

14.05.2015

Counsel for the appellant and Saim Raza, ADO alongwith Addl: A.G for respondents present. Learned counsel for the appellant informed the Court that the appellant has been promoted and the transferred to GGHS Bagra and in view of the changed circumstances appellant would be seeking redressal of her grievances afresh.

In view of the above, learned counsel for the appellant requested for withdrawal of appeal. The same is dismissed as withdrawn. File be consigned to the record.

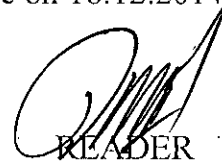
ANNOUNCED
14.5.2015


Chairman

14.05.15

28.11.2014

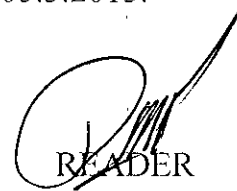
Clerk to counsel for the appellant, and Mr. Muhammad Adeel Butt, AAG for the official respondents present. None is available on behalf of private respondent No. 4. The Tribunal is incomplete. To come up for the same on 18.12.2014.



READER

18.12.2014

Clerk to counsel for the appellant and Mr. Muhammad Jan, GP for the official respondents present. The Tribunal is incomplete. To come up for the same on 05.3.2015.



READER

05.3.2015

Clerk of counsel for the appellant, Addl. AG present. Fresh notices be issued to all the respondents and case to come up for written reply on main appeal as well as reply/arguments on stay application 14.5.2015.



MEMBER

Appeal No. 1089/2014
Mst. Ghazia Jabeen

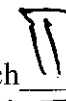
3
13.10.2014


Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, the appellant has impugned order dated 14.04.2014, vide which the appellant was transferred from GGHS Sarai Saleh to GGHS Chajjian. Against the above referred impugned order appellant filed departmental appeal on 30.04.2014 which was not responded within the statutory period of 90 days, hence the instant appeal on 29.08.2014. Counsel for the appellant filed an application alongwith the appeal for interim relief. Notice of application should also be issued to the respondents for reply/arguments.

Since the matter pertains to terms and conditions of service of the appellant, hence admit for regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on main appeal on 18.12.2014 as well as reply/arguments on application on 31.10.2014.

Note The deposited Security
& Process Fee Rs 350/-
Bank receipt attached
in file
G.

13.10.2014

This case be put before the Final Bench  for further proceedings.


Member


Chairman

31.10.2014



Counsel for the appellant, and Mr. Muhammad Jan, GP with Khursheed Khan, SO and Mosam Khan, AD for respondents No. 1 & 2 present and requested for time. Fresh notices be issued to respondents No. 3 & 4. To come up for written reply/arguments on stay application on 28.11.2014.


MEMBER

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1089/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	29/08/2014	<p>The appeal of Mst. Shazia Jabeen presented today by Mr. Muhammad Zafar Tahirkheli Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	3-9-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>13-10-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE SERVICE TRIBUNAL, KHYBER PUKHTOONKHWA
PESHAWAR

Service Appeal No. 1089 /2014

Ms. Shazia Jabeen,
C.T Teacher, Government Girls
High School, Sarai Saleh.

.....Appellant

VERSUS

1. The Secretary Education,
Government of Khyber Pakhtunkhwa, Peshawar
2. Director Elementary and Secondary Education,
Government of Khyber Pakhtunkhwa, Peshawar
3. District Education Officer (Female), Haripur
4. Mst. Noreen Kausar, C.T, Government Girls
High School, Sarai Saleh, Haripur.

.....Respondents

=====
I N D E X

S.No	Particulars	Annexure	Pages
1	Memo of Petition		1-3
2	Interim Relief	-	4
3	Impugned Order	dated 14-04-2014	"A" 5
4	Application	dated 24-01-2014	"B" 6
5	Departmental Appeal	dated 30-04-2014	"C" 7
6	Transfer & Posting Policy	"D"	8-11
7	Vakalatnama (with original only)	-	12

Peshawar, dated
28-08- 2014

(MUHAMMAD ZAFAR TAHIRKHELI)
Advocate

(Ansar Ullah Khan)
Advocate

BEFORE THE SERVICE TRIBUNAL, KHYBER PUKHTOONKHWA
PESHAWAR

Service Appeal No. 1089 /2014

Ms. Shazia Jabeen,
C.T Teacher, Government Girls
High School, Sarai Saleh.

