15.07.2022

Nemo for the appellant.

Coursel informe - By Talephone - 11-8-2022

Notice be issued to the appellant and his counsel for preliminary hearing on 16.09.2022 before S.B.

(MIAN MUHAMMAD) MEMBER (E)

26.11.2021

None for the appellant present.

Notices be issued to the appellant and his counsel. To come up for preliminary hearing on 31.01.2022 before S.B.

(MIAN MUHAMMAD) MEMBER (E)

31.01.2022

None for the appellant present.

Notices be issued to the appellant and his counsel. Adjourned. To come up for preliminary hearing on 31.03.2022 before S.B.

31.03.2022 Non present Notices & the phellop I could for 11.05-2022

(Mian Muhammad) Member(E)

11.05.2022

Junior to counsel for appellant present with a request for adjournment as senior counsel is busy before Hon'ble Peshawar High Court, Peshawar. Last chance is given. To come up for personal attendance of appellant and preliminary arguments on 15.07.2022 before S.B.

(Rozina Rehman) Member (J)

06.08.2021

Nemo for the appellant.

It is evident from the factual account given in the memorandum of appeal that the appellant was reinstated into service on the strength of judgment dated 22.05.2007 of this Tribunal in Service Appeal No. 267/2005. Let this appeal be argued on the point of maintainability in view of Rule 23 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974 r/w sub section (1) of Section 47 CPC further r/w sub section (2) of Section 7 of the Khyber Pakhtunkhwa Civil Servants Act, 1973. To come up for preliminary hearing on 06.10.2021 before S.B.

06.10.2021

Appellant in person present and requested for adjournment on the ground that his counsel is ill today. Adjourned. To come up for preliminary hearing on the point of maintainability before the S.B on 11.10.2021.

(SALAH-UD-DIN) MEMBER (JUDICIAL)

11.10.2021

None for the appellant present.

Due to General Strike of the Peshawar Bar Association. Adjourned. To come up for preliminary hearing before the S.B on 26.11.2021.

> (MIAN MUHAMMAD) MEMBER (E)

Form- A

FODM OF ODDED SUFET

Court of Case No					
1	2	3			
1-	14/06/2021	The appeal of Mr. Muhammad Ayub resubmitted today by Mr. Yousaf Ali Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.			
2-		REGISTRAR This case is entrusted to S. Bench for preliminary hearing to be put up there on $0608/2021$.			
		CHARMAN			

The appeal of Mr. Muthammad Ayub C.T. GMS Qandami received today i.e. on 30.04.2021 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- Appeal may be page marked.
- 3- Affidavit may be got attested by the Oath Commissioner.
- 4- Appeal has not been flagged/marked with annexures' marks.
- 3 Copy of impugned order is not attached with the appeal which may be placed on it. /(12/02/2005)

No. 774 /S.T. Dt. 05/05 /2021

REGISTRAR SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Mr. Yousaf Ali Adv. Pesh.

14.6. 21

Resubmitted after complection

APPEAL is PENDING

1º

<u>BEFORE THE KHYBER PAKHTUNKHWA SERVICES, TRIBUNAL,</u> <u>PESHAWAR</u>

6176 S.A.No. /2021

Muhammad Ayub..... Appellant

Versus

District Education Officer, Dir Lower and others...... Respondents

S.No.	Description of documents.	Annexure	Pages.
1	Memo of appeal		1-3
2	Addresses of the parties.		4
2	Copy of the judgment dated 22.05.2007 in service appeal No.267/2005	A	05-09
3	Copy of the appeal.	В	10
4	Copy of reminder.	С	21
5	Wakalatnama.		12

<u>INDEX</u>

Appellant

Through

Yousaf Ali

۵

Advocate Supreme Court

Dated: 29.04.2021

<u>BEFORE THE KHYBER PAKHTUNKHWA SERVICES, TRIBUNAL,</u> <u>PESHAWAR</u>

Muhammad Ayub

C.T. Govt. Middle School Qandarai Tehsil Samar Bagh District Dir Lower...... Appellant

Versus

- 1) District Education Öfficer, Dir Lower.
- 2) Secretary Education Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 3) Director Education Department (Primary) Govt. of Khyber Pakhtunkhwa.
- 4) Deputy Commissioner Dir Lower at Timergara...... Respondents

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974

Respectfully Sheweth;

The appellant most humbly submits as:

- 1) That the appellant is presently serving as Certified Teacher (C.T) in Govt. Middle School Qandarai, Tehsil Samarbagh Dir Lower.
- 2) That the service of the appellant was terminated vide order dated 12.01.2005 and after filing of appeal for restoration and reinstatement in service, appeal of the appellant was allowed and consequently the appellant was reinstated in service, but the intervening period from 11.08.2003 was treated as leave without pay, as the initial application for leave was submitted by the appellant on 11.08.2003. (Copy of the judgment dated 22.05.2007 in service appeal No.267/2005 is Annexure "A").

