

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No.1019/2019

Date of Institution ... 26/07/2019

Date of Decision ... 02/02/2022

Juma Zar Ex-TT GPS Yarzamad Kalay Bara District Khyber.

... (Appellant)

VERSUS

Director Elementary and Secondary Education Officer Khyber Pakhtunkhwa  
Peshawar and two others. ... (Respondents)

Present.

Mst. Roeeda Khan,  
Advocate

... For appellant.

Mr. Muhammad Adil Butt,  
Addl. Advocate General,

... For respondents.

MR AHMAD SULTAN TAREEN  
MR. ATIQ-UR-REHMAN WAZIR,

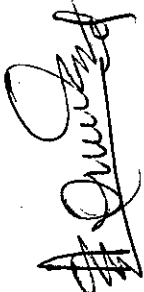
... CHAIRMAN  
... MEMBER(E)

JUDGMENT

**AHMAD SULTAN TAREEN, CHAIRMAN:-**The appellant named above has invoked the jurisdiction of this Tribunal through above titled appeal with the prayer as copied below:-

**"On acceptance of this appeal the impugned order dated 08.02.2019 may kindly be set aside and the appellant may kindly be reinstated in service alongwith all back benefit. Any other remedy which this august Tribunal deems fit that may also be granted in favour of appellant."**

2. Brief facts of the case as enumerated in the Memorandum of appeal are that the appellant was initially appointed as T.T. on 23.10.1995 in the



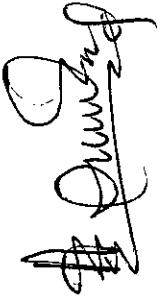
Education Department and performed his duty regularly and with full devotion and no complaint whatsoever was made against him; that in the year 2017 due to domestic/personal problems and terrorism situations in the area, the appellant was unable to perform his duty; that on 08.02.2019, the respondent department removed the appellant from service on the ground of absence without providing opportunity of defence to him; that the appellant submitted departmental appeal which was not decided within the statutory period of ninety days, hence the present appeal.

3. After admission of the appeal for regular hearing, the respondents have submitted written reply/comments, refuting the claim of the appellant with several factual and legal objections and asserted for dismissal of appeal with cost.

4. We have heard the arguments and perused the record

5. Learned counsel for the appellant argued that the impugned order is illegal and *void ab-initio*; that no regular enquiry was conducted and no chance of personal hearing was provided to the appellant; that no final show cause notice was served upon the appellant; that absence of the appellant was not deliberate and intentional but due to the reason beyond his control; that no notice was served on home address of the appellant and that the punishment awarded to the appellant was harsh and not commensurate with the charge against the appellant. Learned counsel for the appellant prayed that the appeal may be accepted as prayed for.

6. Learned Addl. Advocate General while rebutting the arguments of learned counsel for the appellant contended that two consecutive absence notices were served upon the appellant vide Endst. No. 2628-32 dated





18.10.2017 and Endst. No: 181 dated 20.07.2020 but the appellant did not respond to these notices; that the respondent department published the absence notice in two leading newspapers in Daily "Mashriq" Dated 05.12.2018 and Daily "Express" dated 05.12.2018 but the appellant paid no heed to these notices and that finally after observing all the codal formalities the appellant was removed from service vide order dated 08.02.2019. Learned AAG requested that the appeal may be dismissed with costs.

7. Having perused the comments of the respondents and copies of the record annexed therewith, we are constrained to hold that the appellant was properly proceeded under Rule 9 of the Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 with regard to his willful absence. The cited reason of his absence as domestic/personal problems and terror situation in the area in the year 2017 and thereby his hindrance from performance of his duty with the respondent department is not workable by itself. At the same time it is observed that the appellant was appointed in the respondent department on 23.10.1995 and has got a considerable long period of service at his credit. Obviously, the proceedings under Rule 9 are ex-parte in nature and penalty of removal from service having regard to the long service of the appellant, if kept intact, is too harsh. It would be a sufficient blow for the appellant, if the period of his absence as admitted till the date of this judgment is treated as leave without pay. So, we deem it appropriate to set aside the impugned order of removal from service but reinstatement of the appellant into service will not entitle him for claim of the salary and other financial benefits for the absence period and the same shall be treated as leave without pay. The appeal stands





disposed of in the given terms. Parties are left to bear their own costs. File be  
consigned to the record room.

  
(ATIQ-UR-REHMAN WAZIR)  
Member(E)

  
(AHMAD SULTAN TAREEN)  
Chairman

ANNOUNCED  
02.02.2022

1172/2019

S.No.	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	02.02.2022	<p><u>Present.</u></p> <p>Mst. Roeeda Khan, Advocate ... For appellant</p> <p>Mr. Muhammad Adeel Butt, Asstt. Advocate General ... For respondents.</p> <p>Vide our detailed judgment, this appeal is disposed of as per Para-7 of the detailed judgment. Parties are left to bear their own costs. File be consigned to the record room.</p> <p> (ATIQ-UR-REHMAN WAZIR) Member(E)</p> <p> CHAIRMAN</p> <p><u>ANNOUNCED</u> 02.02.2022</p>

11.06.2021

Counsel for the appellant present.

Mr. Kabirullah Khattak, learned Additional Advocate General for respondents present.

Due to general strike of the Bar, case is adjourned to 28.09.2021 for arguments before the D.B.

  
(Rozina Rehman)  
Member(J)

  
Chairman

28-9-21

DB is on Tour case to come up?  
For the same on dated 2/21/22

  
Rendes

22.01.2021

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah Deputy District Attorney alongwith Munawar Khan ADO for respondents present.

Learned counsel for the appellant requested for adjournment The request is acceded to, the appeal is adjourned to 08.03.2021 on which date file to come up for arguments before D.B.

(Atiq-Ur-Rehman Wazir)  
Member (E)

(Muhammad Jamal Khan)  
Member (J)

08.03.2021

Counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Munawar Khan ADEO for respondents present.