.....Appellant

VERSUS

1. The Secretary Education,
Government of Khyber Pakhtunkhwa, Peshawar
2. Director Elementary and Secondary Education,
Government of Khyber Pakhtunkhwa, Peshawar
3. District Education Officer (Female), Haripur
4. Mst. Noreen Kausar, C.T, Government Girls
High School, Sarai Saleh, Haripur.

1118
29-8-2014

.....Respondents

=====

**SERVICE APPEAL U/S 4 OF NWFP SERVICE TRIBUNAL ACT, 1974,
AGAINST THE IMPUGNED TRANSFER ORDER DATED 14-04-2014,
(COPY ANNEXED HERETO MARKED "A"), WHEREBY THE
APPELLANT WAS TRANSFERRED FROM GGHS SARAI SALEH TO
GGHS CHAJJIAN.**

=====

PRAYER: Allowing the appeal by setting aside the impugned transfer order dated 14-04-2014, and allowing the appellant to serve at her previous place of posting as C.T Teacher at GGHS Sarai Saleh Haripur.

RESPECTFULLY SHEWETH,

1. The appellant is a C.T Teacher and was serving the department at GGHS Sarai Saleh, Haripur. The appellant has been serving the department honestly and diligently to the utmost satisfaction of her superiors since her appointment. Neither complaint of any sort was filed against her, nor she was served with any adverse remarks till date.

29/8/14
That respondent No. 4 while serving as C.T Teacher at GGHS Chajjian, submitted an application dated 24-01-2014 before respondent No. 3 for her transfer to GGHS Sarai Saleh Haripur. The application was strongly recommended by the M.P.A of PK-50 Haripur-II and Muhammad Atif, Minister for Elementary and Secondary Education Khyber Pakhtunkhwa. (Copy annexed hereto marked "B")

3. That while exerting political pressure, the respondent No. 4 successfully transferred herself from GGHS Chajjian to GGHS Sarai Saleh, Haripur vide impugned order dated 14-04-2014, by replacing the appellant. (Annex "A")

4. That the appellant filed a departmental appeal dated 30-04-2014 before the respondent No. 2, against the impugned order, which has not been decided till the lapse of statutory period limitation. (Annex "C")
5. Feeling aggrieved and finding no other remedy, the appellant has been constrained to approach the Hon'ble Service Tribunal for the redress of her grievance, respectfully maintaining that the Respondent's impugned action, is arbitrary, discriminatory, malafide and as such is without jurisdiction and without lawful authority and is liable to be set-aside, inter-alia, for the following,

Reasons:

- a. The impugned order has been passed in hastily manner, without considering the material facts on record.

The impugned action being ultra-virus of the law and the rules, discriminatory, arbitrary, malafide and without lawful authority, it is liable to be set right by this Hon'ble Court.

- b. That according to the Government's Transfer and Posting Policy, being unmarried female, the appellant has the legal right to be posted at a place near to her parents' residence. However she has been denied her legitimate right. (Copy annexed hereto marked "D")
- c. The appellant has been transferred just to accommodate a blue eyed C.T Teacher namely Mst. Noreen Kausar on political grounds as evident from letter dated 24-01-2014 at GGHS Sarai Saleh. The impugned order is thus illegal, void ab-initio and is thus subject to cancellation on this count alone.(Annex "B")

It is necessary to mention that the transfer on political base has been admitted by the respondent department in its rejection order dated 08-07-2014.

- d. The appellant is suffering from kidney disorder and has to undergo treatment at Sarai Saleh while living with her family. That her new place of posting at Chajjian is more then 30 kilo meters from her residence and keeping in view her medical condition, it is impossible for her to travel 60 kilo meters daily. The appellant's case needs a sympathetic consideration and her departmental appeal was thus partially accepted, with the direction to respondent no. 3 to accommodate her in a nearest school, but was not acted upon.
- e. It is necessary to mention that respondent No. 4 is permanently residing with her husband, who belongs to village Chajjian Haripur. She has been transferred prematurely on political bases while displacing the appellant without any solid or cogent reason.

In utter disregard and in violation of the principles of equity and justice, the appellant has been subjected to arbitrary and discriminatory treatment, as is evident from the facts narrated above.

