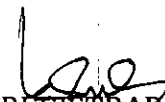



Form- A

FORM OF ORDER SHEET

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

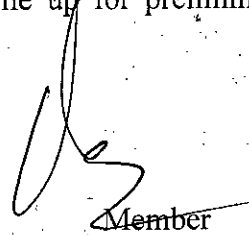
Case No. 589/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	24/04/2014	<p>The appeal of Mr. Muhammad Wali resubmitted today by Mr. Ashraf Ali Khattak 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	7-5-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <del>25-6-2014</del></p> <p style="text-align: right;"> CHAIRMAN</p>

25.06.2014

Counsel for the appellant present and filed an application for condonation of delay. Preliminary arguments partly heard. Perusal of the case reveals that the impugned order has been passed on 19.05.2013, however the learned counsel for the appellant submitted before the court that the impugned order was came into the knowledge of the appellant during pendency of Writ Petition filed by the appellant, hence the instant appeal.

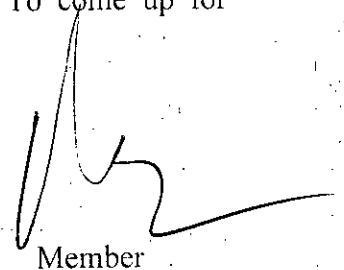
Since the matter required further elucidation on the point of limitation, therefore, pre-admission notice is hereby given to the respondents to produce the relevant record of the appellant and to learned GP to assist the Tribunal. To come up for preliminary hearing on 13.08.2014.



Member

13.08.2014

Counsel for the appellant and Mr. Muhammad Jan, GP for the respondents present. The learned counsel for the appellant requested for adjournment. Request accepted. To come up for preliminary hearing on 16.10.2014.



Member

16.10.2014

No one is present on behalf of the appellant. Mr. Kabirullah Khattak, Asst: Advocate General for the respondents present. Notices be issued to the appellant/counsel for the appellant. The learned AAG also directed to contact the respondents for production of complete record of the appellant. To come up for preliminary hearing on 15.12.2014.



Member

6.

Reader Note:

15.12.2014

No one is present on behalf of the appellant. Mr. Kabirullah Khattak, Asst. Advocate General for the respondents present. Since the Tribunal is incomplete, therefore, case is adjourned to 05.03.2015 for the same.

  
Reader

7.

05.03.2015

No one is present on behalf of the appellant. Notice be issued to the learned counsel for the appellant. To come up for preliminary hearing on 04.05.2015.

  
Member

04.05.2015

Counsel for the appellant present and requested for adjournment. Request accepted. To come up for preliminary hearing for 05.06.2015 before S.B.

  
Member

05.06.2015

Agent of counsel for the appellant present, and requested for adjournment. Request accepted. To come up for preliminary hearing on 05.08.2015 before S.B.

  
Member

05.08.2015

None for the appellant present. Asstt: AG for the respondents present. Notice be issued to the appellant/counsel for the appellant. To come up for preliminary hearing on 24.08.2015 before S.B.

  
Member

24.08.2015

Agent of counsel for the appellant and Assistant A.G for respondents present. Seeks adjournment. Adjourned to 31.8.2015 for preliminary hearing before S.B.

  
Chairman

31.08.2015

None present for appellant. Assistant A.G for respondents present.  
Learned counsel for the appellant is not in attendance due to strike of Bar.  
Adjourned to 21.9.2015 for preliminary hearing before S.B.

  
Chairman

21.09.2015

None present for appellant. Assistant AG for respondents present. Counsel for the appellant has been appointed as Public Prosecutor. Notice to appellant be issued for 30.9.2015 for preliminary hearing before S.B.

  
Chairman

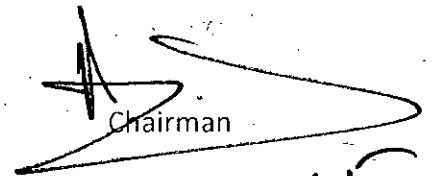
30.09.2015

Mr. Nawab Zada, Advocate on behalf of the appellant present. Requested for adjournment as the grievances of the appellant are being considered departmentally. To come up for further proceedings/ preliminary hearing on 13.10.2015 before S.B.

  
Chairman

13.10.2015

None present for appellant despite repeated calls. The Court time is about to over. Dismissed for want of prosecution. File be consigned to the record room.

  
Chairman  
13.10.15

ANNOUNCED  
13.10.2015

The appeal of Mr. Muhammad Wakeel Ex-Chowkidar Govt. Middle School Zavar Bara received today i.e. on 31 .03.2014 is incomplete on the following score which is returned to the counsel for the appellants for completion and resubmission within 15 day.

- 1- Index of the appeal may be prepared according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 2- Appeal may be got signed by the appellant.
- 3- Copies of extract of service book mentioned in the memo of appeal are not attached with the appeal which may be placed on it.
- 4- Copies of writ Petition and reply of departmental mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 5- Copy of impugned termination order dated 19.5.2011 mentioned in the heading of the appeal is not attached with the appeal which may be placed on it.
- 6- Copy of departmental appeal is not attached with the appeal which may be placed on it.
- 7- Four copies/sets of the appeal along with annexures i.e. complete in all respect may be also be submitted with the appeal.

No. 545 /S.T,

Dt. 01/04 /2014.

*Received on 9/4/2014*

Mr. Ashraf Ali Khattak Adv. Pesh.

