

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.195/2019

Date of Institution ... 28.01.2019  
Date of Decision ... 22.07.2022

Akbar Ali S/O Shamat Khan R/O Mohallah Zaid Khel, Toru Tehsil &  
District Mardan.

... (Appellant)

**VERSUS**

Director Elementary & Secondary Education Peshawar and two others.

... (Respondents)

Shah Saud,  
Advocate

... For appellant.

Muhammad Riaz Khan Paindakheil,  
Assistant Advocate General

... For respondents

Rozina Rehman  
Fareeha Paul

... Member (J)  
... Member (E)

**JUDGMENT**

Rozina Rehman, Member (J): Appellant Akbar Ali has filed the instant service appeal U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, for the correction of his date of birth in his service record.

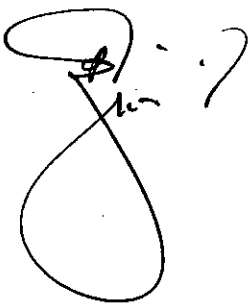
2. Brief facts of the case are that the appellant joined service as Class-IV (Watchman) on 12.04.2004 and performed his duties to the full of his abilities and honesty in Government Primary School Shamshad Abad Toru, District Mardan. Correct date of birth of appellant is 10.04.1961 which was correctly recorded in his CNIC and academic record. Initially, his date of birth was recorded as 10.04.1961 in his service book however, the same was wrongly entered as 10.04.1958 which act is illegal, against law and facts and the same entry is ineffective upon the rights of the appellant which is liable to rectification. That he came to know about the wrong entry in his payroll and service book on 28.08.2017, therefore, he applied for correction of same but to no avail.

He filed a Civil suit seeking declaration and in the meanwhile, the respondent Department submitted an application under Order 7 Rule 11 of CPC seeking rejection of his plaint which application was rejected by the Court which order was challenged by the respondents through Civil Revision and the same was accepted with direction to the appellant to approach Service Tribunal as the matter relates to the terms and conditions of his service. Feeling aggrieved, the appellant approached this Tribunal.

3. We have heard Shah Saud Advocate learned counsel for appellant and Muhammad Riaz Khan Paindakheil, learned Assistant Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Learned counsel for appellant submitted that correct date of birth of the appellant is 10.04.1961 which was correctly recorded in his CNIC and School Leaving Certificate. He submitted that his correct date of birth had properly been entered in his service book but the same was altered without his consent and knowledge and wrong entry was made and attested which entry is against law and facts, therefore, he submitted an application for rectification but to no avail.

5. Conversely, learned AAG submitted that as per Estacode of Khyber Pakhtunkhwa, the date of birth of civil servant once recorded in service record cannot be changed or altered after initial two years of appointment and that a civil servant cannot be allowed to change his date of birth after two years of joining of service. Reliance was placed on a reported judgment 1998 SCMR 1494. Lastly, he submitted that correct date of birth of the appellant according to service book is 1958 and the appellant was trying to extend his service tenure which cannot be allowed under the law.




6. From the record it is evident that the appellant joined service as Class-IV employee on 12.04.2004. His manual NIC was not produced however, copy of his CNIC is available on file which was issued on 05.10.2011 and which correctly bears the number of his old NIC as 12958377431. This number clearly shows that his date of birth in his original NIC was recorded as 1958. His service record is available on file wherein his date of birth has been mentioned as 10.04.1958. The entry in respect of 10.04.1961 has been omitted and the cutting has been attested by the concerned DDO on 29.01.2009. The appellant kept mum right from this entry and cutting from 2009 to 2017. No objection was raised by the appellant during service. He has filed the instant appeal after his retirement. Civil suit filed by the appellant was disposed of on the point of jurisdiction and it was held that as the matter relates to term and conditions of service, therefore, civil court lacks jurisdiction. Whereafter, the appellant sought withdrawal of his civil case and instituted the present service appeal.

7. The change in date of birth in service record is allowed within two years of entry into service according to G.F.R-116. It has become a common practice with the civil servants to file suit for correction of date of birth when they come to the verge of retirement just to prolong their tenure for enjoying perks & privileges at the cost of others.

8. Keeping in view the above discussion, we do not find any merit in the present appeal which is hereby dismissed. With no order as to costs. File be consigned to the record room.

ANNOUNCED.  
22.07.2022

  
(Fareeha Paul)  
Member (E)

  
(Rozina Rehman)  
Member (J)

01.06.2022

Counsel for the appellant present.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

Former made a request for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 22.07.2022 before D.B.



(Fareeha Paul)  
Member(E)



(Rozina Rehman)  
Member (J)

**ORDER**

22.07.2022

Appellant present through counsel.

Muhammad Riaz Khan Paindakheil, learned Assistant Advocate General for respondents present. Arguments heard. Record perused.

Vide our detailed judgment of today of this Tribunal placed on file, we do not find any merit in the present appeal which is hereby dismissed. With no order as to costs. File be consigned to the record room.

**ANNOUNCED.**

22.07.2022



(Fareeha Paul)  
Member (E)



(Rozina Rehman)  
Member (J)

05.11.2021 Counsel for appellant present.

Muhammad Rasheed learned Deputy District Attorney alongwith Said Khan ADEO (Litigation) for respondents present.

The departmental representative produced the copy of medical certificate of the appellant. Accordingly, the year of birth is written as 1958 and age as per statement of the appellant and by appearance is 46 years. On the other hand, the date of birth of the appellant as per School Certificate and C.N.I.C is 10.04.1961. Let the learned counsel for appellant assist us on the point that in view of the said conflict between the date of birth in the medical certificate and the educational certificate, whichever will prevail.

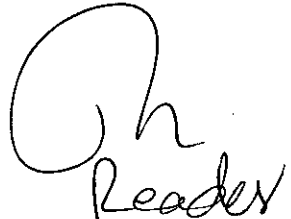
Adjourned to 09.02.2022 before D.B.

  
(Rozina Rehman)  
Member (J)

  
Chairman

9-2-2022

Due to retirement of the Hon,ble  
Chairman the case is adjourned, to  
come up for the same as before on  
01/06/2022

  
On  
Reader

24.02.2021

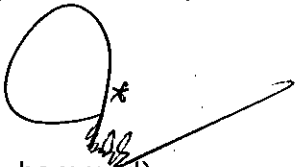
Counsel for the applicant and Addl. AG for the respondents present.


Instant application is with the prayer for restoration of service appeal No. 195/2019, dismissed for non-prosecution on 10.12.2020.

It is noted in the application that on the relevant date, the appeal was not heard due to some confusion about the classification of cases posted for hearing. Although learned counsel for the appellant was available before the Tribunal neither the case was called nor he was heard.

The application for restoration was submitted on 15.12.2020, only five days after the dismissal of appeal. Besides, the grounds agitated therein require the restoration of appeal straight away. It is, therefore, allowed.

Appeal No. 195/2019 is restored to its original number and shall come up for further proceedings on 24.05.2021 before the Tribunal.

  
(Mian Muhammad)  
Member(E)

  
Chairman

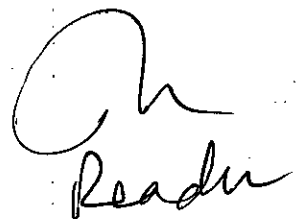
24.05.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 01.09.2021 for the same as before.

  
Reader

1-9-21

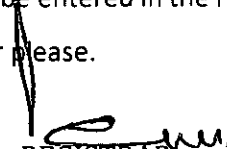

Due to non availability of DB  
to come up for the same on 17/12/21

  
Reader

FORM OF ORDER SHEET

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

Restoration Application No. 173 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	15.12.2020	<p>The Restoration Application submitted by Mr. Akbar Ali through Mr. Shah Saud Mishwani 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</p> <p>2-</p> <p>This Restoration Application be put up before DB Bench on <u>24-02-2021</u></p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE**  
**TRIBUNAL, PESHAWAR.**

C.M. No. \_\_\_\_\_/2020

In

Service Appeal No. 195/2019

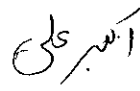
**AKb**ar Ali.....(Appellant)

**VERSUS**

EDO and others.....(Respondents)


**I N D E X**

<b>S.No</b>	<b>Description of Documents</b>	<b>Annex</b>	<b>Pages</b>
1.	Application		1-2
2.	Affidavit		3
3.	Copy of order dated 10/12/2020	A	4-5

Appellant  
Akbar Ali 

Through

Dated: 15/12/2020

  
**Shah Saud Mishwani**  
Advocate High Court,  
Peshawar.  
Cell No. 0345-9095245



**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR.**

C.M. No. 173/2020

In

Service Appeal No. 195/2019

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1058

Dated 15/12/2020

AKbar Ali.....(Appellant)

**VERSUS**

EDO and others.....(Respondents)

**APPLICATION FOR RESTORATION OF  
SERVICE APPEAL NO. 195/2019  
TITLED ABOVE WHICH WAS  
DISMISSED IN DEFAULT VIDE ORDER  
DATED 10/12/2020.**

**Respectfully Sheweth:**

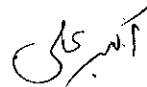
1. That the above titled Service Appeal was pending before this Hon'ble Tribunal and was dismissed in default on 10/12/2020. (Copy of order dated 10/12/2020 is attached as annexure "A").
2. That on 10/12/2020 the counsel for the appellant was present before this Hon'ble Tribunal for arguments, but Reader of the Tribunal was informed the counsel that today the Tribunal is

entertaining the transfer matters while rest of the cases will be adjourned.

3. That the appellant is an old age person and was ill on that day, therefore his counsel attended the Tribunal early in the morning and meet the Reader of the Tribunal and therefore went to Charsadda for his other case, the counsel came to know that his case was dismissed in default.
4. That the appellant having an important right with the case, and if the case of the appellant is not restored, he would put to great loss, and would deprived from his basic rights.

It is, therefore, most humbly prayed that on acceptance of this application, the above titled Service Appeal may kindly be restored.

Appellant  
Akbar Ali



Through



**Shah Saud Mishwani**  
Advocate High Court,  
Peshawar.

Dated: 15/12/2020

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR.**

C.M. No. \_\_\_\_\_/2020

In

Service Appeal No. 195/2019

~~AK~~bar Ali.....(Appellant)

**VERSUS**

EDO and others.....(Respondents)

**AFFIDAVIT**

I, **Shah Saud Minshwani** Advocate High Court, Peshawar, as per instructions of my client, do hereby solemnly affirm and declare on oath, that the contents of the accompanied **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

**KHALID MAHMOOD**  
Advocate  
Oath Commissioner  
Peshawar High Court

*Shah Saud Minshwani*  
**ADVOCATE**

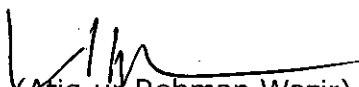
195/2019 (Khalid Khan)

10.12.2020

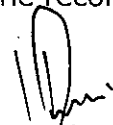
Nemo for the appellant. Addl. AG alongwith Sajid Superintendent for the respondents present.

Representative of the respondents submitted copy of page 2 of Service Book alongwith Medical Certificate of appellant. Placed on file.

It is already past 03.15 P.M and despite repeated calls no one appeared on behalf of the appellant. It is, therefore, dismissed for non-prosecution. File be consigned to the record.

  
(Atiq-ur-Rehman Wazir)

Member(E)

  
Chairman

ANNOUNCED

10.12.2020

30.06.2020

Due to COVID-19, the case is adjourned to 25.08.2020 for the same.

  
Reader

25.08.2020

Due to summer vacation case to come up for the same on 16.10.2020 before D.B.

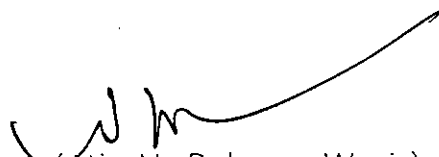
  
Reader

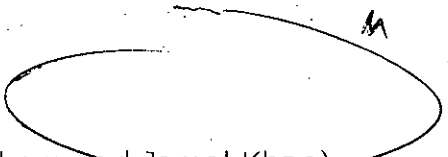
16.10.2020

Appellant in person present. Mr. Kabirullah Khattak learned Additional Advocate General for respondents present.


Former requests for adjournment that his counsel is busy before Hon'ble Peshawar High Court Peshawar.

Adjourned to 10.12.2020 for arguments before D.B.

  
(Atiq-Ur-Rehman Wazir)  
Member


  
(Muhammad Jamal Khan)  
Member

20.01.2020 Due to general strike on the call of the Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Adjourned to 09.03.2020 for arguments before D.B.

  
(Hussain Shah)

  
(M. Amin Khan Kundi)

09.03.2020 Member Counsel for the appellant present. Addl: AG alongwith Mr. Sajid Khan, ADEO for respondents present. Record reveals that initially the date of birth of the appellant was mentioned in the service book as 10.04.1961 but later on the respondent-department has tempered the same and instead of 10.04.1961 the date of birth has been mentioned as 10.04.1998 on 29.01.2009 under the signature and stamp of the respondent-department. Representative of the respondent is directed to furnish copy of service book of the appellant, Medical Certificate duly signed by the concerned Medical Superintendent and academic testimonials annexed by the appellant with the application submitted for appointment of the said post. Adjourned. Adjourned. To come up for record and arguments on 03.04.2020 before D.B.

  
Member

  
Member

03.4.2020

Due to COVID-19, the case is adjourned. To come up for further on 30-6-2020.



15.07.2019

Appellant in person and Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG for the respondents present.

Learned AAG requests for adjournment to procure written reply of the respondents. To come up for written reply/comments on 05.09.2019 before S.B.

  
Chairman

05.09.2019

Counsel for the appellant. Mr. Usman Ghani, District Attorney alongwith Mr. Sajid ADEO for respondents present. Written reply on behalf of respondent submitted which is placed on file. To come up for rejoinder and arguments on 21.11.2019 before D.B.

  
(Ahmad Hassan)  
Member

21.12.2019

Learned counsel for the appellant present. Mr. Riaz Paindakhel learned Assistant Advocate General alongwith Mr. Sajid ADEO for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 20.01.2020 before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

19.03.2019 Learned counsel for the appellant present. Preliminary arguments heard.

The appellant join service as Class-IV in the Education Department on 12.04.2004. On 28.08.2017 the appellant became aware of the fact about the date of birth mentioned in service record which he allegedly states that his original date of birth is 10.04.1961, on the basis of the his CNIC and Academic record. The department has noted his dated of birth as 10.04.1958 which has been challenged in the instant appeal

The appellant initially filed a plaint in the Civil Court. The Hon'ble Additional District Judge-IV Mardan directed the appellant to approach the Service Tribunal on the ground of jurisdiction. It has been prayed that the instant service appeal, preferred on 28.01.2019, may be accepted and the respondent department be directed to correct his date of birth as per CNIC and Academic record.

Points raised need consideration. The appeal is admitted for regular hearing. Subject to all legal objections. The appellant is directed to deposit security and process fee within ten (10) days. Thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 06.05.2019 before S.B. While the application of temporary probatory injunction is not accepted

  
Member

06.05.2019

Appellant in person present and requested for time to deposit security and process fee. Appellant is directed to deposit the same within seven days thereafter, notice be issued to the respondents for written reply/comments for 15.07.2019 before S.B.



  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

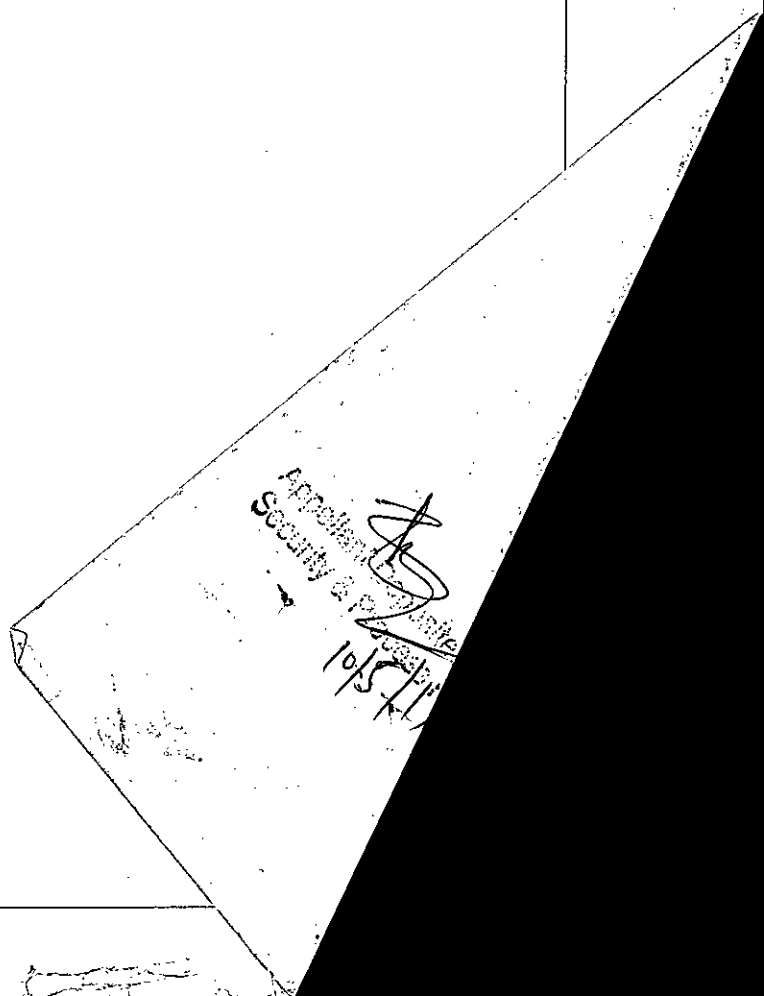


Form- A  
FORM OF ORDER SHEET

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

Case No. 195/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	12/2/2019	<p>The appeal of Mr. Akbar <sup>Ali</sup> resubmitted today by Mr. Shah Saud Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 12/2/19</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>19-3-19</u>.</p> <p> CHAIRMAN</p>




The appeal of Mr. Akbar Ali son of Shahmat Khan/o of Mohallah Zaid Khel Toru District Mardan received today i.e. on 28.01.2019 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- Necessary party be made in the memo of appeal. ✓
- 3- Address of respondent no.1 and 3 is incorrect which may be corrected. ✓
- 4- Copy of retirement order mentioned in the heading of the appeal is not attached with the appeal which may be placed on it.
- 5- Copy of departmental appeal is not attached with the appeal which may be placed on it.

