

17th Oct, 2022

None present on behalf of the appellant. Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG for the respondents present.

Notices e issued to appellant and his counsel for the next date. To come up for arguments on 15.11.2022 before the D.B at camp court, Abbottabad.



(Fareeha Paul)
Member(E)



(Kalim Arshad Khan)
Chairman

15th Nov 2022

Appellant in person present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

Appellant seeks adjournment on the ground that his learned counsel the appellant is not available for today. Last chance is given to the appellant to argue the case on the next date failing which the case will be decided on the available record without the arguments. To come up for arguments on 14.12.2022 before D.B at camp court Abbottabad.


(Salah Ud Din)
Member (Judicial)


(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad


20.04.2022

Clerk of learned counsel for the appellant present. Mr. Naseeb Khan, Section Officer (Litigation) alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for official respondents No. 1 to 3, 7 & 8 present. Syed Iltaf Hussain, Advocate on behalf of respondents No. 4 to 6 present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is unable to appear before the Tribunal today due to illness of his mother. Adjourned. Last opportunity given. To come up for arguments on 14.06.2022 before the D.B at Camp Court Abbottabad.



(Rozina Rehman)
Member (J)
Camp Court Abbottabad



(Salah-ud-Din)
Member (J)
Camp Court Abbottabad

14.06.2022

Nemo for appellant. Lawyers are on general strike.

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

Notice be issued to appellant/counsel for 15.08.2022 for arguments before D.B at Camp Court, Abbottabad.



(Fareeha Paul)
Member (E)
Camp Court, A/Abad

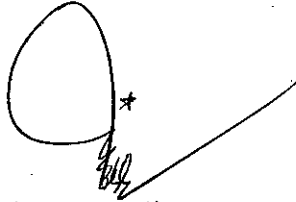


(Rozina Rehman)
Member (J)
Camp Court, A/Abad

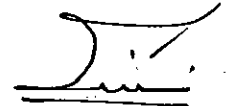
21.12.2021

Clerk of learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Clerk of learned counsel for the appellant stated that learned counsel for the appellant is unable to attend the Tribunal today due to strike of Lawyers. Adjourned. To come up for arguments on 21.01.2022 before the D.B at Camp Court Abbottabad.



(Mian Muhammad)
Member (E)
Camp.Court A/Abad



(Salah-ud-Din)
Member (J)
Camp Court A/Abad

21.01.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 20.04.2022 before the D.B at Camp Court Abbottabad.



(Rozina Rehman)
Member (J)
Camp Court A/Abad



(Salah-ud-Din)
Member (J)
Camp Court A/Abad

21.01.2021

Due to COVID-19, the case is adjourned for the same on 18.02.2021 before D.B.


READER

18.02.2021

Junior counsel for appellant present.

Noor Zaman Khattak learned District Attorney for respondents present.

Former made a request for adjournment as senior counsel for appellant is not available today. Adjourned. To come up for arguments on 14.06.2021 before D.B at Camp Court, Abbottabad.



(Atiq ur Rehman Wazir)
Member (E)
Camp Court, A/Abad



(Rozina Rehman)
Member(J)
Camp Court, A/Abad

14.06.2021

Due to cancellation of tour, Bench is not available. Therefore, case is adjourned to 28.09.2021 for the same as before.


Reader

28.09.2021

Counsel for appellant present.

Muhammad Rasheed, learned Deputy District Attorney present.

Former made a request for adjournment. Request is accorded. To come up for arguments on 21.12.2021 before D.B at Camp Court, Abbottabad.



(Rozina Rehman)
Member(J)
Camp Court, A/Abad



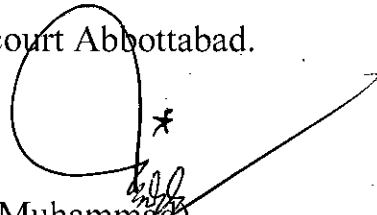
Chairman
Camp Court, A/Abad

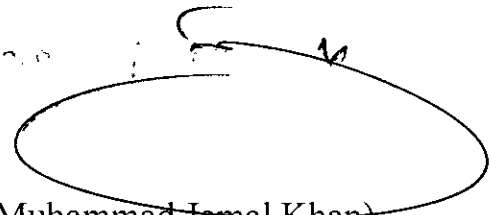
19.11.2020

Counsel for the appellant is present. Mr. Muhammad Riaz Khan Painsdakhel, Asst: AG alongwith Mr. M. Ishfaq, Assistant for respondents are present.

Learned counsel for the appellant requests for adjournment as he has not prepared the brief.

Adjourned to 21.01.2021 for arguments before D.B at camp court Abbottabad.


(Mian Muhammad)
Member(E)


(Muhammad Jamal Khan)
Member(J)
Camp Court Abbottabad

Due to covid ,19 case to come up for the same on / /
at camp court abbottabad.

Reader

9 / 20 Due to summer vacation case to come up for the same on 1 / 6
at camp court abbottabad.

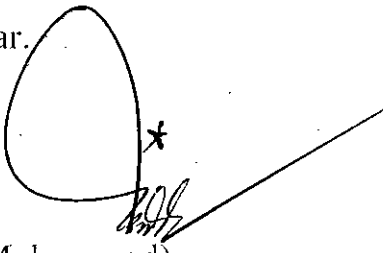

Reader

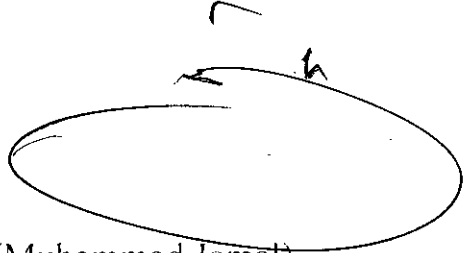
16.09.2020

Appellant has not forth come despite making of repeated calls at different interval and the last cal in this regard was made on 12:10 PM. Mr. Usman Ghani, District Attorney alongwith Mr. Sajid Saleem, Advocate for respondents present.

The last two adjournments were made on the basis of note Reader due to spread of disease of Covid-19, therefore, in the circumstances we deem it appropriate to issue notice to the appellant as well as his respective counsel.


Adjourned to 19.11.2020 for arguments before D.B at Peshawar.



(Mian Muhammad)
Member(E)


(Muhammad Jamal)
Member
Camp Court A/Abad

17.12.2019

Junior counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Sajid, Superintendent for respondent No. 1 present. Junior counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant has gone to Swat and cannot attend the Tribunal today. Adjourned to 22.01.2020 for rejoinder and arguments before D.B at Camp Court Abbottabad.

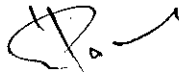

(Hussain Shah)
Member
Camp Court Abbottabad


(M. Amin Khan Kundi)
Member
Camp Court Abbottabad

22.01.2020

None for the appellant present. Mr. Ziaullah, DDA alongwith Mr. Sohail Ahmad Zeb, Assistant and Mr. Muhammad Ishfaq, Legal Officer for the respondents present. Due to general strike of the bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for further proceedings/arguments on 18.02.2020 before D.B at camp court Abbottabad. Appellant be put on notice for the date fixed.



Member



Member
Camp Court A/Abad

19.08.2019

No one present on behalf of appellant. Syed Altaf Hussain Shah Advocate present and submitted written reply/comments alongwith wakalat nama in favor of the respondents No.4 to 6 & 8. Written reply on behalf of remaining respondents not submitted. Muhammad Shameem SO representative of respondent No.7 present and seeks time to furnish written reply/comments. No one present on behalf of respondents No.1 to 3. Notice be issued to respondents No.1 to 3 with direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on behalf of respondents No.1 to 3 & 7 on 21.10.2019 before S.B at Camp Court, Abbottabad.

21.10.2019

Appellant present in person.  Member
Camp Court, A/Abad, District
Attorney present. Mr. Muhammad Shamim, SO for respondents No.1, 2, 3 and 7 present and submitted parawise comments on behalf of the said respondents which are placed on record. Other respondents have already submitted their parawise comments. To come up for rejoinder if any, and arguments on 17.12.2019 before the D.B at Camp Court, Abbottabad.


Member
Camp court, A/Abad

24.05.2019

Counsel for the appellant Muhammad Javed present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in ^{Board of} ~~Border~~ of ^{intermediate} Elementary and Secondary Education Abbottabad as Assistant Secretary. It was further contended that after retirement, the respondent-department issued letter/order dated 24.04.2018 wherein it was ordered that Rs. 398197.41 to be recovered from the appellant on the basis of wrong pay fixation. The appellant filed departmental appeal on 03.06.2018 but the same was not decided within the statutory period therefore, the appellant filed Writ Petition on 01.07.2018 which was disposed of vide order dated 19.02.2019 hence, the present service appeal on 11.03.2019. Learned counsel for the appellant contended that before the impugned order neither any inquiry was conducted by the respondent-department nor the appellant was provided opportunity of personal hearing and defence. It was further contended that the respondent-department was also not competent to issue the impugned order of recovery against the appellant on the basis of locus Potentia. In this regard he also relied on PLD 1992 Supreme Court 207. It was further contended that the appeal pertain to financial matter therefore, limitation does not run against the appellant therefore, the impugned order is illegal and liable to be set-aside.

The contention raised by the learned counsel for the appellant 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 10 days thereafter, notice be issued to the respondents for written reply/comments for 19.08.2019 before S.B at Camp Court Abbottabad.

MA
(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad

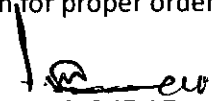

Appellant Deposited
Security & Process Fee
27/5/19

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 353/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	11/03/2019	<p>The appeal of Mr. Muhammad Javed presented today by Malik Muhammad Waseem Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 11/3/2019</p>
2-	17-3-19	<p>This case is entrusted to touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>26-05-2019</u></p> <p> CHAIRMAN</p>

18.02.2021 Junior counsel for appellant present.

Noor Zaman Khattak learned District Attorney for respondents present.

Former made a request for adjournment as senior counsel for appellant is not available today. Adjourned. To come up for arguments on 14.06.2021 before D.B at Camp Court, Abbottabad.

(Atiq ur Rehman Wazir)

Member (E)

Camp Court, A/Abad

(Rozina Rehman)

Member(J)

Camp Court, A/Abad

14.06.2021 Due to cancellation of tour, Bench is not available. Therefore, case is adjourned to 28.09.2021 for the same as before.

Reader

28.09.2021 Counsel for appellant present.

Muhammad Rasheed, learned Deputy District Attorney present.

Former made a request for adjournment. Request is accorded. To come up for arguments on 21.12.2021 before D.B at Camp Court, Abbottabad.

(Rozina Rehman)

Member(J)

Camp Court, A/Abad

Chairman

Camp Court, A/Abad

16.09.2020

Appellant has not forth come despite making of repeated calls at different interval and the last cal in this regard was made on 12:10 PM. Mr. Usman Ghani, District Attorney alongwith Mr. Sajid Saleem, Advocate for respondents present.

The last two adjournments were made on the basis of note Reader due to spread of disease of Covid-19, therefore, in the circumstances we deemed it appropriate to issue notice to the appellant as well as his respective counsel.

Adjourned to 19.11.2020 for arguments before D.B at Peshawar.

(Mian Muhammad)
Member(E)

(Muhammad Jamal)
Member
Camp Court A/Abad

19.11.2020

Counsel for the appellant is present. Mr. Muhammad Riaz Khan Paindakhel, Asst: AG alongwith Mr. M. Ishfaq, Assistant for respondents are present.

