  
and District Newshehra.

**(Appellant)**

**VERSUS**

Government of Khyber Pakhtunkhwa through Chief Secretary  
Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others.

**(Respondents)**

**REJOINDER TO THE PARA WISE REPLY ON**  
**BEHALF OF THE APPELLANT**

Respectfully submitted

The appellant submits his rejoinder as under:

**ON PRELIMINARY OBJECTIONS:**

1. Contents incorrect and misleading, the appellant has the cause of action to file the present appeal.
2. Contents incorrect and misleading, this Hon;able Tribunal has the jurisdiction to entertain the present appeal.
3. Contents incorrect and misleading, the appellant has arrayed all the necessary parties in the present appeal.
4. Contents incorrect and misleading, no rules of estoppel is applicable to the instant case.
5. Contents incorrect and misleading, the appeal being filed well in accordance with the prescribed rule and procedure hence maintainable in its present form and also in the present circumstances of the case.
6. Contents incorrect and misleading, the appeal being filed well within time.p

7. Contents incorrect and misleading, the appellant has the Locus standi to file the instant petition.

### ON FACTS

1. No comments, moreover Contents of Para-1 of the appeal are correct.
2. No comments, moreover Contents of Para-2 of the appeal are correct.
3. No comments, moreover Contents of Para-3 of the appeal are correct.
4. No comments, moreover Contents of Para-4 of the appeal are correct.
5. No comments, moreover Contents of Para-5 of the appeal are correct.
6. No comments, moreover Contents of Para-6 of the appeal are correct.
7. No comments, moreover Contents of Para-7 of the appeal are correct.
8. No comments, moreover Contents of Para-8 of the appeal are correct as a valid decree has issued by competent court of law on merits and the respondents have not challenged the same decree till date.
9. No comments, moreover Contents of Para-9 of the appeal are correct. Furthermore the age of the appellant was correctly given in the medical certificate dated 15.11.2017.
10. No comments, moreover Contents of Para-10 of the appeal are correct.
11. No comments, moreover Contents of Para-11 of the appeal are correct, moreover the date of birth of the appellant was corrected on the decree of the competent court of law.
12. No comments, moreover Contents of Para-12 of the appeal are correct.
13. No comments, moreover Contents of Para-13 of the appeal are correct.
14. No comments, moreover Contents of Para-14 of the appeal are correct, more over detailed reply has been given in the preceding pages.
15. No comments, moreover Contents of Para-15 of the appeal are correct.

**GROUND**

The Grounds (A to I) taken in the memo of appeal are legal and will be substantiated at the time of arguments.

It is therefore humbly prayed that the appeal of the appellant may please be accepted as prayed for

*[Signature]*  
Appellant

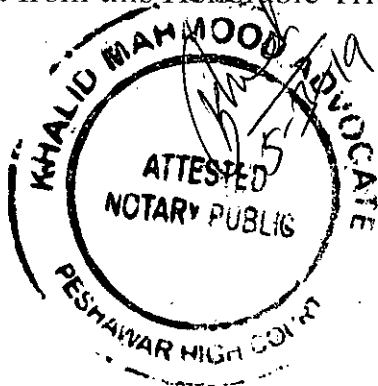
Through

*[Signature]*  
Zartaj Anwar  
Advocate High Court

**AFFIDAVIT**

It is hereby solemnly affirm and declare on oath that the contents of the above rejoinder as well as titled appeal are true and correct and nothing has been kept back or concealed from this Honorable Tribunal.

*[Signature]*  
Deponent



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

Appeal No. 776/2018

Taleh Shah s/o Maroof Gul r/o Adam Zai Akora Khattak Tehsil  
and District Nowshera.

(Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa through Chief Secretary  
Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others.

(Respondents)

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6. Contents incorrect and misleading, the appeal being filed well within time.p

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**GROUNDS**

The Grounds (A to I) taken in the memo of appeal are legal and will be substantiated at the time of arguments.

It is therefore humbly prayed that the appeal of the appellant may please be accepted as prayed for

*Appellant*

Through

Zartaj Anwar  
Advocate High Court

**AFFIDAVIT**

It is hereby solemnly affirm and declare on oath that the contents of the above rejoinder as well as titled appeal are true and correct and nothing has been kept back or concealed from this Honorable Tribunal.