- f. The impugned transfer order is thus arbitrary, discriminatory, against the principles of equity, law, justice and proprietary, subject to correction by the worthy authority.

- g. Appellant seeks permission to take several other grounds at the time of arguments.

In view of the above, it is most humbly requested that by accepting this appeal the impugned transfer order dated 14-04-2014, may kindly be set aside and the respondent department may be directed to retain the appellant at her previous place of posting at GGHS Sarai Saleh.

Any other relief deemed appropriate may also be granted.

Shazia Jabeen
Appellant

Through,

Peshawar, dated
28 Aug, 2014

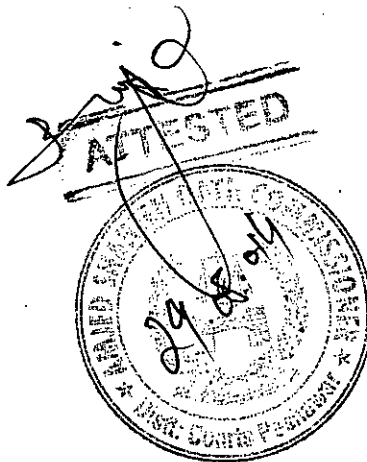
(MUHAMMAD ZAFAR TAHIRKHELI)
Advocate

(Ansar Ullah Khan)
Advocate

Affidavit

I, the appellant, do hereby state 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 Tribunal.

Shazia Jabeen
DEPONENT



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

Service Appeal No. _____ / 2014

Shazia Jabeen

VERSUS

Secy..Education etc.

=====
PETITION FOR INTERIM RELIEF

Respectfully Sheweth

1. That the above titled petition is being filed before this Hon'ble tribunal, in which date of hearing is yet to be fixed.
2. That the contents of the accompanying appeal may kindly be read as part and parcel of the present petition.
3. The petitioner has got a good prima facie case on merits and is sanguine about her success.
4. The Respondent department has issued the impugned transferred order in complete disregard to the rules regulating the service.
5. It is the petitioner who will suffer irreparable harm if in case, his request is refused. The Respondent department may kindly be restrained from transferring the petitioner in violation of the transfer policy of the respondent department.

It is therefore, most humbly prayed that by accepting the present petition, the impugned transfer order dated 14-04-2014, may kindly be suspended pending adjudication the present appeal.

Shazia Jabeen

Petitioner,

Through,

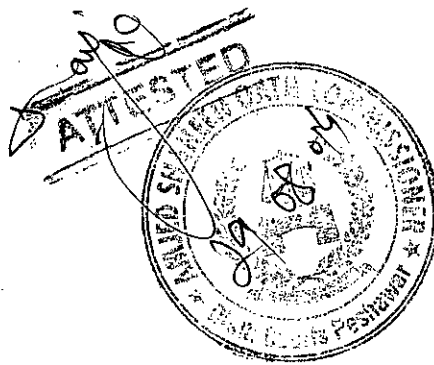
(MUHAMMAD ZAFAR TAHIRKHELI)

Advocate

Peshawar, dated
28 Aug, 2014

Affidavit

I, the Petitioner, stated on Oath that contents of the above petition are true and correct to the best of my knowledge and belief, and nothing has been kept concealed from this Hon'ble Tribunal.



Shazia Jabeen
DEPONENT

Office of the District Education Officer (F) Haripur

ADJUSTMENT ORDER

is approved by the competent authority the following transfer order is hereby made in the interest of public service on his own pay and grade with immediate effect.

SNO	Name and address	To	Remarks
01	Mst Norvee Kousur, CT GGHS Chajjian	GGHS Saria Saleh	VICE SNO 2
02	Mst Shazia Jabeen, CT, GGHS Sarai Saleh	GGHS Chajjian	Vice S.NO 1 (Due to longest tenour)

1. Charge report should be submitted to all concerned.

District Education Officer (Female)
Haripur

Dated 14 / 04 / 2014

Enclst No 1, 2, 3, 4, 5, 6

Copy to:

1. The Senior District Accounts Officer.
2. The Principal/IMM Concerned
3. Office record file

District Education officer (Female)
Haripur

Date
30/04/2014

SHAZIA JABEEN
D/O MUHD. DAUD KHAN, CT.