Learned counsel for the appellant requests for adjournment as he has not prepared the brief.

Adjourned to 21.01.2021 for arguments before D.B at camp court Abbottabad.

(Mian Muhammad)
Member(E)

(Muhammad Jamal Khan)
Member(J)
Camp Court Abbottabad

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. 353 /2019

Muhammad Javed, Ex-Assistant Secretary Academic, Board of Intermediate & Secondary Education, Abbottabad.

....APPELLANT

VERSUS

Director, Local Fund Audit Department, Government of Khyber Pakhtunkhwa, Peshawar & others.

...RESPONDENTS

SERVICE APPEAL

INDEX

S. #	Description	Page #	Annexures
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2.	Copies of certificate of SSC and appointment letter	12 to 13	"A" & "B"
3.	Copy of Promotion letter	14	"C"
4.	Copy of Intermediate certificate, order of one advance increment by BISE & Government Notification / 07/01/1993 of dated 07/01/1993 for another advance increment	15, 16 17	"D" "E" & "F"
5.	Copy of Government Notification No.FD(PRC)1-1/89 dated 11/08/1991 & BISE calendar regarding advance increments".	18 to 22 23	"G" & "H"
6.	Copy of the impugned letter No.LPI(29)10-2/502 dated 13/06/2017	24	"I"
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8.	Copy of application and letter No.113	26, 27	"K" & "L"
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...APPELLANT

Dated: _____ /2019

Through;


(MALIK MUHAMMAD WASEEM)
Advocate High Court, Abbottabad

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. _____-A/2019

Muhammad Javed, Ex-Assistant Secretary Academic, Board of Intermediate & Secondary Education, Abbottabad.

...APPELLANT

VERSUS

1. Director, Local Fund Audit Department, Government of Khyber Pakhtunkhwa, Peshawar.
2. Assistant Director, (HQ) Local Fund Audit Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. Auditor, (pension Incharge) Local Fund Audit Department, Government of Khyber Pakhtunkhwa, Benevolent Fund Building, Peshawar Cantt.
4. Board of Intermediate & Secondary Education, Abbottabad through it's Chairman.
5. Chairman, Board of Intermediate & Secondary Education, Abbottabad.
6. Secretary, Board of Intermediate & Secondary Education, Abbottabad.
7. Secretary, to the Govt. of KPK, Finance Department, Civil Secretariat, Peshawar.
8. Establishment Officer Board of Intermediate & Secondary Education, Abbottabad.

...RESPONDENTS

**SERVICE APPEAL UNDER SECTION 4 OF
SERVICE TRIBUNAL ACT 1974 FOR
DECLARATION TO THE EFFECT THAT THE
IMPUGNED AND SO-CALLED RECOVERY**

(2)

ORDERS PASSED AND ACTIONS TAKEN
THERE UNDER I.E LETTER
NO.LPI(29)10.2/503 DATED 13/06/2017 BY
RESPONDENT NO.2 AND ENDST NO:
16/A/24/ESTT/BISE/ATD DATED: 24/04/2018
BY RESPONDENT NO.6 (BOTH IMPUGNED)
ARE ILLEGAL, UNLAWFUL, AGAINST THE
LAW, FACTS AND CIRCUMSTANCES, ARE
INEFFECTIVE UPON THE RIGHTS OF
PRESENT APPELLANT.

PRAYER: ON THE ACCEPTANCE OF THE
INSTANT APPEAL, THE IMPUGNED AND SO-
CALLED RECOVERY ORDERS PASSED AND
ACTIONS TAKEN THERE UNDER I.E LETTER
NO.LPI(29)10.2/503 DATED 13/06/2017 BY
RESPONDENT NO.2 AND ENDST NO:
16/A/24/ESTT/BISE/ATD DATED: 24/04/2018
BY RESPONDENT NO.6 (BOTH IMPUGNED)
MAY PLEASE BE DECLARED AB-INITIO
NULL AND VOID, ULTRA VIRES,
DISCRIMINATORY, UNCONSTITUTIONAL,
ILLEGAL, WITHOUT LAWFUL AUTHORITY
AND OF NO LEGAL AND BINDING EFFECTS
ON THE RIGHTS OF THE APPELLANT AND

CONSEQUENTLY, THE ILLEGAL AND UNJUSTIFIED, SUM RECOVERED FROM THE APPELLANT MAY PLEASE BE ORDERED TO BE RETURNED TO THE APPELLANT. ANY OTHER APPROPRIATE RELIEF UNDER THE PECULIAR CIRCUMSTANCES OF THE CASE, NOT SPECIFICALLY PRAYED FOR, MAY ALSO BE AWARDED IN FAVOR OF THE APPELLANT.

Respectfully Sheweth;

The brief facts given rise to the instant service appeal are as under:-

1. That the appellant was appointed as a junior clerk in Board of Intermediate and Secondary Education, Peshawar on 02/07/1977, on the basis of having an educational qualification of SSC. (Certificate of SSC and appointment letter is Annexure "A" and "B" respectively).
2. That in the year 1983, vide order 248, the appellant was promoted to the post of Senior

Clerk on the basis of seniority cum fitness.
(Promotion letter is annexed as annexure "C")

3. That in the year 1987, appellant improved his educational qualification by passing his intermediate examination, on the basis of which, he was accorded one advance increment as per Board Calendar, Chapter XXIX, Para 01, page 320 in the year 1989 and later on, second qualification increment was awarded with effect from 01/06/1991 as per provincial Government Notification No.FD(PRC) 1-1/89 dated 11/08/1991, vide office order 57 of dated 07/01/1993. (Intermediate certificate, order of one advance increment by BISE & Government Notification of dated 07/01/1993 for another advance increment are annexed as Annexure "D" "E" & "F" whereas the Government Notification & BISE calendar regarding advance increments are annexed as Annexure "G" & "H".

4. That the sanctions of both the Notifications, one by BISE and the other by the Government were

duly endorsed by the LFA department while carrying out their external annual audit.

5. That at the time of appellant's superannuation, a few objections were raised by respondent No.2, rest were removed except the one, that one of the accorded advance increments was beyond rights and is liable to be recovered from the appellant. (Copy of the impugned letter No.LPI(29)10-2/502 dated 13/06/2017 is annexed as Annexure "I")
6. That the Local Audit Fund department raised various frivolous objections regarding the impugned recovery of one of the above said advance increments and in compliance of recovery objection, deducted an amount of Rs.398197.41 from the pension claim of appellant, in consequence of which, respondent No.6 issued a SANCTION letter Endst: No.16/A/24/ESTT:/BISE/ATD dated 24/04/2018 with the entries of deduction of (Rs. 398197.41). Copy of the impugned letter is annexed as Annexure "J".

7. That the appellant preferred an application to the chairman BISE, Abbottabad on 20/06/2018 to re-consider the matter according to law and in response received a letter No 113, dated 30/07/2018 by the Secretary BISE, Abbottabad, refusing the request of the appellant with reference to a letter No LPI/(29)10.2/889, dated 30/10/17 of LFA department, (impugned) of respondent No.2. Copy of application and letter No.113 are annexed as Annexure "K" & "L" respectively.

8. That prior here to, the present appellant filed writ petition No. 1061-A/2018, before the Honourable Peshawar High Court, Abbottabad Bench, in which the Honourable High Court very kindly pleased to direct the appellant to approach the competent forum for redressal of his grievance vide order dated 19/02/2019. Attested Copy of writ petition and order dated 19/02/2019 is annexed as Annexure "M" & "N".

9. That now the appellant assails both the above said impugned orders inter-alia, on the following grounds amongst others:-

GROUND S; -

a) That the orders passed and actions taken there under by the respondents regarding recovery of one advance increment are in violation of the provisions of the Constitution, illegal, perverse, against the norms of justice, coram-non-judice, without jurisdiction and against the law and statute, ab-initio unlawful and without lawful authority and ineffective upon the rights of the appellant.

b) That this Honorable Tribunal and the Honorable Apex court have been generously allowing alike appeals throughout the judicial history of the country.

- c) That the Apex Supreme Court of Pakistan in its decision sighted in "PLD 1992 Supreme Court 207" held that:-

Locus Potentia---Principle of---

Recovery of amount paid on basis of incorrect order and the recipient had received same on a bonafide belief that he was entitled to it---payer was not entitled to recover the amount from the payee during the period when incorrect order remain in the field and principle of locus potentia would be applicable to the case.

- d) That as per section 21 of General Clauses Act vested right accrued to a citizen, can not be taken away through subsequent circular.

- c) That the Constitution of Islamic Republic of Pakistan provides equal opportunities to every citizen and guarantees that everyone should be treated fairly, equitably and according to law.

- f) That the appellant deserves to be treated in the same way as the Constitution and the prevailing law of the country provides and the accrued rights, once availed by the appellant should not be taken away through subsequent orders.

- g) That the rights of appellant are protected and guaranteed under Art 4 and 25 of the Constitution of Islamic Republic of Pakistan.

- h) That the appellant has got no other efficacious/ alternate remedy except to invoke the jurisdiction of this Honourable Tribunal through the instant appeal.

It is therefore, most respectfully prayed that under the peculiar circumstances, by accepting the instant constitutional service appeal, the impugned and so called recovery orders, i.e.; Letter No.LPI(29)10.2/503 dated 13/06/2017 by respondent No 2 and Endst: No: 16/A/24/ESTT/BISE/ATD Dated: 24/04/2018 by

respondent No 5 (both impugned) made and actions taken there under may be declared void-ab-initio, null, ultra vires, un-constitutional, illegal, against law and repugnant, discriminatory, without lawful authority and of no legal and binding effects on the rights of the appellant and also in utter violation of the Constitution of Islamic Republic of Pakistan and judgments of the superior courts. The illegal and unjustified sum recovered from the appellant may please be ordered to be returned to the appellant. Any other appropriate relief under the peculiar circumstance of the case, not specifically prayed for, may also be awarded in favor of the appellant.

...APPELLANT

Through;

Dated: _____/2019



(MALIK MUHAMMAD WASEEM)
Advocate High Court, Abbottabad

VERIFICATION:-

Verified on oath that the contents of foregoing service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.



...APPELLANT

(11)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No. _____-A/2019

Muhammad Javed, Ex-Assistant Secretary Academic, Board of Intermediate & Secondary Education, Abbottabad.

....APPELLANT

VERSUS

Director, Local Fund Audit Department, Government of Khyber Pakhtunkhwa, Peshawar & others.