No. 185 /S.T,

Dt. 31-1- /2019.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Shah Saud Adv. Pesh.

- ① In reply of objection # 4 the retirement order is not yet issued or communicated to the appellant.
  - ② In reply of objection # 5, The document on page ~~#~~ 10 as annex "c" is the departmental appeal.
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IN THE COURT OF SERVICE TRIBUNAL JUDGE PESHAWAR

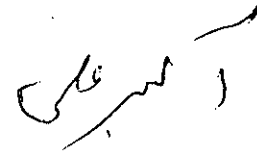
Appeal No. 195/2019

Akbar Ali VERSUS EDO and others

INDEX OF THE DOCUMENT

1	Appeal with application		1-6
2	Copy of CNIC, School Certificate	A	7-8
3	Copy of Service Book	B	9
4	Copy of Application Dated 28-08-2017	C	10
5	Copy of plaint, application order 7 rule 11, Replies	D	11-17
6	Copy of the order dated 09-03-2018, Revision Petition, order dated 14-12- 2018	E	18-28
7	Wakalat Nama	In Original	29

Date = 28/01/2019



Appellant

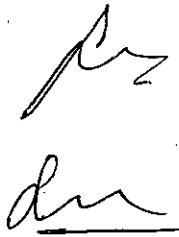
Through

Shah Saud

&

Gharib Gul

Advocate



IN THE COURT OF SERVICE TRIBUNAL JUDGE PESHAWAR.

Appeal No. 195/2019

Akbar Ali S/o Shamat Khan R/o Mohallah Zaid Khel, Toru Tehsil & District Mardan.

APPELLANT

Khyber Pakhtukhwa  
Service Tribunal

Diary No. 127

Dated 28-01-2019

VERSUS

1. Director Elementary and Secondary Education Peshawar.
2. Sub Divisional Education Officer (Male) Primary District Mardan.
3. District Education Officer Mardan. (Male)

Filed to-day

Registrar 28/1/19

RESPONDENTS

Re-submitted to -day  
and filed.

Registrar

12/2/19

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL  
ACT 1974 AGAINST THE ILLEGAL ACT OF THE RESPONDENTS WHO  
ILLEGALLY TEMPERED / ALTERED THE DATE OF THE BIRTH OF  
THE APPELLANT AND ILLEGALLY ENTERED IT AS 10/04/1958  
INSTEAD OF 10/04/1961, WHICH IS LIABLE TO BE CORRECTED AS  
10/04/1961. AND NOW THE RESPONDENTS ARE BENT UPON TO  
RETIRE THE APPELLANT ON THE BASIS OF THAT WRONG / ILLEGAL  
/ INCORRECT ALTERATION / TEMPERING DATE OF BIRTH OF THE  
APPELLANT.

**RESPECTFULLY SHEWETH:-**

1. That the correct date of birth of the Appellant is 10/04/1961 which has correctly been recorded in his CNIC and academic record. (copies of CNIC along with school certificates is annexed as annexure "A").
2. That even in the service book of the Appellant, initially his date of birth was recorded as 10/04/1961, however later on, in total ignorance of the Appellant, illegally and against the facts the same was cut and wrong entry pertaining to the date of birth of the Appellant was made therein as 10/04/1958. The said entry is illegal, against the facts and record therefore ineffective upon the rights of the Appellant and is liable to correction.
3. That on 12/04/2004 Appellant joined service as Class-VI ("Watchman) under the Respondents and now a days the appellant is performing his duties to the full of his abilities and honesty in Government Primary School, Shamshad Abad No.2, Toru, District Mardan. (copies of the service book of the Appellant is annexed as annexure "B").
4. That on dated 28/08/2017 Appellant came to know about the fact that his date of birth has wrongly been recorded in his payroll and his service book, thereafter he applied for correction of the same but in vain. (copy of application dated 28/08/2017 is annexed as annexure "C")
5. That thereafter, the appellant filed a civil suit seeking declaration for the correction of the date of birth of the appellant wherein the

respondents are summonses and the respondents are appeared through the departmental representative and submitted an application under order 7 rule 11 C.P.C for rejection of the plaint. (copy of the plaint and application, reply are annexed as annexure "D").

6. That application of the respondents for rejection of plaint was dismissed by the civil court vide order dated 09/03/2018 which was challenged by the respondents through civil revision petition before the Additional District Judge-IV Mardan, wherein the learned ADJ-IV Mardan directed the appellant to approached to the service tribunal on the ground that the matter is relates to the terms and conditions of the civil servants. (copy of the Order dated 09/03/2018 and Revision Petition and order dated 14/12/2018 are annexed as annexure "E").
7. That being aggrieved from the illegal act of the respondents and upon the directions of the ADJ-IV Mardan, the appellant approached to this honorable tribunal to adjudicate the matter.

It is, therefore, most humbly prayed that on acceptance of this appeal the respondents may kindly be directed to correct the date of birth of the appellant as 10/04/1961 which was initially entered in has Service Book. Furthermore, the respondents may also be directed not to issue the retirement notification on the basis of that illegally entered date of birth 10/04/1958.

Any other relief, which is not specifically prayed for and the appellant is liable, may also be granted to the appellant.

Dated: /01/2019

اکبر علی

Appellant :Akbar Ali

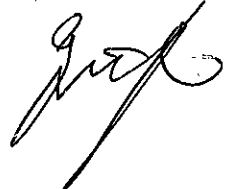
Through

Shah Saud



&

Gharib Gull,


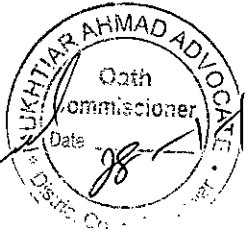


Advocates, Peshawar

**Affidavit**

I, Akbar Ali (Appellant myself), do hereby affirm on oath that the contents of this plaint are true and correct to the best of my knowledge and belief.

**ATTESTED**

Deponent: Akbar Ali

اکبر علی

5

IN THE COURT OF SERVICE TRIBUNAL JUDGE PESHAWAR

Akbar Ali (Petitioner)

VERSUS

EDO and others (Respondents)

---

Application for the grant of temporary prohibitory injunction "tell the disposal of the appeal in hand" against the respondents to the effect that the respondents may kindly be restrained to retire the appellant or discontinue his service upon the basis of wrong and illegal entry regarding his date of birth ( as mentioned in his service book).

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Respectfully sheweth,

1. That the appeal mentioned above has been filed before this Honorable tribunal on the basis of strong documentary and proves and there is likelihood of its success in favour of the appellant.
2. That respondents are bent upon to get the petitioner retire from his service on the basis of wrong and illegal entry regarding the date of birth of the petitioner in his existing record/document.
3. That if they are not restrained during the pendency of the instant appeal the petitioner would suffer irreparable loss, as this will be a loss not only the petitioner but to his whole family which can never be compensated in terms of money. While the appeal will also become infructuse.
4. That balance of convenience also lies in favour of the petitioner. While the petitioner is also ready to continue his service on his risk and cost.



It is therefore most humbly prayed that the application in hand may kindly be accepted as prayed for.

Date: 28-01-2019

اکبر علی

Akbar Ali  
(Petitioner)

Through

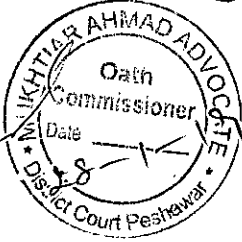
Shah Saud  
&  
Gharib Gul  
Advocate

*[Signatures]*

**AFFIDAVIT**

I Mr. Akbar Ali (Petitioner), do hereby on oath stated that all the contents of this petition are true and correct to the best of my knowledge and belief and no fact has been concealed from this honorable court.

**ATTESTED**



Akbar Ali  
(Deponent)

اکبر علی

# مدرسہ چھوڑنے کا سرٹیفکیٹ

نمبر 29

25

نام طالب علم \_\_\_\_\_  
تاریخ پیدائش \_\_\_\_\_  
نمبر رجسٹرڈ داخلہ \_\_\_\_\_  
تصدیق کیا جاتا ہے کہ \_\_\_\_\_  
کاپیٹ 10-9-2008

اپنا نام خارج کرانے کی اجازت دی گئی ہے جماعت \_\_\_\_\_  
اس کا امتحان \_\_\_\_\_  
لیا گیا تھا جس میں \_\_\_\_\_  
ان طلباء کی صورت میں جو \_\_\_\_\_  
مدرسہ کے کسی حصہ کی مفروضہ \_\_\_\_\_  
پڑھائی کے اختتام پر چھوڑیں \_\_\_\_\_

مضامین جس میں طالب علم شامل ہوا \_\_\_\_\_  
ان طلباء کی صورت میں جو مدرسہ کے \_\_\_\_\_  
کسی حصہ کی مفروضہ پڑھائی کے اختتام \_\_\_\_\_  
پر چھوڑیں \_\_\_\_\_

تصدیق کیا جاتا ہے کہ مندرجہ ذیل اندراج اس مدرسہ کے رجسٹرڈ اور ان سارٹیفکیٹوں کے مطابق ہے جس میں جو اس کے ان مدرسوں سے حاصل \_\_\_\_\_  
کئے ہیں، جہاں اس تعلیمی سال میں اس سے پہلے تعلیم پائی ہے۔ \_\_\_\_\_

نمبر	مدرسہ	داخل ہونے کی تاریخ		خارج ہونے کی تاریخ	حاضر ہونے کی تاریخ		رضعت جو سال
		شعبہ	درجہ		سال	حصہ	
1	CHS	4/5	درسدہا	10/9	15/9	10/9	رضعت جو سال
2	CHS	15/9	کون	10/9	11/9	10/9	رضعت جو سال
3	CHS	11/9	میزان	10/9	11/9	10/9	رضعت جو سال

تاریخ اجراء 03 / 2008 / صرف سکارٹشپ پانے والوں کی صورت میں

قسم سکارٹشپ \_\_\_\_\_  
کس سال عطا ہوا \_\_\_\_\_  
کون دیتا ہے \_\_\_\_\_

1 فوٹا، عام طور پر مدرسہ چھوڑنے کے سرٹیفکیٹ کے لئے درخواست مدرسہ سے طلبہ ہر سہ ماہ کے آخری دو ماہ کے اندر دی جانی چاہیے۔ یہ صورت \_\_\_\_\_  
ان طلباء کے جنہوں نے ڈیل سکول کا امتحان دیا ہو ایک ماہ قبل اسکول کی تاریخ سے گننا چاہیے۔ \_\_\_\_\_  
بعد گزرنے ایک ماہ کے مدرسہ چھوڑنے کے سرٹیفکیٹ کے لئے موازی آٹھ ماہ کے فیس چارج ہونی \_\_\_\_\_  
اگر مدرسہ چھوڑنے کا سرٹیفکیٹ کم ہوجائے اور نئے سرٹیفکیٹ کے لئے درخواست دی جائے تو نئے سرٹیفکیٹ کیلئے موازی آٹھ ماہ کے فیس چارج ہوں گے۔ \_\_\_\_\_

تصدیق کیا جاتا ہے \_\_\_\_\_  
طالب علم \_\_\_\_\_  
ضلع \_\_\_\_\_  
سکول \_\_\_\_\_  
19 \_\_\_\_\_  
ورثہ \_\_\_\_\_  
اسکی تاریخ پیدائش \_\_\_\_\_

1	2	3	4	5	6	7	8
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	Signature of Government Servant.
<u>APPT: AGAINST FIXED PAY CHOWKIDAR @ Rs=2800/PMT</u>							
Fixed Chowkidar CPS, No-2 Shomshad Abad Pay Centre Secwrigon	Fixed PAY		Rs= 2800/- PMT		Fixed -	12/4 2004	اکبر علی
<u>REVISION OF FIXED PAY @ Rs=3100/PMT FIXED WEF 01-12-04</u>							
-DO-	-DO-		Rs= 3100/- PMT		Fixed	01/12 2004	اکبر علی
<u>REVISION OF FIXED PAY WEF 01-7-05 @ Rs= <del>3100</del> 3500/PMT</u>							
-DO-	-DO-		Rs= 3500/- PMT	✓	Fixed	01/7 05	اکبر علی
<u>REVISION OF FIXED PAY WEF 01/11/2006 @ Rs= 4000/PMT</u>							
-DO-	-DO-		Rs= 4000/- PMT	✓	Fixed	01/11 06	اکبر علی
<u>ENTRIES REVISED FIXED PAY POST CONVERTED TO CONTRACT</u>							
IN BPS-I WIDE GOVT. OF NWFP FINANCE NO 301/RS/1-22/2008-9 dated 30-7-08. @ Rs= 1870-55-3520.							
Chowkidar Post CPS, No 2 Shomshad Abad (Mardan)	Contract		Rs= 1870/- PMT	✓	-	12/4 04	اکبر علی
-DO-	-DO-		Rs= 1925/- PMT	✓	-	01/12 05	اکبر علی

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

1. Name: AKBAR ALI

2. Race: AFGHAN

3. Residence: VILLAGE 9 P.O TERU TEH/DIST: MARDAN

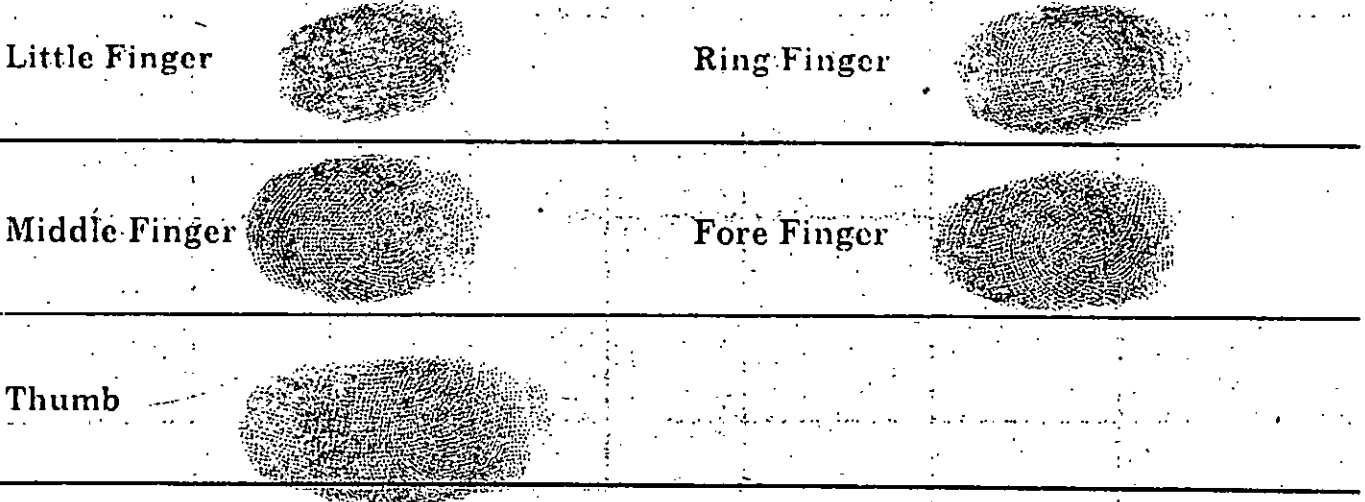
4. Father's name and residence: SHAMAT KHAN. -DO-