3) That an appeal was filed before the respondents by the appellant to provide salaries and increments to appellant for the period from 11.08.2003 to 16.11.2013 vide an appeal dated 01.01.2021. (Copy of the appeal is Annexure "B").

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- 4) That the respondent No.1 was also addressed through reminder dated 24.03.2021 but in vain. (Copy of reminder is Annexure "C").
- 5) That till date neither the appeal nor the reminder of appellant has decided by the respondents.
- 6) That having no other remedy, hence the present appeal before this Hon'ble Tribunal on the following grounds:

GROUNDS:

- A) That the omission regarding the disposal of appeal of the appellant is against the law and facts.
- B) That the silence of the respondents over the appeal of the appellant is unjust but rather they tacitly admit the claim of appellant.
- C) That even the reinstatement into service of the appellant reveals his innocence and justification that as when he was reinstated it means that the appellant is innocent and the respondents were at fault and rather the respondents have crossed the limit of legal framework of service law.
- D) That the stance of the appellant has also re-affirmed by the August Supreme Court of Pakistan in a judgment report as 2013 SCMR 752.
- E) That Article 4 and 27 and other relevant provisions of the Constitution, 1973 has badly been violated by the respondents.
- F) That the appellant will raise additional grounds at the time of hearing of the instant appeal with the kind permission of this Hon'ble Tribunal.

It is therefore, very humbly prayed that on acceptance of this appeal, respondents may kindly be directed to provide the appellant's salaries and increment from 11.08.2013 to 16.11.2017

Appellant

Through

YousafAfi

Advocate Supreme Court

<u>AFFIDAVIT</u>

1

I, do hereby affirm and declare on oath that the contents of the accompanying Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Depoptent

BEFORE THE KHYBER PAKHTUNKHWA SERVICES, TRIBUNAL,

<u>PESHAWAR</u>

S.A.No. /2021

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• 5

Muhammad Ayub..... Appellant

Versus

District Education Officer, Dir Lower and others...... Respondents

ADDRESSES OF THE PARTIES

APPELLANT:

Muhammad Ayub C.T. Govt. Middle School Qandarai Tehsil Samar Bagh District Dir Lower

RESPONDENTS:

- 1) District Education Officer, Dir Lower.
- Secretary Education Govt. of Khyber Pakhtunkhwa, Civil 2) Secretariat, Peshawar.
- Director Education Department (Primary) Govt. of Khyber 3) Pakhtunkhwa.
- Deputy Commissioner Dir Lower at Timergara 4)

Appellant

Through

Yousaf Ali Advocate Supreme Court

Dated: 29.04.2021

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BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR

1

Innexuse

Appeal No. 267/2003

Date of institution - 25.3.2005 Date of decision - 22.05.2007

Muhammad Ayub Khan, ex-PTC Teacher, GPS Zardali Banda, Dir Lower......(Appellant)

VERSUS

- 1. District Coordination Officer, District Dir Lower at Timargara.
- 2. Director, Schools & Literacy Department, Government of NWFP, Peshawar.
- 3. Secretary, Schools & Literacy Department, Government of NWFP Peshawar.

4. Executive District Officer (Schools & Literacy) District Dir Lower...

Appeal u/s 10 of the NWFP Removal from Service (Special Powers) Ordinance, 2000 against the order dated 12.1.2005 whereby the appellant was removed from service.

PRAYER.

On acceptance of the appeal, the impugned order may be set aside and the appellant be re-instated in service with all back benefits.

Mr. Ashraf Ali, Advocate.....For appellant. Mr. Zaffar Abbas Mirza, A.G.P.....For respondents.

MR. SHAH SAHIB......MEMBER. MR. MUHAMMAD UMAR AFRIDI......MEMBER.

JUDGEMENT

SHAH SAHIB, MEMBER:- This appeal has been filed by the appellant against the order dated 12.1.2005, whereby he has been terminated from service, with the prayer that the impugned order may be set aside and he be re-instated in service with all back benefits.