مذمت صدر ڈی ای او صاحبہ اعلیٰ ایڈمیٹری افسر گورنمنٹ پری سکول

جناب عالیہ

گزارش ہے کہ میں گورنمنٹ گریڈیٹ سکول چھپان میں بطور

سولڈ ٹیچر اپنے فرائض منصبی سر انجام دے رہی ہوں

جس کا نتیجہ اپنا پیش سرانے صلاح پری سکول میں ہے

اور میں گزشتہ کی تکلیف کی وجہ سے روزانہ سفر نہیں کر سکتی اس لئے

آپ سے گزارش ہے کہ میرا تبادلہ گورنمنٹ گریڈیٹ سکول چھپان

سے گورنمنٹ گریڈیٹ سکول میں کر کے

شکریہ کا موقع دیں

الحاقہ

RECEIVED

9

آپ کی مجلس

میں نوٹس کوثر علی
گورنمنٹ گریڈیٹ سکول
چھپان

Give me a substitute
for this school

دینے 24 جنوری 2014ء

DEO (F) HR
Strongly recommended
for transfer/adjustment
as per merit request accordingly

Akbar Ayub Khan
MPA
PK-50 Haripur II

Attest
Head Mistress
G.G.H.S Chailan
(Haripur)

Handwritten signatures and scribbles

MUHAMMAD ATIF
Minister for Elementary &
Secondary Education
Khyber Pakhtunkhwa

7

EXHIBIT - 6

TO

THE DIRECTOR OF EDUCATION (E & S),

KPK - PESHAWAR.

Subj: APPEAL AGAINST TRANSFER ORDER NO. 147476/
DATED 14/04/2014 (COPY ATTACHED).

Sir,

With due respect I write following few lines for your kind consideration and necessary action please.

1. The applicant is permanent r/o village Serai Saleh native, while the other teacher is married with one who is permanent r/o village Chajjan.
2. The applicant is single/alone. Her new station Chajjan is far flung/mountainous with very inconvenient means of communication.
3. The applicant's mother is ill and aged (above 80). There is no one at home to look after her other than the applicant.
4. The Tenure of the applicant is not vulnerable. The cumulative tenure of the applicant is not greater than those who had been mutually transferred between the neighbouring schools within the range of 3-6/7 km.
5. Transfer is already banned by the Govt.
6. The transfer order is also in the violation of Govt. Transfer policy particularly in the case of female teachers.
7. The applicant has already been served at far flung station of Dist Haripur like Mohallah Dhandan, Kalinyar, Darra Sirkar, Shamra Teh. Ghazi etc. It is very inconvenient now to make her roll stone in the name of tenure base.
8. The applicant is working efficiently at GHS-Sera Saleh rating her superior.
9. The transfer order is without any justification.

PRAYER. Kindly consider the appeal sympathetically & consonant with the Govt. transfer policy, the transfer order referred above, being devoid of merit be CANCELLED and the applicant may kindly be retained at GHS-SERA SALEH.

Date.
30/04/2014

Yours obediently,
Shazia Jabeen
SHAZIA JABEEN
D/O MUHD. DAUD KHAN ET.

9

ANNEXURE D

GOVERNMENT OF N.W.F.P.
ESTABLISHMENT & ADMINISTRATION DEPARTMENT
(REGULATION WING)

No.SOR-I(E&AD)1-1/85 (VOL-II)
Dated Peshawar the 15th February 2003.

1. All Administrative Secretaries to Govt. of NWFP.
2. The Secretary to Governor, N.W.F.P.
3. The Secretary to Chief Minister, N.W.F.P.
4. All Heads of Attached Departments in NWFP.
5. All Heads of Autonomous/Semi-Autonomous Bodies in NWFP.
6. All District Coordination Officers/Political Agents in NWFP.
7. The Registrar Peshawar High Court Peshawar.
8. All District and Session Judges in NWFP.
9. The Secretary, NWFP Public Service Commission, Peshawar.
10. The Director Anti-Corruption Establishment, Peshawar.
11. The Secretary, Board of Revenue, NWFP, Peshawar.
12. The Registrar, NWFP S. C. Tribunal, Peshawar.