5. Date of birth by Christian era as nearly as can be ascertained: TENTH APRIL NINETEEN FIFTY EIGHT 10-4-1958 1958 ✓

6. Exact height by measurement: 5-5 D/birth 1958 ✓ attested. 29/11/09

7. Personal marks for identification: MOLE ON THROAT.

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



9. Signature of Government Servant: اکبر علی ✓

10. Signature and designation of the Head of the Office, or other Attesting Officer. 29/11/09 D.D. (25) P.M. MARDAN ✓

خدمت جناب سب ڈویژنل ایجوکیشن افسر صاحب پرائمری ضلع مردان  
تصحب تاریخ پیدائش

عنوان  
جناب عالی کی زیر سایہ تحریک پرائمری سکول نمبر 2 کشمیر آباد  
کراچی موروثی ہے۔ کہ سائل جناب عالی کی زیر سایہ تحریک پرائمری سکول نمبر 2 کشمیر آباد  
طورو میر میں کھیت جو کھیدار فضل الہی سے ہے  
چونکہ فردی کے سروں تک میں میر تاریخ پیدائش کا اندراج غلط ہے یعنی 10/4/1958  
میں سابقہ سرکاری کتاب نے 1958 میں سرکاری کتاب ہے۔

جناب عالی  
چونکہ میر سکول سرٹیفکیٹ اور شناختی کارڈ اور دیگر کارڈ میں  
میر تاریخ پیدائش 10/4/1958 ہے۔

جناب عالی کی خدمت اقدس میں التیجاء کرتا ہوں کہ میر سروں تک  
میں شناختی کارڈ اور سکول سرٹیفکیٹ کے مطابق تاریخ پیدائش 10/4/1958  
کا حکم نامہ صادر فرمائیں۔ تاکہ آج والے وقت میں میر مشکل سے  
کونسلر کے پاس نہ پہنچ سکے۔

اس احسان کا قصور دعاؤں اور اہلسنہ ریلوں  
فقط ذرا سے جواب

28/8/17  
الفضل  
الذکر  
ذخیرہ کشمیر آباد  
ضلع مردان

کافی سرائے کاروانی  
نمبر 1 - ADEO مردانہ ضلع مردان  
نمبر 2 - ADEO مردانہ پرائمری ضلع مردان  
نمبر 3 - سرکل ایجنس صاحب پرائمری مردان  
A.S.D.E.O (Male)  
Circle Sharqi Hoti  
District Mardan

(11)

Annex 'D'

IN THE COURT OF SENIOR CIVIL JUDGE MARDAN



Akbar Ali S/o Shamat Khan R/o Muhlla Zaid Khel  
and District Mardan

AGAINST

13-dict-7 Plaintiff  
Senior Civil Judge  
Mardan.

1. The Executive District Officer Higher & Secondary Education; Mardan
2. Sub Divisional Education officer (male) Primary, District Mardan
3. Circle In-charge Primary Education, District Mardan

Defendants

---

A. Suit for declaration that correct date of birth of the plaintiff is 10/04/1961 which is correctly mentioned NADRA Record and CNIC issued to the plaintiff, apart from being correctly recorded in the School record of the plaintiff. That in service book of the plaintiff his dated of birth has incorrectly been recorded as 10/04/1958, which entry is wrong, illegal, baseless, unfounded, against the facts, therefore ineffective upon the rights of the plaintiff and liable to correction.

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B. Suit for permanent prohibitory injunctions to the effect that defendants be restrained to retire the plaintiff or discontinue his service upon the basis of wrong and illegal entry pertaining to his date of birth.

---

Value of suit for court fee & Jurisdiction. Rs. 500/-

---

Respectfully Sheweth,

1. That the correct date of birth of the plaintiff is 10/04/1961 which has correctly been recorded in his CNIC and academic record. (Copies of CNIC along with school certificates is annexed herewith.)
2. That even in the service book of the plaintiff, initially his date of birth was recorded as 10/4/1961 however later on in total ignorance of the plaintiff, illegally and against the facts the same was cut and wrong entry pertaining to the date of birth of the plaintiff was made therein as 10/4/1958. The said entry is illegal, against the facts and record therefore ineffective upon the rights of the plaintiff and is liable to correction.
3. That on 12/4/2004 plaintiff joined service as Class-VI "Watchman" under the defendants and now a day he is performing his duties to the full of his abilities and honesty in Government Primary School, Shamshad Abad No-2 Toru, District Mardan. (copies of service book of the plaintiff is annexed herewith).

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- 4. That on dated: 28/08/2017 plaintiff came to know about the fact that his date of birth has wrongly been recorded in his payroll and his service book, thereafter he applied for correction of the same but in vain, therefore the suit in hand for the reliefs mentioned in heading. (Copy of application dated: 28/8/2017 is annexed)
- 5. That value of the suit for court fee and jurisdiction are given at the head note and this court has jurisdiction to entertain the suit in hand.

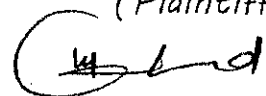
It is, therefore, most humbly prayed that the suit of the plaintiff may kindly be decreed as prayed for with cost.

Dated: 13/11/2017

=====

Akbar Ali  
(Plaintiff)

Through,

  
Muhammad Ali  
Advocate, Mardan

**AFFIDAVIT**

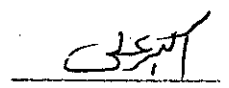
I Akbar Ali (plaintiff myself), do hereby affirm on oath, that the contents of this plaint are true and correct to the best of my knowledge and belief.

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Akbar Ali  
Deponent



14

BEFORE THE COURT OF CIVIL JUDGE, MARDAN

Akbar Ali ----- Versus ----- Executive District Education Officer  
(Male) Mardan & others

Suit for Declaration.

Application under Order 7 Rule 11 for rejection of Plaintiff.

0-7  
13.2.12

*Handwritten signature*

(NAJEEB UL HAQ)

Chief Judge/Judicial Magistrate III,  
Mardan.

Respectfully Sheweth:

1. That the case captioned above is pending before this Honorable Court for written statement.
2. That the plaint of the plaintiff is liable to be rejected on the following amongst other grounds:-
  - a. That the plaint of the plaintiff is barred by law.
  - b. That as per the Khyber Pakhtunkhwa Esta Code & General Financial Rules the date of birth of Civil Servants once recorded in his service documents cannot be changed or altered after initial two year of his appointment. Furthermore as per decision of the August Supreme Court of Pakistan 1998 SCMR 1494 a civil servant after two years of his joining of service cannot be allowed to change his date of birth, hence the plaint of the plaintiff is liable to be rejected on this score alone.
  - c. That the plaint does not disclosed any cause of action and not maintainable under the law.

It is therefore most humbly prayed that on acceptance of this application the plaint of the plaintiff may kindly be dismissed with costs.

*Handwritten signature*

Departmental Representative

Through:

*Handwritten signature*

Deputy District Attorney  
Mardan

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اکبر علی

نام

محمد حکیم تعلیم

سینا مشیل مو

دعوی استعراق حق

13/1/13

ضاجعہ علی ا جو ایدر خواست فانیہ مدعی تسلیم دہلو است مدعا علیہ ثابت

اخراج حسب ذیل عرض ہے۔

مذرات شمیری ا

1- ...

2- ...

3- ...

مذرات واقفائیہ

مذرات واقفائیہ

1- قوہ ...

2- قوہ ...

A - قوہ ...

B - قوہ ...

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ع - فقرہ زیر عدل و برہنہ و جم اشارت ہے۔

کذا استدعا ہے کہ مفوضت سائین خانج زوقی جا کر مقدم حاصل عدلی  
پر کارروائی جاری رکھی جائے

مسلمہ 13-2-2018

ابراہیم علی ہزارہ و سب

M. Shah

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10 JAN 2019

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Sessions Court Mardan

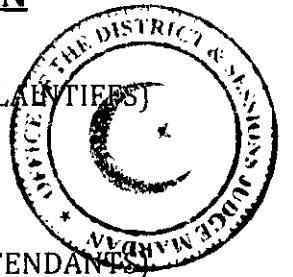
16

**BEFORE THE COURT CIVIL JUDGE MARDAN**

AKBAR ALI & OTHERS ----- (PLAINTIFFS)

VERSUS

DISTRICT EDUCATION OFFICER (MALE) MARDAN & OTHERS - (DEFENDANTS)



**Suit for Declaration etc.**

**Written Statement on behalf of Defendants.**

**Respectfully Sheweth:-**

The defendants humbly submit as under:-

**PRELIMINARY OBJECTIONS:**

1. That the plaintiff has got no cause of action.
2. That the plaintiff has not come to the court with clean hands.
3. That this suit cannot proceed further due to mis-joinder and non-joinder of necessary parties.
4. That the plaintiff has filed the instant suit on malafide intention.
5. That the instant suit is not within period of limitation, so it is hopelessly time barred.
6. That the petition of the petitioners is hit by principle estoppel.
7. That the plaint of the plaintiffs is bad in its present form.
8. That this Honorable court has got no jurisdiction to entertained the instant suit.
9. That the plaintiffs have filed the instant suit against the provision of section 79-80 CPC and article 174 of the Constitution of Islamic Republic of Pakistan 1973, hence liable to be dismissed.
10. That the pliant of the plaintiffs is liable to be rejected under order VII rule XI C.P.C.
11. That the plaintiffs are entitled for special cost under section 35-A of CPC.
12. That the date of birth of a civil servant once recorded in his Medical certificate and service book cannot be after altered changed under the law.
13. That as per the Khyber Pakhtunkhwa Estacada and General financial rule the Date of Birth of civil servant once recorded in service record cannot be change or altered after initial two year of his appointment, furthermore as per decision of the August Supreme court of Pakistan reported in SCMR 1998 date 1494 a civil servant after two year of his joining of service cannot be allowed to change of his date of birth, hence the plaint of the plaintiff dismissed on this score alone. (Copy attached).
14. That as per the service book & Medical certificate of the plaintiff the exact Date of Birth of the plaintiff is 10-04-1958 and not 1961 & by instituting the instant suit, the plaintiff is trying to extend his tenure of service which cannot be allowed under the law.

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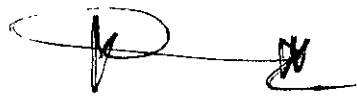
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Sessions Court Mardan**

**ON FACTS**

1. That para 1 of the plaintiff is wrong, baseless, against facts and circumstances, hence denied. In reply it is submitted that the actual date of birth of the plaintiff as per service book and medical certificate is 1958 and not 1961.
2. That para 2 of the plaintiff as dropped is wrong, baseless, against facts and law, hence denied. In reply it is submitted that the actual date of birth of plaintiff is 10-4-1958 and the clerical mistake was corrected by the relevant officer, moreover in the Medical certificate of the plaintiff actual date of birth of the plaintiff is 1958, hence the suit of the plaintiff is liable to be rejected with cost.
3. That para 3 of the plaint is pertains to service record, hence need no comments.
4. That para 4 of the plaintiff is wrong, baseless, against facts and law, hence denied.
5. That para 5 of the plaintiffs is legal, Proper preliminary objection have already been raised above.

*It is therefore humbly prayed that the on acceptance of this written statement on behalf of respondents the plicant of the plaintiffs may be dismissed with cost and any other remedy which this Honorable court deems fit under circumstances of the case and not specifically asked for may be also awarded.*

<p><b>AFFIDAVIT:</b></p> <p><i>It is stated on solemn affirmation that the contents of this written statement are true and correct to the best of my knowledge and nothing has been concealed from this Honorable Court.</i></p> <div style="text-align: right;">   <b>DEPONENT</b> </div>	<p>Defendants through Representative</p> <div style="text-align: center;">   <b>Deputy District Attorney Mardan</b> </div>
---	--

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(18)

Annex "E"

IN THE COURT OF CIVIL JUDGE-XI, MARDAN

Akbar Ali vs EDO and others

Suit No.439/01 of 2017

Order---08

Dt; 09.03.2018

Parties along with their learned respective counsel present.

This order is intending to dispose of an application submitted by defendant (henceforth referred to as petitioner) for the rejection of plaint u/Order-VII Rule-11 CPC on the ground that once recorded in his service documents cannot be changed or altered after initial two years of his appointment as per Khyber Pukhtunkhwa Code & General Financial Rules as well as reliance made on 1998 SCMR 1494, therefore, the respondent/plaintiff has got no cause of action and not maintainable under the law.

The reply not submitted, however counsel for the plaintiff/respondent relied upon his plaint, while argue the application in rebuttal, therefore arguments heard and case file perused.

Perusal of record would suggest that plaintiff/respondent has instituted a suit for declaration regarding the rectification of correct date of birth is 10.04.1967 and date of birth has been wrongly mentioned by the defendants No.01 to 03 in their record as 10.04.1958, which is wrong, illegal and ineffective upon the rights of the plaintiff and liable to be corrected. Plaintiff has also sought perpetual cum mandatory injunction. The record further reflects that there is cutting in service book,

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Sessions Court Mardan**

therefore factual controversy is involved, which cannot be determined without recording of pro and contra evidence, therefore, factual controversy is involved, therefore, the application of petitioner/defendant for maintainability is hereby declined.

No order as to costs.

File to come up for written statement on

07/4/18

ANNOUNCED:

Dt; 09.03.2018

Haq.

NAJEEB UL HAQ,  
CIVIL JUDGE-XI, MARDAN.

لفظی  
07.4.18  
امس  
20/4/18  
رست اشیا قید پر \* لانا

وقدہ قریبین حاضر دیا رہی کیلئے سہولت  
بلند - اقدیا ہرقہ دہا جانر منیل میرا  
دیا رہی 15/5/18

(NAJEEB UL HAQ)  
Civil Judge/Judicial Magistrate-XI,  
Mardan.

وقدہ قریبین حاضر GP قدریہ کان 2 دیا رہی  
کیلئے سہولت بلند منظر اقدیا ہرقہ  
دہا جانر منیل میرا دیا رہی 11/6/18

Haq.  
(NAJEEB UL HAQ)  
Civil Judge/Judicial Magistrate-XI,  
Mardan.

حکم  
20.4.18

حکم  
15.5.18

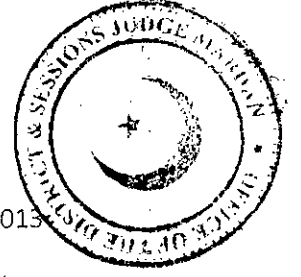
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10 JAN 2019  
Examiner Copying Branch  
Sessions Court Mardan

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IN THE COURT OF DISTRICT JUDGE, MARDAN

Civil Revision No. \_\_\_\_\_/2013



1. District Education Officer (MALE) District Mardan.
2. SUB DIVISIONAL OFFICER (MALE) DISTRICT MARDAN
3. CIRCLE INCHARGE PRIMARY EDUCATION, DISTRICT MARDAN

1670718  
**SUPERINTENDENT**  
 Sessions Division  
 Mardan

(Petitioners)

Versus

1. Akbar Ali S/o Shamat Khan R/o Muhlla Zaid Khel Toru Distt & Tehsil Mardan.

(Respondents)

REVISION PETITION UNDER SECTION 115 C.P.C. AGAINST ORDER/JUDGEMENT DATED 09/03/2018 PASSED BY LEARNED CIVIL JUDGE- XI MARDAN THROUGH WHICH THE APPLICATION OF PETITIONERS UNDER ORDER 7 RULE 11 CPC WAS DISMISSED.

Prayer.

On acceptance of instant revision petition, the order/judgment dated 09/03/2018 may kindly be set-aside and the plaint of respondents may kindly be rejected/ dismissed with costs.

Respectfully Sheweth:

The Petitioners humbly submits as under:-

1. The respondent has brought this suit with respect to correction of his dated of birth in the official record. Secondly the plaintiff/respondent claimed permanent injunction to the effect that the defendant/appellant may be restrained to retire him prior to correction of his date of birth.
2. That the petitioners then filed an application for rejections of plaint order 7 rule 11 CPC on the ground that correction of date of birth of a civil servant after first two year of appointment cannot legally be altered. No reply to this application was submitted by the Plaintiff/respondent.

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- 3. That the learned Civil Judge after hearing arguments dismissed the application of the petitioners/defendants which is against law, facts and available record hence not tenable in the eyes of law. (Attested copies of impugned order are annexed).
- 4. That the impugned order/judgment is against the facts and law and is not maintainable on the following grounds inter-alia.


16/5/18  
 SUPERINTENDENT  
 Sessions Division  
 Mardan.