*[Signature]*  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

*Si*  
*Resubmitted after needful completion on*  
*22/4/2014*  
*[Signature]*  
*Advocate.*

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 589 /2014

Muhammad Wali.....Appellant

**VERSUS**

The Agency Education Officer  
(E & S C) Khyber Agency.....Respondents

**INDEX**

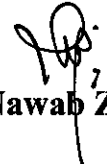
<b>S.NO</b>	<b>PARTICULARS</b>	<b>ANNEX</b>	<b>PAGES</b>
1.	Service Appeal		1-5
2.	Appointment order dated 17.12.2006	A	6-7
3.	Copy of service book.	B	8-12
4.	Copy of para-wise comments in W.P.No.3532/12	C	13-15
5.	Copy of termination order dated 19.5.2011	D	16
6.	Copy of withdrawal order in W.P. dt.26.11.2013	E	17-19
7.	Copy of departmental appeal dated 30.11.2013	F	20-22
8.	Wakalat Nama		

Appellant

Through

  
Ashraf Ali Khan Khattak

And

  
Nawab Zada

Advocates, Peshawar



**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 589/2014

**481**  
**31-3-2014**

Muhammad Wali, ex-Chowkidar,  
Govt: Middle School Zawar,  
Bara Khyber Agency.....**Appellant**

**VERSUS**

1. The Director of Education (E&SE) Dabgari Gardens, Peshawar.
2. The Director of Education (S&SE) FATA,  
Warsak Road, Peshawar.
3. The Agency Education Officer,  
Khyber Agency at Jamrud.....**Respondents**

Service appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, against the order dated 19.05.2011 passed by respondent No.3 and against which appellant filed departmental appeal which is still pending without disposal

**PRAYER:**

On acceptance of the instant service appeal, this Hon'ble Tribunal may graciously be pleased to declare the impugned order dated 19.05.2011 of respondent No.3 as illegal, unlawful, void and without lawful authority and set aside the same and re-instate the appellant with all back benefits.

**31/3/14**

Respectfully sheweth

**Facts giving rise to the present service appeal are as under :-**

1. That appellant was appointed as Class-IV (Chowkidar) vide order dated 17.12.2006 on regular basis and was posted at Govt: Middle School, Zawa Bara. Appellant took over the charge of his service/ duty and performed his duty to the entire satisfaction of his superiors. He has

**re-submitted to the Tribunal and filed,**  
**24/4/14**

never been rated as in-efficient and un-qualified. Appellant's service book was also maintained. (Annexure A, B)

2. That it is pertinent to mention here that during the year 2010 the law and order situation in the Khyber Agency was very worst due to Taliban militancy and almost all the educational institutions were under the Taliban militant threat. The same can best be verified from the news clipping during those days and it was the reason that almost all educational institutions were closed till the time the continual threats got vanished.
3. That unfortunately on 22.07.2010 the Taliban militant attacked the school and destroyed the school building along with infrastructure therein.
4. That on the basis of afore mentioned tragedy the respondent No.2 suspended the appellant from his service along with his other Class-IV employees and there salaries were stopped.
5. That appellant and his other colleagues submitted numerous representations before the high-ups and competent authorities but inspite of their hectic efforts the suspension remained in field along with stoppage of their salaries.
6. That appellant after their hectic efforts and having no other alternative remedy filed constitutional petition No.3523/2013. The Hon'ble Peshawar High Court Peshawar was pleased to direct the respondents to file para wise comments and the respondents after almost one year filed para wise comments on 29.10.2013, wherein the respondents took the plea that the services of the appellant and his other colleagues have been terminated vide order dated 19.05.2011. (Annexure C, D)
7. That it was from the comments of the respondents that appellant and his other colleagues got the knowledge of their termination.

8. That appellant has never been informed of any disciplinary action or pendency of disciplinary action nor served with any sort of charge sheet and statement of allegations etc; The termination order has never been communicated to the appellant.
9. That upon the fresh development appellant and his other colleagues were left with no other alternative option except to withdraw the writ petition as the same was against the suspension order and not against the termination order and therefore, the writ petition was withdrawn. (Annexure E)
10. That appellant filed departmental appeal (Annexure F) against the illegal termination order allegedly passed by the respondents on 19.05.2011 before the respondent No.1, which is still pending without hence the statutory period has elapsed therefore, the instant service appeal inter alia on the following grounds :-

### **GROUND S**

- A. That respondents have not treated the appellant in accordance with law, rules and policy on the subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973, Section 16 of the Civil Servant act 1973 provides that every civil servant is liable for prescribed disciplinary action and penalty only through prescribed procedure. In the instant case no prescribed procedure has been adopted by the respondents, hence the action taken by the authority is illegal, coarm non judice and liable to be set aside.
- B. That appellant has never and ever been served with any sort of charge sheet and statement of allegations and even has not been informed of any sort of disciplinary action or pendency of any cause/ lis.

C. That major penalty has been imposed without any sort of inquiry and appellant has been condemned unheard and no valid reason has been assigned with termination order which constitutes violation of section 24A of the General Clause Act, 1897, therefore, the impugned orders are not sustainable in the eyes of law and liable to be struck down.

D. That the Hon'ble Supreme Court of Pakistan has in thousand of cases has held that no major punishment could be imposed without regular inquiry, the subject impugned order based on no inquiry has therefore, no base in the light of the decision of the apex court, thus liable to be set aside.

E. That factual controversy is involved in the subject case, therefore, regular inquiry was absolutely necessary as per law laid down by the Hon'ble Supreme Court of Pakistan, the same has been ignored in toto, therefore, on this score, the impugned order is liable to be set aside.

F. That well-known principle of law "Audi altram partem" has been violated. This principle of law was always deemed to have embedded in every statute even though there was no express specific or express provision in this regard.