*Deponent*



Teleh Shah vs Govt

From: A C

2021 PLC (C.S.) 570

[Supreme Court of Pakistan]

21/7/2021

Date of Birth:  
Not allowed.

Present: Gulzar Ahmed, C.J., Ijaz ul Ahsan and Sayyed Mazahar Ali Akbar Naqvi, JJ  
MUHAMMAD KHALIQ MANDOKHAIL

Versus

GOVERNMENT OF BALOCHISTAN through Chief Secretary, Civil Secretariat Quetta and another

Civil Petition No. 4428 of 2019, decided on 16th February, 2021.

(Against the judgment dated 31.10.2019 of the Balochistan Service Tribunal, Quetta passed in Appeal No.490/2018)

**(a) Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009---**

---R. 11---Alteration of date of birth in service record---Disallowed---Mala fide of Education Board in changing date of birth---Academic credentials of the petitioner-civil servant clearly reflected that the date of birth was recorded as 1-3-1959 on every document including NADRA record---Petitioner moved for correction of his date of birth after a lapse of 22 years of continuous service in the year 2014, and approached the Board of Intermediate and Secondary Education ('the Board'), to get his date of birth changed from 01-03-1959 to 20.12.1963---Board without any hesitation proceeded according to the whims of the petitioner and made the alteration, when it had no authority to entertain such a request---In the absence of any declaration from a Civil Court of competent jurisdiction, the Board was not empowered to change the date of birth---Whole proceedings carried out by the Board smacked of mala fide---Consequently the proceedings carried out regarding the change of date of birth were prima facie based upon an act of Board which was mala fide, based upon extraneous consideration, therefore, any superstructure raised over it would fall to the ground---Since the whole proceedings for alteration of date of birth were carried out by the petitioner after a lapse of 22 years of active service, therefore, it could safely be held that such proceedings were based upon an afterthought just to prolong the service tenure on the basis of frivolous and tainted documents---Petition for leave to appeal was dismissed and leave was refused with the observation that the Supreme Court in a number of cases had discouraged change in the date of birth of a civil servant, which could be for the purpose of unduly enhancing the tenure of service in employment.

Ali Azhar Khan Baloch v. Province of Sindh 2015 SCMR 456 ref.

**(b) Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009---**

---R. 11---Alteration/correction of date of birth in service record---Pre-requisites---While seeking such an alteration/correction, a declaration was sine qua non which could only be issued by the Civil Court of competent jurisdiction on the basis of evidence produced during the proceedings regarding the authenticity of the subject matter. [p. 574] B

**(c) Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009---**

---R. 11---Alteration/correction of date of birth in service record---Scope---Civil servant could not seek alteration in his date of birth at the verge of his retirement.

Ali Azhar Khan Baloch v. Province of Sindh 2015 SCMR 456 ref.

**(d) Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009---**

---R. 11---Alteration/correction of date of birth in service record---Rule 11 of Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009, interpretation of---Date of birth of the petitioner mentioned in his Secondary School Certificate was 01-03-1959, while in his service book, it was registered as 20-12-1963---Plea of petitioner that according to R. 11 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009, (the 2009 Rules) the date of birth of a civil servant once recorded at the time of joining the government service shall be final and no alteration

therein shall be permissible---Held, that service book was only a piecemeal and for all intents and purposes it would not be considered as a complete service record---Other documents relating to his service record including the academic record, the CNIC, the seniority lists prepared on different occasions, the ACRs and the retirement notification, all conjointly reflect that the date of birth of the petitioner was incorporated as 01.03.1959---Petitioner agitated his grievance in the year 2014 after a lapse of 22 years of joining service---Proceedings initiated by the petitioner seeking alteration in the date of birth while pressing in R. 11 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 were intended on the basis of extraneous considerations just to prolong his service period---Petition for leave to appeal was dismissed and leave was refused.

Muhammad Shoaib Shaheen, Advocate Supreme Court for Petitioner.

Nemo for Respondents.

Date of hearing: 16th February, 2021.

## JUDGMENT

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.**---The instant petition under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, has been filed by the petitioner calling in question the judgment of the Balochistan Service Tribunal, Quetta dated 31.10.2019 whereby the Service Appeal filed by him seeking correction of date of birth in the service record was dismissed.