...RESPONDENTS

SERVICE APPEAL

AFFIDAVIT

I, Muhammad Javed, Ex-Assistant Secretary Academic, Board of Intermediate & Secondary Education, Abbottabad, do hereby solemnly affirm and declare that the contents of foregoing service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

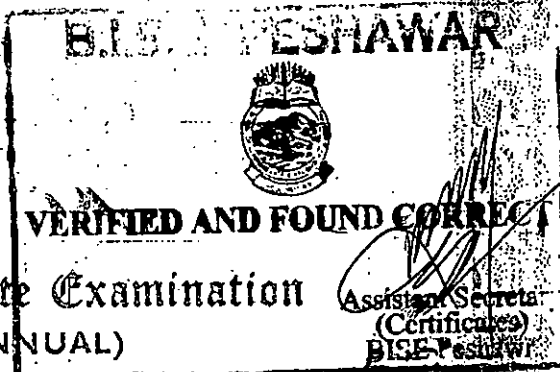

DEPONENT

(12) Annulus A³

S No. 205141

Roll No. 11090

Board of Intermediate and Secondary Education
PESHAWAR, N.W.F.P. (PAKISTAN)



Secondary School Certificate Examination
SESSION 1976 (ANNUAL)

This is to certify that MOHAMMAD JAVED

Son/Daughter of MOHAMMAD AKRAM

and a resident of HAZARA DISTRICT.

has passed the **SECONDARY SCHOOL CERTIFICATE EXAMINATION** of
the Board of Intermediate and Secondary Education, Peshawar held in March/April, 1976
as a private candidate. He/She obtained 306 Marks out of 900/1000,

and has been placed in Grade REPRESENTING (FAIR)

The candidate passed in the following Subjects :

- | | | |
|--------------|------------------------|---------|
| 1. English | 4. GENERAL SCIENCE | 7. ART. |
| 2. Urdu | 5. HISTORY | |
| 3. Islamiyat | 6. GENERAL MATHEMATICS | |

Date of birth according to admission form is THIRTEENTH MAY
one thousand nine hundred and FIFTY-SEVEN (13-5-1957).

15th July, 1976

Asstt. Secretary

SECRETARY

This certificate is issued without alteration or erasure.

13

Annexure "B"

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... .. *Mohammad Javed*

2. Race... .. *AFGHANI.*

3. Residence... .. *Village Dolbather, Teh. Abul Kalam
Peshawar*

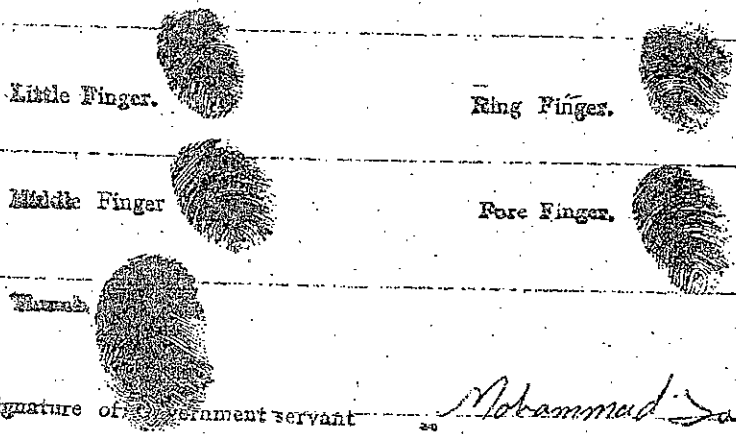
4. Father's name and residence... .. *Mohammad Akram - Asakera*

5. Date of birth by Christian era as nearly as can be ascertained... .. *(13-5-1951) Nineteenth May
one thousand nine hundred & fifty
seven*

6. Exact height by measurement... .. *5-4*

7. Personal marks for identification... .. *A wound mark on right leg*

8. Left hand thumb and finger impression of (non-gazetted) officer



9. Signature of Government servant... .. *Mohammad Javed*

10. Signature and designation of the Head of the Office, or other Attesting Officer... .. *Javed*
Secretary, DISE, Peshawar.

Page as reviewed for pension purpose.

27/4/77

*Secretary
DISE AWS*

13

Annexure "B"

Note.—The entries in this page should be renewed or re-attested at least every five years, and the signature in ink and it should be dated.

1. Name *Mohammad Javed*

2. Race *AFGHANI*

3. Residence *Village Dolathar, Teh. Abdolkhalid
Dist. Peshawar*

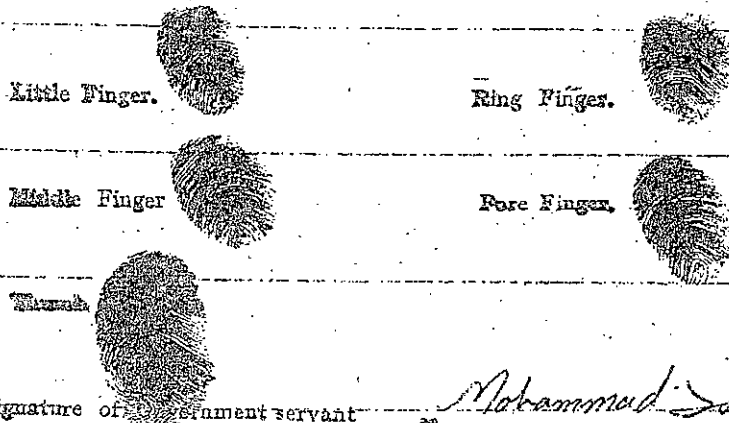
4. Father's name and residence *Mohammad Akram - Asakera*

5. Date of birth by Christian era as nearly as can be ascertained *(13-5-1951) Thirteenth May
one thousand nine hundred & fifty
seven*

6. Exact height by measurement *5-4*

7. Personal marks for identification *A wound mark on right leg*

8. Left hand thumb and finger impression of (non-gazetted) officer



9. Signature of Government servant *Mohammad Javed*

10. Signature and designation of the Head of the Office, or other Attesting Officer *Javed*
Secretary, BISE, Peshawar.

Page as re-verified for pension purpose.

Javed
*Secretary
BISE AWP*

27/4/77



(14)

Annexure "C"

BOARD OF INTERMEDIATE AND SECONDARY EDUCATION, PESHAWAR.

OFFICE ORDER NO. 248 DATED October 6, 1983.

The Chairman has been pleased to promote the following Junior Clerks of the Board of Intermediate and Secondary Education, Peshawar to the posts of Senior Clerks in Basic Pay Scale No.7 (Rs.560-23-1020) with effect from 01.10.1983 (RN) :-

1. Mr. Abdul Ghafoor.
2. Mr. Pauli Akbar.
3. S. Jhangir Shah.
4. Mr. Noor Mohammad.
5. Mr. Mohammad Farooq.
6. Mr. Mohammad Javed.
7. Mr. Mohammed Sharif.
8. Mr. Nisarul Wazood.

They will remain on probation for a period of one year.

(S.M. ASHRAF M.A., B.L.S.,
Secretary.

NC. 540 /estt/BISE, Peshawar.

Copy to :-

1. All Section Officers, B.I.S.E., Peshawar.
2. All Concerned.
3. Personal Files.
4. Office Order File.

(S.M. ASHRAF M.A., B.L.S.,
Secretary.

(15)



Annexure

"D"

No 229954

Roll No. 98987



BOARD OF INTERMEDIATE AND SECONDARY EDUCATION



Peshawar N.W.F.P. Pakistan
INTERMEDIATE EXAMINATION

Humanities Group
 SESSION 1989 (ANNUAL)

THIS IS TO CERTIFY THAT Muhammad Javed
 Son/Daughter of Muhammad Akram
 and a resident of Abbottabad District.
 Registered No. _____ has passed the *Intermediate Examination* of
 the Board of Intermediate & Secondary Education, Peshawar held in July/Aug 1989
 as a *Private candidate*. He/She obtained 467 Marks out of 1100
 and has been placed in Grade D Representing Fair

The Examination was taken as whole / in parts.

Asstt. Secretary

Secretary

This certificate is issued without alteration or erasure

attested

46

Annexure

"E"

BOARD OF INTERMEDIATE AND SECONDARY EDUCATION PESHAWAR.

OFFICE ORDER NO. 453

DATE 9.12. / 1989

The Chairman has been pleased to allow Mr. Muhammad Javed Senior Clerk Exam Section Board of Intermediate and Secondary Education, Peshawar to draw One advance increment on account of passing his Inter Annual Exam 1989 Under R.O. No. 96987 from Peshawar Board during the Board Service, raising his pay from Rs. 1096/- to Rs. 1134/- P.M. in D.S.-7 (Rs. 750-31-1370) with effect from 20.11.1989.

Sd/-

(PROF: ATTAULLAH JAN)
SECRETARY.

No. 742 / Asst/ HSO, Peshawar.

COPY to:-

- 1. The Audit Officer.
- 2. The Treasurer.
- 3. G.O. File.
- 4. P/file.
- 5. Mr. Muhammad Javed, S/O

amf

(PROF: ATTAULLAH JAN)
SECRETARY.

Annexure "F"
(17) (9)

BOARD OF INTERMEDIATE AND SECONDARY EDUCATION, ABBOTTABAD

Office Order No. 57

Dated 7-1-1993

Sanction is hereby accorded for the grant of one more advance increment to Mr. Muhammad Javaid Senior Clerk on account of passing his mat Intermediate Examination (Annual) 1989 w.e.f. 1.6.1991 as allowed by the Govt. of N.W.F.P. Peshawar raising his pay from Rs. ~~1877~~ to Rs. ~~2045~~ p.m. (i.e. Rs. 1482-72-2265).

Sd/-
Secretary
Board of Inter: & Secondary
Education, Abbottabad.

Order No. SP-62 / Estt / BISE / Attd

Dated 7-1-1993

Copy to:

1. The P.S to Chairman BISE, Abbottabad.
2. The Audit Officer
3. The Account Officer
4. Office Order File.
5. Personal File
6. Mr. Muhammad Javaid Senior Clerk

Sd/-
Secretary
Board of Inter: & Secondary
Education, Abbottabad.

(18) Annas '4'

GOVERNMENT OF NWFP,
FINANCE DEPARTMENT.

(PAY REVISION CELL).

NO. FD(PRC)1-1/89

Dated Peshawar, the 11th August 1991.

The Secretary to Government of NWFP,
Finance Department, Peshawar.

On:
To:

1. All Administrative Secretaries, Government of N.W.F.P.
2. The Senior Member Board of Revenue, N.W.F.P., Peshawar.
3. The Secretary to Governor, NWFP, Peshawar.
4. The Secretary to Chief Minister, NWFP, Peshawar.
5. The Secretary, Provincial Assembly, NWFP, Peshawar.
6. All Heads of Attached Departments in NWFP.
7. All Commissioners/Dy. Commissioners/Political Agents/District & Sessions Judges in N.W.F.P.
8. The Registrar, Peshawar High Court, Peshawar.
9. The Secretary, Public Service Commission, NWFP, Peshawar.
10. The Registrar, Services Tribunal, NWFP, Peshawar.
11. The Secretary, Board of Revenue, NWFP, Peshawar.

26/8
19/8
TMO
17/8

Handwritten notes and signatures on the left margin, including "M: Chaudhary" and "19/8/91".

Subject:-

REVISION OF BASIC PAY SCALES AND FRINGE BENEFITS OF CIVIL EMPLOYEES (BPS-1 - 15) OF THE PROVINCIAL GOVERNMENT (1991).

I am directed to refer to the subject noted above and to say that the Governor, N.W.F.P., has been pleased to sanction revision of the Basic Pay Scales for the Provincial Civil Servants (BPS-1 - 15) as detailed in the following paragraphs:-

BASIC PAY SCALES :-

The existing, modified and revised pay scales are detailed in the annexure to this letter. The revised pay scales shall replace the Basic Pay Scales, 1987 and shall be effective from the 1st of June, 1991.

Handwritten notes and signatures at the bottom left, including "27/8/91".