Due to non-availability of D.B, case is adjourned to 11.06.2021 for the same as before.

Reader

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*[Faint handwritten text]*  
Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Munawar Khan ADEO for respondents present.

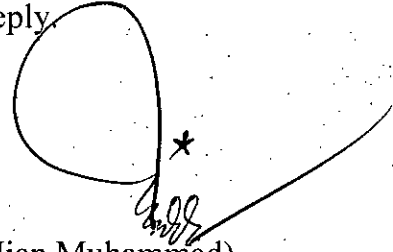
*[Faint handwritten text]*  
11.06.2021 for the same as before.

16.07.2020

Counsel for the appellant and Addl: AG alongwith Mr. Munawar Khan for respondents present.

Written reply not submitted. Requested for further adjournment. Last opportunity granted for reply.

Adjourned to 16.09.2020 before S.B.

  
(Mian Muhammad)  
Member(E)

16.09.2020

Counsel for the appellant present. Nemo on behalf of the respondents.

The respondents have not furnished reply/comments despite last opportunity. The matter is, therefore, posted to D.B for arguments on 02.12.2020.


  
Chairman

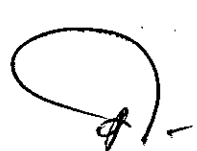
02.12.2020

Appellant in person present.

Zara Tajwar, learned Deputy District Attorney present.

Former requests for adjournment; granted. To come up for arguments on ~~01.01~~ 01.01.2021 before D.B

  
(Atiq-Ur-Rehman Wazir)  
Member (E)

  
(Rozina Rehman)  
Member (J)



04.02.2020

Clerk to counsel for the appellant present. Addl. AG for respondents present. Written reply not submitted. Notices be issued to the respondents for submission of written reply/comments on 16.03.2020 before S.B.

  
Member

16.03.2020

Nemo for the appellant. Mr. Kabirullah Khattak learned Addl. AG for the respondents present. None present on behalf of respondent department nor submitted written reply/comments, therefore, fresh notice be issued to the respondent for submission of written reply/comments. Last opportunity is granted. Adjourned. To come up for written reply/comments on 22.04.2020 before S.B..

  
Member

22.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 16.07.2020 for the same. To come up for the same as before S.B.

  
Reader

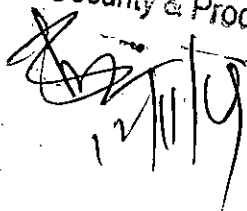
08.11.2019

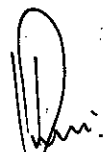
Counsel for the appellant present.

Contends that before imposition of major penalty of removal from service upon the appellant, no notice at his residence was sent. In the said manner, the mandatory provisions contained in Rule-9 of Khyber Pakhtunkhwa Civil Servants (Efficiency and Discipline) Rules 2011 were violated. It is also argued that in the contents of impugned order dated 08.02.2019, it<sup>is</sup> nowhere depicted that any inquiry was held against the appellant at the departmental level. In view of the various judgments of apex court a regular/proper enquiry is all the more necessitated in cases where major penalty is imposed on a civil servant, it was added.

In view of the available record and arguments of the learned counsel, the instant appeal is admitted to regular hearing subject to all just exceptions regarding the delay in submission of departmental appeal. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 19.12.2019 before the S.B.

Appellant Deposited  
Security & Process Fee






Chairman

19.12.2019

Junior to counsel for the appellant and Addl. AG for the respondents present.

Learned AAG seeks time to contact the respondents and submit written reply/comments. Adjourned to 04.02.2020 on which date the requisite reply/comments shall positively be submitted.



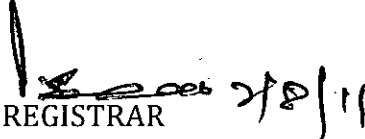
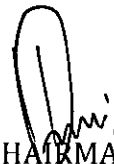

Chairman

Form- A

FORM OF ORDER SHEET

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

Case No.- \_\_\_\_\_ 1019/2019 \_\_\_\_\_

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	02/08/2019	<p>The appeal of Mr. Juma Zar, resubmitted today by Roaeda Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	23.09.2019	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>23-9-2019</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Issue notice to appellant/counsel for preliminary hearing on 08.11.2019 before S.B.</p> <p style="text-align: right;"> CHAIRMAN</p>




The appeal of Mr. Juma Zar Ex-TT GPS Yarzamd Kalay Bara District Khyber received today i.e. on 26.07.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Departmental appeal having no date be dated.
- 2- Affidavit may be got attested by the Oath Commissioner.
- 3- Copies of charge sheet, Statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.


No. 1328 /S.T,

Dt. 31-7- /2019.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Roeeda Khan Adv. Pesh.

Objection No 2 has been justified  
objection No 1 no date has been mentioned  
in departmental appeal of W appellant  
while objection No 3 no charge sheet, no  
statement of allegations, show cause notice,  
enquiry report & reply has been provided  
to W appellant by W respondent  
department.

  
21/8/19

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

In Re S.A No. 1019 /2019

Juma Zar

**VERSUS**


Education Department Khyber Pakhtunkhwa Peshawar and  
Others

**INDEX**

S#	Description of Documents	Annexure	Pages
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2.	Affidavit.		7
3.	Addresses of parties & Condonation of delay		8-10
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5.	copy of removal order	"B"	12 & 13
6.	Copy of departmental appeal	"C"	14
7.	Wakalatnama		

  
APPELLANT

Through

  
**Roeda Khan**  
Advocate, High Court  
Peshawar.

Dated: 25/07/2019

①

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

In Re S.A No. 1019 /2019

Khyber Pakhtukhwa  
Service Tribunal

Diary No. 1063

Dated 26/7/19

Juma Zar Ex-TT GPS Yarzama Kalay Bara District  
Khyber.