2. Briefly stated the facts of the matter are that the petitioner was appointed as Naib Tehsildar in the Revenue Department of Government of Balochistan on 18.08.1992. He was promoted to the Post of Tehsildar vide notification dated 07.03.2010 and he was further promoted to BPS-18 vide notification dated 18.10.2017. The date of birth of the petitioner was mentioned in the Secondary School Certificate as 01.03.1959, while in the service book, it was registered as 20.12.1963. However, the petitioner approached the Board of Intermediate and Secondary Education, Quetta to get his date of birth corrected in the Secondary School Certificate in the year 2014 after the lapse of 22 years. The said certificate was duly issued to him on 29.12.2014 by correcting the date of birth of the petitioner from 01.03.1959 to 20.12.1963. The petitioner after securing correction of date of birth in the Secondary School Certificate, also got his date of birth corrected from NADRA in his CNIC. The department issued seniority lists dated 15.10.2014 and 03.01.2018, however, the date of birth of the petitioner was mentioned as 01.03.1959. The petitioner being aggrieved by the seniority lists duly issued by the department filed objections before the competent authority but the objections raised by the petitioner were not addressed and the department paid no heed to it. Consequently, on 27.09.2018 a notification was issued by the department regarding the date of retirement of the petitioner, after attaining the age of superannuation, with effect from 28.02.2019 basing his date of birth as 01.03.1959. Against the notification of superannuation, the petitioner filed departmental appeal which was rejected vide order dated 02.01.2018. Being aggrieved by the rejection of departmental appeal, the petitioner preferred service appeal before the Balochistan Service Tribunal, Quetta, which was dismissed by the Tribunal vide judgment dated 31.10.2019. Hence this petition for leave to appeal.

3. Learned counsel for the petitioner inter alia contends that in the service book the date of birth of the petitioner was rightly mentioned as 20.12.1963 and according to law, the first date of birth entered in the service record has to be presumed to be the correct date of birth; that the learned Tribunal has failed to take into consideration Rule 11 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009, according to which the date of birth of a civil servant once recorded at the time of joining the government service shall be final and no alteration therein shall be permissible; that the learned Tribunal has also not considered that the petitioner's date of birth recorded in the matriculation certificate was corrected by the Board by issuing a duplicate certificate. He lastly added that while passing the impugned judgment, the learned Service Tribunal has erred in law, therefore, the same is not sustainable in the eyes of law.

4. We have heard learned counsel for the petitioner and have perused the available record.

5. We have noticed that the petitioner was appointed as Naib Tehsildar on 18.08.1992. The

academic credentials of the petitioner clearly reflect that the date of birth was recorded as 01.03.1959 on every document including NADRA record. It was very surprising that the petitioner moved for correction of his date of birth after the lapse of 22 years of continuous service in the year 2014. He approached the Board of Intermediate and Secondary Education, Quetta to get his date of birth changed from 01.03.1959 to 20.12.1963. It is surprising that the Board without any hesitation proceeded according to the whims of the petitioner and submitted itself before the desire of the petitioner, although the Board had no authority to entertain such a request and made alteration of its own. We have specifically confronted the learned counsel to show us from the record the material placed before the Board which prompted the Board to come for the rescue of the petitioner and act according to the illegal desire of the petitioner. It has been informed that an affidavit was tendered, which was made basis for conversion of the date of birth from 01.03.1959 to 20.12.1963. It is established law that while seeking such like correction, a declaration is sine qua non which can only be issued by the Civil Court of competent jurisdiction on the basis of evidence produced during the proceedings regarding the authenticity of the subject matter. In the absence of any declaration the Board was not empowered to change the date of birth. The whole proceedings carried out by the Board are nothing but squarely smack mala fide at the end of Board as well as the litigant. The said conduct of the Board is deprecated. As a consequence the proceedings carried out regarding the change of date of birth are prima facie based upon an act of Board which is mala fide based upon extraneous consideration, therefore, any superstructure raised over it would fall to the ground. As we have noticed that the whole proceedings were carried out after the lapse of 22 years of active service, therefore, it can be safely held that the proceedings carried out by the petitioner were based upon an afterthought just to prolong the service tenure and it was nothing but an attempt to continue with the service on the basis of frivolous and tainted documents which speak volume in relation to its genuineness. This Court in a number of cases has discouraged change in the date of birth of a civil servant, which could be for the purpose of unduly enhancing the tenure of service in employment. In the case of Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456), it has been held by this Court that a civil servant could not seek alteration in his date of birth at the verge of his retirement. The material produced and examined by the Tribunal clearly suggests that the petitioner got changed his date of birth when he was at the verge of his retirement.