- (i) The initial pay of the existing employees who have been in Government service since before the 1st June, 1991, shall first be fixed in the modified scale at the stage giving the same pay or if there is no such stage at the next higher stage. Hereafter the pay shall be fixed in the revised Pay Scale "on point to point basis" i.e. at the stage in the relevant revised basic pay scale which is as many stages above the stage occupied by him above the minimum of the modified basic scale.
- (ii) In the case of those employees whose pay is fixed in the revised scale at a stage which gives less than Rs. 100/- increase in pay of May, 1991 a minimum increase of Rs. 100/- in pay over May, 1991 level, would be allowed and thereafter pay fixed at the co-responding stage equal to this pay or if there is no such stage, at the next higher stage. The pay fixation formula has been illustrated through examples I, II & III in Appendix.
- (iii) The annual increment shall continue to be admissible subject to the existing conditions on the 1st of December each year.
- (iv) The increases allowed since 1-7-1988, as detailed below shall cease to be admissible from 1-6-1991:-
 - (a) Indexed pay sanctioned vide Finance Department circular No. FD(PRC)1-3/85, dated 4-8-1988.
 - (b) Ad-hoc increase of 5% of pay sanctioned vide circular No. FD(PRC)1-3/85, dated 13-1-1990.
 - (c) Ad-hoc increase of 20% sanctioned vide Finance Department circular No. FD(PRC)1-3/89 dated 21-7-1990.
 - (d) Dearness Allowance of Rs. 200/- p.m. sanctioned vide Finance Department circular No. FD(PRC)1-3/89 dated 16-1-1991.

FIXATION OF PAY ON PROMOTION

- 1) In cases of promotion from a lower to higher post/scale before the introduction of these scales, the pay of the employee concerned in the revised scale may be fixed and so enhanced that it would not be less than the pay that would have been admissible to him if his promotion to the higher post/scale had taken place after the introduction of these scales.
- ii) Government employees who are allowed selection grade shall be granted one premature increment from 1-6-1991 as is allowed in the case of promotion.

(20)

GRANT OF ADVANCE INCREMENTS TO OFFICIALS FOR POSSESSING/ ATTAINING HIGHER EDUCATIONAL QUALIFICATION.

1) From 1-6-1991 onwards advance increments shall be allowed without the condition of the second Division to the officials in BPS 1-15 for possessing or acquiring higher educational qualifications over and above prescribed qualifications in the relevant Recruitment Rules to the extent given below :-

	No. of Advance increments for obtaining			
	Matric	F.A./F.Sc	B.Sc./B.Sc.	M.A./M.Sc
a) Where the prescribed qualification is Non-Matric.	2	4	6	8
b) Where the prescribed qualification is Matric	Nil	2	4	6
c) Where the prescribed qualification is F.A./F.Sc.	Nil	Nil	2	4
d) Where the prescribed qualification is B.A./B.Sc	Nil	Nil	Nil	2

The advance increment already allowed in terms of para-6(a) of Finance Department's letter No. 30(PRC)1-1/87-Vol-VIII, dated 22-7-1987 would be doubled from 1.6.1991.

ii) The advance increments shall be allowed at the time of recruitment or acquisition of higher qualification whichever is later. In cases where the employee is already at the maximum of the scale, he may be allowed the number of advance increments beyond the maximum of his scale as personal pay to be absorbed at the time of his move-over/promotion. Those employees who had acquired higher qualification in 3rd Division prior to 1-6-1991 and were not granted advance increments earlier would henceforth be allowed advance increments with effect from 1-6-1991.

MOVE-OVER

6. The concession of Move-over shall be available from 1-6-1991 onwards to those who are enjoying selection grade.

7.

SPECIAL PAYS

The existing Special Pay admissible to various categories of Personal Assistants in BPS-15 shall be revised from 1-6-1991 as under :-

NAME OF POST	EXISTING RS. PER MONTH.	REVISED RS. PER MONTH.
P.A. to Minister.	100	150
P.A. to Chief Secretary/ Addl. Chief Secretary/ Secretaries/Additional Secretari	75	120

8.

TEACHING ALLOWANCE

The existing rate of teaching allowances admissible to qualified teachers of High Schools who teach Science subjects Physics, Chemistry, Biology & Mathematics and Junior Instructors Poly-Technic shall be enhanced as under :-

- (a) For High School Science Teachers. From Rs. To Rs.
- (b) For Junior Instructors in Poly-technic who possess Technical Teachers Diploma. From Rs. To Rs.

9.

MEDICAL ALLOWANCE.

The existing rate of Medical Allowance of Rs. month admissible to the employees in BPS-1-15 shall be enhanced to Rs.60/- P.M.

10.

a) MESSING/DIET ALLOWANCE.

The existing rate of messing/diet allowance for Cadre (below BPS-16) shall be enhanced from Rs.300/- to Rs.

b) UNIFORM ALLOWANCE

The existing rate of uniform allowance for (below BPS-16) shall be enhanced from Rs.125/- P.M. to Rs.

NIGHT DUTY ALLOWANCE

The Night Duty Allowance shall be admissible as under:-

- (i) For Assistants/Clerks. Rs. 0/- per night
- (ii) For staff Car Drivers/ Despatch Riders. Rs. 4/- per night
- (iii) For Haib Qasid. Rs. 3/50 per night

WASHING GRANT/ALLOWANCE ADMISSIBLE TO LIVERIED STAFF

The existing rates of Washing Grant/Allowance shall be enhanced from Rs. 25/- per month to Rs. 30/- per month.

CONVEYANCE CHARGES FOR LATE SITTING AFTER OFFICE HOURS.

The existing rates of Conveyance Charges admissible to employees in BPS-1 -16 (Non-Gazetted) shall be enhanced as under:-

(i) ON WORKING DAYS

For officials in BPS 1-2

From Rs. 3.50 per day
to Rs. 4.50 per day

For officials in BPS 3-15
B-16 (Non-Gazetted)

From Rs. 4.50 per day
to Rs. 5.50 per day

(ii) ON CLOSED HOLIDAYS

For officials in BPS 1-2

From Rs. 4.50 per day
to Rs. 5.50 per day

For officials in BPS 3-15
B-16 (Non-Gazetted)

From Rs. 7.00 per day
to Rs. 8.00 per day

Yours obedient servant

(GHULAM DASTGIR AKHTAR)
DEPUTY SECRETARY (REGULATION)
FINANCE DEPARTMENT

Dated Pesh., the 11-8-1991

NO. FD(PRC)1-1/89

Copy forwarded for information to :-

1. All Autonomous & Semi Autonomous Bodies in NWFP.
2. The Secretary Finance Department, Government of the Punjab, Sindh and Balochistan.

(GHULAM DASTGIR AKHTAR)
DEPUTY SECRETARY (REGULATION)
FINANCE DEPARTMENT

CHAPTER XXIX
RULES FOR GRANT OF ADVANCE
INCREMENTS ON THE BASIS OF IMPROVED
QUALIFICATIONS, AND FORMULA FOR
FIXATION OF PAY

1. In supersession of all previous decisions on the subject an employee of the Board who has improved after joining service in the Board, upon the minimum qualifications prescribed by the Board for direct recruitment will be allowed advance increment/s at the following rates with effect from 1.7.1970 provided he has not previously received advance increment/s on this account on appointment or during service for the same qualifications:-

	EXAMINATION	ADVANCE INCREMENT
(i)	Intermediate (Full subjects) OR Intermediate (English Only with Honour in a Pakistani/Classical Languages Examination) OR D.Com Examination.	One increment.
(ii)	B.A. (Full subjects) OR B.A. (English only) with Honours in a Pakistani / Classical Languages Examination.	one increment
(iii)	M.A./M.Sc. One increment.	

2. An employee who improves upon the prescribed qualifications upto M.A./M.Sc. shall be entitled to the grant of three advance increments in total, which will be given to

him on passing each Examination at the rate of one increment from time to time i.e. one for Intermediate, another for B.A./B.Sc and one for M.A./M.Sc.

3. Seasonal staff or employees recruited on purely temporary basis shall not be eligible for the advance increments.

4. Grant of advance increment/s shall be subject to satisfactory record of service.

5. Should the grant of advance increment/s involve crossing of efficiency bar, entitlement of advance increment/s shall be subject to the employees' crossing the efficiency bar with the orders of the competent authority.

6. In the case of employees improving their qualifications after 1.10.1970, the date of declaration of the result of the relevant examination shall be taken into account for the purpose of giving effect to the grant of advance increment/s to the employee concerned.

Employees below the rank of junior clerks shall be eligible for one advance increment on passing Secondary School Certificate Examination.

No employee of the Board will be allowed 4th increment for improvement of Academic Qualifications during the service of the Board.



To

2/6/17
124)
Estab. 0.

Ammons
GOVT. OF KHYBER PAKHTUNKHWA,
LOCAL FUND AUDIT DEPARTMENT,
PESHAWAR.

NO. LPI/29/10.2/ 503
Dated Peshawar the 13/06/2017

The Secretary,
Board of Intermediate & Secondary Education,
Abbottabad.

Subject: - PENSION CASE IN R/O MUHAMMAD JAVED EX-ASSTT. SECRETARY B-17.

Please refer to your memo No. 54-Estt/BISE/ATD dated 19-5-2017 on the subject cited above.

According to the Services & General Administration (Regulation) Wing letter No. SOSR-I(S&GAD)1-29/75(Vol-I) dated 04-9-1991, retrospective promotion is not permissible. In the instant case the incumbent was promoted from retrospective effect to B-16 i.e. from 1-6-1995 vide office order No.108 dated 26-6-1995 which is irregular and needs recovery.

The employee was not entitled for the grant of 2 advance increments on qualification of F.A being a Senior Clerk, which he was granted w.e.f 20-11-1989 and 1-6-1991 in light of Finance Deptt's letter No.FD(SR-I)2-145/97/Vol-V and No.FD(SR.V)2-145/98 dated 14-3-1998 and 31-8-1999 respectively, being two way of selection of Senior Clerk on direct recruitment and promotion among the Junior Clerk as per Board Calendar. Therefore correct pay fixation may be recorded in the service book and excess payment may be worked out and intimated for adjustment from the pension claim.

According to the upgradation policy 2010, personal upgradation granted due to hardship case to those employee who do not have further promotion chances and have stayed on one position for a reasonably long time, in the instant case the incumbent has been granted personal upgradation from B-16 to B-17 as Superintendent w.e.f 2-12-2012 vide office order No.15/A/03/Estt/02-10 dated 2-10-2012 whereas according to para-I (C) of Chapter XXVIII of the Board Calendar, 2/3 posts of Assistant Secretary / Assistant Controller B-17 is to be filled through promotion from next lower grade in the cadre on seniority cum merit.

Beside above he has also been granted promotion as Assistant Secretary B-17 w.e.f 19-4-2017 in conformity of the above rules, thus the incumbent was not entitled for the grant of personal upgradation w.e.f 2-12-2012, pay fixation may be correct accordingly. In this reference audit para No.420 of audit report for 2015-16 already taken which is still stand.

Service book alongwith personal file are returned herewith.