Subject: POSTING/TRANSFER POLICY OF THE PROVINCIAL GOVERNMENT

Dear Sir,

I am directed to refer to the subject noted above and to say that in supersession of all policy instructions issued in this behalf, the competent authority has approved the following Posting Transfer Policy:-

- (i) All the postings/transfers shall be strictly in public interest and shall not be abused/misused to victimize the Government servants.
- ii) All Government servants are prohibited to exert political, Administrative or any other pressures upon the posting/transfer authorities for seeking posting/transfers of their choice and against the public interest.
- iii) All contract Government employees, appointed against specific posts, can not be posted against any other post.
- (iv) The normal tenure of posting shall be three years subject to the condition that for the officers/officials posted in unattractive areas, the tenure shall be two years and for the hard areas the tenure shall be one year. The unattractive and hard areas will be notified by the Government.
- (v) Months of March and July are fixed for posting/transfer of the officers/officials excluding the officers in B-19 and above in the Province. Posting/transfer in Education and Health Departments shall be made in March while the remaining Departments shall make posting/transfers in July. There shall be a ban on posting/transfers throughout the year excluding the aforesaid two months. However there shall be no restriction in cases where posting/transfers of Government employees become inevitable in other months due to promotion/retirement/creation of new posts/return from long leave/involvement in disciplinary proceedings and adjustment of surplus staff for which specific relaxation shall be obtained from the Chief Minister.
- vi) While making postings/transfers from settled areas to FATA and vice-versa, specific approval of the Governor, NWFP needs to be obtained.
- vii) Officers may be posted on executive administrative posts in the Districts of their domicile except District Coordination Officers (D.C.Os) and Superintendent of Police (SP). Similarly Deputy Superintendent of Police (DSP) shall not be posted at a place where the Police Station (Thana) of his area/residence is situated.

TRUE COPY

- ✓ (viii)
- ✓ (ix)
- ✓ (x)
- ✓ (xi)
- (xii)

No postings/transfers of the officers/officials on detailment basis shall be made.

Regarding the posting of husband/wife, both in Provincial Services, efforts where possible would be made to post such persons at one station and this will be subject to the public interest.

All the posting/transferring authorities may facilitate the postings/transfers of the unmarried female Government Servants at the station of the residence of their parents.

Officers/officials except DCOs and SPs who are due to retire within one year may be posted on their option, on posts in the Districts of their domicile and be allowed to serve till the retirement.

In terms of Rule-17(1) and (2) read with Schedule-III of the Government of NWFP Rules of Business 1985, transfer of officers shown in column 1 of the following table shall be made by the authorities shown against each officers in column 2 thereof :-

1	2
---	---

Outside the Secretariat

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Officers of the all Pakistan Unified Group i.e. DMG, PSP including Provincial Police Officers in BPS-18 and above. 2. Other officers in BPS-17 and above to be posted against scheduled posts, or posts normally held by the APUG, PCS (EG) and PCS(SG). 3. Head of Attached Departments and other Officers in B-19 & above in all the Deptts. | <p>Chief Secretary in consultation with the Establishment Department and the Department concerned with the approval of the Chief Minister.</p> <p>- do -</p> <p>- do -</p> |
| In the Secretariat :- | |
| <ol style="list-style-type: none"> 4. Secretaries. 5. Other Officers of and above the rank of Section Officers:- <ol style="list-style-type: none"> (a) Within the Same Department. (b) Within the Secretariat from one Department to another. 6. Officials upto the rank of Superintendent:- <ol style="list-style-type: none"> (a) Within the same Department. (b) To and from an Attached Department. (c) Within the Secretariat from one Department to another. | <p>Chief Secretary with the approval of the Chief Minister.</p> <p>Secretary of the Department concerned.</p> <p>Chief Secretary/Secretary Establishment.</p> <p>Secretary of the Department concerned.</p> <p>Secretary of the Department in consultation with Head of Attached Department concerned.</p> <p>Secretary (Establishment)</p> |

TRUE COPY

xiii) While considering postings/transfers proposals all the concerned authorities shall keep in mind the following:-

- a) To ensure the posting of proper persons on proper posts, the annual confidential reports, past and present record of service, performance on post held presently and in the past and general reputation with focus on the integrity of the concerned officers/officials be considered.
- b) Tenure on present post shall also be taken into consideration and the posting/transfers shall be in the best public interest.