.....An adverse order passed against a person without affording him an opportunity of personal hearing was to be treated as void order. Reliance is placed on 2006 PLC(CS) 1140. As no proper personal hearing has been afforded to the appellant before the issuing of the impugned order, therefore, on this ground as well the impugned order is liable to be set aside.

G. That appellant is jobless since his dismissal from the service therefore, entitled to be re-instated with all service benefits.

H. That appellant would like to seek the permission of this Hon'ble Tribunal to advance some more grounds at the time of arguments.

It is, therefore, humbly prayed that the appeal in hand may graciously be allowed as prayed for above. Any other relief as deemed appropriate in the circumstances of the case not specifically asked for, may also be granted to the appellant

Dated: \_\_\_\_\_

Through

*AK*  
Appellant  
*Ashraf Ali Khan Khattak*  
Ashraf Ali Khan Khattak

And

*Nawab Zada*  
Nawab Zada  
Advocates, Peshawar

Dated: \_\_\_\_\_

**AFFIDAVIT**

I, do solemnly affirm and declare on Oath that the contents of the instant service appeal are true to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

*AK*  
**DEPONENT**

Ann - A 6

OFFICE OF THE  
OFFICE OF THE  
POLITICAL AGENT, KHYBER AGENCY.

No. 5591-92 / Appointment,  
Dated 07/12 /2006

To:

The Agency Education Officer,  
Khyber Agency at Jamrud.

Subject:- APPOINTMENT OF CHOWKIDAR IN GOVT: MIDDLE SCHOOL  
ZAWA BARA KHYBER AGENCY.

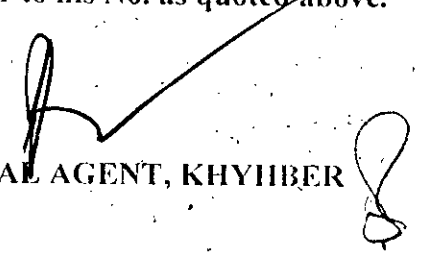
Memo:

On the recommendation of Assistant Political Agent Bara Khyber Agency vide letter No. 5488/APA-Bara, dated 04.12.2006, Mr. Muhammad Wali s/o Tawkal Khan is hereby appointed as Chowkidar (BPS-1) in Govt: Middle School Zawa Aka Khel Bara Khyber Agency subject to fulfillments of all codal formalities under the rules.

  
POLITICAL AGENT, KHYBER.

Copy jto:-

The Assistant Political Agent, Bara w/r to his No. as quoted above.

  
POLITICAL AGENT, KHYBER

*Opp  
A Has Taw*

P-7

OFFICE OF THE AGENCY EDUCATION OFFICER KHYBER AGENCY AT JAMRUD  
APPOINTMENT.

Consequent upon the recommendation of Political Administration Khyber Agency Mr. Muhammad Wali S/O Tawakal Khan C.IV Servant is hereby temporary appointed against the vacant Chowkidar post at GMS Zawa Killi Bara Teshail Khyber Agency in BPS No.01 Rs. 2150-65-4100 P.M. plus usual allowances as admissible under the rules on contract basis with effect from the date of his taking over charge in the interest of public services.

Note:-

1. Charge report should be submitted to all concerned.
2. The appointment of the Candidate being purely on Temporary/ Contract basis and is liable to terminate any time without any notice in case They wishes to resign their post. they shall give one Month prior notice or forfeit one-Month pay in lieu thereof.
3. Their Documents Date of Birth & Domicile certificate should be checked before handed over charge of the post and attested copies there of kept on record of the office.
4. He should produce Health and Age certificate from the Agency Surgeon concerned.
5. Age should be accorded to the Govt: rules.
6. If he fails to report within 15 days the order will be treated as cancelled.
7. The order is made on contract basis

(ABDUR RASHID QUARISHI)  
AGENCY EDUCATION OFFICER  
KHYBER AGENCY AT JAMRUD

Endst No. 13542-46

Dated 17/12 /2006

- Copy forwarded to the
- 1 Director of Education FATA (NWFP) Peshawar
  - 2 Agency Accounts Officer Khyber at Jamrud
  3. AAEO concerned.
  4. Official Concerned.

*[Handwritten signature]*  
Attested

*[Handwritten signature]*  
AGENCY EDUCATION OFFICER  
KHYBER AGENCY AT JAMRUD

P. No. 00407287

3 Annex. B



Note: The entries in this page should be renewed or re-attested at least every five years and the signature to lines 9 and 10 should be dated.

ANNEX A/3

1. Name: Mr. Muhammad Wali

2. Race: Aja'khel Afirechi

3. Residence: Village Jambur P.O. 9. Tehsil Baska

4. Father's name and residence: Tarawal Khan

5. Date of birth by Christian era as nearly as can be ascertained: 1986

6. Exact height by measurement:

7. Personal marks for identification:

A black mole on face

8. Left hand thumb and finger impression of (Non-Gazetted) officer:

Little Finger

Ring Finger

Middle Finger

Fore Finger

Thumb

Attested

9. Signature of Government Servant:

10. Signature and designation of the Head of the Office, or other Attesting Officer.



9

Name of post  
 G.P.S. Jaiwar  
 Chawkidar

Whether substantive  
 or officiating post  
 whether permanent  
 or temporary

If officiating, state  
 (i) substantive  
 appointment, or  
 (ii) whether service  
 counts for pension  
 under Art. 33(1)  
 C.S.R.

Pay in  
 substantive  
 post

Additional  
 pay for  
 special pay

Other  
 benefits of  
 similar order  
 Government  
 order

Date  
 of  
 appointment

Page No. of  
 Government Order

Rs. 2150/- p.m.