Grounds

- A. That the learned lower court has totally misconceived the facts with regard to the matter in dispute and failed to comprehend the material aspects of the case, therefore, the impugned order/judgment needs to be set-aside.
- B. That the court has completely ignored the legal point, that as per the Khyber Pakhtunkhwa Esta Code and General Financial Rules the date of birth of a civil servant once recorded in his service documents cannot be changed or altered after initial two years of his appointment, furthermore as per decision of the august Supreme Court of Pakistan SCMR 1998 page 1494 a civil servant after two years of his joining of service cannot be allowed to change his date of birth, hence the plaint of the respondent/plaintiff is liable to be rejected on this score alone. (copies attached)
- C. That the trial court has completely ignored the point of limitation.
- D. That the impugned order/judgment is not speaking one. The learned SCJ Mardan has failed to give his findings in judgment on the ground of jurisdiction.
- E. That the impugned order is silent on the authorities/judgments of superior courts produced by the petitioners on the ground of jurisdiction.
- F. That the Revision petition is well within time and this Honorable court has got jurisdiction to entertain the instant revision petition.
- G. That the petitioners seek leave of this Honorable court to advance additional grounds at the time of arguments.

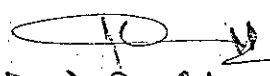
It is, therefore, most humbly prayed that on acceptance of this revision petition, the impugned order/judgment dated 05/11/2016 may kindly be set-aside and the plaint of the respondent/plaintiff may kindly be rejected with costs.

Any other relief deemed appropriate in the circumstances of the case may also be granted in favor of petitioners and against respondents with cost throughout.

  
 Petitioners  
 (Representative)

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 Sessions Court Mardan

Dated: 16/5/2018

Though:   
 DDA Mardan

22

6

Deputy District Attorney

Mardan

Verification:

Verified that the contents of this revision are true and correct to the best of my knowledge and belief.

Deponent

1615718  
SUPERINTENDENT  
Sessions Division  
Mardan.

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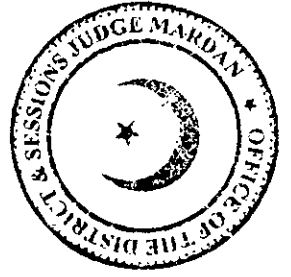
05 JAN 2019

**Examiner Copying Branch  
Sessions Court Mardan**

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20

IN THE COURT OF ABDUL BASIT  
ADDITIONAL DISTRICT JUDGE-IV, MARDAN



Civil Revision No. 07/CR of 2018

Date of institution: 16.05.2018

Date of decision: 14.12.2018

19/12/18 - J/S

District Education Officer (Male), District Mardan and two others (Petitioners/defendants)

Versus

Akbar Ali son of Shamat Khan r/o Mohallah Zaidkhel Toru Tehsil and District, Mardan (Respondent/plaintiff)

**JUDGMENT**

Through this judgment I shall decide civil revision filed by petitioners/defendants against respondent/plaintiff impugning herein the judgment and order of the learned Civil Judge-XI, Mardan dated: 09.03.2018, whereby, he dismissed the application of petitioners/defendants moved for rejection of plaint of the respondent/plaintiff under Order 7 Rule 11 CPC in civil suit no. 489/1 of 2017.

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Brief facts necessary for disposal of instant revision are that respondent/plaintiff has filed a suit wherein contended that his correct date of birth is 10.04.1961, which is correctly entered in his computerized national identity card and academic record but has been entered wrong by petitioners/defendants in his service record as 10.04.1958. That his date of birth was entered correct in his service record even but later on petitioners/defendants through wrong and illegal manner struck off his true date of birth from service record and entered the wrong instead. That respondent/plaintiff was employed as watchman, Class-IV, with petitioners/defendants & performing his duties honestly in Government Primary School, Shamshad Abad No. 2 Toru District Mardan. That he came to know about wrong entry of his date of birth in service book and payroll on 28.08.2017, where after, he contacted petitioners/defendants for making correction of the

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12/18

(24)

(21)

same but they refused, hence, he prayed for declaration that his correct date of birth is 10.04.1961 and for permanent prohibitory injunction to the effect that petitioners/defendants be restrained to retire or discontinue his service on the basis of alleged wrong date of birth in the service record.

The petitioners/defendants were summoned by the court. They appeared and filed application under Order 7 Rule 11 CPC for rejection of the plaint by asserting that Civil Court lacks the jurisdiction to entertain the suit being barred by law. They alleged that as per Khyber Pakhtunkhwa Esta Code and General Financial Rules the date of birth of a civil servant once recorded in his service documents cannot be changed or altered after initial two years of appointment. He also referred the decision of the apex Supreme Court of Pakistan reported in 1998 SCMR 1494, according to which a civil servant, who has joined a service cannot be allowed to change his date of birth after two years of his joining the service, therefore, prayed for rejection of plaint.

Respondent/plaintiff filed the written reply and alleged that petitioners/defendants have crossed entry of correct date of birth in his service record and illegally entered his wrong date of birth there; therefore, claim of respondent/plaintiff is not of correction of date of birth but correction of record.

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The learned trial court after hearing both the parties dismissed the application of petitioners/defendants, who feeling aggrieved of the decision filed the instant civil revision and by alleging that judgment and order of the learned trial court dated: 09.03.2018 is against the law, facts and result of non-exercise of jurisdiction vested upon the court. They further alleged that suit of respondent/plaintiff is badly hit by law of limitation, while, order of the learned trial court is also non-speaking, therefore, prayed for setting it aside and to reject the plaint by accepting the instant revision.

14/12/2018

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Arguments of learned counsel for the parties heard and record perused.

Going through arguments advanced by learned counsel for parties and record placed on file, it is held that no doubt civil court is the court of ultimate jurisdiction and has vast powers; however, there are certain special laws or Acts, which bars the jurisdiction of a Civil Court and provide a separate forum to file a suit in case any dispute arises related to the special law etc. This is also a general principle known to everyone that special law overrides the general law, therefore, when any dispute relating to special law is arises; the aggrieved person has to follow the law and procedure laid down in the special law etc. As evident from contents of the plaint that respondent/plaintiff is a government servant and working as watchman on Class-IV post with petitioners/defendants, therefore, if he feels that petitioners/defendants have made error in entering his date of birth in his service record wrong, then, he was supposed to approach to the Service Tribunal instead of knocking the door of Civil Court because it is clearly provided under Article 212 of the Constitution of Islamic Republic of Pakistan 1973 that "matters relating to the terms and conditions of persons, who are or have been in the service of Pakistan, including disciplinary matters shall approach the Tribunal established for the purpose". Article 212 of the Constitution is reproduced below as ready reference;

[212. Administrative Courts and Tribunals. (1) Notwithstanding anything herein before contained the appropriate Legislature may by Act <sup>2</sup>[Provide for the establishment of] one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of -

- (a) matters relating to the terms and conditions of persons <sup>3</sup>[who are or have been] in the service of Pakistan, including disciplinary matters;
- (b) matters relating to claims arising from tortious acts of Government, or any person in the service of Pakistan, or of any local or other authority

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any  
 14/12/2018

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23

empowered by law to levy any tax or cess and any servant of such authority acting in the discharge of his duties as such servant; or

- (c) matters relating to the acquisition, administration and disposal of any property which is deemed to be enemy property under any law.
- (2) Notwithstanding anything herein before contained, where any Administrative Court or Tribunal is established under clause (1), no other court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends:

Provided that the provisions of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a Provincial Assembly unless, at the request of that Assembly made in the form of a resolution, Parliament by law extends the provisions to such a Court or Tribunal.

- (3) An appeal to the Supreme Court from a judgment, decree, order or sentence of an Administrative Court or Tribunal shall lie only if the Supreme Court, being satisfied that the case involves a substantial question of law of public importance, grants leave to appeal.]

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19/12/2018

Since, respondent/plaintiff alleged that change of his date of birth by appellants/defendants in his service record and now he seeks correction of the same, which relates to his terms and conditions of the service and respondent being a civil servant is barred to approach the Civil Court under Section 23-B of the Civil Servants Act, 1973, which reads as follow;

[23-B. Jurisdiction Barred: Save as provided under this Act and the Service Tribunal Act, 1974 (Khyber Pakhtunkhwa Act No. I of 1974), or the rules made thereunder, no order made or proceedings taken under this Act, or the rules made thereunder by the Governor or any officer authorized by him shall be called in question in any Court and no injunction shall be granted by any Court in respect of any decision made, or proceedings taken in pursuance of any power conferred by or under this Act or the rules made thereunder.”]

(27)

(24)

As Service Tribunal is constituted or established for the purpose to deal with the service matters and issues relating to terms and conditions of service, therefore, when any issue pertaining to service matter would arise, the aggrieved person has to approach the Service Tribunal for redressal of his grievances because in Section 3 (2) of the Service Tribunal Act, 1974 it is vividly mentioned that "A Tribunal shall have exclusive jurisdiction in respect of matters relating to the terms and conditions of service of civil servants, including disciplinary matters."

If I agree with the contention of learned trial court that the Civil Court has got the jurisdiction, even then, it is clear from record that respondent/plaintiff has joined the service in 2004 and his alleged wrong date of birth was entered in his service record in 2009, then, he was supposed to file the suit within two years of his joining the service, if his date of birth was entered wrong from the very first day, or within two years from the date on which the wrong entry was made in his service book, as is the case of respondent/plaintiff, however, he filed the instant suit after around eight years, which is time barred in terms of service rules as well as the law of limitation, which also avails that respondent/plaintiff has got no cause of action within the meaning of Rule 12-A incorporated in the Civil Servants (Appointment, Promotion & Transfer) Rules, 1973 on 31.07.2000, which reads as follow;

*"12-A. Alteration in the date of birth: The date of birth once recorded at the time of joining government service shall be final and thereafter no alteration in the date of birth of a civil servant shall be permissible."*

Thus, keeping in view my discussion above, I am of the view that the learned trial court not properly addressed the issue of jurisdiction and decided the same in haste mere relying on reason that it is a factual controversy and did not pass a speaking order over jurisdiction issue, therefore, revision is accepted and

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14/12/2018

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Sessions Court Mardar

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judgment and order of learned Civil Judge-XI, Mardan dated: 09.03.2018 is set-aside and it is held that since respondent/plaintiff is a civil servant and his matter relates to terms and conditions of his service, the proper forum for which is the Service Tribunal and the Civil Court lacks jurisdiction to entertain this matter, hence, learned trial court is directed to return the plaint to respondent/plaintiff as per law with an advise to present it before proper forum, if he so wishes, in accordance with law.

Copy of this order be sent to learned Civil Judge-XI, Mardan for the needful and requisitioned record, if any, returned to headquarter concerned. File of this court consigned to the record room after its completion and compilation.

**Announced**  
14.12.2018

*ayy*  
**Abdul Basit**  
Addl. District Judge-IV, Mardan

**CERTIFICATE**

Certified that this judgment consists of six (06) pages, those are signed by me after necessary corrections.

*Certified To Be True Copy*

05 JAN 2019

**Announced**  
14.12.2018

*ayy*  
**Abdul Basit**  
Addl. District Judge-IV, Mardan

Examiner Copying Branch  
Sessions Court Mardan

*ایڈیشنل ڈسٹرک جج ایف ڈی ایم*

Name of Applicant	
Application No	17952
Date of Presentation of Application	20-12-18
Date on which app. returned	05-1-19
Date on which app. pronounced	05-1-19
No. of pages	197
Case Fee deposited at	0
Urgent fee	
signed of order	<i>ayy</i>
Date of Delivery	05/1/19





ایڈوکیٹ: \_\_\_\_\_

بار کونسل ایسوسی ایشن نمبر: Be-15-5360

رابطہ نمبر: 0345 9095245

پشاور بار ایسوسی ایشن، نیسبر پختونخواہ

بعدالت جناب: \_\_\_\_\_

مخاتب: ایڈووکیٹ	دعویٰ: _____
آئیڈیٹی	علت نمبر: _____
بنام	مورخہ: _____
EDO مظہرہ	جرم: _____
	تھانہ: _____

### بابت تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ  
 آن مقام \_\_\_\_\_ کیلئے \_\_\_\_\_، ساہ سہو و سٹو انی راجہ کو کو وکیل مقرر  
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو  
 راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق  
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز  
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی  
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب  
 مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا  
 دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیش مقام دورہ یا حد سے  
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: \_\_\_\_\_ 28/1/19

العبد \_\_\_\_\_ واہ شد \_\_\_\_\_ العبد \_\_\_\_\_

مقام \_\_\_\_\_ شاور \_\_\_\_\_ کے لیے منظور ہے۔

Accepted by \_\_\_\_\_

\_\_\_\_\_

40

BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR

Service Appeal No: 195/2019

Akbar Ali S/O Shamat Khan R/o Mohallah Zaid Khel, Toru Tehsil & District  
Mardan. (Petitioner)

**Versus**

The Director Elementary & Secondary Education, Peshawar & Others  
(Respondents)

**INDEX**

S.NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGES	
1.	Para wise comments along with affidavit		01	03
2.	Copy of Rule <i>ESTA Code</i>	"A"	05	--
3.	Supreme Court Judgment	"B"	06	---
4.	Copy of Service book	"C"	07	---

Respondent

District Education Officer  
(Mald) Mardan

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

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR

Service Appeal No: 195/2019

Akbar Ali S/O Shamat Khan R/o Mohallah Zaid Khel, Toru Tehsil & District  
Mardan. (Petitioner)

**Versus**

The Director Elementary & Secondary Education, Peshawar & Others  
(Respondents)

**Para Wise Comments on Behalf of Respondents No 1 to 3**

Respectfully Sheweth,

**PRELIMINARY OBJECTIONS:**

1. That the appellant has got no cause of action as well as locus standi to file the instant appeal.
2. That the instant appeal is incompetent in its present form, hence liable to be dismissed.
3. That the instant appeal is badly time barred.
4. That the appeal is not maintainable in its present form.
5. That the appellant has not come to this Honorable Tribunal with clean hands.
6. That the appellant is estopped by his own conduct.
7. That the appellant has concealed the material facts from this Honorable tribunal hence liable to be dismissed.
8. That the instant appeal is based on malafide intention, hence liable to be dismissed.
9. That the instant appeal is against the prevailing law and rules.
10. That the appellant has been treated as per law & rules.
11. That as per the Estacode of KPK, the date of birth of civil servant once recorded in service record cannot be change or altered after initial two years of his appointment, as per the reported judgment 1998 SCMR 1494, a civil servant after two years of hi joining his service cannot be allowed to change of his date of birth, hence the appeal is liable to be dismissed.

(Copies of Rule & Supreme Court Judgment are as Annexure A & B)

12. That the Date of Birth of a civil servant once recorded in medical certificate and Service Book cannot be changed under the law.


(Copy of Service book is as Annexure -C)

**FACTS:**

1. Para No 1 is incorrect baseless against facts as, the correct date of birth of the appellant according to his service book is 1958, and the appellant is

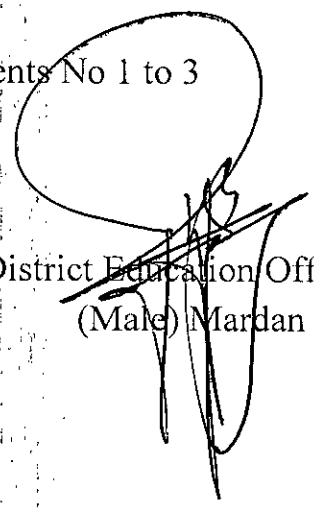
- trying to extent his tenure of service which cannot be allowed under the law, hence denied.
- 2. Para No 2 is incorrect baseless against facts as, the correct date of birth of the appellant is 10-04-1958 and the clerical mistake was corrected by the relevant officer, hence denied.
- 3. Para No 3 pertains to record, hence no comments.
- 4. Para No 4 is incorrect baseless against facts as, the correct date of birth of the appellant according to his service book is 1958, and the appellant is trying to extent his tenure of service which cannot be allowed under the law, hence denied.
- 5. Para No 5 pertains to record, hence no comments.
- 6. Para No 6 pertains to record, hence no comments.
- 7. Para No 7 pertains to record, hence no comments.

It is therefore humbly prayed that in the light of above facts, the appeal may please be dismissed with cost.




Sub Divisional Education Officer  
(Male) Mardan

Respondents No 1 to 3



District Education Officer  
(Male) Mardan



The Director (E & S E)  
Education KPK, Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR

Service Appeal No: 195/2019

Akbar Ali S/O Shamat Khan R/o Mohallah Zaid Khel, Toru Tehsil & District  
Mardan. (Petitioner)


**Versus**

The Director Elementary & Secondary Education, Peshawar & Others  
(Respondents)

**AFFIDAVIT**

I, Mr Sajid Khan Litigation Officer Education Department Mardan do hereby solemnly affirm and declare that the contents of Para Wise Comments submitted on behalf of respondents are true to the best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal,

Deponent

  
Sajid Khan  
16101-6005318-5

## **Change in the recorded date of birth of the civil servants**

I am directed to say that under the existing rules, immediately after his induction into service, every civil servant is required to declare the date of his birth by the Christian era with as far as possible confirmatory/conclusive evidence such as matriculation certificate, municipal birth certificate and so on. This is supplemented by the opinion of the Civil Surgeon/Standing Medical Board. The department after full satisfaction with age and on the basis of medical examination of the new entrant in the department, enter the same in an authentic document i.e. Service Book/History of Service etc. The said document is maintained by the Department/Audit and is always checked periodically.