**Appellant**

***VERSUS***

1. Director Elementary and Secondary Education  
Officer Khyber Pakhtunkhwa Peshawar.
2. District Education Officer Khyber Tribunal  
District Jamrud.
3. Secretary Education, Khyber Pakhtunkhwa,  
Peshawar.

**Filed to-day**

**Registrar**

26/7/19.

**Respondents**

**APPEAL U/S-4 OF THE KHYBER**  
**PAKHTUNKHWA SERVICES TRIBUNAL ACT**  
**1974 AGAINST THE ORDER DATED 08/02/2019**  
**WHEREBY THE APPELLANT HAS BEEN**  
**AWARDED MAJOR PUNISHMENT OF**  
**REMOVAL FROM SERVICE AGAINST WHICH**  
**THE APPEALANT FILED DEPARTMENT**  
**APPEAL WITHIN 30 DAYS OF THE**  
**COMMUNICATION OF THE IMPUGNED**  
**ORDER DATED 08/02/2019 WHICH HAS NOT**  
**BEEN RESPONDED BY THE RESPONDANT**

Re-submitted to -day  
and filed.

Registrar 26/7/19

(2)

DEPARTMENT WITHIN STATUARY PERIOD OF  
90 DAYS.

Prayer:-

ON ACCEPTANCE OF THIS APPEAL  
THE IMPUGNED ORDER DATED  
08/02/2019 MAY KINDLY BE SET ASIDE  
AND THE APPELLANT MAY KINDLY BE  
REINSTATED IN SERVICE ALONG WITH  
ALL BACK BENEFITS. ANY OTHER  
REMEDY WHICH THIS AUGUST  
TRIBUNAL DEEMS FIT THAT MAY  
ALSO BE ONWARD TRIBUNAL DEEMS  
FIT THAT MAY ALSO BE GRANTED IN  
FAVOUR APPELLANT.

Respectfully Sheweth,

1. That the Appellant has been initially appointed as TT on 23/10/1995 in the Education department. (Copy of the appointment letter is annexure "A".)
2. That the appellant performed his duty regularly and with full devotion and no complaint whatsoever has been made against the appellant.
3. That in the year of 2017, due to domestic / personal problems and terrorism situations in the area, the appellant was unable to



perform his duty with Respondent Department.

4. That on 08/02/2019 the Respondent Department removed the appellant from service on the ground of absentee without providing opportunity of defence to the appellant. **(copy of removal order is annexure "B")**.
5. That the appellant submitted departmental appeal within 30 days of the date of communication of the impugned order dated 08/02/2019 against the said removal order which has not been responded by the respondent department within the statutory period of 90 days. **(Copy of departmental appeal is annexure "C")**
6. That feeling aggrieved the Appellant prefers the instant service appeal before this Hon'ble Tribunal on the following grounds inter alia:-

**GROUND:-**

- A. That the impugned order 08/02/2019 is void and abinitio order because it has been



passed without fulfilling the codal formalities.

B. That no regular inquiry has been conducted by the Respondent department and no chance of personal hearing has been provided to the appellant in this respect the appellant relied upon the judgment dated 2008 SCMR Page:1369.

C. That no final show cause notice has been served to the appellant by Respondent department before imposing the major penalty in this respect the appellant relied upon a judgment reported on 2009 PLC (CS) 176.

D. It is a well settled maxim no one can be condemned unheard because it is against the natural justice of law in this respect the

(5)

appellant relied upon a judgment reported on 2008 SCMR page:678.

E. That no statement of witnesses has been recorded by the inquiry officer and no opportunity of personal hearing has been provided to the appellant

F. That the punishment has been given by the Respondent department is harsh one.

G. That no notice has been served on home address of the appellant by the respondent department as well as no notice has been issued in two leading newspapers.

H. That the absence of appellant was not deliberately or intentionally but due to the reason above.

I. That the punishment is a harsh one.

J. That any other ground not raised here may graciously be allowed to be raised at the

(6)

time full of arguments on the instant service appeal.

*It is therefore, most humbly prayed that on acceptance of this appeal the impugned order dated 08/02/2019 may kindly be set aside and the appellant may kindly be reinstated in service along with all back benefits.*

*Any other relief not specifically asked for may also graciously be extended in favour of the Appellant in the circumstances of the case.*



APPELLANT

Through



**Roeeda Khan**  
Advocate, High Court  
Peshawar.

Dated: 25/07/2019

**NOTE:-**

As per information furnished by my client, no such like appeal for the same petitioner, upon the same subject matter has earlier been filed, prior to the instant one, before this Hon'ble Tribunal.



Advocate.

(7)

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

In Re S.A No. \_\_\_\_\_/2019

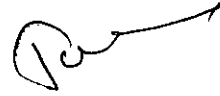
Juma Zar

**VERSUS**

Education Department Khyber Pakhtunkhwa Peshawar and  
Others


**AFFIDAVIT**

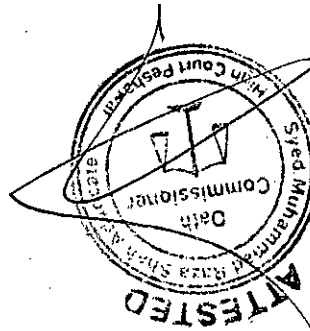
I, Juma zar Ex-TT GPS Yarzam Kalay Bara District  
Khyber., do hereby solemnly affirm and declare that all the  
contents of the **instant appeal** are true and correct to the best  
of my knowledge and belief and nothing has been concealed  
or withheld from this Hon'ble Court.



**DEPONENT**

***Identified by:***

  
**Roeda Khan**  
Advocate High Court  
Peshawar.



(8)

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

In Re S.A No. \_\_\_\_\_/2019

Juma Zar

**VERSUS**

Education Department Khyber Pakhtunkhwa Peshawar and  
Others

**ADDRESSES OF PARTIES**

***PETITIONER.***


Juma zar Ex-TT GPS Yarzam Kalay Bara District  
Khyber.