14 <sup>12</sup>/<sub>06</sub>

Revised BPS 02 (2530 - 85 - 5080)

Rs. 2530/-

1 <sup>7</sup>/<sub>07</sub>

Rs. 2615/-

1 <sup>12</sup>/<sub>07</sub>

Revised BPS 02 (3035 - 100 - 6035)

3135/-

Rs. 3140/-

1 <sup>7</sup>/<sub>08</sub>

Rs. 3235/-

1 <sup>12</sup>/<sub>08</sub>

Rs. 3335/-

1 <sup>12</sup>/<sub>08</sub>

REVISION BY

...

Rs. 2615/-

1 <sup>9</sup>/<sub>07</sub>

Rs. 2700/-

1 <sup>12</sup>/<sub>07</sub>

J

Attest

10

9	10	11	12	13		14	15
				Leave			
				Nature and duration of leave taken.	Allocation of period of leave on average pay scale for which leave salary is payable to another Government		
Signature and Designation of the head of the office or other attesting officer in attestation of columns 1 to 6	Date of termination or appointment.	Reason of termination such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer.	Period	Government to which debitable	Signature of the head of the office or other attesting officer	Reference to any recorded punishment or praise of the Government Servant.
<i>[Signature]</i>	30/6/07	R/Pay + B/S 02	<i>[Signature]</i>				Appointed against vacant Chowkidari post at BPS 7 in BPS No 1 on contract basis vide this office order No 13547 - dt dated 13/12/06
<i>[Signature]</i>	30/11/07	Inc	<i>[Signature]</i>				
<i>[Signature]</i>	30/6/08	R/Pay	<i>[Signature]</i>				
<i>[Signature]</i>	30/11/08	A/Inc	<i>[Signature]</i>				
<i>[Signature]</i>	30/11/09	A/Inc	<i>[Signature]</i>				
<i>[Signature]</i>	01/9/07	Allowed one sp. Inc	<i>[Signature]</i>				
<i>[Signature]</i>	30/11/07	A/Inc	<i>[Signature]</i>				
<i>[Signature]</i>	30/11/08	Revision of pay	<i>[Signature]</i>				

*[Signature]*  
 Agency Education Officer,  
 Jharkhand Agency at Jamshedpur

14-12-06  
 30-6-08  
 dt 05-08-07

In the light of NEIPA Secretariat  
 Finance Dept. Letter No. 50/Adm  
 P/P/5/4-4/08, the official is allowed  
 one sp. i.e. immediate upgradation  
 up pay scales is dt 01-07-07  
 vide Dt. PATA F. No. 11836,  
 dt 05-08-07.

Agency Education Officer  
 Jharkhand Agency at Jamshedpur

18

Name of  
 G.P.S. Jai  
 Choudhary

1	2	3	4	5	6	7
Name of post	Whether substantive or officiating and whether permanent or temporary	If officiating, state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R.	Pay in substantive post	Additional Pay for officiating	Other emolument falling under the term "p"	Date of appointment
Chowpost		B.P.S. N.	2 (Rs. 3235/-)			7/08
L.P.S. Lawa			Rs. 3235/-			
Bana						
- 11 -			Rs. 3335/-			12/08
- 11 -			Rs. 3435/-	✓		12/09
- 11 -			Rs. 3535/-			12/2010
- dl -			Rs. 5750/-			7/2011
- 11 -			Rs. 5920/-			12/2011

Attested

120

3 Signature of the head of the office or other attesting officer of Government	10 Date of termination or appointment.	11 Reason of termination such as promotion, transfer, dismissal etc.)	12 Signature of the head of the office or other attesting officer.	13 Nature and duration of leave taken.	14 Leave Allocation of period of leave or average pay upto four months for which leave salary is debitable to another Government	15 Signature of the head of the office or other attesting officer	16 Reference to any recorded punishment or praise of the Government Servant
	30-11-08	A/Suc			TR NO 16500/08		
	30-11-09	A/Suc			TR NO 16500/09		
	30-11-2008	Prom.			TR NO 16500/08	Agency Education Officer Khyber	
	30-6-2011	Revision of pay			1-7-08	30-11-2010	record
	30-11-2011	A/Suc			SERVICES VERIFIED From 1-7-08 to 30-11-2011 From the Pay Bill & other records		
					Agency Education Officer Khyber		

Annex C

P-13

BEFORE THE PESHAWAR HIGH COURT PESHAWAR.

Writ petition No 3532-p/2012.

Zahid Khan and others..... Petitioners.

Versus.

Director Education FATA and others..... Respondents.

Comments on behalf of Respondents No.1 and 2.