2. The date of birth of a civil servant as recorded in his service documents remains constantly in his knowledge. This is reiterated in his ACRs and the Seniority List issued by the department from time to time. The preparation of service record of an officer is an official act and according to law, it is presumed to be correct. GFR-116 also provides that the date of birth once recorded cannot be altered except in the case of clerical error, without the previous orders of the Local Administration. Despite this, certain Government Servants are complacent with the state of affairs and sleep over their rights for decades knowing fully about their dates of birth entered in their Service Books etc. It would therefore be too much to accept such a belated claim from a Civil Servant that he was born on a date other than the one entered in his service documents and that the delay in representation was due to ignorance of the alleged erroneous entry. After all, there is always attached a finality to decisions taken by competent authorities.

3. I am, accordingly, directed to request that all concerned may please be informed in clear terms that in future a request for an alteration in the recorded date of birth of a Government servant may only be entertained by the Appointing Authority in the case of officers in BS-17 and above and by the Administrative Department in the case of civil servants in BS-16 and below, after special enquiry and only if the Government servant applies for it within two years from the date of his entry into Government service.

(Authority; No.SOR.II(S&GAD)5(40)/87, dated-15th February, 1989)

## **Criteria/modalities for classifying death/ incapacitation of civil servants in the line of duty for the purpose of compensation.**

### **1. DEFINITIONS**

- (a) Civil Servant. Civil Servant means the same as defined in the Government of NWFP Civil Servants Act, 1973. However, the employees of Federal Government serving in Provincial Government would also be considered civil servants in the above mentioned meaning for the purpose of this letter.

Annex B - (06)

36

1998 S C M R 1494

[Supreme Court of Pakistan]

Present: Nasir Aslam Zahid, Munawar Ahmad Mirza and Abdur Rehman Khan, JJ

Syed IQBAL HAIDER --- Petitioner

Versus

FEDERATION OF PAKISTAN and another---Respondents

Constitutional Petition No. 5 of 1998, decided on 30th April, 1998.

(a) Constitution of Pakistan (1973)----

---Arts. 179 & 184(3)---Constitutional petition before Supreme Court under Art. 184(3) of the Constitution---Retiring age of a Supreme Court Judge---Point raised in the petition was about the date of birth of respondent (Chief Justice of Pakistan) contending that respondent was born in the year 1932 and not 1934 and, thus, could not continue in his office after attaining the age of 65 years--Held, matter in issue was not such which required to be placed before the Full Court for hearing---Interpretation of Art.179 or any other provision of the Constitution was not required.

(b) Age

---Correction of date of birth---Contention that date of birth could not be corrected merely on the basis of an affidavit was misconceived. ---[Affidavit].

(c) Civil service---

--- Age of employee---Application of employee for change in his date of birth--Government employee under the relevant Rules cannot make any application for change in his date of birth after two years of his joining the service--Authenticity of date of birth recorded in the documents, therefore, cannot be challenged belatedly specially beyond the period of two years---Supreme Court desired that such Rule with regard to correction of age should also be applied to judiciary. ---[Age].

Petitioner in person.

Nemo for Respondents.

Ch. Muhammad Farooq, Attorney-General for Pakistan and M.A. Latif, Registrar, Supreme Court of Pakistan on Court Notice.

Date of hearing: 30th April, 1998.

JUDGMENT

NASIR ASLAM ZAHID, J.---We have heard the petitioner, Syed Iqbal Haider, who has appeared

1	2	3	4	5	6	7	8
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	Signature of Government Servant.
ADPTT: AGAINST FIXED PAY CHOWKIDAR @ Rs=2800/PMT							
Fixed Chowkidar Cps, No-2 Shamsbad Abad Pay Centre Sewarigan	Fixed PAY		Rs= 2800/- PMT		Fixed	12/4 2004	اکبر علی
<del>REVISION OF FIXED PAY @ Rs=3100/- PMT FIXED WEF 01-12-04</del>							
-DO-	-DO-		Rs= 3100/- PMT		Fixed	01/12 2004	اکبر علی
<del>REVISION OF FIXED PAY WEF 01-7-05 @ Rs= <del>3100</del> 3500/- PMT</del>							
-DO-	-DO-		Rs= 3500/- PMT	✓	Fixed	01/7 05	اکبر علی
<del>REVISION OF FIXED PAY WEF 01/11/2006 @ Rs= 4000/- PMT</del>							
-DO-	-DO-		Rs= 4000/- PMT	✓	Fixed	01/11 06	اکبر علی
ENTRIES REVISED FIXED PAY POST CONVERTED TO CONTRACT IN BPS-I WIDE GOVT. OF N.W.F.P. FINANCE NO 301/RE/11-22/2008-9 Dated 30-7-08. @ Rs= 1870-55-5520.							
Chowkidar Post Cps, No 2 Shamsbad Abad (Mardon)	Contract		Rs= 1870/- PMT	✓		12/4 04	اکبر علی
-DO-	-DO-		Rs= 1925/- PMT	✓		01/12 04	اکبر علی



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

1. Name: AKBAR ALI

2. Race: AFGHAN

3. Residence: VILLAGE 9 P.O. TERU TEH/DISTT: MARDAN.

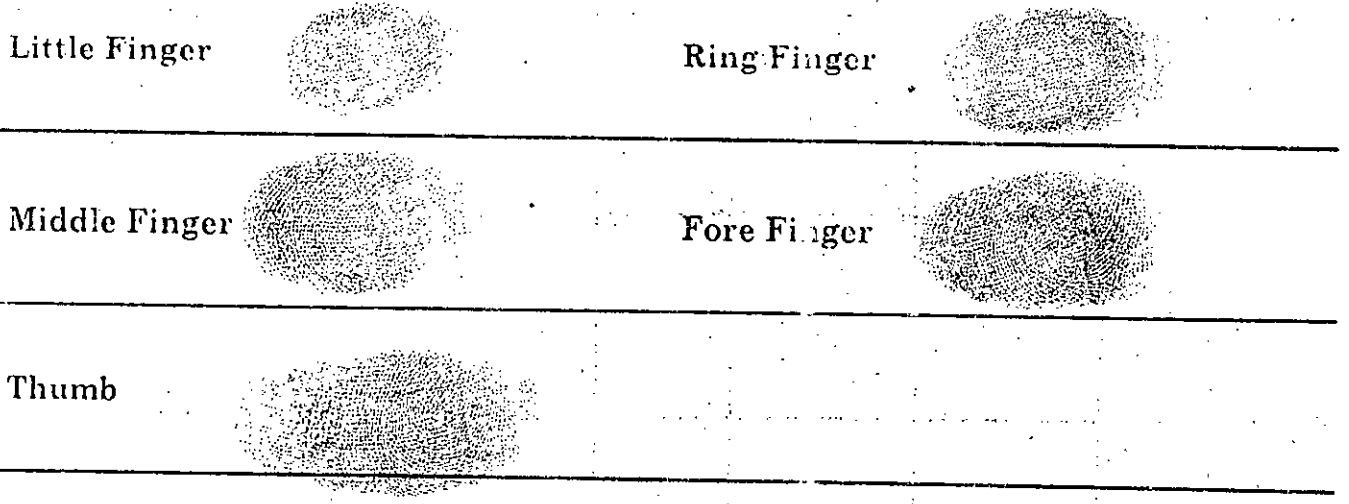
4. Father's name and residence: SHANAT KHAN. -DO-

5. Date of birth by Christian era as ~~(TENTH APRIL NINETEEN FIFTY ONE)~~ 1958 ✓  
nearly as can be ascertained: TENTH APRIL NINETEEN FIFTY EIGHT  
10-4-1958 ✓

6. Exact height by measurement: 5-5  
D/birth attested 1958 ✓  
29/1/09

7. Personal marks for identification: MOLE ON THROAT.

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



9. Signature of Government Servant: اکبر علی ✓

10. Signature and designation of the Head of the Office, or other Attesting Officer.  
[Signature]  
29/1/09  
S.D.O. (H) P.T.O.  
MARDAN.

APPOINTMENT ORDER

Consequent upon the recommendations of land donor: Head of Institutions and approved by the District Coordination Officer Mardan, the competent authority is pleased to appoint

Mr. Akbar Ali Shauit Khan ( L/D. )

resident of Shamshad Abad against Chowkidar Post  
at Rs.2800/- Per Month fixed on contract basis at  
GPS Shamshad Abad. for the period of

three years contract on the terms and conditions given below:

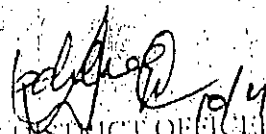
Terms & Condition

1. His appointment is made purely on contract basis for 03 years only and is liable to termination at any time with out assigning any notice or reason.
2. He is allowed to draw fix pay in which his appointment order issued from this office.
3. His contract period can be renewed after 03 years if his performance is found excellent.
4. He is required to produce his health and age Certificate from the Medical Superintendent DHO Hospital Mardan.
5. He is not allowed to take over charge of his post if his age is less than 18 year or more than 45 years on the date of taking over charge.
6. He is required to sign contract agreement forms with the Education Department before taking over charge.
7. No L.A. / D.A. is allowed.
8. The Service Rules Frame by the Government from time to time will govern him.

CHAH FAZAL RABBI KHAN  
EXECUTIVE DISTRICT OFFICER  
SCHOOLS & LITERACY MARDAN

Final No. 3513/19 Deceased Sons Quota File: AE IV Dated 10/4 2004.

- Copy forwarded for information & necessary action to the :-
1. PS to Minister Education NWFP Peshawar.
  2. P.A to Secretary Schools & Literacy Department NWFP Peshawar.
  3. P.A to Director Schools & Literacy Department NWFP Peshawar.
  4. P.A to Zilla Nazim District Council Mardan.
  5. P.A to District Coordination Officer Mardan.
  6. District Accounts Officer Mardan.
  7. District Officer (Male / Female) Schools & Literacy Mardan.
  8. Deputy District Officer (Male / Female) Tehsil Takht Bhai & Mardan.
  9. Municipal / HM concerned.
  10. Candidates concerned.

  
EXECUTIVE DISTRICT OFFICER  
SCHOOLS & LITERACY MARDAN.

مخاتب المراجع

PLD 2016 Supreme Court 872

Present: Anwar Zaheer Jamali, C.J., Mian Saqib Nisar, Ejaz Afzal Khan, Mushir Alam and Manzoor Ahmad Malik, JJ

**KHUSHI MUHAMMAD through L.Rs. and others---Appellants**

Versus

**Mst. FAZAL BIBI and others---Respondents**

Civil Appeals Nos. 2564/2001, 2658/2006, 1670/2008, 60-L/2013, 280-L/2013, 60/2014, 965/2014 and 218/2015, decided on 16th August, 2016.

(On appeal from the judgment dated 25-6-2001/27-8-2002/ 2-6-2008/17-12-2012/23-10-2013 /7-4-2014/3-10-2014 of the Lahore High Court/Peshawar High Court, Peshawar/Lahore High Court, Multan Bench/Peshawar High Court, D.I. Khan Bench/Lahore High Court Lahore/Peshawar High Court, D.I. Khan Bench passed in C.R. No.1611/2000, R.F.A. No.29/1996, R.F.A. No.230/2005, R.S.A. No.4/1996, R.F.A. No. 185/2011, R.F.A. No. 4/2014 and C.R. No.124-D/2014).

**Per Mian Saqib Nisar, J; Anwar Zaheer Jamali, C J, Mushir Alam and Manzoor Ahmad Malik, JJ agreeing; Ejaz Afzal Khan, J disagreeing only with the finding that "principle of actus curiae neminem gravabit had no application where a litigant approached a wrong forum and such appeal was entertained by the staff of the court or by the court or even admitted to regular hearing."**

**(a) Limitation Act (IX of 1908) ---**

---Ss. 3 & 5 & Preamble---Law of limitation, interpretation of---Salient features of interpretation of the law of limitation listed.

Following are the salient features which have been settled by the superior Courts for the purposes of interpretation of the law of limitation;

(i) The law of limitation was a statute of repose, designed to quieten title and to bar stale and water-logged disputes and was to be strictly complied with. Statutes of limitation by their very nature were strict and inflexible. Law of limitation does not confer a right; it only regulates the rights of the parties. Such a regulatory enactment could not be allowed to extinguish vested rights or curtail remedies, unless all the conditions for extinguishment of rights and curtailment of remedies were fully complied with in letter and spirit. There was no scope in law of limitation for any equitable or ethical construction. Justice, equity and good conscience did not override the law of limitation. Object of law of limitation was to prevent stale demands and so it ought to be construed strictly;

2016 PLC (CS) 195; 2010 PLC (Labour) 104; 2007 SCMR 1446; 2003 YLR 1837; PLD 2004 AJ&K 38; PLD 2005 Lah 129; PLD 1958 (WP) Lah 936; PLD 2005 Lah 129; 2013 CLC 403; 2003 YLR 1837 and PLD 1962 (WP) Dacca 381 ref

(ii) The hurdles of limitation could not be crossed under the guise of any hardships or imagined inherent discretionary jurisdiction of the court. Ignorance, negligence, mistake or hardship did not save limitation, nor does poverty of the parties;

AIR 1940 Rang 276 (FB); PLD 2003 SC 628; 2002 PLC (CS) 526; 2002 PLC (CS) 474; PLD 2002 SC 101; 1998 PLC (CS) 1007; 1988 SCMR 1354 and 1987 PLC (CS) 200 ref.

(iii) It was salutary to construe exceptions or exemptions to a provision in a statute of limitation rather liberally while a strict construction was enjoined as regards the main provision. For when such a provision was set up as a defence to an action, it had to be clearly seen if the case came strictly within the ambit of the provision;

25 Cal 496, 503 ref.

(iv) There was absolutely no room for the exercise of any imagined judicial discretion vis-à-vis interpretation of a provision, whatever hardship may result from following strictly the statutory provision. There was no scope for any equity. The court could not claim any special inherent equity jurisdiction;

AIR 1935 All 323 ref.

(v) Statute of limitation instead of being viewed in an unfavourable light, as an unjust and discreditable defence, should receive such support from courts of justice as would have made it what it was intended to be, a statute of repose. Plea of limitation could not be deemed as an unjust or discreditable defence. There was nothing morally wrong and there was no disparagement to the party pleading it. It was not a mere technical plea as it was based on sound public policy and no one should be deprived of the right he had gained by the law. It was indeed often a righteous defence. The court had to only see if the defence was good in law and not if it was moral or conscientious;

48 Cal 110 (PC); AIR 1933 PC 230; 54 All 1067 (PC); AIR 1935 All 323 and 56 Cal 575 ref.

(vi) The intention of the law of limitation was not to give a right where there was not one, but to interpose a bar after a certain period to a suit to enforce an existing right.

21 Cal 8, 18 (PC) ref.

(vii) The law of limitation was an artificial mode conceived to terminate justiciable disputes. It therefore had to be construed strictly with a leaning to benefit the suitor;

AIR 1966 Pat 1 (FB) ref.

(viii) Reading of the Preamble and Section 5 of the Limitation Act, 1908 showed that the fundamental principle was to induce the claimants to be prompt in claiming rights. Unexplained delay or laches on the part of those who were expected to be aware and conscious of the legal position and who had facilities for proper legal assistance could hardly be encouraged or countenanced.

AIR 1966 Raj 213 ref.

**(b) Limitation Act (IX of 1908)---**

---S. 14---Appeal filed before wrong forum---Exclusion of time of proceeding bona fide in Court without jurisdiction---Application of S.14 of the Limitation Act, 1908 was restricted to suits only and had no direct and independent application to cases where an appeal had been filed before a

wrong forum.

From the word the "suit" which appeared in section 14 of the Limitation Act, 1908, it was abundantly clear that the said section applied to suits and there was no mention of appeal or revision etc. Section 14 of the Limitation Act, 1908 was exclusively and solely restricted to suits and suits alone. If it was taken to apply to appeals also, this would tantamount to reading into the section the word "appeal" which did not appear in the said section and such a reading would be contrary to the definition of the word "suit" in the statute. Express provisions of law could not be defeated by resorting to any rule of interpretation which would have the convoluted effect of rendering an appeal a continuation of the suit for the purposes of attracting the application of section 14 of the Limitation Act, 1908.

**(c) Interpretation of statutes ---**

---Rule of casus omissus---Scope --- In terms of the said rule the courts were not entitled to read words into an Act of Parliament unless clear reasons for it were found within the four corners of the Act itself.

(1910) 79 LJKB 955 and AIR 1980 SC 485 and Dr. Syed Sibtain Raza Naqvi v. Hydrocarbon Development and others 2012 SCMR 377 ref.