**ADDRESSES OF RESPONDENTS**

1. Director Elementary and Secondary Education  
Officer Khyber Pakhtunkhwa Peshawar.
2. District Education Officer Khyber Tribunal  
District Jamrud.
3. Secretary Education, Khyber Pakhtunkhwa,  
Peshawar.

  
APPELLANT

Through

  
**Roeda Khan**  
Advocate, High Court  
Peshawar.

Dated: 25/07/2019

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

In Re S.A No. \_\_\_\_\_/2019

Juma Zar

**VERSUS**

Education Department Khyber Pakhtunkhwa Peshawar and  
Others

**APPLICATION FOR CONDONATION OF DELAY (if any)**

*Respectfully Sheweth,*

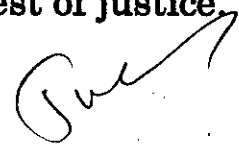
Petitioner submits as under:

1. That the above mentioned appeal is filing before this Hon'ble Tribunal in which no date is fixed for hearing so far.
2. That the appellant filed departmental appeal within 30 days of the date of communication of impugned order which has not been responded within statutory period of 90 days filed the instant service appeal within time.
3. That the absentee of the appellant was not deliberately or intentionally but due to domestic problems.
4. That due to the reason above the appellant was unable to perform his duty with the Respondent department.

10

5. That there are number of precedents of the Supreme Court of Pakistan which provides that the cases shall be decided on merits rather than technicalities.

It is, therefore, requested that the limitation period (if any) may kindly be condone in the interest of justice.



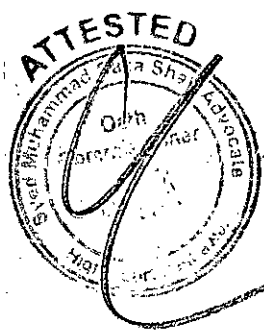
APPELLANT

Through



**Roeeda Khan**  
Advocate, High Court  
Peshawar.

Dated: 25/07/2019



AMM - "A" (11)  
OFFICE OF THE AGENCY EDUCATION OFFICER, KHYBER AGENCY AT JAMRUD

APPOINTMENT ORDER:

Mr./Miss/Mrs. Juma Zar Son/Daughter of Payo Zar

is hereby appointed as TT at GPS Dargai Landikotal in BPS No. 7

of Rs. 1480/-PK PM fixed plus usual allowances as admissible under the rules with effect from the date of His/Her taking over charge against a Vacant TT Post

Note:

- A. Charge report should be submitted to all concerned.
- B. The appointment of the candidate is being made purely on temporary basis and is liable to termination any time without any notice. In case He/She wishes to resign his/her post He/She shall have to give one month prior notice or forfeit one month pay in lieu thereof. His/Her services will be terminated if He/she is not selected by the selection committee.
- C. His/Her Original Education Qualification, date of birth and Domicile Certificate should be checked before He/She is handed over charge of the post and attested copies thereof be kept on record of the school/office.
- D. He/She should produced Health and Age Certificate from the Agency Surgeon Concerned.
- E. Age should be according to the Government Rules.
- F. He/She fails to report with in 15 days the order will be treated as cancelled.

*[Signature]*  
Agency Education Officer,  
Khyber Agency at Jamrud

Endst. No. 3955-57 / Dated 23/10/1995

- A. Director of Education (FATA) NWFP, Peshawar.
- B. Agency Account Office, at Peshawar.
- C. Head Master/Head Mistress GPS Dargai Landikotal Khyber Agency
- D. A.P.C. Khyber/FR Peshawar.

ذات ۲۳/۱۰/۹۵  
کے روز کوئی نوکری نہ لیا جائے  
تو اس کے لئے اس کے لئے

*[Signature]*  
Agency Education Officer,  
Khyber Agency at Jamrud

TESTED



12

Amn + B<sup>2</sup>

BETTER COPY


DISTRICT EDUCATION OFFICE KHYBER AGENCY AT  
JAMRUD NOTIFICATION,

1. Whereas the District Education Officer Khyber Tribal District had come to the ..... That Mr. Juma Zar TT having personal No.422534 GPS Yarzamad Kalay, Khyber Tribal District had been absent without any leave sanctioned wef 09/09/2017 to till date.
2. AND WHEREAS, ~~Absent~~ Notice was served vide this Office Endorsement No.2628-32, dated 18/10/2017 and second Notice was served vide this office No. 18184 dated 20/7/2017 and pay has been also stopped to ensure his attendance in the school in person but he did not respond.
3. AND WHEREAS, show cause notice was published for his absence in two leading newspapers i.e "Daily Mashriq dated 05/12/2018 & "Daily Express dated 05/12/2018, but he did not respond and remained absent.
4. NOW THEREFORE, in exercise of power conferred under rule 4 (b) (iii) of Khyber Pakhtunkhwa Government Servants Efficiency & Disciplinary rules 2011, the competent authority, Agency Education Officer Khyber is pleased to impose a major penalty of removal from service upon Mr. Juma Zar TT 422534 GPS Yarzamad Kalay, Tehsil Bara, Khyber Tribal District with immediate effect.

(MUHAMMAD JADOON KHAN)  
DISTRICT EDUCATION OFFICER  
KHYBER DISTRICT JAMRUD

Endst. No.3556-90,

Date 08/02/2019

  
ATTESTED

(13) AMM S'B

AND WHEREAS Absent Notice was served vide this office Encls. No. 3556-10 dated 02/07/17 and second Notice was served vide this office Encls. No. 3556-10 dated 20/07/2018 and pay has been also stopped to ensure his attendance as a person but he did not respond

3. AND WHEREAS show cause notice was published for his absent in two local papers i.e. "Daily Mashq" dated 05/12/2018 and "Daily Express" Dated 05/12/2018 but he did not respond and remain absent.