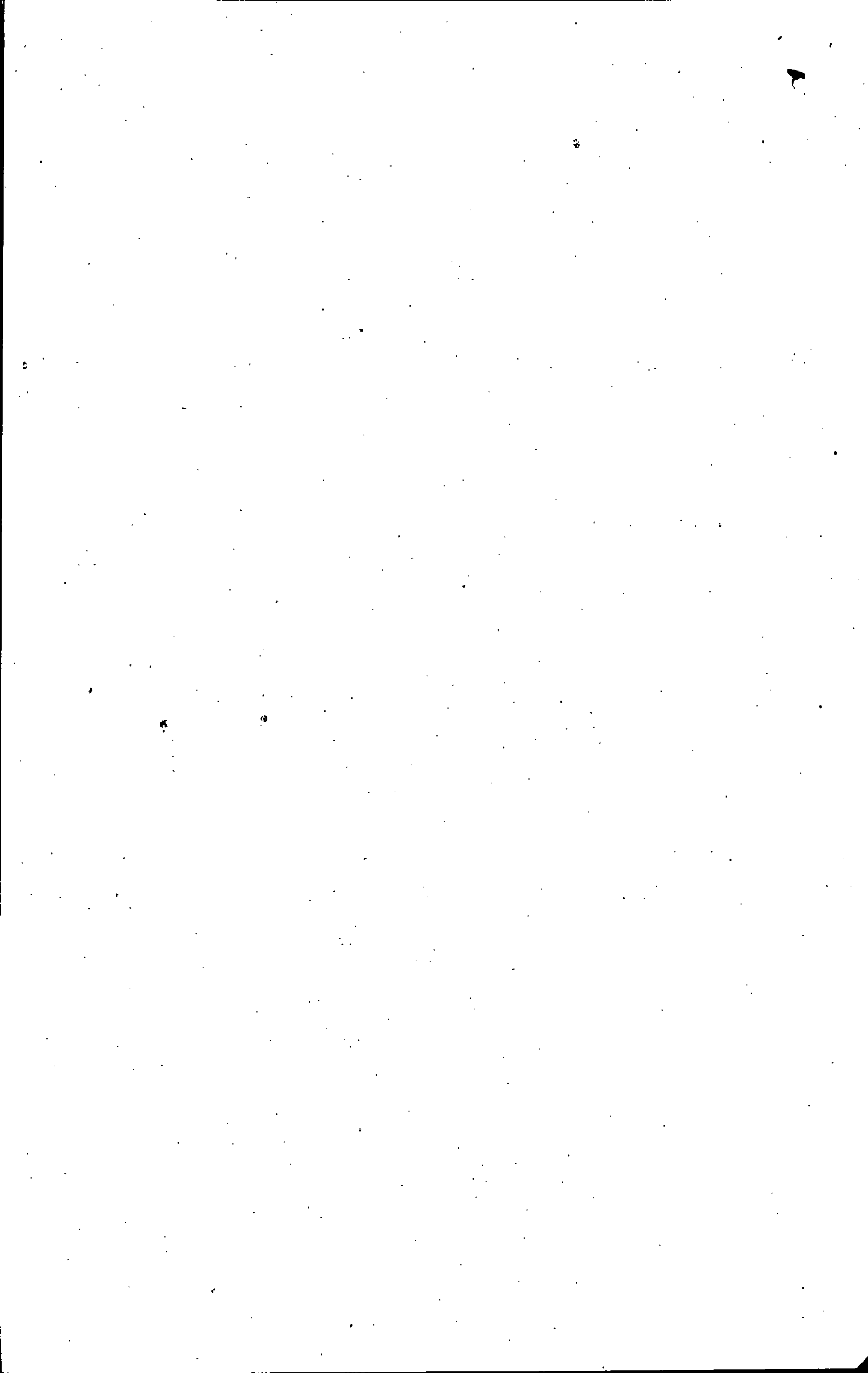
PRELIMINARY OBJECTIONS.

1. That the petitioner has got no cause of action, locus standi to file the instant petition.
2. That the Petitioner has concealed material facts from this High Court.
3. That the Petitioner is estopped by his own conduct to bring the instant Petition.
4. That the petition is not maintainable.
5. That this Honorable Court has no jurisdiction to adjudicate upon the matter.

OBJECTIONS ON FACTS.

1. Correct to the extent that the Petitioners Were appointed as Class-IV employees but they were appointed, purely on a contract basis and were liable to be terminated at any time and rest of the para is denied/incorrect.
2. Incorrect. The Petitioners were responsible for security of the school.
3. Incorrect. The Petitioners were suspended on 05-08-2010, suspension order already attached to the writ Petition as (Annexure-B) and later on the petitioners were terminated on 19-05-2011 on the directions of Political Agent and Director Education FATA, for their negligence and violation of terms and conditions of their service/appointment.( photo copy of termination order is attached as (Annexure A))
4. As the Petitioners were terminated on the directions of Political Agent and the Petitioners have moved an application to the Political Agent (Respondent No.3), therefore, he will be in a better position to reply.
5. No Comments.

*[Handwritten Signature]*  
Attas Eer



14

GROUNDS.

- A. Incorrect. The Petitioners were suspended for their negligence and later on were terminated from service, therefore they were not entitled for salaries.
- B. Incorrect. As stated in para-3 above.
- C. Incorrect. The Petitioners were terminated from their service after suspension.
- D. Incorrect as the Petitioners were terminated from their service, therefore the Petitioner are not entitled for salary.

It is therefore requested that in the light of above real facts, the case of the Petitioner may kindly be dismissed with costs.