6. Now we will advert to the contention raised by the learned counsel for the petitioner that according to Rule 11 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009, the date of birth of a civil servant once recorded at the time of joining the government service shall be final and no alteration therein shall be permissible. It would be in order to reproduce the said rule, which reads as under:-

"11. The date of birth of a civil servant once recorded at the time of joining the Government service shall be final and no alteration therein shall be permissible, except, where a clerical mistake occurs in recording the date of birth in the Service record:

Provided that, no request of a civil servant on this ground shall be entertained after a period of two years from the date of such entry in his service record; and all such cases shall be decided by the Appointing Authority, on the recommendation of an Enquiry Committee with the following composition:

- |                                    |                            |
|------------------------------------|----------------------------|
| 1. Senior Member, Board of Revenue | Chairman                   |
| 2. Secretary, S&GAD                | Member                     |
| 3. Secretary, Law Department.      | Member                     |
| 4. Secretary of the concerned      | Co-opted Member            |
|                                    | Administrative Department" |

7. A bare perusal of the aforesaid Rule makes it abundantly clear that the date of birth of a civil servant once recorded at the time of joining of Government service as a general principle shall be final and would not be altered except (i) there is a clerical mistake (ii) the change is sought within the period of two years. This Rule narrows down the scope for change of date of birth by stipulating that no alteration shall be permissible after the expiry of the time as mandated in the said rule. Otherwise, the

service book is only a piecemeal and for all intents and purposes it would not be considered as a complete service record. We have noticed that the other documents relating to his service record including the academic record, the CNIC, the seniority lists prepared on different occasions, the ACRs and the retirement notification, all conjointly reflect that the date of birth of the petitioner was incorporated as 01.03.1959. The petitioner joined the service on 18.08.1992, whereas he agitated his grievances in the year 2014 after the lapse of 22 years. Hence keeping in view the facts and circumstances, it is clear that the proceedings initiated by the petitioner seeking alteration in the date of birth while pressing in Rule 11 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 were intended on the basis of extraneous considerations just to prolong the service period. The whole proceedings carried out by the petitioner can be dubbed as tainted on this score alone. Otherwise no substantial question of law of public importance within the meaning of Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, has been raised before this Court.

8. For what has been discussed above, this petition having no merit is accordingly dismissed and leave to appeal is refused.

MWA/M-13/SC

Petition dismissed.

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

C.M. No.252/2019

In

Service Appeal No.776/2018

Taleh Shah..... *Appellant*

**VERSUS**

*Government of Khyber Pakhtunkhwa & others*

..... *Respondents*

**REPLY TO APPLICATION FOR  
RESTORATION.**

**Respectfully Sheweth:**

- 1) *Para-1 needs no comments.*
- 2) *Incorrect. Appellant deliberately failed to attend the court on date fixed. Nothing was provided to show justification for non-appearance on the date fixed.*
- 3) *Incorrect. As replied in Para-2 above.*

- 4) Valuable rights has been accrued to the respondent/department, hence the application is badly time barred and not maintainable.
- 5) The application is barred by law.

It is, therefore, requested that the application may pleased be dismissed with cost.

Dated 07/02/2020

Respondent No.4

District Education Officer  
through  
Assistant District legal  
Officer

Through:

**Additional Advocate General,  
Khyber Pakhtunkhwa Service  
Tribunal Peshawar.**

**Affidavit:**

I, Inayat Ullah ADO (Legal), do hereby declare that the content of the above application is true nothing stated false therein

**ADO (Legal)**

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

C.M. No.252/2019

In

Service Appeal No.776/2018

Taleh Shah..... **Appellant**

**VERSUS**

Government of Khyber Pakhtunkhwa & others

..... **Respondents**

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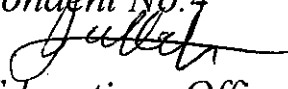
4) Valuable rights has been accrued to the respondent/department, hence the application is badly time barred and not maintainable.

5) The application is barred by law.

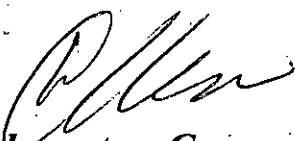
It is, therefore, requested that the application may pleased be dismissed with cost.

Dated 07/02/2020

Respondent No.4


  
District Education Officer  
through  
Assistant District legal  
Officer

Through:

  
Additional Advocate General,  
Khyber Pakhtunkhwa Service  
Tribunal Peshawar.