4. NOW THEREFORE in exercise of the powers conferred under Rules 4 (b) (ii) of Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) 2011, the undersigned Agency Education Officer is pleased to impose a major penalty of disapproval from service on Mr. Juma Zai F.I. 422534 GPS Yar Zamand Khyber Pakhtunkhwa.

MR. JAMA ZAI  
AGENCY EDUCATION OFFICER  
DISTRICT EDUCATION OFFICER

3556-10

08/2/2019

Copy of the order is being sent to  
1. Mr. Juma Zai, Secretary, District Education Office, Peshawar.  
2. Deputy Commissioner, Khyber Pakhtunkhwa, Peshawar.  
3. District Accounts Officer, District Education Office, Peshawar.  
4. Mr. Juma Zai, GPS Yar Zamand, Peshawar. (He has been advised to go to his home at once.)

DISTRICT EDUCATION OFFICER  
KHYBER PAKHTUNKHWA  
PESHAWAR

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دفعہ ۲۱ - Ann

بھخور جناب ڈائریکٹر ایلیمنٹری اینڈ سکینڈری ایجوکیشن پشاور خیبر پختونخوا

عنوان: اپیل برائے سروس بحالی

جناب عالی!

گزارش ہے کہ سائل گورنمنٹ پرائمری سکول یارزد کلے باڑہ خیبر ایجنسی میں بطور (ٹی، ٹی) استاد ڈیوٹی سرانجام دے رہا تھا۔ سائل کی تقریباً 23 سال سروس ہے۔ دران سروس سائل کو ذاتی دشمنی درپیش ہوئی تھی۔ جبکہ علاقہ میں حالیہ دہشت گرد حالات کی وجہ سے سائل کو اور لوگوں کی طرح علاقہ بھی چھوڑنا پڑا۔ جس کے بعد سائل کو نامعلوم افراد نے پشاور سے اغوا بھی کیا تھا۔ اور سائل بہت عرصہ ان کے قبضے میں رہا۔ جس کی وجہ سے سائل کی نوکری کو ختم کر دیا۔ سائل اپنے خاندان کا واحد کفیل ہے۔ کوئی بھی ذریعہ معاش نہیں ہے۔

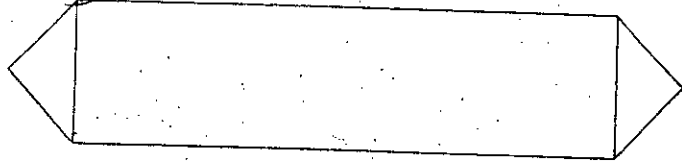
اس لیے گزارش ہے کہ سائل کے مشکلات کو مد نظر رکھتے ہوئے سائل کے نوکری پر بحال کرنے کے احکامات صادر فرمائیں۔

عین نوازش ہوگی  
العارض جمعہ زار  
سائل جمعہ زار (ٹی، ٹی) جی، پی، ایس (ایس) یارزد کلے باڑہ خیبر ایجنسی  
For Favourable Consideration  
District Education Officer  
Khyber Tribal District at Jhelum

ATTESTED

DISTRICT EDUCATION OFFICER  
KHYBER TRIBAL DISTRICT AT JHELUM

بعدالت صلوات علیہ وسلم



2019ء منجانب

محمد دار بنام

مورخہ

مقدمہ

دعویٰ

جرم

## باعث تحریر آنکد

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارملی متعلقہ

آن مقام کے لیے روایت کیا گیا ہے

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کمل کارروائی کا کمال اختیار ہوگا۔ نیز

وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

زر میں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت 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۔ از بصورت ضرورت

مقدمہ مذکور کے کمل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے

تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے

اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے

سبب سے دہوگا کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں

گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

2019ء

ماہ جولائی

26

المرقوم

العبد محمد دار

کے لئے منظور ہے۔

محمد دار

مقام

محمد دار بنام

Accepted by

PL

محمد دار  
صندھ

**Appeal No.1019/2019**

**Juma Zar.....Appellant.**

**Versus**

**Education Department Khyber Pakhtunkhwa Peshawar and  
Others..... Respondents**

**Comments on behalf Respondents No1 and 2.**

**Preliminary objections.**

- That the appellant has got no cause of action locos standi to file the instant appeal.
- That the appellant has not come to this honorable tribunal with clean hands.
- That appellant concealed material facts from this honorable tribunal.
- That the appellant is stopped by her own conduct to bring the present appeal.
- That the appeal is bad due to mis-joinder and non-joinder of necessary parties.
- That the appeal is barred by law.

Respectfully submitted as;

**ON FACTS.**

- 01.** Subject to record
- 02.** Incorrect. The appellant did not perform any duty regularly. He was involved in willful absence. Two consecutive absence notices were served upon the appellant vide Endst: No 181 date 20/07/2020 and vide Endst:No 2628-32 dated 18/10/2018. But he did not respond even paid no heed to these notice. Copies attached as Annexures ("A"&"B").
- 03.** Incorrect: As elucidated under Para 2 above.
- 04.** Incorrect. The respondent Department followed laws/rules and acted accordingly. The respondent Department published the absence notice in two leading Newspapers i.e Daily Mashriq, dated 05/12/2018 and "Daily Express: dated 05/12/2018 but the appellant did not respond and remained absent. Finally the responded department removed the appellant from service vide Endst No: 3585-90 dated 08/02/2019, relevant copies are attached as Annexures ("C,D&E").
- 05.** In correct. Hence denied.

**Grounds:**

- A.** Incorrect. The respondent department removed the appellant from service after fulfilling all the codal formalities.
- B.** Incorrect. The respondent department served absence notice in two leading newspapers but the appellant did not respond.