Respondent.No.1

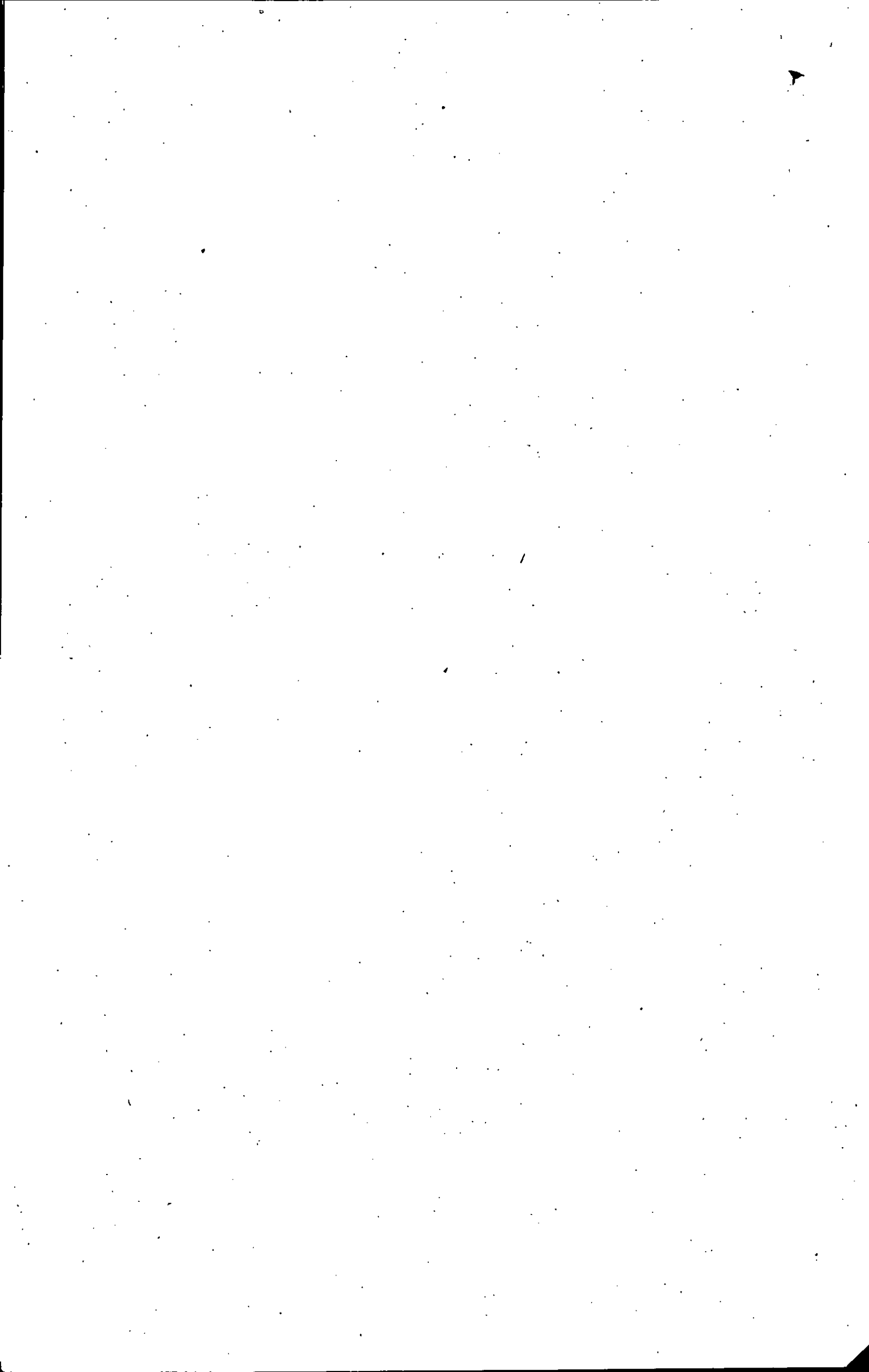
Respondent No. 2

Director Education,  
FATA, Secretariat Peshawar.

Agency Education officer

Khyber Agency at Jamrud.

Alto...  
[Handwritten signature]





PESHAWAR HIGH COURT PESHAWAR

15

Writ petition No 3532-p/2012.

Zahid Khan and others.....Petitioner.

Versus

Director Education FATA and others..... Respondents.

AFFIDAVIT.

I Abdul Malik Assistant Director (Litigation) Directorate of Education FATA Peshawar do hereby solemnly affirm and declare that, contents of the Para Wise Comments submitted by respondent No.1 and 2 are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Court.

*Abdul Malik*

Deponent.

16/09-1510736-9

Identified by

*[Signature]*

Advocate General, Khyber  
Pakhtunkhwa Peshawar.

3823  
cc of Director  
Assistant Director  
Abdul Malik  
FATA  
A.C.  
29/10/2012

*[Signature]*  
Attested



Ammed, D

P-16

AGENCY EDUCATION OFFICE KHYBER AGENCY AT JAMRUD

TERMINATION.

Consequent upon the direction of Director Education FATA at Peshawar vide letter No. 23901-12/AD (C) E-3/File No Dated Peshawar the 19/12/2009 the following male class IV servants of GMS Zawa Tehsil Bara Khyber Agency are hereby terminated from service with immediate effect due to their negligence and violation of terms and conditions of their recruitment.

S.No	Name & Designation	Name of Institution
01	Muhammad Wali chowkidar	GMS Zawa Bara
02	Zahid Khan Beshti	GMS Zawa Bara
03	Amir Zada Sweeper	GMS Zawa Bara
04	Yar Muhammad Class IV	GMS Zawa Bara

Note:- Necessary entry to this effect should be made in their service book.

(HASHAM KHAN)  
AGENCY EDUCATION OFFICER  
KHYBER AGENCY AT JAMRUD.

Endst. No. 0532-35 Damage School File, Dated. 19/5 /2011

Copy forwarded to the:

1. Director Education FATA at Peshawar.
2. Political Agent Khyber Agency at Peshawar.
3. Assistant Political Agent Tehsil Jamrud Khyber Agency.
4. AAEO concerned local office.
5. Superintendent/Accountant local office.
6. Officials concerned.