**(d) Limitation Act (IX of 1908)---**

---Ss. 5 & 14---Appeal filed before wrong forum---Condonation of delay---Sufficient cause--- Whether the principles of S.14 of the Limitation Act, 1908 could be resorted to for the purposes of determining sufficient cause under S.5 of the said Act---For the purposes of determining whether in a given case sufficient cause had been made out for condonation of delay when an appeal had been filed before a wrong forum, there did not seem to be any bar in law that the conditions or the limitation prescribed by S.14 could not be looked into---However, the conditions laid down in S.14 must be satisfied and established on the record---Term 'sufficient cause' had to be given the widest possible amplitude and in so doing the conditions/principles of S.14 of the Limitation Act, 1908 could not be left out.

For the purposes of determining whether in a given case sufficient cause had been made out for condonation of delay when an appeal had been filed before a wrong forum, no hard and fast rule could be laid down; there could not and should not be a simple test for determining the same. The establishing of sufficient cause was not amenable to mathematical formulae. Courts were called upon in individual cases to apply their judicial faculties to the facts placed before them and weigh the same in order to decide whether that ephemeral threshold had been crossed which meant that the appellant had convincingly established sufficient cause for condonation of delay. It would be unwise and unadvisable to state for all times to come that what may or may not constitute a sufficient cause; each case ought to be decided on its own merits vis-à-vis the plea of sufficient cause.

For the purposes of determining whether in a given case sufficient cause had been made out when an appeal had been filed before a wrong forum, there did not seem to be any bar in law that the conditions or the limitation prescribed by section 14 of the Limitation Act, 1908 could not be looked into. However the conditions laid down in section 14 must be satisfied and established on the record.

Term sufficient cause had to be given the widest possible amplitude and in so doing the conditions/principles of section 14 of the Limitation Act, 1908 could not be left out.

**(e) Limitation Act (IX of 1908)---**

---Ss. 5 & 14---Institution or pendency of an appeal before a wrong forum i.e. one lacking jurisdiction, on the wrong advice of the counsel---Condonation of delay---Good faith and due diligence of appellant---Mistaken advice of counsel did not automatically and per se constitute a sufficient cause for condonation of delay as a matter of course and routine, rather, the appellant had to specify the reasons with clarity and precision which prevailed with the counsel and led him to commit the mistake and such application must also be supported by an affidavit---Mere incompetence of the counsel, inadvertence, negligence or ignorance of law attributable to him and/or overlooking of the record by the counsel could not constitute sufficient cause ipso facto, but the factor(s) which misled the legal counsel, including any ambiguity in the law, causing him to file the appeal before the wrong forum must be indicated---Appellant had to establish that due to some honest, bona fide and genuine ambiguity in the law or in fact, a party or his counsel was led astray in terms of approaching a wrong forum.

Question as to whether the institution and the pendency of the appeal on the wrong advice of the counsel before a wrong forum i.e. one lacking jurisdiction constituted a sufficient cause for condonation of delay in terms of section 5 of the Limitation Act, 1908, it could neither be held that condonation was absolutely ruled out in such a situation nor that the appellant shall be entitled to condonation as a matter of course and right, rather the Court must look into the facts and circumstances of each case as to whether sufficient cause had been made out.

Person seeking condonation of delay must establish sufficient cause. Time spent pursuing an appeal before a wrong forum, in good faith and with due diligence ought to constitute sufficient cause for condonation of delay. But the act of approaching a wrong forum must be accounted for: it should be established that due to some honest, bona fide and genuine ambiguity in the law or in fact, a party or his counsel was led astray in terms of approaching a wrong forum. Mere incompetence of the counsel, inadvertence, negligence or ignorance of law attributable to him and/or overlooking of the record by the counsel could not constitute sufficient cause ipso facto, but the factor(s) which misled the legal counsel, including any ambiguity in the law, causing him to file the appeal before the wrong forum must be indicated. Mere wrong advice of counsel was not an adequate ground per se to constitute sufficient cause because if such rule was accepted, the rule that ignorance of law was no excuse would stand violated. Besides, the factors which caused ambiguity and misled the appellant (or his counsel as the case may be) had to be stated with clarity and precision in the application for condonation of delay and proved on the record.

Poor advice by a counsel may well cause hardship to a litigant and compromise his ability to seek redress in law. But hardship caused to a person on account of poor advice of counsel did not constitute a sufficient cause for condonation of delay per se. Courts must insist that applications for condonation of delay must specify with particularity as to what factors misled the counsel and gave him cause to form his unfortunate opinion with respect to the (wrong) forum adopted and thereafter the said factors must be proved on record. It is then for the court to decide if, on the basis of such factors, sufficient cause had been made out or not.

There may be instances where there was a different period of limitation applicable to different fora of appeal, and an appellant whose appeal was time barred before an appropriate forum may instead deliberately approach another forum (knowing it to be the wrong forum) in order to lay claim that time spent before a wrong forum ought to be condoned on account of the fact that appellant had approached it (forum) on the advice of counsel. All Courts must keep such considerations in mind when deciding whether or not delay caused by virtue of alleged wrong advice by counsel should be condoned.

**(f) Administration of justice ---**

--'Actus curiae neminem gravabit' ("an act of the court shall prejudice no man"), principle of---  
 Scope---[Per Mian Saqib Nisar, J]: Said principle was founded upon justice and good sense, and  
 afforded a safe and certain guide for the administration of law and justice; it was meant to promote  
 and ensure that the ends of justice were met; it prescribed that no harm and injury to the rights and  
 the interest of the litigants before the court shall be caused by the act or omission of the court---  
 Said principle of administration of justice was meant for the benefit of both sides of litigants  
 before the court and it would be illogical to conceive that the rule would or should be applied for  
 the advantage of one litigant to the prejudice and disadvantage of the other---Court had the duty to  
 act as a neutral arbiter between the parties and to provide justice to them through strict adherence  
 to law and keeping in mind the facts of each case---[Per Ejaz Afzal Khan, J]: Principle of "actus  
 curiae neminem gravabit" had been founded upon the principles of justice and good conscience---  
 Rationale behind said principle was to undo the wrong or prejudice caused to a party by the act of  
 the court---Said principle was applied to undo an injury or injustice caused to a party by an act of  
 the court or by the laches or mistakes of its officers; it was also applied to restore what had been  
 delayed or denied to a party by the act of the court or negligence of the persons manning and  
 managing it.

Robert Mitchell. v. A. M. Overman (103 U.S. 64-65) ref.

**(g) Limitation Act (IX of 1908)---**

----Ss. 5 & 14---Appeal entertained by the staff of the court or the court itself which had no  
 pecuniary jurisdiction---Appeal ultimately returned to the appellant or dismissed---Whether such  
 appellant was protected from the bar of limitation and/or it constituted a sufficient cause for the  
 condonation of delay---'Actus curiae neminem gravabit' ("an act of the court shall prejudice no  
 man"), principle of---Applicability---Per Mian Saqib Nisar, J (Majority view): Principle of actus  
 curiae neminem gravabit had no application where a litigant approached a wrong forum and such  
 appeal was entertained by the staff of the court or by the court or even admitted to regular  
 hearing---No condonation of delay could thus be availed by the appellant on the basis of said  
 principle---Per Ejaz Afzal Khan, J (Minority view): If mistaken view of a counsel in filing an  
 appeal or suit before the wrong forum could constitute a sufficient cause for the condonation of  
 delay, it was not understandable why the same should not apply to a mistaken view of the court  
 entertaining the appeal or the suit---Treating the two situations differently simply because one  
 found expression in the act of the counsel and the other found expression in the act of the court  
 would be unjust, unfair and unreasonable---Latter situation i.e. mistaken view of the court in  
 entertaining the appeal or the suit deserved all the more allowance firstly because the court  
 entertaining the appeal or the suit did not care to know that it laid outside its jurisdiction; secondly  
 because it sat over it for months instead of returning it for being presented in the court of  
 competent jurisdiction and thirdly because the appellant or the plaintiff went out of limitation on  
 account of the said act of the Court---Excluding the principle of "actus curiae neminem gravabit"  
 from the purview of Ss. 5 & 14 of the Limitation Act, 1908 would amount to excluding a vital part  
 of the jurisprudence which had grown over centuries and earned recognition of the courts---  
 Appellants going out of limitation on account of the act of the court were entitled to extension of  
 time---His Lordship Ejaz Afzal Khan, J observed that the Clerk of the court while receiving appeal  
 in the office and the District Judge hearing an appeal in motion shall ensure that it was presented in  
 a competent forum and in case it was otherwise he shall immediately return it for being presented  
 in the court of competent jurisdiction.

Consolidated Engineering Enterprises. v. Principal Secretary, Irrigation Department and  
 others (2008) 7 SCC 167; J. Kumaradasan Nair and another v. IRIC Sohan and others AIR 2009  
 SC 1333; Rodger. v. The Comptoir d' Escompte de Paris (1871) 3 P.C. 465; Jai Berham and others  
 v. Kedar Nath Marwari and others AIR 1922 PC 269; East Suffolk Rivers Catchment Board v.

Kent and another 1941 AC 74; Pulteney v. Warren (1801) 6 Ves.73, 92; Parker v. Ellis 362 U.S. 574; Sough Eastern Coalfields, Ltd. v. State of M. P. and others AIR 2003 SC 4482; Amarjeet Singh and others v. Devi Ratan and others AIR 2010 SC 3676; Hidayatullah v. Murad A. Khan PLD 1972 SC 69; Hari Ram v. Akbar Hussain ILR 29 All. 749; Rashad Ehsan and others v. Bashir Ahmad and another PLD 1989 SC 146; Sherin and 4 others v. Fazal Muhammad and 4 others 1995 SCMR 584; Syed Haji Abdul Wahid and another v. Syed Sirjuddin 1998 SCMR 2296; Karachi Electric Supply Corporation Ltd. v. Lawari and 4 others PLD 2000 SC 94 and Mst. Bas Khana and others v. Muhammad Raees Khan and others PLD 2005 Pesh. 214 ref.

### **Per Mian Saqib Nisar, J**

#### **(h) Limitation Act (IX of 1908)---**

---Ss. 3 & 5---Discretion exercised by the courts below in condoning delay---Interference by higher forum---Principles---Discretion exercised by a court below was not open to interference by a higher court unless it had been exercised arbitrarily---In the exercise of its discretionary power the court (below) was not empowered to act upon whim and caprice, rather the discretion of the court was circumscribed by the law, recognized norms of justice, fairplay, equity, logic, rationality and reasonableness---Where the court (below) had passed an order in exercise of its discretion by condoning the delay, on the basis of sufficient cause which had been made out, it did not behove a superior court to interfere in the matter---However where the exercise of discretion was unbridled, arbitrary and perverse, it did not render it immune to the scrutiny and correction by the superior court---Where no sufficient cause on record had been made out yet the discretion for the condonation of delay was exercised subjectively and whimsically (by the lower court) it was the duty of the superior court to rectify the defect in the exercise of discretion---Such duty was duly mandated by the provisions of S.3 of the Limitation Act, 1908.

Muhammad Bashir v. Province of Punjab through Collector of District Gujrat and others 2003 SCMR 83 and The Province of East Pakistan v. Muhammad Hossain Mia PLD 1965 SC 1 ref.

#### **(i) Punjab Pre-emption Act (I of 1913) [since repealed]**

---S. 21---Limitation Act (IX of 1908), Ss. 5 & 14---Suit for pre-emption---Appeal filed by counsel before the wrong forum i.e. one lacking pecuniary jurisdiction---Whether lack of pecuniary jurisdiction by court sufficient cause for condonation of delay---No reason existed for the counsel of the appellant (pre-emptor) whilst filing the appeal, to be misled by any fact or the law because the jurisdictional value was clearly mentioned in the plaint by the pre-emptor---Such value was also clearly reflected in the decree passed by the Trial Court, whereby the suit of the pre-emptor was dismissed---Appeal should thus have not been filed before the District Court, but before the High Court, as at the relevant point of time, it was the High Court which had the pecuniary jurisdiction to hear the appeal on account of the jurisdictional value fixed in the plaint and decree sheet---Record showed that an objection was raised by the vendees/defendants about the incorrect valuation and that was the most opportune moment for the pre-emptor having been put to notice about his so-called inadvertent incorrect valuation to ratify the said mistake but instead the pre-emptor joined the issue---No attempt was ever made by the pre-emptor during the course of trial to correct the valuation by seeking an amendment in the plaint---Trial Court retained the value of the suit filed by the pre-emptor, which valuation squarely and duly appeared in the decree sheet; it was thus on the basis of the valuation of the suit fixed by the pre-emptor in the plaint itself and reflected in the decree which had to determine the forum of appeal---At the time of passing the decree there was no ambiguity which could mislead the pre-emptor's counsel into filing the appeal before the District Court---Inadvertence, negligence, mistake simpliciter (albeit bona fide) etc. of the counsel did not constitute a sufficient cause for condonation of delay---Pre-emptor



had not been able to make out a case beyond mere inadvertence---In the present case, condonation of delay had been granted to the pre-emptor by both the courts below on the basis of arbitrary and whimsical reasons---Such exercise of discretion being against settled principles could always be interfered with---Supreme Court dismissed the appeal of the pre-emptor before the District Court for being barred by time.

**(j) Specific Relief Act (I of 1877)---**

---Ss. 8 & 42---Limitation Act (IX of 1908), Ss. 5 & 14 --- Suit for declaration and possession--- Appeal filed by counsel before the wrong forum i.e. one lacking pecuniary jurisdiction---Whether sufficient cause for condonation of delay---Contention of appellant that due to the inadvertent mistake of his counsel the appeal had been filed before the District Court (wrong forum) instead of the High Court---Validity---Such mistaken advice of a counsel, even if unintentional, simpliciter did not constitute a sufficient cause in terms of S. 5 of the Limitation Act, 1908, instead there had to be cogent reasons, clearly spelt out and proved on the record, for such purpose---Mere pendency of an appeal before the wrong forum especially when no sufficient cause had been made out shall not be a ground per se or simpliciter for condonation of delay---Application for condonation of delay filed in the present case contained a mere narration of the facts leading up to the filing of the appeal before the wrong forum (District Court), and there were no plausible reasons or justifications given for the filing of such appeal before the wrong forum, apart from a feeble assertion that "the delay for filing the Regular First Appeal was not intentional" on the part of the appellant---Besides case record showed that the memorandum of appeal was ordered to be returned on 23.6.1994 but the appellant never approached the District Court (wrong forum) for receiving the same within reasonable time rather, after considerable lapse of time of about 18 months, it was received on 2.1.1996---No explanation was provided for such delay, i.e. 18 months and 10 days---Appellant had never claimed that after the order of return of the memorandum of appeal he approached the District Court (wrong forum) promptly and it was the (District) Court which delayed the return of the memorandum of appeal ---No sufficient cause for delay in filing the appeal had been made out in the present case---Appeal was dismissed accordingly.

**(k) Limitation Act (IX of 1908) ---**

---Ss. 5 & 14---Appeal, filing of---Condonation of delay---Sufficient cause---Appellant correctly filing appeal before the High Court---High Court returning the appeal and compelling appellant to file his appeal before the District Court (wrong forum), which under law had no jurisdiction---Such order of the High Court was bad in law---Appellant was a victim of an act of the court, which was sufficient cause for condoning delay in filing the appeal.

Pre-emptor, in the present case, had valued the suit property at Rs.500,000 in the plaint and specifically mentioned the said amount as the value of the suit for the purposes of court fee and pecuniary jurisdiction. Such valuation was categorically denied by the vendee through her written statement asserting it to be Rs.2,500,000. In light of such divergent pleas the Trial Court framed an issue in that "What is the market value of the suit property?". On the said issue Trial Court fixed Rs.25,00,000/- as market value of the suit property. Keeping in view such finding of the trial court, which determination was duly reflected in the decree sheet as well, the vendee (appellant) filed an appeal before the High Court, instead of the District Court. High Court ordered return of appeal for filing the same before the proper forum on the basis that valuation of suit for the purpose of court fee and jurisdiction was given as Rs.500,000 in the plaint.

Vendee was justified in considering that the value of the suit for the purposes of jurisdiction had been changed/modified (from Rs.500,000 to Rs.25,00,000) by the trial court, thus leading him to prefer an appeal before the High Court. High Court remained oblivious that in a suit for pre-emption of a house (urban property) the value of the suit for the purposes of jurisdiction was the

sale consideration of the suit property; thus as per the finding of the trial court, when it was held that the sale consideration was Rs.2,500,000/- this modified the jurisdictional value automatically.

The market value of the suit property at Rs.2,500,000/- had been clearly indicated in the decree sheet prepared by the trial court, thus for all intents and purposes the said amount became the changed value for the purposes of jurisdiction of the forum of appeal. Vendee had rightly filed the appeal before the High Court and the order of the High Court returning the appeal was bad in law. In such manner the vendee had been compelled to file his appeal before the District Court (wrong forum) which had no jurisdiction on account of the increase in the sale price of the property by the trial court. Vendee was a victim of the act of the court which was sufficient cause for condonation of delay in filing his appeal.