Anneures - A

Brief facts of the case are that the appellant was the permanent 2. employee of the respondent department working against the post of PTC Teacher. His father became sick and on diagnosis he was found to be patient of cancer for which he was taken to Shaukat Khanum Memorial Cancer Hospital, Lahore. As there had been no other male person in the family to look after him, so the appellant was constrained to accompany his ailing father during his treatment at the Hospital. He accordingly sought earned leave from the competent authority by submitting an application on 11.8.2003. But, pending the decision on his application, he proceeded to take his father to the SKMCH, Lahore, presuming that leave sought would be granted. Amazingly, however, he found himself served with a Show Cause Notice on 12.11.2004 for absence from duty. He accordingly submitted his reply to the Show Cause Notice on 23.11.2004. Thereafter, Respondent No. 1 passed the impugned order dated 12.1.2005 whereby he was removed from service. The appellant preferred a departmental appeal against the impugned order on 17.1.2005, but the same had not been decided so far. Hence, the appellant filed the instant appeal on the following grounds on 25.3.2005;

a. That Respondent No. 1 had not treated the appellant in accordance with law/rules on the subject and acted in violation of Article 4 of the Constitution of Pakistan, 1973 and thus the impugned order was illegal, of no legal effect and liable to be set aside;

Anewe - A

- b. That the alleged absence of appellant was not wilful but due to unavoidable circumstances which he had been already brought in the notice of the authority concerned through his application but then Respondent No. 1 acted in an arbitrary manner and without any proper proceedings, passed the impugned order which was unlawful and not sustainable under the law;
- c. That the mater in question was pertaining to factual controversy which could not be resolved without recording evidence which was only possible through proper regular enquiry which has not been held in this case. However, respondent No. 1 has referred inquiry report in the Show Cause Notice but actually the appellant was never intimated about the proceedings of the alleged inquiry and similarly the copy of such alleged inquiry was also not found attached regarding which the appellant also submitted application for its supply but the same was not provided to him;
- d. That the appellant has been condemned unheard and the impugned order has been passed at his back without providing him a fair opportunity of defence. Moreover, no notice about the alleged absence has been published in the local newspaper nor served upon him under registered post. Therefore, the impugned order is unlawful and violative of the principles of natural justice;
- e. That respondent No. 1 has not acted fairly and passed the impugned order in slipshod manner and the punishment was harsh, unreasonable, unfair and not sustainable under the law/rules on the subject and liable to be set aside.

3. The appeal had been admitted to regular hearing on 3.5.2005 and the respondents had been put on notice. They appeared through their representatives, filed their written reply, contested the appeal and denied the claim of the appellant. The appellant has also filed his re-joinder wherein he has rebutted the objections of the respondents raised in their reply.

4. Arguments heard and record perused.

5. The learned counsel for the appellant contends that the appellant's father had been fatally ill and he had to look after him at the Shaukat Khanum Memorial Cancer Hospital and Research Centre, Lahore: He had to accompany him for which he had sought leave of absence for duty and mand submitted application for the grant of leave. But, the same had not been

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NWEP Service

considered by the respondent department and he had been removed from service with retrospective effect without fulfilling the legal procedure, such as framing a Charge Sheet duly supported by a Statement of Allegations, holding an impartial inquiry into the allegations against the appellant, serving a Show Cause Notice on him, affording him a chance of personal hearing etc. The respondents were required to have issued a notice to him in the newspaper as per letter dated 1.8.2001 of Establishment & Administration Department but the respondent department had failed to do so, hence the impugned order is liable to be set aside.

Annewse - A

6. The learned AGP opposed the contention of the learned counsel for the appellant and argued that the appellant had remained absent from duty and the action taken against him was covered by law and be allowed to remain in force.

7. After hearing the arguments of both parties, the Tribunal holds that the appellant is a trained Teacher who had to look after his ailing father. On 11.8.2003, he had submitted application for the grant of leave which had been seen by the EDO but the same had not been disposed of with in a reasonable time. The appellant had 6 years service to his credit and had been entitled, under the Revised Rules, to extra ordinary leave (EOL) upto 5 years. The punishment of dismissal in this case appears to be too harsh for the appellant. Moreover, the impugned order had been passed by the respondent department without following the proper inquiry procedure as prescribed 'under the Removal from Service (Special Powers) Ordinance,

MW/C

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2000. The appeal is therefore, accepted, the impugned order is set aside and the appellant is re-instated in service. The intervening period, from 11.8.2003 till his re-instatement in service, is to be treated as leave without pay. There is no order as to costs. File be consigned to the record after completion.

ANNOUNCED. 22.05.2007

M. Umar Apidi (MUHAMM UMÁR AFRIDI) MEMBER.

(SHAH SAIIIB) MEMBER.

Anneure-A

- or 112 W beenting F.