- C. Incorrect. The responded department time and again informed the appellant through absence notices but the appellant turned a beafear to these notices and did not respond and remained absent.
- D. Incorrect. As per Para "B"
- E. Incorrect. As elucidate under Para 2 and 4 above on facts.
- F. Incorrect. The respondent department followed laws/rules and acted accordingly
- G. Incorrect. As elucidate in Para 4 above on facts.
- H. Incorrect. The respondent department can not tolerat the absenteeism of the appellant without any sanction of leave on the risk of the poor students education.
- I. Incorrect. The respondent department treats everyone in accordance with laws/rules and thus treated the appellant accordingly.
- J. The respondent department may also be allowed to advance other proofs at the time of hearing.

**PRAY:**

It is humbly prayed that the appeal may please be dismissed with cost.

**Respondent No. 2**

**District Education Officer  
Tribal District Khyber at Jamrud**

**Affidavit**

We the above respondents do hereby declare and affirm the above comments are true and correct to the best of our knowledge and nothing has been concealed from this Honorable Tribunal.

**Respondent No. 2**

**District Education Officer  
Tribal District Khyber at Jamrud**



DISTRICT EDUCATION OFFICE  
TRIBAL DISTRICT KHYBER AT JAMRUD  
PHONE. 091-5820584 FAX 091-5820584

P-12  
Annexure A

**DISTRICT EDUCATION OFFICE KHYBER AGENCY AT JAMRUD.**  
**WILLFUL ABSENCE NOTICE.**

You, the following teachers were absent from your duties as reported by AAEO Bara-1 from the period mentioned against your name.

S.No.	Name of Employee/Desig.	School	Absent Period w.e.f.	Remarks
1	Juma Zar TT 42253A	GPS Yar Zamad Killi Bara	09/09/2017	Final Notice
2	Muhammad Haroon PST	GPS Zarma Jan Aka Khel	17/05/2018	Final Notice

I, Jadoon Khan District Education Officer Tribal District Khyber at Jamrud in the capacity of the competent authority do hereby issue this notice, through a registered acknowledgement, on your home address directing you to resume your duty within fifteen days of issuance of this notice. It must be noted that if this notice is received back as undelivered or no response is received from you, with in the stipulated time period, another notice would be published in two leading news papers daily "AJJ" and daily "Mashriq" for directing you to resume your duty with in another Fifteen days of the publication of that notice, failing which an ex-parte decision would be taken against you.

On the expiry of that stipulated period in the notice, major penalty of removal from service will be imposed upon you.

(MUHAMMAD JADOON KHAN)  
DISTRICT EDUCATION OFFICER  
TRIBAL DISTRICT KHYBER AT JAMRUD

Dated 20/7/2018

Endst: No. 181-84

Copy of the above is forwarded to the:

1. Director Education (NMD) at Peshawar.
2. Deputy Commissioner Khyber Tribal District at Peshawar.
3. AAEO Local Office
4. Officials Concerned.

DISTRICT EDUCATION OFFICER  
TRIBAL DISTRICT KHYBER AT JAMRUD

P-4  
B

Annexure




**AGENCY EDUCATION OFFICE**  
PHONE. 091-5820584 FAX 091-5820584  
NO 28/10 DATED 1 2017

**WILLFUL ABSENCE NOTICE:-**

You, the following teacher and chowkidar are absent from the period mentioned against your names.

S.No	Name	Designation	Period	Date
1	Juma zar	IT	GPS Yar Zamad	09/09/2017
2	Shabeer Ahmad	Chowkidar	GPS Yar Zamad	01/09/2017


I, Jadoon Khan Agency Education Officer Khyber in the capacity of the competent authority do hereby issue this notice, through a registered acknowledgement, on your home address directing you to resume your duty within 7 days not more than 15 days of issuance of this notice. It must be noted that if this notice is received back as undelivered or no response is received from you, with in the stipulated period of time, another notice would be published in two leading newspapers for directing you to resume your duty with in further 15 days of the publication of that notice, failing which an ex-parte decision would be taken against you, as specified in KP Govt: Servants (Efficiency & Discipline) Rules 2011.

  
AGENCY EDUCATION OFFICER  
KHYBER AGENCY AT JAMRUD

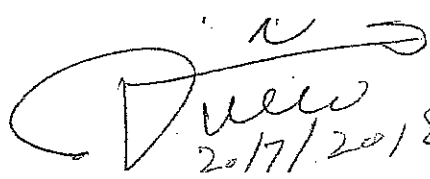
Endst: No. 28-58 dated 18/10/2017

Copy of the above is forwarded to the:-

1. Director Education FATA
2. PA Khyber
3. AAEO (M) Bara
4. Teachers concerned (GPS Yar zamad aka khel)  
Home address: Bazar zakha khel Landi kotal.
5. Chowkidar concerned  
Address: Village Qandia Hussain khel Men khel Tehdil Bara

  
AGENCY EDUCATION OFFICER  
KHYBER AGENCY AT JAMRUD

Ullw

  
2017/2018





P-10  
Annexure - "D"

## نوٹس فیبر حاضری

آپ کی سماج کاری کی اچھی ایس انہوں تالاب باڑہ کسی رضا خان ٹی ٹی بی ایس  
باری عالم شیر، محو زار ٹی ٹی بی ایس بارہتہ گل باڑہ اور محمد بادون ٹی ایس ٹی بی بی  
ایس روزہ جان علی اکاٹیل ضلع خیراٹی، بوٹوں سے تاحال فیبر حاضر ہو جس کی خاطر  
آپ کو دفتر ہذا سے آپ کے گھر کے پتہ پر دفتر نوٹس کا راجہ سید سید فیض  
اسٹ نوٹس ارسال کئے گئے تھے جن میں آپ کو ہدایات کی گئی تھی کہ آپ جلد از جلد  
اپنے کے اندر اندر اپنی اپنی ذیولٹی پر حاضر ہو جائے اور اپنی فیبر حاضری تائیں لیکن  
اس کے باوجود بھی نہ آپ اپنے فراموشی کی ادائیگی کے لئے اپنی ذیولٹیوں پر حاضر  
ہوئے اور نہ کوئی معقول وجہ یا اطلاع دفتر ہذا کو ارسال کر دی۔