**(I) Interpretation of statutes--**

---Law of limitation---Salient features of interpretation of law of limitation enumerated.

Raja Muhammad Ibrahim Satti, Senior Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Appellant (in C.A. No.2564 of 2001).

Malik Muhammad Qayyum, Senior Advocate Supreme Court, Mian Hamid Farooq, Advocate Supreme Court and Syed Rifaqat Hussain Shah, Advocate-on-Record for Respondents.

Khurram Raza Chaudhry, Advocate Supreme Court for Appellant (in C.A.No.2658 of 2006).

Nemo for Respondent No.12 (in C.A.No.2658 of 2006).

Waqar Ahmed Sheikh, Advocate Supreme Court, Gulzar Hussain, Asstt. Director (Hort.) PHA and Muhammad Tariq Nazir, Asstt. Law, PHA for Respondent No.16 (in C.A.No.2658 of 2006).

L.Rs. of Respondents Nos. 1, 10 and 11: Ex parte.

L.Rs. of Respondents Nos. 2-9, 13-15: Ex parte.

Mian Muhibullah Kakakhel, Senior Advocate Supreme Court for Appellant (in C.A.No.1670 of 2008).

Abdul Sattar Khan, Advocate Supreme Court for Respondents (in C.A.No.1670 of 2008).

Ch. Mushtaq Ahmed Khan, Senior Advocate Supreme Court for Appellant ((in C.A.No.60-L of 2013).

Ch. Nusrat Javed Bajwa, Advocate Supreme Court for Respondent(s) (in C.A.No.60-L of 2013). (Resp. Nos. 1-3(i-vi), 4(A-D), 7(iv-viii), 10, 19, 24, 48, 54(A-C), 55, 56(ii-v), 57-65).

Zahid Hussain Khan, Advocate Supreme Court for Respondent No.7(i-iii).

Ch. Nusrat Jabved Bajwa; Advocate Supreme Court for Appellant (in C.A.No.280-L of 2013).

good faith and act of the Court held as under :-

"In the aforesaid admitted facts and circumstances, we are of the view that it is not a case where the appeal had been filed by the appellant before the District Judge only on account of mistaken advice of the counsel. Here the act and conduct of the District Judge and its office in entertaining the appeals on both occasions i.e. in the earlier round when the appeal was filed by the respondents and then when the appeal was filed by the appellant and District Judge deciding the appeals on both occasions on merits and not noting or raising the question of maintainability, and respondents on both occasions, are also factors which led the appellant in filing the appeal before the District Judge and pursuing the same there. In our view taking all the above, facts and circumstances together, a case of sufficient cause as required in section 5 of the Limitation Act had been made out and the appeal filed by the appellant before the High Court was not liable to be rejected on the ground of limitation."

19. In the case of Mst. Bas Khana and others v. Muhammad Raees Khan and others (PLD 2005 Peshawar 214) a Division Bench of the Peshawar High Court in an identical situation held as under:-

"Assuming for a while that the appellants did not act with due diligence by prosecuting their remedy in a wrong forum, could be put on the right track by the learned District Judge, the day the memorandum of appeal was presented before him. This is what preliminary hearing stands for. In any case when it was entertained and even admitted by the learned Judge without adverting to its competency on account of his pecuniary jurisdiction, all the time so consumed from its entertainment to its return in his Court, cannot be debited in the account of the appellants, and thus they cannot be allowed to suffer for the act of the Court. Had it been returned on the first date of hearing the appellants could have presented it in this Court well within time. Since the time was consumed due to the act of the Court, it will certainly constitute a sufficient cause for condonation of delay as according to the principle enshrined in the maxim *actus curiae neminem gravabit*, 'an act of the Court shall prejudice none'."

The Bench while parting with the judgment observed as under:-

"While parting with this judgment we will direct the Registrar of this Court to circulate a copy of this judgment to all the Courts of the learned District and Additional District Judges and the Clerks of the Court with the remarks that they should before entertaining any appeal ensure that it is within their pecuniary jurisdiction."

20. It thus follows that the maxim *actus curiae neminem gravabit* is the most vital part of our jurisprudence. Excluding it from the purview of sections 5 and 14 of the Act would amount to excluding the most vital part of the jurisprudence which has grown over the centuries and earned recognition of the Courts ever since then. I, therefore, hold that the appellants going out of limitation on account of the act of the Court are entitled to extension of time. Their appeals thus stand decided accordingly. However, it is directed that henceforth the Clerk of the Court while receiving appeal in the office and the learned District Judge hearing appeal in motion shall ensure that it is presented in a competent forum and in case it is otherwise he shall immediately return it for being presented in the Court of competent jurisdiction. Order of this Court be circulated to all the District Judges and the Clerks of Court for doing the needful.

Sd.

Ejaz Afzal Khan, J

**ORDER OF THE BENCH**

With the majority decision of four to one the result of the appeals is recorded in paragraph No.60 (supra) of the majority judgment.

Sd.  
Anwar Zaheer Jamali, CJ

Sd.  
Mian Saqib Nisar, J

Sd.  
Ejaz Afzal Khan, J

Sd.  
Mushir Alam, J

Sd.  
Manzoor Ahmad Malik, J

Order accordingly.

MWA/K-5/S

MEDICAL CERTIFICATE

Name of Official: Akbar Ali  
 Caste or race: Muslim  
 Father's name: S. A. M. Khan  
 Residence: T. C. U. Mardani  
 Date of birth: 1958  
 Exact height by measurement: 5-5  
 Personal mark of identification: Mole on throat  
 Signature of the Official: \_\_\_\_\_  
 Signature of head of office: \_\_\_\_\_

Seal of Office

I do hereby certify that I have examined Mr. Akbar Ali candidate for employment in the Office of the E.D.O. (S&D) M.D. and can not discover that he had any disease communicable or other constitutional affection or bodily infirmity except vision corrected with glasses.

I do not consider this as disqualification for employment in the office of the AS Chowkiala his age according to his own statement 46 year and by appearance about Forty six year.

**D.D.O (S & D)**  
**M. S. Mardani**

LEFT HAND THUMB AND FINGER IMPRESSIONS

09.12/4/04

Medical Superintendent,  
 Civil Hospital

*[Handwritten signature]*

Entries in this page should be renewed or re-attested at least every five years and the signature to lines 10 should be dated.

AKBAR ALI ✓

AFGHAN

Residence: VILLAGE of P.O. TERU TEH/DISTT: MARRDAN

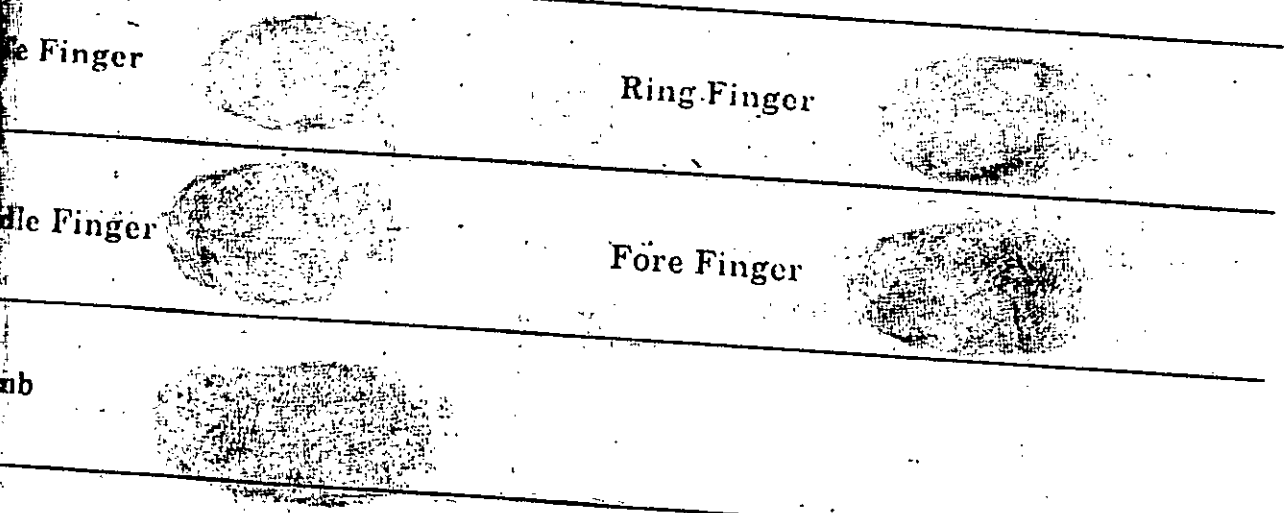
Owner's name and residence: SHANIAT KHAN. -DO- ✓

Date of birth by Christian era as (TENTH APRIL 1958) 1958 ✓  
as can be ascertained: TENTH APRIL 1958 ✓  
10-4-1958 ✓

Net height by measurement: 5-5 ✓  
D/birth attested 1958 ✓  
29/1/09 ✓

Personal marks for identification: MOLE ON THROAT.

Hand thumb and finger impression (Non-Gazetted) officer:



Signature of Government Servant: [Signature] ✓

Signature and designation of the Officer of the Office, or other Attesting Officer: [Signature] ✓  
29/1/09  
MARRDAN

MEDICAL CERTIFICATE

Name of Official: Akbar Ali  
 Caste or race: Muslim  
 Father's name: S. M. Khe  
 Residence: Taru Marda  
 Date of birth: 1958  
 Exact height by measurement: 5-5  
 Personal mark of identification: Mole on throat  
 Signature of the Official: \_\_\_\_\_  
 Signature of head of office: \_\_\_\_\_  
 Seal of Office: \_\_\_\_\_

I do hereby certify that I have examined Mr. Akbar Ali candidate for employment in the Office of the E.D.O. (S & D) M.D. and can not discover that he has any disease communicable or other constitutional affection or bodily infirmity except vision corrected with glasses.

I do not consider this as disqualification for employment in the office of the AS Chowkiala his age according to his own statement 46 year and by appearance about Forty six year.

**D.D.O (S & D)**  
**Mole Mardani**

LEFT HAND THUMB AND FINGER IMPRESSIONS

07 12/4/04

Medical Superintendent  
 Civil Hospital  
[Signature]

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE**

**TRIBUNAL, PESHAWAR.**

C.M. No. \_\_\_\_\_/2021

In

Service Appeal No. 195/2019

Akbar Ali.....(Appellant)

**VERSUS**

EDO & others.....(Respondents)

**I N D E X**

S.No	Description of Documents	Annex	Pages
1.	Application		1-2
2.	Affidavit		3
3.	Copies of medical certificates		4-17

Applicant

  
Akbar Ali

Through



Dated: 15/09/2021

**Shah Saud Mashwani**  
Advocate High Court,  
Peshawar.  
Cell No. 0345-9095245



1

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE**

**TRIBUNAL, PESHAWAR.**

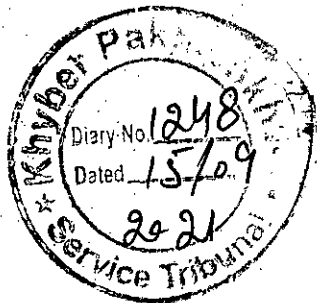
*put up to the worthy chairman  
with relevant appeal.*

C.M. No. \_\_\_\_\_/2021 *15/9/2021*

*Ready*

In  
Service Appeal No. 195/2019

*Fix before the DB  
in first week of  
Nov, 2021*



Akbar Ali.....(Appellant)

*5.11.21*  
*04/10/2021*

**VERSUS**

EDO & others.....(Respondents)

**APPLICATION FOR EARLY HEARING.**

**Respectfully Sheweth:**

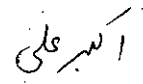
1. That the above titled Service Appeal is pending adjudication before this Hon'ble Tribunal which is fixed for 17/12/2021.
  
2. That the matter in the captioned appeal is relates to correction of the service record of the appellant and now the service period of the appellant has been completed, while due to the pendency of the instant

appeal the salaries and other beneficial funds are retained pending by the department.

3. That the appellant is a heart patient and having no male children, while the service is the only source of income of appellant and the health conditions of the appellant now a days are very critical. (Copies of medical certificates of the appellant are attached).
4. That it shall be in the interest of justice to urgently fixed the date in the Service Appeal.

It is, therefore, respectfully prayed that on acceptance of this application, the date in the instant Service Appeal may kindly be fixed as earlier as possible.

Applicant

  
Akbar Ali

Through



**Shah Saud Mashwani**  
Advocate High Court,  
Peshawar.

Dated: 15/09/2021

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**

C.M. No. \_\_\_\_\_/2021

In

Service Appeal No. 195/2019

Akbar Ali.....(Appellant)

**VERSUS**

EDO & others.....(Respondents)

**AFFIDAVIT**

I, **Akbar Ali** (Appellant), do hereby solemnly affirm and declare that the contents of the **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

*Khalid Mahmood*  
Oath Commissioner  
Peshawar High Court

*159-2*

*Akbar Ali*

**DEPONENT**

CNIC No. 16101-1261876-7

4

R

**Peshawar Institute of Cardiology - MTI**

Phase-V, Hayatabad, Peshawar. Phone: +92 91 921 9641-4, Fax: --  
Email: healthcare@pic.edu.pk, Website: www.pic.edu.pk



**OPD SLIP**

**CARDIOLOGY - OPD Token# 022**

<b>Appointment Time</b> : 09:00	<b>Serial #</b> : 25901
<b>M.R. No</b> : K05EME00001533	<b>Invoice #</b> : K05210155599
<b>Name</b> : Akbar Ali	<b>Father/Husband</b> : SHAMAT KHAN
<b>Gender</b> : Male	<b>Amount Paid</b> : 50.00
<b>Age</b> : 60 Year(s)	<b>Date</b> : 26-AUG-21 08:36:11

History

Clinical Examination.

Wt 77 kg  
 HR 79/min  
 SpO<sub>2</sub> 97  
 Temp 36c  
 BP 142/90

Provisional Diagnosis

CAD / Hb Aus

Investigations

~~ECG~~  
~~2/9/2021~~

Ascal 75  
— 4

Carvedilol 3.125  
r+r

Sarvesto 500  
r+r

Atorvastatin 500  
— 1

Losartan 400  
r+r

Xpl...

Ret

31/8/2007 GMP

31/9/2007 Admit  
8:30



# ACCIDENT & EMERGENCY DEPARTMENT

PESHAWAR INSTITUTE OF CARDIOLOGY  
MEDICAL TEACHING INSTITUTION  
(PIC-MTI)

Patient : EME00001533

Akbar Ali

Serial # 1179

Father / Husband : SHAMAT KHAN

60 Year( Male

Date : 20-MAY-21 08:34:19

Invoice # : K05210063610

Receipt #

Complaints:

R<sub>x</sub>

C/O

. DM

. HTN

. HF & EF (EF 26%)

DM → 3 years

HTN → 6 years

Findings:

- was admitted on 17/05/2021

Addiction  
snuff.

for CA, but due to dyspnea  
before CA, ~~patient~~ patient was  
managed in inpatient for HF

and was discharged on 19/05/2021

on oral medication & advised  
of CML

→ now again presented w/ dyspnea  
and PND

Investigations:

ECG

= LBBB

QRS 200ms

Diagnosis:

D/R

pulse 96/min

Bp 132/92 mmHg

CVS S4H0

and R2C vesicular breath

Next Visit: \_\_\_\_\_

Consultant Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Med:

Wt → 75kg

Tabs. Loprin 5mg

24

Tabs. ~~Aspirin~~ Clopidogrel 75mg  
V, P 2/29/1 ⊙

12

Tabs. Rosuvastatin 2.5mg  
V, P 2/29/1 ⊙

V, P 2/29/1 ⊙

Tabs. Concor 5mg

V, P 2/29/1 ⊙

Tabs. Rast 10mg

V, P → 2/29/1 ⊙

Tabs. Casix 40mg

V, P 2/29/1 ⊙

Tabs

Aldactone 50mg

V, P 2/29/1 ⊙

Insulin Humulin 70/30

24 units q.d.

12 units q.b.i.d.

Tabs. Diclofenac 10mg

V, P → 2/29/1 ⊙

Tabs. Uicentil 40mg

V, P → 2/29/1 ⊙

To be reviewed  
in OPD @  
CMR report

patient is consulted  
in detail regarding  
diet, drugs and  
exercise.