<u>5</u>

1291 _____ د سر کیٹی ایجو کیشن آفیسر صاحب مردانہ ضلع در یا نتین بمقام شیمر گرہ عوان: ايمل بابت ادايكي تتوابيل بمنه الاونسز و سالاند اينكر يمنت از 2003-8-11 تا 2007-16-11 جان عالیا. مؤدبانه بر ازش نے برکہ بندہ بحثیت PTC کور منٹ پرائمری سکول ترکیزا کی باندہ تمرباغ س جواب عالیا : مودبانه بر این ہے۔ یہ بعدہ یے ۔ وَدَوَبَرِنَ عَمَّلَ ابْنِی فَرائَض مُنْصِی بَرَابْجَام دِبِ رہا تھا۔ والدصاحب کینسر کا مریض تھا اور این کو بتوکت خانم کہ محمد سال کر چھٹی کیلیے یہ اور بار بار مائنہ اور علاج سیلیج لے جارہا تھا۔ بندہ نے یہ امر مجبوری دو سال کے چھٹی کیلیے o~?\` دب قواست از مورجه 2003 11-8 تا 2005-8-10 كزارى اور والد ك علاج ك سلسل مي معروف عمل ربا ر کیونکد بندہ بج علاوہ گھر میں اور کوئی نرینہ /ذمددار محنس نہیں تھا کہ والد کا دیکھ بال/ تیارداری کر سکے۔ بندہ این Adjustment کے سلسلے میں دفتر بذا میں ماضر ہوا تو بندہ کو بتایا گیا کہ "آپ گی مروں ختم ہو چکی یے"۔ میں نے Termination آرڈر کے حسول کا مطالبہ کیا تر بندہ کو نکورہ آرڈر کی کائی فراہم ک المحرف حالائله بنده كو نه كوئي اظهار وجوه نولس ديا حمي تها ادر نه اخبار ميس كوئي بيان ديا حميا تها- يوس من -سائل نے آرڈر مذکور کے خلاف سروس ٹرییونل ت رجوع کیا۔ ٹرییونل موصوف نے من سائل کے حق میں فیصلہ مورند 2007-5-22 صادر کیا جس کا نقل لف ہے۔ عدالتی فیصلہ کے روشنی میں بندہ کو مورجہ 17-11-2007 كو مردى ير دوباره بحال كيا كميا لف ب- اور دورانيه از 2003-8-11 11 7200-11-11 کو بغیر تخواہ کی چھٹی قرار دی محق۔ نقل آرڈر لف ہے۔ مذکورہ دورانیہ کو چھٹی بمعہ تنخواہ يين تبديل كرنے كى بار بار درخواستين ترزارى تركين كوكى شنواكى نه ہوكى۔ حالانك اس سلسل ميں عدالت عظمی بیٹر درج ذیل واضح احکامات موجود ہیں :۔ 2013 SCMR منف 257 سريم كورث ك فيصل ك مطابق نوكرى ت برخاست بونے دالے ملازم كو و المراجع المراجع المراجع المراجع المراجع المراجع المراجع المرجع المرجع المرجع المرجع المرجع المرجع المرجع الم . بروین بین شار ہوگا ادر تحکمہ اس عرصے کی تنخواہ د اینکر سنٹ ادر پردموثن سمیت تمام مراعات اس ملازم کو ريخ بي بي ابند مي ... بچالات، بالا استدعا ہے، کہ معزز عدالت عظمی کے فصلے کی ردش میں سائل کو از 2003-8-11 تا 11-2007 11-6 1 20 "تو إين و اينكر سن واكرار كرن ك احكامات صادر فرمات حاكم دعاكو مورند 01-01-2021 ع ض گزار! مدانوت CT فوز بنك بدل سكول قدهار بخصيل تمرباغ يضلع در ياكن-ATTESTED TO BE TRUE COPY

5.

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Annequise-C° (11)

بخدمت جناب ڈسٹر کٹ ایجو کیشن افیسر صاحب مرادانہ تیمر گرہ دیر پائین

عنوان البيل بابت ادائيتگى نخوا ہيں بمعہالدنسز وسالا نہائكرىمىنىس از 11/08/2003 تا 16/11/2007

جناب عالى! مؤ دبانة كزارش حسب ذيل ہے۔ یہ کہ ہندہ تحسیثیت CT ^تورنمنٹ مڈل سکول قندار ہے میں اپنے فرائض ^{منعب}ی سرانجام دےرہا ہے۔ بیہ کہ ہندہ تحسیثیت CT یہ کہ بندہ نے عنوان بالا سے سلسلے میں اپیل مور خہ 01/01/2021 پر جمع کیا تھا۔ جس پر تا حال جناب والا کی طرف سے کوئی تکلم نامہ جاری نہیں کیا ہے۔