آخری بار بذریعہ اخبار نوٹس آپ کو منجھ کیا جاتا ہے کہ اس نوٹس کی اشاعت کے  
15 دن کے اندر اندر ڈسٹرکٹ ایجوکیشن آفیسر ضلع خیر کے درویش ہو کر وجہ برائے  
غیر حاضر ہوتی ہیں کریں۔ کیوں نہ آپ کے خلاف تادیبی کارروائی کی جائے گی۔  
عدم حاضری کی صورت میں آپ کے خلاف خیر بچھوخوا کے سرکاری ملازمین کے  
(ایجوکیشن اور ڈسٹرکٹ) رولز مجریہ 2011 کے رولز کے تحت یکطرفہ کارروائی عمل میں  
لائی جائے گی جناب سب کی ملازمت برعکس پڑتی ہو سکتی ہے۔

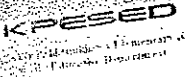
محمد جہون وزیر

ڈسٹرکٹ ایجوکیشن آفیسر ضلع خیراٹی، جمروڈ

INF(P)  
4554

DISTRICT EDUCATION OFFICE  
KHYBER TRIBAL DISTRICT KHYBER AT JAMRUD  
PHONE: 091-5820584 FAX 091-5820584  
NO: ----- DATED: -- / -- / 2019

P-7  
Annexure "E"  
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**DISTRICT EDUCATION OFFICE KHYBER AGENCY AT JAMRUD**  
**NOTIFICATION**

1. WHEREAS the District Education Officer Khyber Tribal District had come to know that Mr. Juma Zar TT having personnel Number 422534 GPS Yar Zamand Killi, Tehsil Bara Khyber Tribal District had been absent without any leave sanction w.e.f 09/09/2017 till now.
2. AND WHEREAS Absent Notice was served vide this office Endst No.2628-32 dated 18/10/2017 and second Notice was served vide this office Endst. No.181-84 dated 20/07/2018. and pay has been also stopped to ensure his attendance in school in person but he did not respond.
3. AND WHEREAS show cause notice was published for his absent in two leading news papers i.e "Daily Mashriq" dated 05/12/2018 and "Daily Express" Dated 05/12/2018. But he did not respond and remained absent.
4. NOW THEREFORE In exercise of the powers conferred under Rules-4 (b) (iii) of Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) 2011, the competent Authority, Agency Education Officer Khyber, is pleased to impose a major penalty of "removal from Service" upon Mr. Juma Zar TT 422534 GPS Yar Zamand Killi, Tehsil Bara Khyber Tribal District with immediate effect.

MUHAMMAD JADOON KHAN  
DISTRICT EDUCATION OFFICER  
KHYBER TRIBAL DISTRICT AT JAMRUD

Dated 08/02/2019

Endst: No 3586-90

- Copy of the above is forwarded to the:
1. Director Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.
  2. Deputy Commissioner Khyber Tribal District at Peshawar.
  3. District Accounts Officer at Jamrud.
  4. J.AEO Local Office Pay Clerk concerned.
  5. To Mr. Juma Zar TT GPS Yar Zamand Killi Bara under registered cover to his home address.

DISTRICT EDUCATION OFFICER  
KHYBER TRIBAL DISTRICT AT JAMRUD

P 10

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

In Re S.A No. \_\_\_\_\_/2019

Juma Zar

**VERSUS**

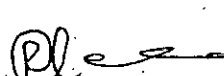
Education Department, Khyber Pakhtunkhwa Peshawar and  
Others

**INDEX**

S#	Description of Documents	Annexure	Pages
1.	Grounds of Petition.		1-6
2.	Affidavit.		7
3.	Addresses of parties & Condonation of delay		8-10
4.	Copy of the appointment letter	"A"	11
5.	copy of removal order	"B"	12 & 13
6.	Copy of departmental appeal	"C"	14
7.	Wakalatnama		

  
APPELLANT

Through

  
**Roeda Khan**  
Advocate, High Court  
Peshawar.

Dated: 25/07/2019

(1)

BEFORE THE HON'BLE SERVICE TRIBUNAL  
PESHAWAR

In Re S.A No. \_\_\_\_\_/2019

Juma Zar Ex-TT GPS Yarzama Kalay Bara District  
Khyber.

Appellant

**VERSUS**

- 1. Director Elementary and Secondary Education  
Officer Khyber Pakhtunkhwa Peshawar.
- 2. District Education Officer Khyber Tribunal  
District Jamrud.
- 3. Secretary Education, Khyber Pakhtunkhwa,  
Peshawar.

Respondents

APPEAL U/S-4 OF THE KHYBER  
PAKHTUNKHWA SERVICES TRIBUNAL ACT  
1974 AGAINST THE ORDER DATED 08/02/2019  
WHEREBY THE APPELLANT HAS BEEN  
AWARDED MAJOR PUNISHMENT OF  
REMOVAL FROM SERVICE AGAINST WHICH  
THE APPEALANT FILED DEPARTMENT  
APPEAL WITHIN 30 DAYS OF THE  
COMMUNICATION OF THE IMPUGNED  
ORDER DATED 08/02/2019 WHICH HAS NOT  
BEEN RESPONDED BY THE RESPONDANT

(2)

DEPARTMENT WITHIN STATUARY PERIOD OF  
90 DAYS.

Prayer:-

ON ACCEPTANCE OF THIS APPEAL  
THE IMPUGNED ORDER DATED  
08/02/2019 MAY KINDLY BE SET ASIDE  
AND THE APPELLANT MAY KINDLY BE  
REINSTATED IN SERVICE ALONG WITH  
ALL BACK BENEFITS. ANY OTHER  
REMEDY WHICH THIS AUGUST  
TRIBUNAL DEEMS FIT THAT MAY  
ALSO BE ONWARD TRIBUNAL DEEMS  
FIT THAT MAY ALSO BE GRANTED IN  
FAVOUR APPELLANT.