Dr. Imran Ali  
Trainee Registrar Cardiology  
Peshawar Institute of Cardiology

2923

2800

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# PESHAWAR INSTITUTE OF CARDIOLOGY

MEDICAL TEACHING INSTITUTION, PIC - MTI  
5-A, Sector B-3, Phase-V, Hayatabad, Peshawar, KP, Pakistan

+92 91 9219641 info@pic.edu.pk www.pic.edu.pk

## Echocardiography

Request No	PR No	Entered	17,05, 2021
Patient Name Akbar Ali	(male:)	Printed	
Consultant		Location	Cardiology

Measurements	Observed	Normal Range (mm)	Parameter	Values	Range
Aortic Root Dimension	29	20-40	EPSS		0-9
Left Atrial Dimension	44	19-39	PHT		-
LV End D Dimension	60	36-56	E Velocity(cm/sec)	44	44 - 1
LV Ends Dimension	52	25-41	A Velocity(cm/sec)		2 - 6
IVS Thickness	11	8-11	E A Ratio		7 - 3.1
LVPW Thickness	10	7-11	RVSP		45-
Rt Vent Dimension	23	7-25			
<b>LV Function Indices</b>					
Fractional Shortening	13%	Ejection Fraction	26%		
IVRT		E Wave DT			
PAP(mmHg):					
Sys		Dias			

Valves	Gradient (mmHg)		Peak Velocity (cm/Sec)	Valve Area(cm) <sup>2</sup>		Regurgitation
	Peak	Mean		Doppler	2-D	
Mitral Valve						+1--2
Tricuspid valve						+1
Aortic Valve						Trace
Pulmonic Valve						

### Comments

- o LA is dilated in size.
- o LV is dilated in size with impaired LV systolic function.
- o RV is normal in size with fair RV systolic function
- o Septal motion is abnormal consistent with conduction defect
- o IVS/PW are normal in thickness.
- o E.A ratio across mitral valve is reversed.
- o Mitral and Aortic valves are thickened with normal opening
- o Other valves are normal in structure.
- o No ASD, VSD or PDA seen.
- o No clot or pericardial effusion seen

### Conclusion:

- o Impaired LV systolic function.
- o Mild to moderate MR
- o Mild TR with PAH



7

# Peshawar Institute of Cardiology

Peshawar Institute of Cardiology, Phone: 0092 921 9641, Fax: --  
Email: info@pic.edu.pk, Website: www.pic.edu.pk



VIEW: 28-Jun-2021 03:30:05

## Chemical Pathology Report

Page 1 of 1

Dept Ref# : K05RCH21010273  
MRNO : K05-EME00001533  
Name : Akbar, Ali  
Age/Sex : 60 Year(s)/Male  
Phone : 0301 8188049  
Address : House # , Street # , Sector/Area, MARDAN - PAKISTAN

Ordered By : Dr. Muhammad Imran Khan  
In-house Consultant : Dr Abid Ullah  
Requested : 28-JUN-2021 02:17:44  
Specimen Received : 28-JUN-2021 02:27:21  
Reported : 28-JUN-2021 02:57:40

**SPECIMEN** : SERUM

### TEST(s)

### RESULT(s) UNITS

### REFERENCE RANGE

Troponin-I.

0.012 ng/mL

< 0.6

**Abdur Rasheed**  
Sr. Medical Technologist

Electronically verified report, no signature(s) required.

DR RASHID AZEEM  
MBBS, FCPS-HEMATOLOGY



9

### Peshawar Institute of Cardiology

Peshawar Institute of Cardiology. Phone: 0092 921 9641, Fax: --  
Email: info@pic.edu.pk, Website: www.pic.edu.pk



VIEW: 27-Jun-2021 12:01:52

## Chemical Pathology Report

Page 1 of 1

MRNO : **K05-EME00001533**  
Name : **Akbar Ali**  
Age/Sex : 60 Year(s)/Male  
Phone : 0301 8188049  
Address : House # , Street # , Sector/Area, MARDAN - PAKISTAN

Ordered By : Dr. Muhammad Ishaq Khan  
In-house Consultant : Dr Abid Ullah  
Report Destination :  
Requested : 27-JUN-2021 11:04:46  
Specimen Received : 27-JUN-2021 11:25:04  
Reported : 27-JUN-2021 11:55:35

### Chemistry - I

TEST(s)	NORMAL	UNIT(s)	K05RCH21010255	K05RCH21006725	K05RCH21006724
			27-JUN-2021 11:55:35	15-MAY-2021 18:42:55	15-MAY-2021 16:41:10
SODIUM	135 - 150	mmol/L	142.3		138.7
POTASSIUM	3.5 - 5.1	mmol/L	3.8		3.62
CHLORIDE	96 - 112	mmol/L	110.5		110
CREATININE	0.64 - 1.2	mg/dL	1.04		1.03
Troponin-I	< 0.6	ng/mL		= 1.63	1.82
UREA NITROGEN	6 - 20	mg/dL	8		15

**Note :** Lab values should always be correlated with clinical picture.  
Normal Range(s) and Unit(s) shown are for most recent results.

**Irfan Ullah Karim**  
Sr. Medical Technologist

Electronically verified report, no signature(s) required.

DR RASHID AZEEM  
MBBS,FCPS-HEMATOLOGY

10

**Peshawar Institute of Cardiology - MTI**

Phase-V, Hayatabad, Peshawar. Phone: +92 91 921 9641-4, Fax: --  
Email: healthcare@pic.edu.pk, Website: www.pic.edu.pk



**OPD SLIP**

**CARDIOLOGY - OPD**

**Token# 021**

**Appointment Time : 09:21**

**Serial # : 17226**

**M.R. No : K05EME00001533**

**Invoice # : K05210098136**

**Name : Akbar Ali**

**Father/Husband : SHAMAT KHAN**

**Gender : Male**

**Amount Paid : 50.00**

**Age : 60 Year(s)**

**Date : 28-JUN-21 08:48:43**

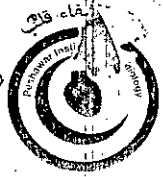
History

Clinical Examination

Provisional Diagnosis

Investigations

11



# ACCIDENT & EMERGENCY DEPARTMENT

PESHAWAR INSTITUTE OF CARDIOLOGY  
MEDICAL TEACHING INSTITUTION  
(PIC-MTI)

Patient : EME00001533

Akbar Ali

Serial # 1719

Father / Husband : SHAMAT KHAN

60 Year( Male

Invoice # : K05210097847

Date : 27-JUN-21 10:17:13

Receipt #

Complaints:

Typical chest pain

4:00 am

ACS

~~ASTHMA~~

Findings:

Pulse: 72/min

B.P. 102/72 mmHg

SPO<sub>2</sub>: 98% on R.A

Chest: B/L N/R

Admit ER

Dr. Mayur

ACS give.

Investigations:

Trop-I -1.63

Tab Concor 2.5mg

(AM)

} Given

ECG - Done

Tab Ramipace 2.5mg

(1200)

Diagnosis:

Next Visit: \_\_\_\_\_

Consultant Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Observation

- IIR line
- Dry: 2sokit @ 5ml/hr - IIR start then titrate according to b.p.

The weight is 7  
 (15-10)

The weight is 7  
 (15-10)

1.0 gms 25  
 (15-10)

1.0 gms 25  
 (15-10)

1.0 gms 25  
 (15-10)

1.0 gms 25  
 (15-10)

1.0 gms 25  
 (15-10)

1.0 gms 25  
 (15-10)

1.0 gms 25  
 (15-10)

Total Ranola Soomy  
 (15-10) 1.21

Total Cardnit 2.6mg  
 (15-10) 1.61

2127  
 2000

2127  
 2000  
 Leg 1

ID: 2021062710254631

2021-06-27 10:25:36 AM

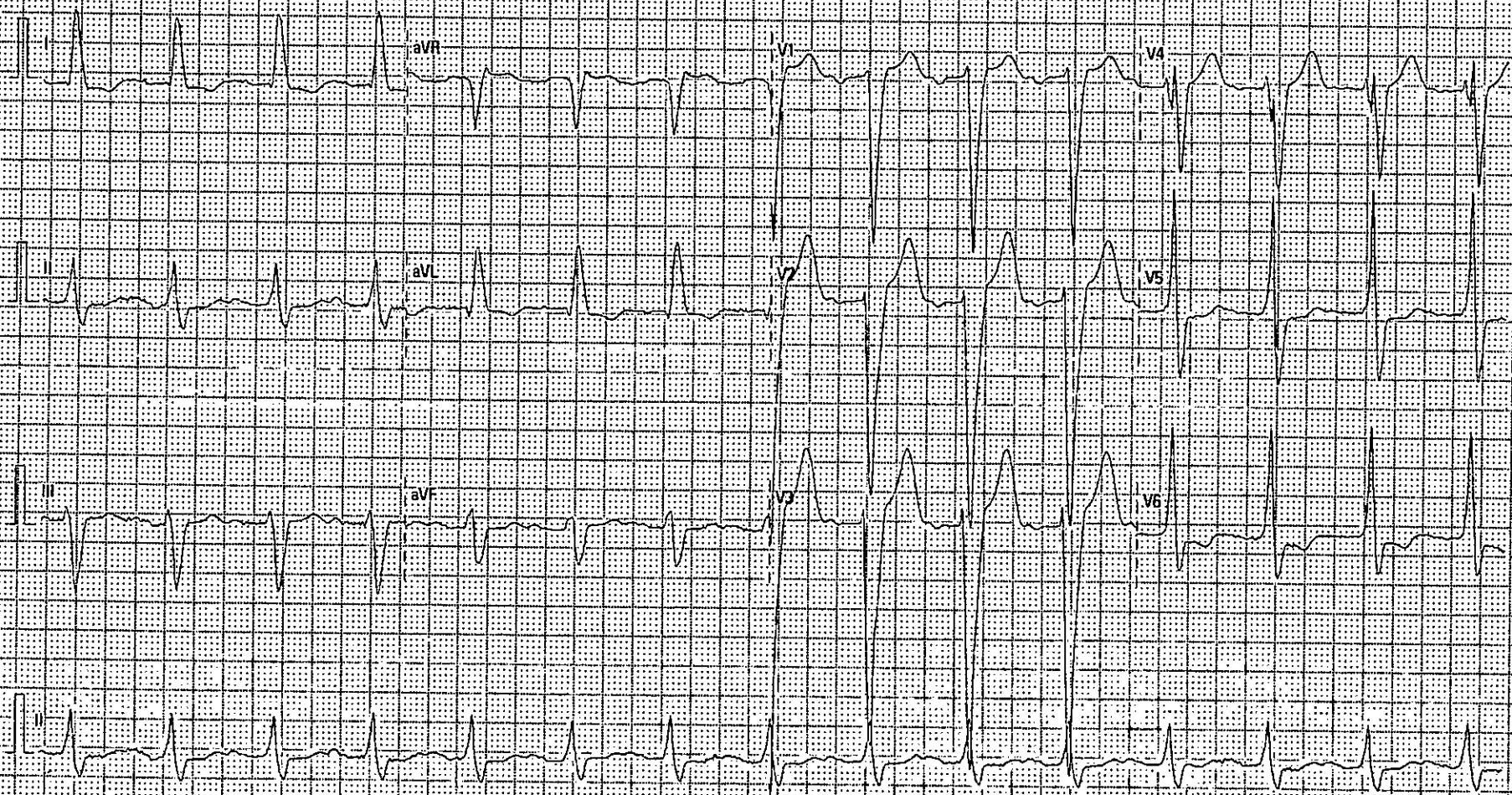
Name: Akbar ali  
Age: 27/6/21  
Gender:

Vent. Rate: 88 bpm  
PR Interval: 208 ms  
QRS Duration: 172 ms  
QT/QTc Interval: 416/465 ms  
P/QRS/T Axes: 59/14/133 deg  
QTcHodges:

Sinus rhythm with borderline 1st degree A-V block  
Interpretation made without knowing patient's gender/age  
IV conduction defect  
Left ventricular hypertrophy  
Lateral ST-T abnormality may be due to the hypertrophy and/or ischemia

Abnormal ECG

Unconfirmed Diagnosis



12

13

### Peshawar Institute of Cardiology

Peshawar Institute of Cardiology. Phone: 0092 921 9641, Fax: --  
Email: info@pic.edu.pk, Website: www.pic.edu.pk



VIEW: 27-Jun-2021 17:58:30

## Chemical Pathology Report

Page 1 of 1

Dept Ref# : K05RCH21010255	Ordered By : Dr. Muhammad Ishaq Khan
MRNO : K05-EME00001533	In-house Consultant : Dr Abid Ullah
Name : Akbar, Ali	Requested : 27-JUN-2021 11:04:46
Age/Sex : 60 Year(s)/Male	Specimen Received : 27-JUN-2021 11:25:04
Phone : 0301 8188049	Reported : 27-JUN-2021 12:26:06
Address : House # , Street # , Sector/Area, MARDAN - PAKISTAN	

**SPECIMEN : SERUM**

TEST(s)	RESULT(s) UNITS	REFERENCE RANGE
Troponin-I	0.014 ng/mL	< 0.6

**Irfan Ullah Karim**  
Sr. Medical Technologist

Electronically verified report, no signature(s) required.

DR RASHID AZEEM  
MBBS,FCPS-HEMATOLOGY



14

### Peshawar Institute of Cardiology

Peshawar Institute of Cardiology. Phone: 0092 921 9641, Fax: --  
Email: info@pic.edu.pk, Website: www.pic.edu.pk



VIEW: 27-Jun-2021 17:59:02

## Chemical Pathology Report

Page 1 of 1

MRNO : K05-EME00001533	Ordered By : Dr. Muhammad Ishaq Khan
Name : Akbar Ali	In-house Consultant : Dr Abid Ullah
Age/Sex : 60 Year(s)/Male	Report Destination :
Phone : 0301:8188049	Requested : 27-JUN-2021 11:04:46
Address : House # , Street # , Sector/Area, MARDAN - PAKISTAN	Specimen Received : 27-JUN-2021 11:25:04
	Reported : 27-JUN-2021 11:55:35

### Chemistry - I

TEST(s)	NORMAL	UNIT(s)	K05RCH21010255	K05RCH21006725	K05RCH21006724
			27-JUN-2021 12:26:06	15-MAY-2021 18:42:55	15-MAY-2021 16:41:10
SODIUM	135 - 150	mmol/L	142.3		138.7
POTASSIUM	3.5 - 5.1	mmol/L	3.8		3.62
CHLORIDE	96 - 112	mmol/L	110.5		110
CREATININE	0.64 - 1.2	mg/dL	1.04		1.03
Troponin-I	< 0.6	ng/mL	0.014	1.63	1.82
UREA NITROGEN	6 - 20	mg/dL	8		15

Note : Lab values should always be correlated with clinical picture.  
Normal Range(s) and Unit(s) shown are for most recent results.

Irfan Ullah Karim  
Sr. Medical Technologist

Electronically verified report, no signature(s) required.

DR RASHID AZEEM  
MBBS,FCPS-HEMATOLOGY

15



# ACCIDENT & EMERGENCY DEPARTMENT

PESHAWAR INSTITUTE OF CARDIOLOGY  
MEDICAL TEACHING INSTITUTION  
(PIC-MTI)

Patient : EME00001533

Akbar Ali

Serial # 24705

Father / Husband : SHAMAT KHAN

60 Year( Male

Invoice # : K05210147664

Date : 19-AUG-21 14:53:42

Receipt #

R<sub>x</sub>

### Complaints:

*Chest pain associated  
w/ inspiration*

### Findings:

*HR = 76/min*

*RR = 26/min*

*B-P = 123/86 mmHg*

*SpO<sub>2</sub> = 97% on air*

*19 - Chest bag 1/2 skt*

### Investigations:

*Covid Antigen - Negative*

### Diagnosis:

Next Visit: \_\_\_\_\_

Consultant Name: \_\_\_\_\_

Signature: \_\_\_\_\_

ID: 2021081914561043 2021-08-19 02:56:00 PM

Name: AKbar Ali  
Age: EME-1533  
Gender:

Vent. Rate 84 bpm  
PR Interval 238 ms  
QRS Duration 166 ms  
QT/QTc Interval 424/466 ms  
P/QRS/T Axes 61/-21/141 deg  
QTc/Hodges

Sinus rhythm with 1st degree A-V block  
Interpretation made without knowing patient's gender/age  
Leftward axis  
IV conduction defect  
Biventricular hypertrophy  
Widespread ST-T abnormality may be due to the hypertrophy and/or ischemia

Abnormal ECG

Unconfirmed Diagnosis

16



ID: 2021062802080536

2021-06-28 02:07:56 AM

Name: *Alloca Ali*  
Age: *1533*  
Gender:

Vent. Rate: 72 bpm  
PR Interval: 240 ms  
QRS Duration: 174 ms  
QT/QTc Interval: 458/479 ms  
P/QRS/T Axes: 42/14/146 deg  
QTc Hodges:

Sinus rhythm with 1st degree A-V block  
- Interpretation made without knowing patient's gender/age  
Possible left atrial abnormality  
IV conduction defect  
Left ventricular hypertrophy  
Inferior/lateral ST-T abnormality may be due to the hypertrophy and/or ischemia

Abnormal ECG

Unconfirmed Diagnosis

17