لہذااس سلسلے میں عرض ہے۔ کہ مہر بانی کر کے اس پرکوئی حکم نامہ بابت منطوری یا Rejected جارئ کیا جائے - تاکہ بندہ طمعنین ہو جائے ۔

مورخه 24/03/2021

مہر بانی ہوگی ۔

تاليبرار

مسلم محمد ایوب خان CT گورندنٹ مڈل سکول قندار کے خصیل خمر باغ ضلع دسے پائٹمین۔

ATTESTED TO BE TRUE COPY

84807 ايثروكيث: بارکوس/ایسوسی ایشن نمبر:_ يبثاور بإرابسوسي اليثن، خيبر يختونخواه رابطنمبر: _ بعدالت جناب: منجانب: دعویٰ: علت نمبر: مورخه :77 تقانه باعث تحرب مقدمه مندرجه عنوان بالاميں اپنی طرف سے داسطے پیروی دجواب دہی کا ردائی متعلقہ کودکیل مقرر آن مقام لين المراجع كرك اقراركياجا تاب كيفنا حب موصوف كومقده كاكل كاردائي كأكامل اختيار جوكا بيروكيل صاحب كو راضی نامه کرنے وتقرر ثالث وفیصلہ برخلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست آز ہر کے تصدیق زریں پرد بتخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی دنظر تانی و پیروی کمرینے کا مختار ہوگا اور بصورت ضرورت مقدہ مذکورہ سے کل یاجزوی كاروائى كے واسط اور وكيل يا مختار قانون كوالے محراق السط بتجابے تقرر كا اختيار ہوگا ورضاحب مقرر شده کودی جمله مذکوره با اختیا رات جاصل ہوں گے اوبان کا پیا ختہ پر داختہ منظور دقتول ہوگا دوران مقدمہ میں جوخرچہ ہرجاندالتوائے مقدہ کے سبب سے ہوگا کوئی تاریخ پیش مقام دورہ ماحد سے باہر ہوتو وکیل صاحب پابند بوق میں کر در دی مذکورہ کریں البند اوکا السی کا سکھر یا تا کہ سندر ہے 29/4/2021 المرقوم: ___ <u>م الم الم الع</u> الع___ مقام ليشاوله __ کے لیے منظور ہے۔

نون: اس د کالت نامه کی فو ٹو کا پی نا قابل قبول ہوگی۔



GS&PD.KP.SS-1776/1-RST-5,000 Forms-09.05.18/P4(Z)/F/PHC Jos/Form A&B Ser. Tribunal

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR.

6176 of 20 APPEAL No.....

21

ĊŢ,

Nuhammad Ayub

No.

Apellant/Petitioner

Versus

District Education Officer, Dir Lower

RESPONDENT(S)

Youxaf Ali Advocate Supreme Course Notice to Appellant/Petitioner

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal (1/5; 1/2) at (1/5; 1/2) at

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

اعجاز 14-4-2022

Registrar, ر Khyber Pakhtunkhwa Service Tribunal, Peshawar.

GS&PD.KP.SS-1776/1-RST-5,000 Forms-09.05.18/P4(Z)/F/PHC Jos/Form A&B Ser. Tribunal "A" KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR. JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR. No. Resci 6176 APPEAL No...... of 20²¹. Mahammad Ayub **Apellant/Petitioner** Versus District Education Officer, Dir Lower Notice to Appellant/Petitioner School Qamclasai Tehsil Samar Begh District Dir Lower RESPONDENT(S) Take notice that your appeal has been fixed for Preliminary hearing,

replication, affidavit/counter affidavit/record/arguments/order before this Tribunal

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

Registrar, C, Khyber Pakhtunkhwa Service Tribunal, Peshawar. GS&PD.KP-1621/4-RST-6,000 Forms-05.07.17/P4(Z)/F/PHC Jos/Form A&B Ser. Tribunal

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR. JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR. No. mature 1 Augo **Apellant/Petitioner** Versus Officer Louise Day **RESPONDENT(S)** Notice to Appellant/Petitioner Youse I Mr. Advacde Supreme D. Marsard

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

GS&PD.KP-2557/3-RST-5000 Forms-09.07.2018/P4(Z)/F/PHC Jos/Form A&B Ser. Tribunal "A" KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR. JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR. No. Jub Apellant/Petitioner Versus Dix Lowed 1-1--(**RESPONDENT(S)** Notice to Appellant/Petitioner Muha Ayub (.1 Cont Asiddle School Qandarai Tehsi Samas Back Distr. Dix Lower.

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

Khyber Pakhtunkhwa Service Tribunal, Peshawar.