Respectfully Sheweth,

1. That the Appellant has been initially appointed as TT on 23/10/1995 in the Education department. (Copy of the appointment letter is annexure "A".)
2. That the appellant performed his duty regularly and with full devotion and no complaint whatsoever has been made against the appellant.
3. That in the year of 2017, due to domestic / personal problems and terrorism situations in the area, the appellant was unable to

(3)

perform his duty with Respondent Department.

4. That on 08/02/2019 the Respondent Department removed the appellant from service on the ground of absentee without providing opportunity of defence to the appellant. (copy of removal order is annexure "B").

5. That the appellant submitted departmental appeal within 30 days of the date of communication of the impugned order dated 08/02/2019 against the said removal order which has not been responded by the respondent department within the statutory period of 90 days. (Copy of departmental appeal is annexure "C")

6. That feeling aggrieved the Appellant prefers the instant service appeal before this Hon'ble Tribunal on the following grounds inter alia:-

GROUNDS:-

A. That the impugned order 08/02/2019 is void and abinitio order because it has been

passed without fulfilling the codal formalities.

B. That no regular inquiry has been conducted by the Respondent department and no chance of personal hearing has been provided to the appellant in this respect the appellant relied upon the judgment dated 2008 SCMR Page:1369.

C. That no final show cause notice has been served to the appellant by Respondent department before imposing the major penalty in this respect the appellant relied upon a judgment reported on 2009 PLC (CS) 176.

D. It is a well settled maxim no one can be condemned unheard because it is against the natural justice of law in this respect the



(5)

appellant relied upon a judgment reported on 2008 SCMR page:678.

E. That no statement of witnesses has been recorded by the inquiry officer and no opportunity of personal hearing has been provided to the appellant

F. That the punishment has been given by the Respondent department is harsh one.

G. That no notice has been served on home address of the appellant by the respondent department as well as no notice has been issued in two leading newspapers.

H. That the absence of appellant was not deliberately or intentionally but due to the reason above.

I. That the punishment is a harsh one.

J. That any other ground not raised here may graciously be allowed to be raised at the

(6)

5

time full of arguments on the instant service appeal.

*It is therefore, most humbly prayed that on acceptance of this appeal the impugned order dated 08/02/2019 may kindly be set aside and the appellant may kindly be reinstated in service along with all back benefits.*

*Any other relief not specifically asked for may also graciously be extended in favour of the Appellant in the circumstances of the case.*



APPELLANT

Through

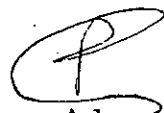


Roeeda Khan  
Advocate, High Court  
Peshawar.

Dated: 25/07/2019

NOTE:-

As per information furnished by my client, no such like appeal for the same petitioner, upon the same subject matter has earlier been filed, prior to the instant one, before this Hon'ble Tribunal.



Advocate.

7

BEFORE THE HON'BLE SERVICE TRIBUNAL  
PESHAWAR

In Re S.A No. \_\_\_\_\_/2019

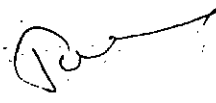
Juma Zar

VERSUS

Education Department Khyber Pakhtunkhwa Peshawar and  
Others

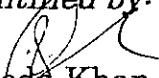
AFFIDAVIT

I, Juma zar Ex-TT GPS Yarzam Kalay Bara District  
Khyber., do hereby solemnly affirm and declare that all the  
contents of the **instant appeal** are true and correct to the best  
of my knowledge and belief and nothing has been concealed  
or withheld from this Hon'ble Court.



DEPONENT

*Identified by:*

  
Roeeda Khan  
Advocate High Court  
Peshawar.

(a)

(2)

BEFORE THE HON'BLE SERVICE TRIBUNAL  
PESHAWAR

In Re S.A No. \_\_\_\_\_/2019

Juma Zar

VERSUS

Education Department Khyber Pakhtunkhwa Peshawar and  
Others

APPLICATION FOR CONDONATION OF DELAY (if any)

*Respectfully Sheweth,*

Petitioner submits as under:

1. That the above mentioned appeal is filing before this Hon'ble Tribunal in which no date is fixed for hearing so far.
2. That the appellant filed departmental appeal within 30 days of the date of communication of impugned order which has not been responded within statutory period of 90 days filed the instant service appeal within time.
3. That the absentee of the appellant was not deliberately or intentionally but due to domestic problems.
4. That due to the reason above the appellant was unable to perform his duty with the Respondent department.

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11

5. That there are number of precedents of the Supreme Court of Pakistan which provides that the cases shall be decided on merits rather than technicalities.

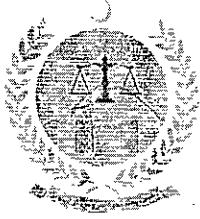
It is, therefore, requested that the limitation period (if any) may kindly be condone in the interest of justice.

  
APPELLANT

Through

  
Roeeda Khan  
Advocate, High Court  
Peshawar.

Dated: 25/07/2019



**KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

No: \_\_\_\_\_/ST Dated: \_\_\_\_/\_\_\_\_/2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281  
Fax:- 091-9213262

To,

The District Education Officer Khyber Tribal District,  
Jamrud.

Subject: **JUDGMENT IN SERVICE APPEAL NO. 1019/2019 OF Mr. JUMA ZAR VS DEO, KHYBER TRIBAL DISTRICT JAMRUD.**

I am directed to forward herewith a certified copy of Judgement dated 02.02.2022 passed by this Tribunal on the above subject for strict compliance.

**Encl: As Above.**

(WASEEMAKHTAR)

REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR