BEFORE THE KPK SERIVE TRIBUNAL,

	Restorertion Appl	WAR DE NO 28	118 Khyber Pakhtukhwa Service Tribunal
CM No.			Diary No. 47
Service A	appeal No 1285 of 2014 2014	Variation of the same of the s	
	ad Tahir, Ex Headmaste		ughdarzai, presently
	of street No. 7, canal town, No.	Appl	icant/Appellant
1.	Sovernment of KPK throu	gh chief Secreta	ry, Civil Secretariat,
. /	Reshawar, Sales Marie Carlos (1997) Secretary Government of		ı Department. Civil
S	Secretariat, Peshawar Communication Director, Elementary and Sec		
	···	Res _I	oondents

Application under Rule-19(3) of the Service Tribunal Rules, 1974 for setting aside Order dated 16/01/2018 vide which the service appeal of the applicant/appellant has been dismissal in default and for restoration of the service appeal bearing No. 1285 of 2016 of the applicant/appellant to be heard and to be decided on merit.

Respectfully Sheweth,

1) That appeal titled above was pending and fixed on 16/01/2018 for before this Hon'ble Tribunal for final arguments.

- 2) That initially service appeal titled Gul Zaman V/S Government of KPK and others and the appeal of the applicant/appellant were clubbed being of similar nature.
- 3) That the petitioner/appellant requests for setting aside Order dated 16/01/2018 and restoration of the appeal on the following grounds inter alia.

GROUNDS:

- A) That the appellant/applicant is suffering from DM+HTN with brain atrophy and old CAN and is confined to bed since long and was/is unable to attend the Hon'ble Tribunal personally and that's way the counsel for the applicant/appellant used to appear in the Hon'ble Tribunal on applicant/appellant's behalf. (Copies of medical prescriptions are attached)
- B) That counsel for the applicant/appellant is also counsel in another appeal titled Gul Zaman V/S Government of KPK and others and besides this the counsel for the applicant/appellant namely Muhammad Tahir has also filed another Service appeal of 2017 titled Muhammad Tahir V/S Government of Kpk and four others, where in request, for one annual increment due on 01/12/2004, has been made and that appeal is fixed for 24/01/2018.
- C) That inadvertently the service appeal of the applicant/appellant, bearing No. 1285 of 2014 was not noted in 16/01/2018 in the dairy of the counsel for the applicant/appellant and only appeal titled Gul Zaman V/S Government of KPK was noted in the dairy. (photocopy of dairy is annexed)
- D) That on 16/01/2018 the counsel for applicant/appellant, appeared in the Service appeal tilted Gul Zaman V/S Government of KPK and others and requested for adjournment on the plea that similar service appeal bearing No. 1285 of 2014, being of similar nature was fixed for 24/01/2018 and the titled appeal Gul Zaman V/S Government of KPK was adjourned to 24/01/2018. This fact is also obvious from the order sheet of service appeal Gul Zaman V/S Government of KPK and others.

Form-A

FORM OF ORDER SHEET

Court of	 Mark Trans
Appeal's Restoration Application No. 28/2018	and and the second section of the section of th
	

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	The Astronomy as the second se
1	24.01.2018	The application for restoration of appeal no. 1285/2014
		submitted by Mr. Muhammad Anwar Advocate, may be entered
		in the relevant register and put up to the Court for proper order
		please.
¢ ન તેં∶	Mariae Nigo	REGISTRÂR
2	06/02/18	This restoration application is entrusted to S. Bench to be
2 i 2 i	్ ముఖ్య సౌకర్యాగిన్ని -	This restoration application is entrusted to S. Bench to be put up there on 12-102/18-11
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		CHARMAN CHARMAN
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		The state of the s
	12.02.2018	Clerk of the counsel for appellant present ar
	÷ ".	requested for adjournment on the ground that learne
	11	counsel for the appellant is not in attendance today due
		strike of the Bar. Adjourned. To come up for arguments of
		restoration application on 05.03.2018 before S.B.
ļ	ges.	(Muhammad Amin Khan Kundi) Member (J)
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05.03.2018

Counsel for the petitioner present. Arguments on application for restoration of appeal heard and case file perused. Through instant petition the petitioner has prayed for setting order dated 16.01.2018 vide which the appellant of the present petitioner was dismissed due to nonprosecution

Since the instant application has been filed well within time, hence the appeal be restored fixed for its previous proceedings on 28.03.2018 before D.B. Notices be also issued to the respondents for the date fixed.

28.03.2018

Learned counsel for the appellant and Learned Additional Advocate General present.

At the very outset learned AAG raised objection that in the instant appeal issue of up-gradation is involved hence this Tribunal has got no jurisdiction in the matter. Learned counsel for the appellant also admitted that through the present service appeal the appellant seeks up-gradation w.e.f 01.07.2012.

As per judgments of august Supreme Court of Pakistan titled "Regional Commissioner of Income Tax, Northern Region, Islamabad and another---Appellants Vs. Syed Manawar Ali & others---Respondents" (2016-SCMR-859) and titled FEDERAL PUBLIC SERVICE COMMISSSION through Secretary---- Petitioner Verses ANWAR UL HAQ (PRIVATE SECRETARY) ISLAMABD and others---- Respondents (2017 SCMR 890) the service Tribunal has got no jurisdiction to entertain the appeals involving issue of up-gradation.

In view thereof the present appeal is returned for want of jurisdiction. The appellant may seek remedy in the proper forum, if so advised, subject to all just exceptions. No order as to costs. File be consigned to the record room.

Uch amonad Amin (Muhammad Amin Kundi) (Muhammad Hamid Mughal)

Member

Member

E) That the non-appearance of applicant/appellant is/was due his serious illness and the non-appearance of the counsel of applicant/appellant was due to mis conception as case was not noted in dairy for 16/01/2018.

F) That the non-appearance of the applicant/appellant and his counsel was neither intentional not willful but due illness and mis conception.

G) That valuable rights of the applicant/appellant are involved in the case.

H) That the superior judiciary of country in a number of authorities has held that cases are to be decided on merits.

1) That the application is well within time.

J) That it will be in the best interest of justice, if this Hon'ble court sets aside the order dated 16/01/2018 and restore the service appeal of the applicant/appellant and to decide the same on merits.

It is, therefore, very humbly prayed that on acceptance of this application the order dated 16/01/2018 may kindly be set aside and the service appeal may please be restored and may please be heard on merit to meet the ends of justice.

applicant/appellant

Through

Dated: 23/1/2018

Muhammad Anwar

Jahanzeb Shinwari Advocate, Peshawar.

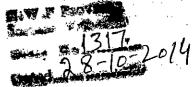
Affidavit:

I, Muhammad Anwar Advocate, counsel for applicant/appellant in the main appeal, do hereby solemnly affirm and declare on oath that contents of this application are true and correct and nothing has been kept concealed.

DEPONENT

BEFORE THE SERVICE TRIBUNAL, KPK, PESHAV

Service Appeal No. 1985 of 2014



VERSUS

- Govt of KPK through Chief Secretary, Civil Secretariat, Peshawar
- Secretary to Govt of KPK,
 Education Department,
 Civil Secretariat, Peshawar
- 3. Director,
 Elementary & Secondary Education,
 KPK Peshawar......Respondents

Appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the Notification bearing No.SO(S/M)/1-3/2013/Promotion BPS-17 to BPS-18, whereby posts of 353 officers of the Teaching Cadre of Elementary & Secondary Education, Peshawar have been upgraded from BPS-17 to BPS-18 with immediate effect instead of 01.07.2012, on regular basis in the light of upgradation of 4-Tier Formula, notified through Govt of KPK,

28/10/14.

Certified to be fure copy

F-ACTITE IA ME

A. No. 1285/2014 M. Tahir VS Gort



16.01.2018

None present on behalf of the appellant. Mr. Muhammad Jan, Learned Deputy District Attorney for the respondents present. Case called for several times but no one appeared on behalf of the appellant. Therefore the present appeal is dismissed in default. File be consigned

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Peshalvar	aldwa a		19-01-1	<u>R</u>

Dete of Presentation of Application 19-0/18

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Name of Constant 19-0/-18

Date of Completion of Application 19-0/-18

Date of Delivery of Constant 19-0/-18

BEFORE THE LEARNED KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appear No72017	
Muhammad Tahir	Appellant
VERSUS	· -
Govt. of KPK & others	Respondents

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Appellant

Through

Muhammad Anwar Advocate High Court, Peshawar

Cell No.0334-9081124

Dated: 20.10.2017

Before the Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar

sei	rvice Appeal No:/ 2017.
Mι	uhammad Tahir, Ex. Head Master, GHS, Palosai Maghdarzai ,Peshawrar,
Pre	esently R/O Arbab Hayat Cham, Canal Town, Nasir Bagh Road, Peshawar.
	Appellant.
	VERSUS
1)	Government of Khyber Pakhtunkhwa, Through Chief Secretary, Civil
	Secretariat, Peshawar.
2)	Secretary to Government of KPK, Finance Department, Civil Secretariat,
	Peshawar.
3)	Secretary to Government of KPK, Elementaryto Secondary Education, Civil
	Secretariat, Peshawar
4)	Accountant General KPK, AG Office, The Mall Road, Peshawar.
5)	District Account Officer, AG Office, The Mall Road, Peshawar.

Appeal to the effect that appellant is similarly placed Government Servant and had reached the maximum of his pay scale on 1/12/2003, and is entitled to one annual increment due on 1/12/2004, as allowed to all the Federal Government Servantsunder Item No. 1 of Finance Division OM No. 1 (6) IMP 2005 dated 13/10/2006 but the appellant, who reached the maximum of his pay scale on 1/12/2003, has been ignored and deprived of one annual increment by the respondents.

..... Respondents

That the appellant joined the Education Department in the capacity of Senior English Teacher (Science), BPS-15 and was later on promoted to the post of Head Master (BPS-17) in the year 2000, and has been retired

on 31/10/2013, at the age of superannuation.

- That on the discontinuation of the scheme of move over, the Government Servants were brought back to original scale of the post and their pay was fixed in the revised pay scale, 2001 on notional extension basis. On doing so the pay of some Government Servants crossed the ceiling of notional extended pay scale. Such category of the Government Servants was allowed personal pay, besides, allowing future increments (as personal to them) upto three years. A question arose as to whether Government Servants, who reached the maximum of his pay scale after 1/12/2001, may also be allowed annual increment as personal pay upto three years i.e 1/12/2002, 1/12/2003, & 1/12/2004.
- That vide office memorandum bearing No. 3 (1) R-2/2014-889 dated 27/10/2014, Government of Pakistan, Finance Division (Regulations wing), issued admissibility of annual increment beyond the scope of pay scale (above ceiling) which memorandum was also forwarded to the Chief Secretary KPK/Respondent No. 1. (Copy of the office memorandum is annexed as Annexure A)
- 4) That the appellant, after series of correspondence submitted an application dated 12/05/2015, addressed to Provincial Ombudsman which was noticed to the Secretary Finance /Respondents No. 2. The Hon'rable Provincial Ombudsman disposed of the application of the appellant and

Respectfully Sheweth;

- 1) That the appellant joined the Education Department in the capacity of Senior English Teacher (Science), BPS-15 and was later on promoted to the post of Head Master (BPS-17) in the year 2000, and has been retired on 31/10/2013, at the age of superannuation.
- 2) That on the discontinuation of the scheme of move over, the Government Servants were brought back to original scale of the post and their pay was fixed in the revised pay scale, 2001 on notional extension basis. On doing so the pay of some Government Servants crossed the ceiling of notional extended pay scale. Such category of the Government Servants was allowed personal pay, besides, allowing future increments (as personal to them) upto three years. A question arose as to whether Government Servants, who reached the maximum of his pay scale after 1/12/2001, may also be allowed annual increment as personal pay upto three years i.e 1/12/2002, 1/12/2003, & 1/12/2004.
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- 4) That the appellant, after series of correspondence submitted an application dated 12/05/2015, addressed to Provincial Ombudsman which was noticed to the Secretary Finance /Respondents No. 2. The Hon'rable Provincial Ombudsman disposed of the application of the appellant and

the same was communicated to the appellant vide covering letter dated 06/11/2015. (Copies of the documents are annexed as B-B/2)

- That feeling aggrieved of the order of the Hon'rable Provincial Ombudsman the appellant preferredrepresentation to the Worthy Governor of KPK, and the same was rejected. (Copies of the representation and letter dated 30/10/2016 are annexed as C-C/1).
- That during the pendency of the representation of the appellant before the Worthy Governor KPK on 02/08/2016, the right-side body of the appellant was paralyzed and the appellant was admitted in the MBW-KTH Peshawar. (Copies of the Medical Prescription are attached as D-D/3)
- 7) That the appellant authorized / nominated his son, namely Muhammad Abbas, his attorney and through him filed writ petition No. 4732-P on 13/12/2016. (Copy of writ petition is annexed as annexure E)
- That in the month of January 2017, the said Muhammad Abbas, son of the appellant got appointed and he was also unable to attend the proceeding in the subject writ petition. The Hon'rable Peshawar High Court, Peshawar, on 23/02/2017, though neither the appellant nor his attorney was present, heard the arguments of the council of the appellant and dismissed the said writ petition, holding therein, that the grant of annual increment is one the terms and conditions of Civil Servant. (copy of the judgment order dated 23/02/2017 is annexed as annexure E/1)
- 9) That the appellant remained on bed due to paralysation of his right-side body and non-availability of any male member in the house, the appellant could not contact his council till 22/06/2017, when the appellant got copyof the order dated 23/02/2017, from the office of his council.

10) That the appellant submitted Departmental Appeal (annexure F) on 22/06/2017, addressed to the Departmental Appellate Authority / Respondent No. 1 but no response with in the stipulated period of 90 days, hence this Service Appeal on the following grounds inter-alia.

GROUNDS;

- A) That the appellant is similarly placed Government Servant as that of Federal Department and the Federal DepartmentEmployees have been allowed annual increment as personal pay upto 3 years after the discontinuation of the scheme of move over in the year 2001, but the appellant has been deprived of the same benefit which is discrimination.
- B) That the matter of determination as to whether a Government Servant who reached the maximum of his pay scale after 01/12/2001 was entitled to annual increment as personal pay upto 3 years or not and on the similar analogy the Wifaqi Muhtasib decided the case of one Muhammad Humayun, Deputy Director (retired) Vide order dated 07/07/2014, in his favour where after benefits of annual increment beyond the pay scale as personal pay was allowed to all the FederalGovernment Servants under Item No. 1 of Finance Division OM No. 1 (6) IMP 2005 dated 13/10/2016, but the appellant, who reached the maximum of his pay on 01/12/2003, has been ignored.
- C) That the benefits, extended to the Government Servant of Federal Department have not been extended to the appellant on the mere ground that the appellant is Government Servant of Provincial Department but this act of the Respondent / Department is against the fundamental rights of the appellant guaranteed by the Constitution of Pakistan 1973.

- D) That the natural justice demandsthat personal pay equal to the annual increment is basic right of the Government Servant working in similar grade with a proposition "Equal Pay for Equal Work". The appellant was similarly placed Government Servant as that of Federal Department and thus is entitled to the same treatment by allowing one annual increment due on 01/12/2004.
- E) That any additional ground, with leave of the Hon'rableTribunal, will be raised at the time of final hearing of the case.

It is, therefore, humbly prayed that, on acceptance of this service appeal the appellant may please be allowed / granted one annual increment as personal pay due on 01/12/2004, with consequential relief of arrears from 01/12/2004.

Appellant

Through,

Muhammad Anwar

Dated 19/10/2017

Advocate, Peshawar.

AFFIDAVIT

I, Muhammad Tahir, Ex. Head Master, GHS, Palosai Maghdarzai, Peshawar do hereby solemnly affirm and declare on oath that the Contents of appeal are true and correct according to the best of my knowledge and belief, and nothing is kept concealed from this Hon'rable Tribunal.

Deponent

Khyber Teaching Hospital, Peshawar OUT - PATIENTS DEPARTMENT

Name: - MUHAMMAD TARTIK

Gender: MALE

Referred To: MEDICINE
Date: 02-AUG-16
Address: PESHAWAR

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BERTEACHING HOSPITAL PESHALL

Medical "D" Unit

Professor & Incharge:

Dr. Hashim ud Din Azam

M.B.B.S.(Pak), M.R.C.P.(UK) F.R.C.P. (Edin) F.R.C.P. (London)

Associate Professor:

Dr. Jamal ud Din Marwat

F.C.P.S. (Med)

Senior Registrar:

Dr. Bughdad Khan

F.C.P.S. (Med)

Junior Registrar:

Dr. Asghar Marwat M.B.B.S., F.C.P.S.

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Prepared by: Dr Imal Checked by: Dr Sharee

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X-RAY برایات برائے مریض دوا کو ڈاکٹر فی برایت کے مطابق استعمال لیریس E.C.G. Ccho- (1) ventricular hypertrophy + W diastolice on only Joseph Jumin denstunction LFTS S. Pail = 1.41. - ALP: 157 ALT = 59.4. BIOPSY Refer to physiotherapy ULTRASOUND CT SCAN/MRI Grown atroling. تكاف كي صورت بين جعرات كيدن ميزيكا اولى وي الشريف لائين

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Am. D/2 هوالشافي AZAM CLINIC DR HASHIM UDDIN AZAM M.B.B.S (PAK) M.D (U.S.A) M.R.C.P (U.K) F.R.C.P (EDIN) F.R.C.P (LOND) PROFESSOR OF MEDICINE AND VISITING CONSULTANT KHYBER TEACHING HOSPITAL Par Sean Con. Ry Interfer Vollerm 5/80 CIEMEN 22 PARK ROAD WEST. UNIVERSITY TOWN. PESHAWAR PAKISTAN. 0322-9117087

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PROFESSOR OF MEDICINE AND VISITING CONSULTANT KHYBER TEACHING HOSPITAL VACCEC AM SI MI STAT A M 100mi 75 ap Risakh on Parate Mrs SITIONET SV 22 PARK ROAD WEST, UNIVERSITY TOWN, PESHAWAR PAKISTAN 0316-1998890 SATURDAY & SUNDAY CLOSED

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