Encl: (As Above)

my Shauq
ASSISTANT DIRECTOR (HQ),
LOCAL FUND AUDIT DEPARTMENT,
KHYBER PAKHTUNKHWA,
PESHAWAR.
13/6



BOARD OF INTERMEDIATE & SECONDARY EDUCATION ABBOTTABAD

SANCTION:

In the light of Govt. of Khyber Pakhtunkhwa Local Fund Audit Department Peshawar PPO No. LFA/(Pen)1.131/258 Dated Peshawar the 04/04/2018, the Competent Authority is pleased to accord sanction of Rs. 2300898.68 (Rupees Twenty Three Lac Eight Hundred and Ninety Eight Paisa 68) including amount of Commutation (= Rs. 2188950.36) and Arrear of Monthly Pension to the tune of Rs. 111948.32 for the period w.e.f 13-05-2017 to 31-03-2018 in favour of Mr. Muhammad Javed Assistant Secretary Academic BPS-17 (Retd). Net Amount of Pension payable becomes to the tune of Rs.1902701.27 after recovery of wrong Pay fixation for the period from 20-11-1989 to 12-05-2017 (=Rs. 398197.41) in compliance with above referred PPO.

The officer concerned is allowed to draw Monthly pension @ Rs. 51689.50 w.e.f 13-05-2017 & Rs. 56071.22 w.e.f 01-07-2017 as per Part -III of page 7 of pension application form.

-sd/-
(DR. SHAISTA IRSHAD KHAN)
Secretary
BISE Abbottabad

Endst No: 16/A/24/ESTT/BISE/ATD

Dated: 24-04-2018

A copy is forwarded for information and necessary action to the:

- ✓ 1. Assistant Director (HQ), Local Fund Audit Department, Khyber Pakhtunkhwa with reference to above cited PPO.
2. Audit Officer BISE Abbottabad
3. Accounts Officer BISE Abbottabad. - *AM*
4. P/S to Chairman BISE Abbottabad with reference to para 172/N Dated. 23-04-2018.
5. Mr. Muhammad Javed Assistant Secretary Academic BPS-17 (Retd) BISE Abbottabad. r/o Village; and P.O Dobather Tehsil and District Abbottabad.

22/5/18

Secretary 24/4/18
BISE Abbottabad



BOARD OF INTERMEDIATE & SECONDARY EDUCATION ABBOTTABAD

Annexure "L"

No. 113

Dated: 30-07-2018

To

Mr. Muhammad Javed
(Ex-Assistant Secretary BISE Abbottabad.)
Village Dobather, District Abbottabad.

Subject: RECOVERY OF WRONG PAY FIXATION FROM PENSION CLAIM ON ACCOUNT OF 2 ADVANCE INCREMENTS OF QUALIFICATION. FOR THE PERIOD 20-11-1989 TO 12-05-2017.

Please refer to your application dated 20-06-2018 for reconsideration of the Recovered Amount of Rs.3,98,197.41 from Pension Claim.

In this regard it is stated that this office had already referred the matter to Local Fund Audit Department vide this office letter No.34-ESTT/BISE/ATD, Dated 25-09-2017 (Copy Attached), wherein it was clarified to the LFA Department in Para (2), that "the officer was entitled for first advance increment in the year 1989 as per Board Calendar Chapter XXIX, para 01, page 320 (Copy Enclosed). Second qualification increment was awarded w.e.f 01-06-1991 on the basis of Provincial Govt Notification No.FD(PRC) 1-1/91, Dated 11-08-1991".

In response vide letter No. LPI /(29)10.2/889, Dated Peshawar, 30-10-2017 (Copy attached), the LFA Department did not agree to our reply and reiterated to recover the subject amount.


Secretary

BISE Abbottabad

Copy to :-

1. PS to Chairman BISE Abbottabad.

--Sd--

Secretary
BISE Abbottabad

To: The Chairman
BISE Abbottabad.

27

Annexure "K"

Subject: APPLICATION FOR RECONSIDERATION IN CASE OF
RECOVERY AMOUNTING TO RS. 398197.41 AS POINTED
OUT BY THE LFA DEPARTMENT VIDE ITS LETTER
LPI(29)10-2/503 DATED 13/06/2017.

Through: Proper Channel.

Respected Sir,

With due reverence, the under signed submit as under:

- i. That I was appointed as a junior clerk in BISE Peshawar on 02/07/1977 and at the time of recruitment I was matriculate.
- ii. That vide order 248 dated 1983, I was promoted to the post of senior clerk on the basis of seniority cum fitness.
- iii. That in the year 1987 I had improved my qualification and I was accorded one advance increment as per Board rules; but later on as per the Govt notification I was accorded one more advance increment vide office order 57 dated 07/01/1993. (Letter annexed).
- iv. Worth mentioning that the same sanction and notification was duly endorsed by the LFA department while carrying out their external annual audit.
- v. Astonishingly at the time of superannuation, it has been pointed out that one advance increment accorded is unjustified, unlawful and is liable to be recovered a sum of Rs. 398197.41/-.
- vi. That the Local Audit Fund audit department raises various objection, which were meet out being devoid of merit, which tantamount that their objections are unjustified, however, in compliance of recovery objection, Rs. 398197.41/- has been deducted hence, it is requested that, the same matter is taken up with the department to meet the ends of justice and my case may please be re-considered sympathetically.

All the relevant record is annexed herewith for consideration and clarification please.

Yours truly,

dated - 20-6-2018

M. P. S.
20/6/18

Muhammad Javed
20/6/18
Ex-Assistant Secretary Academic
BISE Abbottabad

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Amicus

M

BEFORE THE PESHAWAR HIGH COURT
ABBOTTABAD BENCH

WP No. 1061 -A/2018

Muhammad Javed, Ex-Assistant Secretary Academic, Board of Intermediate & Secondary Education, Abbottabad.

...PETITIONER

VERSUS

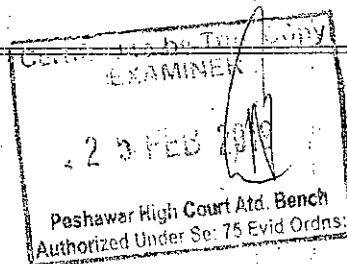
1. Director, Local Fund Audit Department, Government of Khyber Pakhtunkhwa, Peshawar.
2. Assistant Director, (HQ) Local Fund Audit Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. Auditor, (pension Incharge) Local Fund Audit Department, Government of Khyber Pakhtunkhwa, Benevolent Fund Building, Peshawar Cantt.
4. Board of Intermediate & Secondary Education, Abbottabad through it's Chairman.
5. Chairman, Board of Intermediate & Secondary Education, Abbottabad.
6. Secretary, Board of Intermediate & Secondary Education, Abbottabad.
7. Secretary, to the Govt. of KPK, Finance Department, Civil Secretariat, Peshawar.
8. Establishment Officer Board of Intermediate & Secondary Education, Abbottabad.

...RESPONDENTS

WRIT PETITION UNDER ARTICLE 199 OF
THE CONSTITUTION OF ISLAMIC REPUBLIC
OF PAKISTAN AS AMENDED UPTO-DATE.

~~FILED TODAY~~
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH

01/10



(E)

29
—

PRAYER: ON THE ACCEPTANCE OF THIS CONSTITUTIONAL PETITION, THE IMPUGNED AND SO-CALLED RECOVERY ORDERS PASSED AND ACTIONS TAKEN THERE UNDER I.E LETTER NO.LPI(29)10.2/503 DATED 13/06/2017 BY RESPDT NO.2 AND ENDST NO: 16/A/24/ESTT/BISE/ATD DATED: 24/04/2018 BY RESPDT NO.6 (BOTH IMPUGHNED) MAY PLEASE BE DECLARED AB-INITIO NULL AND VOID, ULTRA VIRES, DISCRIMINATORY, UNCONSTITUTIONAL, ILLEGAL, WITHOUT LAWFUL AUTHORITY AND OF NO LEGAL AND BINDING EFFECTS ON THE RIGHTS OF THE PETITIONER AND CONSEQUENTLY, THE ILLEGAL AND UNJUSTIFIED, SUM RECOVERED FROM THE PETITIONER MAY PLEASE BE ORDERED TO BE RETURNED TO THE PETITIONER. ANY OTHER APPROPRIATE RELIEF UNDER THE PECULIAR CIRCUMSTANCES OF THE CASE, NOT SPECIFICALLY PRAYED FOR, MAY

Certified to be True Copy
EXAMINER
25 FEB 2018
Peshawar High Court Ald. Bench
Authorized Under Sec 75 Evid Ordns

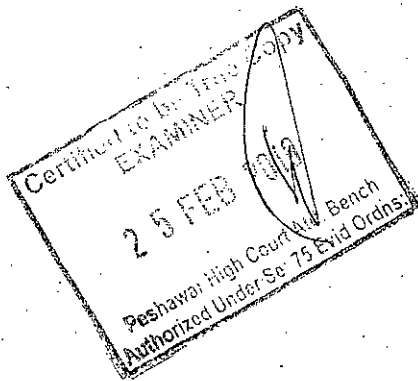
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ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH

ALSO BE AWARDED IN FAVOR OF THE
PETITIONER.

Respectfully Sheweth;

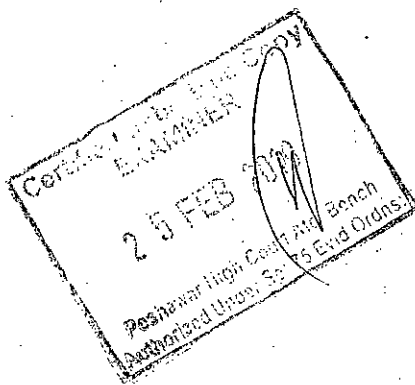
The brief facts given rise to the instant writ
petition are as under:-

1. That the petitioner was appointed as a junior clerk in Board of Intermediate and Secondary Education, Peshawar on 02/07/1977, on the basis of having an educational qualification of SSC. (Certificate of SSC and appointment letter are Annexure "A" and "B" respectively).
2. That in the year 1983, vide order 248, the petitioner was promoted to the post of senior clerk on the basis of seniority cum fitness. (Promotion letter is annexed as annexure "C")
3. That in the year 1987, petitioner improved his educational qualification by passing his intermediate examination, on the basis of which, he was accorded one advance increment



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ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH
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as per Board Calendar, Chapter XXIX, Para 01, page 320 in the year 1989 and later on, second, qualification increment was awarded with effect from 01/06/1991 as per provincial government notification No.FD(PRC) 1-1/91 Dated 11/08/1991, vide office order 57 of dated 07/01/1993. (Intermediate certificate, order of one advance increment by BISE & government notification of dated 07/01/1993 for another advance increment are annexed as annexure "D" "E" & "F" whereas the government notification & BISE calendar regarding advance increments are annexed as Annexure "G" & "H".



4. That the sanctions of both the notifications, one by BISE and the other by the Government were duly endorsed by the LFA department while carrying out their external annual audit.

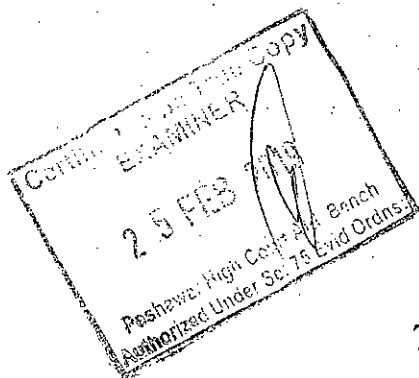
5. That at the time of petitioner's superannuation, a few objections were raised by respondent No.2, rest were removed except the one, that one of the accorded advance increments was beyond rights and is liable to be recovered from

~~FILED TODAY~~
 ADDITIONAL REGISTRAR
 PESHAWAR HIGH COURT
 ABBOTTABAD BENCH

011

the petitioner. (Copy of the impugned letter No.LPI(29)10-2/502 dated 13/06/2017 is annexed as Annexure "I")

6. That the Local Audit Fund department raised various frivolous objections regarding the impugned recovery of one of the above said advance increments and in compliance of recovery objection, deducted an amount of Rs.398197.41 from the pension claim of petitioner, in consequence of which, respondent No.6 issued a SANCTION letter Endst: No.16/A/24/ESTT:/BISE/ATD dated 24/04/2018 with the entries of deduction of (Rs. 398197.41). Copy of the impugned letter is annexed as Annexure "J".



7. That the petitioner preferred an application to the chairman BISE, Abbottabad on 20/06/2018 to re-consider the matter according to law and in response received a letter No 113, dated 30/07/2018 by the Secretary BISE, Abbottabad, refusing the request of the petitioner with reference to a letter No LPI/(29)10.2/889, dated

FILED TODAY
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH

P 01/10

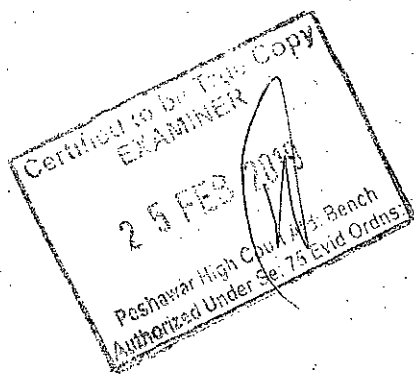
(6)
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30/10/17 of LFA department, (impugned) of respondent No.2 Copy of application and letter No.113 are annexed as Annexure "K" & "L" respectively.

8. The petitioner assails both the above said impugned orders Annexure "I" & "J" with the following grounds amongst others:-

GROUND: -

- a) That the orders passed and actions taken there under by the respondents regarding recovery of one advance increment ⁴⁵ are in violation of the provisions of the Constitution, illegal, perverse, against the norms of justice, coram-non-judice, without jurisdiction and against the law and statute, ab-initio unlawful and without lawful authority and ineffective upon the rights of the petitioner.



FILED TODAY
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH

27/2

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34

b) That this honorable court and the honorable apex court have been generously allowing alike constitutional petitions throughout the judicial history of the country.

c) That the Apex Supreme Court of Pakistan in its decision sighted in "PLD 1992 Supreme Court 207" held that:-

Locus Peonitentiae---Principle of---

Recovery of amount paid on basis of incorrect order and the recipient had received same on a bonafide belief that he was entitled to it---payer was not entitled to recover the amount from the payee during the period when incorrect order remain in the field and principle of locus ponitentiae would be applicable to the case.

General Copy
EXAMINER
20 FEB 2013
Peshawar High Court and Bench
Authorized Under Sec. 79 Evid Ordns.

d) That as per section 21 of General Clauses Act vested right accrued to a citizen, can not be taken away through subsequent circular.

~~XXXXXXXXXXXXXXXXXXXX~~
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ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH
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c) That the Constitution of Islamic Republic of Pakistan provides equal opportunities to every citizen and guarantees that everyone should be treated fairly, equitably and according to law.

f) That the petitioner deserves to be treated in the same way as the Constitution and the prevailing law of the country provides and the accrued rights, once availed by the petitioner should not be taken away through subsequent orders.

g) That the rights of petitioner are protected and guaranteed under Art 4 and 25 of the Constitution of Islamic Republic of Pakistan.

h) That the petitioner has got no other efficacious/ alternate remedy except to invoke the jurisdiction of this Honorable Court through the instant constitutional petition.

Certified True Copy
EXAMINER
25 FEB 2019
Peshawar High Court And Bench
Abbottabad Bench
Authorized Under Sec. 75 Evid Ordns.

~~FILED FOR~~
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH

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- i) That the notices have been served upon respondents as per rules. (Copies of notices along with postal receipts are annexed as annexure "M").
- j) That the Court fee stamp paper worth Rs.500/- is attached herewith.

It is therefore, most respectfully prayed that under the peculiar circumstances, by accepting the instant constitutional petition, the impugned and so called recovery orders, i.e.; Letter No.LPI(29)10.2/503 Dated 13/06/2017 by respdt No 2 and Endst: No: 16/A/24/ESTT/BISE/ATD Dated: 24/04/2018 by respdt No 5 (both impugned) made and actions taken there under may be declared void-ab-initio, null, ultra vires, un-constitutional, illegal, against law and repugnant, discriminatory, without lawful authority and of no legal and binding effects on the rights of the petitioner and also in utter violation of the Constitution of Islamic Republic of Pakistan and judgments of the superior courts. The illegal and unjustified sum recovered from the petitioner may please be ordered to be returned to the petitioner.

Certified True Copy
 EXAMINER
 25 FEB 2019
 Peshawar High Court App. Bench
 Authorized Under Sec. 75 Evid. Ordns

FILED TODAY
 ADDITIONAL REGISTRAR
 PESHAWAR HIGH COURT
 ABBOTTABAD BENCH

Any other appropriate relief under the peculiar circumstance of the case, not specifically prayed for, may also be awarded in favor of the petitioner.

[Signature]
...PETITIONER

Dated: 01-10 /2018

Through;

[Signature]

(Muhammad Naeem Abbasi)
&

(Jawad Hameed)
Advocates High Court, Abbottabad

VERIFICATION:-

Verified on oath that the contents of foregoing writ petition are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

[Signature]
...PETITIONER

[Signature]
ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH
01/10

Certified to be true copy
EXAMINER
25 FEB 2018
Peshawar High Court, Abbottabad Bench
Authorized Under Sec. 7 Evid Ordns.

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BEFORE THE PESHAWAR HIGH COURT
ABBOTTABAD BENCH

WP No. _____ -A/2018

Muhammad Javed, Ex-Assistant Secretary Academic, Board of Intermediate & Secondary Education, Abbottabad.

....PETITIONER

VERSUS

Director, Local Fund Audit Department, Government of Khyber Pakhtunkhwa, Peshawar & others.

...RESPONDENTS

WRIT PETITION

AFFIDAVIT

I, Muhammad Javed, Ex-Assistant Secretary Academic, Board of Intermediate & Secondary Education, Abbottabad, do hereby solemnly affirm and declare that the contents of foregoing writ petition are true and correct to the best of my knowledge and belief and nothing has been concealed therein from this Honourable Court.

13/01-2340090-9

AFFIDAVIT

6456/12

12

[Signature]
DEPONENT

Muhammad Javed Ex-Assistant Secretary Academic Board I.S.E. Abbottabad

Certified to be True Copy
EXAMINED
25 FEB 2018
Peshawar High Court Afd. Bench
Authorized Under Sec. 75 Evid Ordns.

ADDITIONAL REGISTRAR
PESHAWAR HIGH COURT
ABBOTTABAD BENCH

(28)

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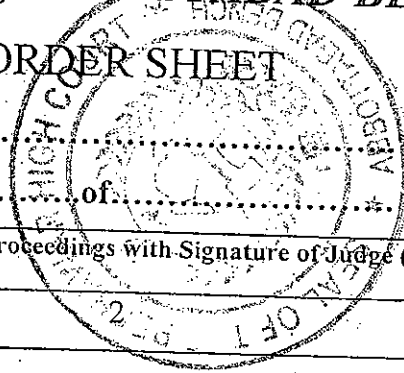
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PESHAWAR HIGH COURT, ABBOTTABAD BENCH.

FORM OF ORDER SHEET

Court of.....

Case No..... of.....



Date of Order of Proceedings	Order or other Proceedings with Signature of Judge (s)
1	
19.02.2019	<p>WP No. 1061-A/2018.</p> <p>Present: Mr. Muhammad Naeem Abbasi, Advocate, for petitioner.</p> <p style="text-align: center;">***</p> <p>LAL JAN KHATTAK, J. Learned counsel for petitioner stated at the bar that he would not press this writ petition anymore, if petitioner is allowed to approach the proper forum in order to seek his remedy.</p> <p>In view of the above, the instant writ petition is dismissed as not pressed, however, petitioner would be at liberty to approach the competent forum for redressal of his grievance.</p> <p style="text-align: right;"><i>sd/ Judge</i> <i>sd/ Judge</i></p>

Certified to be True Copy
EXAMINER
25 FEB 2019
Peshawar High Court Atd. Bench
Authorized Under Section 75 Evid Ordns.

Tahir (P.S)

Hon'ble Justice Lal Jan Khattak & Hon'ble Justice Ishtiaq Ibrahim

SCANNED

کورٹ فیس

وکالت نامہ

بعدالت سرس نرسونل خیر محمد خان خواجہ سید

عنوان: محمد صادق، نام: ڈاکٹر سید ارباب فضل، مندرجہ ذیل

منجانب: امداد

توجیہ مقدمہ: سرس میں اسباب
باعث تحریر آنکے

مقدمہ مندرجہ میں اپنی طرف سے واسطے بیروی و جواب دہی کل کاروائی متعلقہ آں مقام
ارٹ آباد ملک محمد و سیم امداد کی طرف

کو وکیل مقرر کر کے اقرار کرتا ہوں کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل صاحب موصوف کو کرنے راضی نامہ و تقرر قانت و فیصلہ برطرف دینے اقبال دعویٰ اور بصورت دیگر ذکر کرانے اجراء وصولی چیک روپیہ و عرضی دعویٰ کی تصدیق اور اس پر دستخط کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کی کل یا کسی جزوی کاروائی کے لئے کسی اور وکیل یا محکمہ صاحب قانونی کو اپنے ہمراہ اپنی بجائے تقرر کا اختیار بھی ہوگا اور صاحب مقرر شدہ کو کبھی وہی اور ویسے ہی اختیارات ہوں گے اور اس کا ساختہ پر داخستہ مجھ کو منظور و قبول ہوگا۔ دوران مقدمہ جو خرچہ و ہر جانہ التوائے مقدمہ کے سبب ہوگا اس کے مستحق وکیل صاحب ہوں گے۔ نیز بتایا رقم وصول کرنے کا بھی اختیار ہوگا۔ اگر کوئی تیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب موصوف پابند ہوں گے کہ بیروی مقدمہ مذکورہ کریں اور اگر محکمہ مقرر کردہ میں کوئی جزو بتایا ہو تو وکیل صاحب موصوف مقدمہ کی بیروی کے پابند نہ ہوں گے۔ نیز درخواست ہر ادوات تجارت مالش، بیعتہ مفلسی کے دائرہ کرنے اور اس کی بیروی کا بھی صاحب موصوف کو اختیار ہوگا۔

لہذا اوکا لہ نامہ تحریر کر دیا تاکہ سند رہے۔

المقوم:

Accepted
Attested
[Signature]

بمقام:

محمد صادق
[Signature]

السعد

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Service Appeal No 353/ 2019

Muhammad Javed, Ex- Assistant Secretary Academic, Board of Intermediate & Secondary Education, Abbottabad **Appellant**

VERSUS

1. Director Local Fund Audit, Govt: of Kyber PakhtunKhwa, Peshawar.
2. Assistant Director, (HQ) Local Fund Audit, Govt: of Kyber PakhtunKhwa, Peshawar.
3. Auditor (Pension Incharge) Local Fund Audit, Govt: of Kyber PakhtunKhwa, Benevolent Fund Building, Peshawar Cantt.
4. Board of intermediate & Secondary Education, Abbottabad through its Chairman.
5. Chairman, Board of intermediate & Secondary Education Abbottabad.
6. Secretary, Board of intermediate & Secondary Education, Abbottabad.
7. Secretary to the Govt. of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.
8. Establishment officer Board of Intermediate & Secondary Education, Abbottabad..... **Respondents**

PARA WISE COMMENTS ON BEHALF OF THE DIRECTOR LOCAL FUND AUDIT
RESPONDENT NO. 01, ASSISTANT DIRECTOR (H/Q) RESPONDENT NO. 02 AND
AUDITOR (PENSION INCHARGE) RESPONDENT NO. 03.