**Affidavit:**

I, Inayat Ullah ADO (Legal), do hereby declare that the content of the above application is true nothing stated false therein

  
ADO (Legal)



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

C.M. No.252/2019

In

Service Appeal No.776/2018

Taleh Shah..... *Appellant*

**VERSUS**

*Government of Khyber Pakhtunkhwa & others*

..... *Respondents*

**REPLY TO APPLICATION FOR  
RESTORATION.**

**Respectfully Sheweth:**

- 1) *Para-1 needs no comments.*
- 2) *Incorrect. Appellant deliberately failed to attend the court on date fixed. Nothing was provided to show justification for non-appearance on the date fixed.*
- 3) *Incorrect. As replied in Para-2 above.*

4) Valuable rights has been accrued to the respondent/department, hence the application is badly time barred and not maintainable.

5) The application is barred by law.

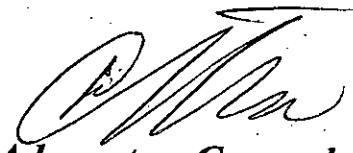
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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Restoration Application No \_\_\_\_\_/2020

In  
Service Appeal No.776/2018

Taleh Shah.

(Applicant)

Versus

Govt of Khyber Pakhtunkhwa and others.

(Respondents)

**APPLICATION FOR CONDONATION OF DELAY**  
**IN FILING THE TITLED RESTORATION**  
**APPLICATION**

*Respectfully submitted:*

1. That the applicant has filed the restoration Application before this Honorable Tribunal, which is fixed for today.
2. That the applicants prays for condonation of delay if any in filing the instant restoration application inter alia on the following grounds:-

**GROUND OF APPLICATION**

- A. That the above noted service appeal was fixed for 22.05.2019 before this honourable Tribunal and was dismissed for non-prosecution vide order dated 22.05.2019.
- B. That the applicant regularly attended this honourable Tribunal on each and every date but on last date mistakenly noted the next date of hearing in Diary as 21.06.2019 instead of 22.05.2019.
- C. That the mistake of noting the date of hearing was not deliberate or intentional rather was due to the above mentioned facts.
- D. That valuable rights of the applicants are involved in the instant case, hence the delay if any in filing the instant case deserves to be condoned, if the delay is not condoned the applicant will face irreparable loss.

E. That the delay if any in filing the instant restoration application was not willful rather due to the reason beyond the control of the applicants hence deserves to be condoned.

F. That it has been the consistent view of the Superior Courts that causes should be decided on merit rather than technicalities including limitation. The same is reported in 2014 PLC (CS) 1014, 2003 PLC (CS) 769.

*It is therefore humbly prayed that on acceptance of this application the delay if any in filing the instant restoration application may please be condoned in the larger interest of justice.*

*Taleh Shah*  
Applicant

Through

*Zartaj Anwar*  
ZARTAJ ANWAR  
Advocate High Court

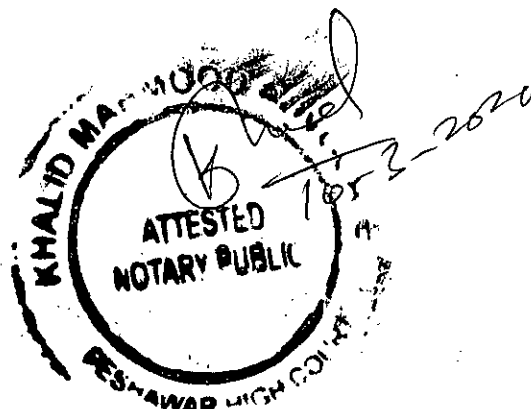
### Affidavit

I, Taleh Shah S/O Maroof Gul R/O Adam Zai Akora Khattak Tehsil and District Nowshera, do hereby solemnly affirm and declare on oath that the contents of the above Petition are true and correct and that nothing has been kept back or concealed from this honorable Court.

*Taleh Shah*  
Deponent

Identified by

*Zartaj Anwar*  
ZARTAJ ANWAR  
Advocate Peshawar



Restoration Application No \_\_\_\_\_/2020

In

Service Appeal No.776/2018

Taleh Shah,

(Applicant)

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**ZARTAJ ANWAR**  
Advocate High Court

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**PESHAWAR**

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