Attested

AGENCY EDUCATION OFFICER  
KHYBER AGENCY AT JAMRUD

Ames E

P-17

IN THE PESHAWAR HIGH COURT PESHAWAR



WRIT PETITION No. 3532 P/2012

1. Zahid Khan S/o Murad Khan,  
Former Behishti, Govt. Middle School,  
Zawa Bara, Khyber Agency.
2. Muhammad Wali S/o Tawakal Khan,  
Former Chowkidar, Govt. Middle School,  
Zawa Bara, Khyber Agency.
3. Yar Muhammad S/o Khan Muhammad,  
Former Cook, Govt. Middle School,  
Zawa Bara, Khyber Agency.....Petitioners

Versus

1. The Director, Education (FATA),  
FATA Secretariat, Warsak Road, Peshawar.
2. The Agency Education Officer,  
Khyber Agency at Jamrud.
3. The Political Agent,  
Khyber Agency at Peshawar.....Respondents.

WRIT PETITION UNDER ARTICLE, 199 OF THE  
CONSTITUTION OF THE ISLAMIC REPUBLIC  
OF PAKISTAN, 1973.

Respectfully Sheweth,

Facts giving rise to the present writ petition are as under:-

1. That petitioners were appointed as Class-IV  
employees on 13.12.2006, 24.08.2005 and  
27.10.2009 and were posted at the relevant time at  
Govt. Middle School Zawa, Khyber Agency. Since  
the date of joining their services, petitioners have  
performed their duties upto the mark with

RE-FILED TODAY  
Deputy Registrar  
18 DEC 2012

*[Signature]*  
Attested

ATTESTED  
EXAMINER  
Peshawar High Court

27-11-13

18

FORM "A"  
FORM OF ORDER SHEET

Court of-----

Case No.-----

Date of order or proceedings 2.	Order or other proceedings with signature of Judge or Magistrate and that of parties or counsel where necessary. 3.
26.11.2013	<p><u>WP No.3532-P/2012.</u></p> <p><u>Present:</u> Mr. Khaled Rehman, Advocate for petitioners.</p> <p>Mr. Waqar, Ahmad, AAG, for respondents.</p> <p style="text-align: center;">*****</p> <p><u>NISAR HUSSAIN KHAN, J.-</u> Petitioners through the instant Constitutional petition have challenged the Order dated 5.8.2010 of respondent No.2, whereby, they have been suspended from service. They have also prayed for issuance of an appropriate writ directing the respondents to release their salaries w.o.f. August 2010 till date.</p> <p>2. At the very outset, learned Counsel for petitioners stated at the bar that respondents alongwith their comments, have annexed copy of termination order of petitioners, due to which the scenario has changed. In the given</p>

*Attested*

*[Signature]*

**ATTESTED**  
EXAMINER  
Peshawar High Court.

1-19

circumstances, he requests for withdrawal of this petition with permission to file afresh one or approach the competent Court of law for the redressal of their grievances.

3. In this view of the matter, this writ petition is dismissed as such.

Announced.

Dated: 26.11.2013.

JUDGE

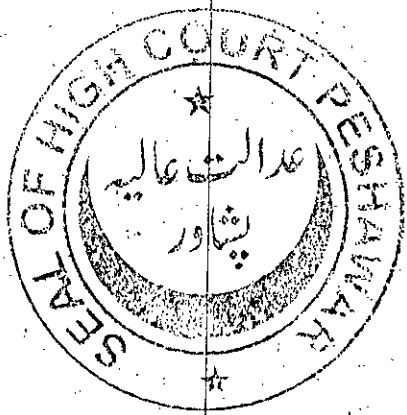
JUDGE

*Justice Nisar Hussain Khan*  
*Justice Musabbat Hiral*

CERTIFIED TO BE TRUE COPY

Examiner  
Peshawar High Court Peshawar  
Authorised Under Article 87 of  
the Oath-taking Order, 1994

27-11-13



*Attest*

7712  
No. of Pages ..... 27-11-13  
No. of Pages ..... 3P  
Copying fee ..... 6.00  
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Received By ..... *[Signature]*

To,

Annex F


P-20

The Director Education (FATA)  
FATA Secretariat, Warsak Road,  
Peshawar.

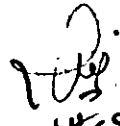
DEPARTMENTAL REPRESENTATION AGAINST THE  
IMPUGNED ORDER DATED 19/05/2011 PASSED BY  
AGENCY EDUCATION OFFICER FATA WHERE BY  
APPELLANT WAS TERMINATED FROM SERVICE WITH  
IMMEDIATE EFFECT.

Respected Sir,

1. That the appellant was appointed as Class-IV employee (Chowkidar) in the year 17/12/2006 and took over the charge in the Government Middle School, Zawa Bara at Khyber Agency, he performed his duty regularly without any complaint till to 22/07/2010.
2. That unfortunately the disturbing law and order situation prevailing in the Khyber Agency, on 22/07/2010 the armed militants suddenly entered in the School at 11:12 PM and destroyed the school building along with all items therein.
3. That on the basis of the said/ bad tragedy the AEO suspended the appellant along with other colleagues for unknown period and their salaries also stopped. For the redressal of their grievances. The appellant tried his best, but no fruitful result was achieved.

  
Attest

4. That after his best effort before the respondents, the appellant has no other choice, but to file W.P. No. 3523/2012 in Peshawar High Court, Peshawar on 18/12/2012, the Writ Petition was admitted for regular hearing and the comments were called from the respondents.
5. That at last after 10 months the respondent filed their comments on 29/10/2013 in which the respondents stated that the appellant along with his colleagues were terminated from their services by the Agency Education officer on 19/05/2011.
6. That it was from the comments of the respondent that the appellant knew about his termination for the first time since no charge sheet/ statement of allegations, no show cause notice had been served upon the appellant. No inquiry either had been conducted and no opportunity of personal hearing was provided to the appellant.
7. That Writ Petition was withdrawn as it had been filed against the suspension order but now it has been learned that malafidely termination order has been issued, the Writ Petition was withdrawn to file the instant Departmental Representation.
8. That the impugned order is without any legal basis, void, arbitrary, unconstitutional, against the principle of natural justice, fair-play trial and liable to be set aside.
9. That under F.R.53 (b) a Civil Servant is entitled to full pay during period of the suspension but respondents

  
 Attested



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have stopped the salaries of appellant, against which appellant filed Writ Petition for the release of his salary, the respondent malafidely issued the termination order in back date, if the same had been issued it would have been communicated to the appellant. Only to weaken the stance of the appellant.