S#	Description Of Documents	Annexure	Page #
1.	Para wise comment		1,2,3
2.	Affidavit		4
3.	Promotion order to Senior Clerk	A	5
4.	Provincial Notification regarding advance increments	B,C	6 to 12
5.	Rules for advance increments in board calendar	D	13
6.	Minimum qualification to the post of Senior Clerk	E	14
7.	Audit Para on the appellant regarding grant of irregular increments and personal upgradation	F	15,16

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No 353/ 2019

Muhammad Javed, Ex- Assistant Secretary Academic, Board of Intermediate & Secondary Education, Abbottabad**Appellant**

VERSUS

1. Director Local Fund Audit, Govt: of Kyber PakhtunKhwa, Peshawar.
2. Assistant Director, (HQ) Local Fund Audit, Govt: of Kyber PakhtunKhwa, Peshawar.
3. Auditor (Pension Incharge) Local Fund Audit, Govt: of Kyber PakhtunKhwa, Benevolent Fund Building, Peshawar Cantt.
4. Board of intermediate & Secondary Education, Abbottabad through its Chairman.
5. Chairman, Board of intermediate & Secondary Education Abbottabad.
6. Secretary, Board of intermediate & Secondary Education, Abbottabad.
7. Secretary to the Govt. of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.
8. Establishment officer Board of Intermediate & Secondary Education, Abbottabad.....**Respondents**

Respectfully sheweth:

PRELIMINARY OBJECTION:

1. That the appellant is an employee of Board of Intermediate & Secondary Education Abbottabad and not a civil servant hence this Honorable Service Tribunal has no jurisdiction to adjudicate the matter.
2. The Board of Intermediate & Secondary Education Abbottabad is not statutory in nature nor would the adoption of the Rules of Civil Service provide them such cover to make the instant appeal.
3. The appellant is neither aggrieved nor locus standi to invoke extra ordinary constitutional jurisdiction of this honorable court.
4. The instant appeal is not maintainable in its present form and substance and liable to be dismissed.
5. The appeal has not come with clean hand and concealed material facts from this august court.
6. The appeal of the appellant is bad in eye of law being infructuous.
7. That the appellant is esstopped by his own conduct to file the instant Writ Petition.

PARA WISE COMMENTS ON BEHALF OF THE DIRECTOR LOCAL FUND AUDIT
RESPONDENT NO. 01, ASSISTANT DIRECTOR (H/Q) RESPONDENT NO. 02 AND
AUDITOR (PENSION INCHARGE) RESPONDENT NO. 03.

- 1) No comments. However appellant being employee of Board of Intermediate & Secondary Education Abbottabad is not a civil servant.
- 2) No comments.
- 3) The appellant was not entitled to the grant of advance increments as he was promoted to the post of Senior Clerk on 6/10/1983 vide order No. 248 (Annex A) where as the notification of advance increments on the basis of higher qualification was issued on 11/08/1991 vide Notification No.FD(PRC)1-1/89 (Annex B) and subsequently clarified vide notification No.FD(SR.V)2-145/97/Vol.V dated 14/03/1998(Annex C). The rules for

2

grant of advance increments on the basis of improved qualification and formula for fixation of pay was also mentioned in board calendar under chapter XXIX (Annex D). The minimum qualification for the post of Senior Clerk in light of board calendar under Chapter XXVIII is declared to be Bachelor Degree OR Intermediate plus five year experience OR Secondary School Certificate in 1st Division and a speed of 100 words per minute (Annex E). Hence the appellant is not entitled to the grant of advance increments accorded to him in light of board calendar and provincial government notifications by having no higher qualification.

- 4) Incorrect, the annual audit conducted by the Directorate of local fund audit has only checked/endorsed the annual increment allowed to the appellant w.e.f 2005 to 2008 rather than the advance increments. The audit party has taken Para on the appellant regarding grant of irregular increments and personal upgradation in the year 2010-11 to 2012-13 (Annex F) The grant of second advance increment allowed to the appellant was not admissible as manifested in the BISE Abbottabad board calendar under chapter XXIX.
- 5) The appellant has been treated as per law and in accordance to laid down procedures.
- 6) The recoveries amounting to Rs.398197 from the pension claim was made due to excess payment on account of not only advance increments but also due to irregular personal upgradation. All the legitimate dues have been paid to the appellant and no discrimination has been made.
- 7) No comments.
- 8) The writ petition as cited in the instant Para of the appeal was dismissed as not pressed and the petitioner was given liberty to approach the competent forum for redressal of his grievance. It is also admitted by the BISE authority that the employees of the institution are not governed by the Civil Servant Act 1973. The appellant does not have the jurisdiction to file the instant appeal in the Khyber Pakhtunkhwa Service Tribunal under the Service Tribunal Act 1974.
- 9) The instant appeal is not competent and not maintainable before the honorable service tribunal.

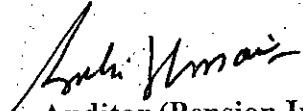
GROUND

- A) Incorrect as the appellant has been treated with accordance to rules and the recovery has been made as per law.
- B) Incorrect as the appeal is not maintainable in the honorable service tribunal due to the fact that the appellant is not a civil servant under the civil servant Act. The judgments of the honorable service tribunal cannot be applied on the employees of BISE or any other autonomous institution.
- C) The instant Para of the appeal for the same reason as stated above creates no title or benefit in favour of the appellant.
- D) Incorrect and untenable. An illegal order does not create a vested right nor does it attract the provision of section-21 of the general clauses Act.
- E) Not denied as laid.
- F) No discrimination has been meted out to the appellant. None of the provisions of the constitution has been violated. An illegal order or proceedings such as the one impugned herein, does not create a vested or a perpetual right in favour of the appellant.
- G) Denied, because the right as claimed in the instant appeal, is not a kind of right as generated under Article-4 and 25 of the constitution. Moreover, violation of any

fundamental right is amenable only to the constitutional jurisdiction of the superior courts.

H) Incorrect and untenable. The instant matter is governed by the law and principle of Master and servant and this honorable service tribunal is not competent to entertain the instant appeal which is liable to be dismissed.

In view of the above submissions, it is very humbly prayed that the instant appeal, being incompetent, beyond the jurisdiction of this honorable service tribunal, untenable and devoid of any merit, may graciously be dismissed.



Auditor (Pension Incharge)

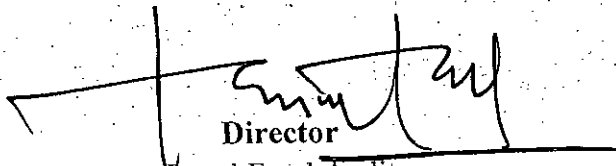
Local Fund Audit
Kyber PakhtunKhwa,
Peshawar.

Respondent No. 03



Assistant Director
Local Fund Audit
Kyber PakhtunKhwa,
Peshawar.

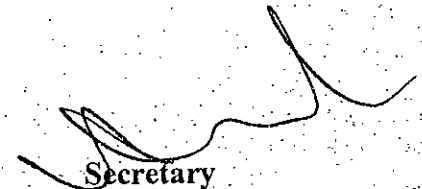
Respondent No. 02



Director

Local Fund Audit
Kyber PakhtunKhwa,
Peshawar.

Respondent No. 01



Secretary

Finance Department
Kyber PakhtunKhwa,
Peshawar.

Respondent No. 07

4

IN THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No 353/ 2019

Muhammad Javed, Ex- Assistant Secretary Academic, Board of Intermediate & Secondary Education, Abbottabad **Appellant**

VERSUS

1. Director Local Fund Audit, Govt: of Kyber PakhtunKhwa, Peshawar.
2. Assistant Director, (HQ) Local Fund Audit, Govt: of Kyber PakhtunKhwa, Peshawar.
3. Auditor (Pension Incharge) Local Fund Audit, Govt: of Kyber PakhtunKhwa, Benevolent Fund Building, Peshawar Cantt.
4. Board of intermediate & Secondary Education, Abbottabad through its Chairman.
5. Chairman, Board of intermediate & Secondary Education Abbottabad.
6. Secretary, Board of intermediate & Secondary Education, Abbottabad.
7. Secretary to the Govt. of Khyber Pakhtunkhwa, Finance Department, Civil Secreatariat, Peshawar.
8. Establishment officer Board of Intermediate & Secondary Education, Abbottabad..... **Respondents**

PARA WISE COMMENTS ON BEHALF OF THE DIRECTOR LOCAL FUND AUDIT
RESPONDENT NO. 01, ASSISTANT DIRECTOR (H/Q) RESPONDENT NO. 02 AND
AUDITOR (PENSION INCHARGE) RESPONDENT NO. 03.

AFFIDAVIT

Aslam Rafique Deputy Director, office of the Directorate of Local Fund Audit Peshawar, do hereby solemnly affirm and declare on oath that the contents of para wise comments on behalf of Respondent No.03 are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.


DEPONENT

CNIC NO. _____

5

BOARD OF INTERMEDIATE AND SECONDARY EDUCATION, PESHAWAR.

OFFICE ORDER NO. 248 DATED October 6, 1983.

The Chairman has been pleased to promote the following Junior Clerks of the Board of Intermediate and Secondary Education, Peshawar to the posts of Senior Clerks in Basic Pay Scale No.7 (Rs.560-23-1020) with effect from 01.10.1983 (FN) :-

1. Mr. Abdul Ghafoor.
2. Mr. Fazli Akbar.
3. S. Jehangir Shah.
4. Mr. Noor Mohammad.
5. Mr. Mohammad Farvez.
6. Mr. Mohammad Javed.
7. Mr. Mohammad Sharif.
8. Mr. Nisarul Wajood.

They will remain on probation for a period of one year.

(S.M. ASHRAF) M.A., LL.B.
Secretary.

NO. 540 /Estt/BISSE, Peshawar.

Copy to :-

1. All Section Officers, B.I.S.E., Peshawar.
2. All Concerned.
3. Personal Files.
4. Office Order File.

* * *

(S.M. ASHRAF) M.A., LL.B.
Secretary.

(18) Annex 4

GOVERNMENT OF NWFP
FINANCE DEPARTMENT

(PAY REVISION CELL)

NO. FD(PHC)1-1/892

Dated Peshawar, the 11th August 1991

The Secretary to Government, NWFP,
Finance Department, Peshawar.

To:

1. All Administrative Secretaries, Government of N.W.F.P.
2. The Senior Member Board of Revenue, N.W.F.P., Peshawar.
3. The Secretary to Governor, NWFP, Peshawar.
4. The Secretary to Chief Minister, NWFP, Peshawar.
5. The Secretary, Provincial Assembly, NWFP, Peshawar.
6. All Heads of Attached Departments in NWFP.
7. All Commissioners/Dy. Commissioners/Political Agents/District & Sessions Judges in N.W.F.P.
8. The Registrar, Peshawar High Court, Peshawar.
9. The Secretary, Public Service Commission, NWFP, Peshawar.
10. The Registrar, Services Tribunal, NWFP, Peshawar.
11. The Secretary, Board of Revenue, NWFP, Peshawar.