✓ (xiv) Government servants including District Govt. employees feeling aggrieved due to the orders of posting/transfers authorities may seek remedy from the next higher authority/the appointing authority as the case may be through an appeal to be submitted within seven days of the receipt of such orders. Such appeal shall be disposed of within fifteen days. The option of appeal against posting/transfer orders could be exercised only in the following cases:-

- ✓ (i) pre-mature posting/transfer or posting/transfer in violation of the provisions of the policy.
- ✓ (ii) Serious and grave personal (humanitarian) grounds.

To streamline the postings/transfers in the District Government and to remove any irritant/confusions in this regard the provision of Rule 25 of the North-West Frontier Province District Government Rules of Business 2001 read with schedule -IV thereof is referred. As per schedule-IV the posting/transferring authorities for the officers/officials shown against each are as under :-

S.No.	Officers	Authority
1.	Posting of District Coordination Officer and Executive District Officer in a District.	Provincial Government.
2.	Posting of District Police Officer.	Provincial Government
3.	Other Officer in BPS-17 and above posted in the District.	Provincial Government
✓ 4.	Official in BPS-16 and below.	Executive District Officer in consultation with District Coordination Officer.

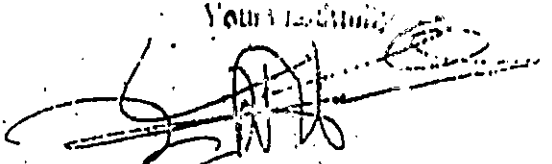
As per Rule 25(2) of the Rules mentioned above the District Coordination Department shall consult the Government if it is proposed to

transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure; and

TRUE COPY
9

require an officer to hold charge of more than one post for a period exceeding 3 months.


4. I am directed further directed to request that the above noted policy may be strictly observed/implemented.

Your obedient

(GHULAM JILANI SSIF)
ADDL. SECRETARY (REG)

Emdstr. No. SOR.(E&AD)1-1/85 Dated Peshawar the 15.2.2003.

Copy forwarded to :-

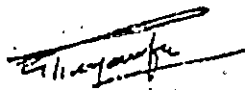
1. All Additional Secretaries in E&A Department.
2. All Deputy Secretaries in E&A Department.
3. All Section Officers in E&A Department.
4. Private Secretary to Chief Secretary NWFP.
5. Private Secretary to Secretary Establishment.
6. Librarian, E&A Department.


(HUSSAIN SHAH)
DEPUTY SECRETARY (REG-1)

Emdstr. No. SOR.(E&AD)1-1/85 Dated Peshawar the 15.2.2003.

Copy forwarded to :-

1. The Accountant General, N.W.F.P., Peshawar.
2. All District/Agency Accounts Officers in NWFP.


(GHAZANFAR ALI)
SECTION OFFICER (REG-1)

TRUE COPY

NISAF
Position & Transfer
Policy

VAKALATNAMA

In the Court of

Service Tribunal, Khyber Pakhtunkhwa
Peshawar,
No. _____ of 2014

Petitioner
Plaintiff
Applicant
Appellant
Complainant
Decree-Holder

Shazia Jabeen

VERSUS

Respondent
Defendant
Opponent
Accused
Judgment-Debtor

Sec. Edu.

I / We Shazia Jabeen the above
noted Appellant do hereby appointed and constitute,

Muhammad Zafar Tahirkheli & Ansar Ullah Khan, Advocates High Court, to appear, plead, act, compromise, withdraw or refer to arbitration for me / us as my / our counsels / advocates in the above noted matter, without any liability for his default and with the authority to engage any other Advocate / Counsel at my / our cost.

The Client / Litigant will ensure his presence before the Court on each and every date of hearing and the counsel would not be responsible if the case is proceeded ex-parte or is dismissed in default of appearance. All cost awarded in favour shall be the right of Counsel or his nominee, and if awarded against shall be payable by me/us.

I / We authorize the said Advocates to withdraw and receive on my / our behalf all sums and amounts payable or deposited on my / our account in the above noted matter.

Shazia Jabeen

Client

13302-8341916-2

Dated 10-07-11

2/2
Attested & Accepted (Advocates)

Office **ATIQ LAW ASSOCIATES,**
87, Al-Falah Street, Besides State Life Building,
Peshawar Cantt, Phone: 091-5279529
E-mail : zafark.advocate@gmail.com

for
② Ansar Ullah Khan