It is, therefore, humbly prayed that on acceptance of this Departmental Representation, the impugned order dated 19/05/2011 may kindly be set aside and the appellant may graciously be reinstated into service with all back benefits.

Appellant



**Muhammad Wali**  
Ex-Chowkidar  
Government Middle School  
Zawar Bara, Khyber Agency.

Dated: 30/11/2013.

No. 180

For Insured Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgment is due.

Rs. Ps.

Received a registered addressed to \_\_\_\_\_

Date Stamp

Initials of Receiving Officer \_\_\_\_\_

\* Write here "bulk", "postcard", "parcel" or "parcel" with the word "insured" before it when necessary.

Insured for Rs. (in figures) \_\_\_\_\_

Insurance fee Rs. \_\_\_\_\_ Ps. \_\_\_\_\_ (in words) } Weight \_\_\_\_\_ Kilo \_\_\_\_\_ Grams \_\_\_\_\_

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# WAKALAT NAMA

## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

*M. Wali*

Ex-Beshir Zada Khan Govt middle school Zawar Bara, Khyber Agency.  
.....Appellant.

Versus

The Director Education Education (FATA), FATA Secretariat, Warsak  
Road, Peshawar. ....Respondents.

### SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974

KNOW ALL to whom these presents shall come that i the undersigned appoint:

*Ashraf Ali Khattak and Nawab Zada Khan Advocates High  
Court Peshawar (herein after called the advocate) to be the Advocate for the Petitioner in  
the above mentioned case, to do all the following acts, deeds and things or any of them ,that is to say*

- 1) To act and plead in the above mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in appeal or review or execution or in any other stage of its progress until its final decision.
- 2) To sign, verify and present pleadings, appeals, cross - objections, petitions for execution, review, revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of said case in all its stages.
- 3) To withdraw or compromise in the said case or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
- 4) To receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and the course of the prosecution of the said case.
- 5) To engage any other Legal practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate whenever he may think fit to do so.

AND I hereby agree to ratify whatever the Advocate or his substitute shall do in the promises.

AND I hereby agree not to hold the Advocate or its substitute responsible for the result of the said case in consequence of his absence from the court when the said case is called up for hearing.

AND I hereby that in the event of the whole or any part of the fee agreed by me to be paid to the Advocate remaining unpaid., He shall be entitled to withdraw from the prosecution of the said case until the same is paid.

IN WITNESS WHEREOF I hereunto set my hand to these presents the contents of which have been explained to and understood by me, this \_\_\_\_\_ day of \_\_\_\_\_ 2013

Accepted By

M. Ashraf Ali Khattak

*Ashraf Ali Khattak*  
Advocate, High Court,  
Cell # 0332-9931676

Signature/ thumb impression  
of party / parties.

*Nawab Zada Khan*  
Nawab Zada Khan Advocate

**BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR**

Misc: Application No. \_\_\_\_/2014

Muhammad Wali,  
Zawar Bara, Khyber Agency.....**Appellant**

Versus

The Agency Education Officer,  
(E & S C) Khyber Agency.....**Respondent**


**APPLICATION FOR CONDONATION OF DELAY IF ANY**

Respectfully sheweth

**FACTS:**

8. That the titled appeal has been pending before this Hon'ble Tribunal.
9. That the delay in filing of departmental appeal was due to the reason that order of termination was not communicated to the appellant.
10. That the termination order dated 19.05.2011 has been provided to the appellant during the pendency of writ petition on 26.11.2013.
11. That appellant immediately filed departmental appeal.
12. That limitation runs from the date of communication. The impugned termination order has been provided to the appellant on 26.11.2013, therefore, under the law, appeal is well within time.
13. That the delay is no intentionally but due to above reasons.
14. That the law favors decision on merit rather than technical grounds.

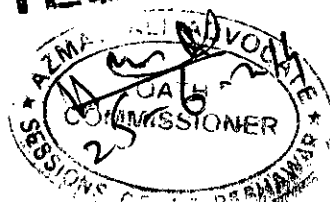
It is, therefore, humbly requested that the delay if any may kindly be condoned in the interest of justice.

Through **Applicant**  
  
Nawabzada  
Advocate, Peshawar

**Affidavit**

As per instructions of my client, solemnly affirmed and declared on oath that contents of the above application are true and correct to the best of my knowledge and belief.

**ATTESTED**



  
Advocate

**BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR**

Misc: Application No. \_\_\_\_/2014

Muhammad Wali,  
Zawar Bara, Khyber Agency.....Appellant

Versus

The Agency Education Officer,  
(E & S C) Khyber Agency.....Respondent

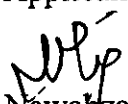
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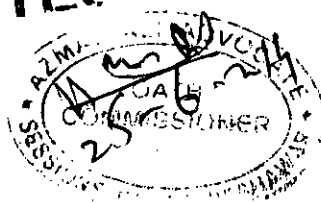
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Versus

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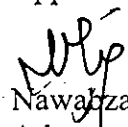
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