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19/8

TMO / 9/11/91

Khan

Asst. Secy

19/8/91

Subject:-

REVISION OF BASIC PAY SCALES AND FRINGE BENEFITS OF CIVIL EMPLOYEES (BPS-1 - 15) OF THE PROVINCIAL GOVERNMENT (1991).

I am directed to refer to the subject noted above and to say that the Governor, N.W.F.P., has been pleased to sanction revision of the Basic Pay Scales for the Provincial Civil Service (BPS-1 - 15) as detailed in the following paragraphs:-

BASIC PAY SCALES

The existing, modified and revised pay scales detailed in the annexure to this letter. The revised pay scales shall replace the Basic Pay Scales, 1987 and shall be effective from 1st of June, 1991.

2/2/91

The initial pay of the existing employees who have been in Government service since before the 1st June, 1988, shall first be fixed in the modified scale at the stage giving the same pay or if there is no such stage at the next higher stage. Thereafter the pay shall be fixed in the revised Pay Scale "on point to point basis" i.e. at the stage in the relevant revised basic pay scale which is as many stages above the stage occupied by him above the minimum of the modified basic scale.

(iii) In the case of those employees whose pay is fixed in the revised scale at a stage which gives less than Rs. 100/- increase in pay (i.e. May, 1991) a minimum increase of Rs. 100/- in pay over May, 1991 level, would be allowed and thereafter pay fixed at the corresponding stage equal to this pay or if there is no such stage, at the next higher stage. The pay fixation formula has been illustrated through examples I, II & III in Appendix.

(iv) The annual increment shall continue to be admissible subject to the existing conditions on the 1st of December each year.

(v) The increases allowed since 1-7-1988, as detailed below shall cease to be admissible from 1-8-1991:-

- (a) Indexed pay sanctioned vide Finance Department circular No. FD(PRC)1-3/85, dated 4-8-1988.
- (b) Ad-hoc increase of 5% of pay sanctioned vide circular No. FD(PRC)1-3/85, dated 13-1-1990.
- (c) Ad-hoc increase of 10% sanctioned vide Finance Department circular No. FD(PRC)1-3/89 dated 21-7-1990.
- (d) Dearness Allowance of Rs. 200/- p.m. sanctioned vide Finance Department circular No. FD(PRC)1-3/90 dated 18-1-1991.

FIXATION OF PAY ON PROMOTION

- 1) In cases of promotion from a lower to higher post/scale before the introduction of these scales, the pay of the employee concerned in the revised scale may be fixed and so enhanced that it would not be less than the pay that would have been admissible to him if his promotion to the higher post/scale had taken place after the introduction of these scales.
- 2) Government employees who are allowed selection grade shall be granted one premature increment from 1-6-1991 as is allowed in the case of promotion.

GRANT OF ADVANCE INCREMENTS TO OFFICERS FOR POSSESSION/ ATTAINING HIGHER EDUCATIONAL QUALIFICATION:

1) From 1-6-1981 onwards advance increments shall be allowed without the condition of the second division to the officers in BPS-15 for possession of/ acquiring higher educational qualifications over and above prescribed qualifications in the relevant recruitment as to the extent given below:

No. of Advance increments for obtaining

	Metric	R.A./R.Sc	B.S./B.Sc	M.Sc	M.A./M.Sc
a) Where the prescribed qualification is Non-Metric	2	1	1	1	1
b) Where the prescribed qualification is Metric	2	2	2	2	2
c) Where the prescribed qualification is R.A./R.Sc	1	1	1	1	1
d) Where the prescribed qualification is B.A./B.Sc	1	1	1	1	1

The advance increment already allowed in terms of

para-6(a) of Finance Department's letter no. (BRC)1-1/87-401-VIII dated 22-7-1987 would be doubled from 1-6-1991.

The concession of move-over shall be available from

MOVE-OVER

1) The advance increments shall be allowed at the time of recruitment or acquisition of higher qualification already at the maximum of the scale, he may be allowed the number of advance increments beyond the maximum of the scale as personal pay to be absorbed at the time of the move-over/promotion. Those employees who had acquired their qualification in 3rd division prior to 1-6-1991 and were not granted advance increments with effect from 1-6-1991, shall be allowed advance increments earlier would henceforth be allowed advance increments with effect from 1-6-1991.

1-6-1991 onwards to those who are enjoying selection grade.

21

9

SPECIAL PAYS

The existing Special Pay admissible to various categories of Personal Assistants in BPS-15 shall be revised from 1-6-1991 as under :-

NAME OF POST	EXISTING RS. PER MONTH	REVISED RS. PER MONTH
P.A. to Minister.	100	150
P.A. to Chief Secretary/ Addl. Chief Secretary/ Secretaries/Additional Secretari	75	120

TEACHING ALLOWANCE

The existing rate of teaching allowances admissible to qualified teachers of High Schools who teach Science subject Physics, Chemistry, Biology & Mathematics and Junior Instructor Poly-Technic shall be enhanced as under :-

- (a) For High School Science Teachers From Rs. _____
To Rs. _____
- (b) For Junior Instructors in Poly-Technic who possess Technical Teachers Diploma From Rs. _____
To Rs. _____

MEDICAL ALLOWANCE

The existing rate of Medical Allowance of Rs. _____ per month admissible to the employees in BPS-1 to 15 shall be enhanced from Rs. 60/- P.M.

MESSING/DIET ALLOWANCE

The existing rate of messing/diet allowance admissible to employees in Cadre (below BPS-16) shall be enhanced from Rs. 300/- to Rs. _____

UNIFORM ALLOWANCE

The existing rate of uniform allowance for employees in Cadre (below BPS-16) shall be enhanced from Rs. 125/- P.M. to Rs. _____

(22)

NIGHT DUTY ALLOWANCE

The Night Duty Allowance shall be admissible as under -

- (a) For Assistants/Clerks Rs. 3/- per night
- (b) For Staff Car Drivers/Despatch Riders Rs. 4/- per night
- (c) For Halb Qasid Rs. 3/50 per night

WASHING GRANT/ALLOWANCE ADMISSIBLE TO LIVERIED STAFF

The existing rates of Washing Grant/Allowance shall be enhanced from Rs. 25/- per month to Rs. 30/- per month.

CONVEYANCE CHARGES FOR LATE SITTING AFTER OFFICE HOURS

The existing rates of Conveyance Charges admissible to employees in BPS-1-16 (Non-Gazetted) shall be enhanced as under:-

- (1) ON WORKING DAYS
 - For officials in BPS 1-2 From Rs. 3.50 per day to Rs. 4.50 per day
 - For officials in BPS 3-15 N-16 (Non-Gazetted) From Rs. 4.50 per day to Rs. 5.50 per day
- (11) ON CLOSED HOLIDAYS
 - For officials in BPS 1-2 From Rs. 4.50 per day to Rs. 5.50 per day
 - For officials in BPS 3-15 N-16 (Non-Gazetted) From Rs. 7.00 per day to Rs. 8.00 per day

Yours obedient servant

(GHULAM DASTGIR AKHTAR)
DEPUTY SECRETARY (REGULATION)
FINANCE DEPARTMENT

Dated: Pesh., the 11-8-1991

NO. FD(PRC)1-1/89

Copy forwarded for information to -

1. All Autonomous & Semi Autonomous Bodies in NWFP.
2. The Secretary Finance Department, Government of the Punjab, Sindh and Balochistan.

(GHULAM DASTGIR AKHTAR)
DEPUTY SECRETARY (REGULATION)
FINANCE DEPARTMENT

The Secretary to Government of NWFF,
Finance Department Peshawar.

1. All Administrative Secretaries to Govt. of NWFF.
2. The Senior Member, Board of Revenue, N.W.F.F.
3. The Secretary to Governor N.W.F.F.
4. The Secretary to Chief Minister, N.W.F.F.
5. The Secretary, Provincial Assembly, NWFF.
6. All Heads of Attached Departments in NWFF.
7. All Commissioners/Deputy Commissioners/Political Agents/District & Sessions Judges in NWFF.
8. The Registrar, Peshawar High Court, Peshawar.
9. The Secretary, Public Service Commission N.W.F.F.
10. The Registrar, Services Tribunal, N.W.F.F.
11. The Secretary, Board of Revenue, NWFF., Peshawar.

Subject:- GRANT OF ADVANCE INCREMENTS TO THE EMPLOYEES
DRAWING PAY IN BIS-16.

I am directed to refer to the subject noted above and to say that under the existing policy the benefit of advance increments for possessing or acquiring higher educational qualifications in the relevant field over and above the prescribed qualifications in the relevant recruitment rules are admissible to the officials in BIS-1-15 in terms of para-5 of Finance Department's letter No. FD(FRC)1-1/89 dated 11.8.1991.

The question of extension of benefit of advance increments to the Government Servants drawing pay in BIS-16 had been under consideration of the Government for quite some time past. It has now been decided to allow advance increments to the provincial civil servants drawing pay in BIS-16 on acquiring/possessing higher qualification over & above the minimum prescribed qualifications in relevant recruitment Rules to the extent given below :-

	Matric.	F.A./F.Sc	B.A./B.Sc	M.A.M.Sc.
Where the prescribed Qualification is Matric.	Nil	2	4	6
Where the prescribed qualification is FA/F.Sc.	Nil	Nil	2	4
Where the prescribed qualification is B.A./B.Sc.	Nil	Nil	Nil	2

These increments will be allowed in accordance with the existing policy requiring fulfilment of the following conditions :-

- i) The higher qualification is in the relevant field.
- ii) The incumbent of the post has not availed the benefit earlier, on any lower post/scale.

iii) The qualification acquired is higher than the one prescribed in respect of the posts for direct recruitment under the service rules.

4. These orders will take effect from 1st March, 1998.

Your obedient servant,

Mohammad Sultan

(MOHAMMAD SULTAN)
ADDITIONAL SECRETARY-V

Endst. No. FD(SR.V.)2-145/97/Vol:V, Dated Peshawar, the 14.3.1998

Copy for information to :-

1. All Autonomous & Semi Autonomous Bodies in NWFP
2. The Secretary Finance Department Government of the Punjab, Sind & Baluchistan.

Sultan Mahmood Khattak
(SULTAN MAHMOOD KHATTAK)
DEPUTY SECRETARY REGULATION

Endst. No. FD(SR.V.)2-145/97/Vol:V, Dated Peshawar, the 14.3.1998

Copy for information to :-

1. The Accountant General N.W.F.P., Peshawar.
2. All Distt./Agency Accounts Officers in NWFP.
3. The Treasury Officer, Peshawar.
4. The Private Secretary to Finance Minister, N.W.F.P.
5. P.S. to Secretary, P.A.S. to Additional Secretaries/Deputy Secretaries in Finance Department.
6. All Section Officers/Budget Officers in Finance Department.
7. The Director, Local Fund Audit, N.W.F.P., Peshawar.

Syed Saad Shah
(SYED SAAD SHAH)
SECRETARY (SR.V)

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CHAPTER XXIX
RULES FOR GRANT OF ADVANCE
INCREMENTS ON THE BASIS OF IMPROVED
QUALIFICATIONS, AND FORMULA FOR
FIXATION OF PAY

1. In supersession of all previous decisions on the subject an employee of the Board who has improved after joining service in the Board, upon the minimum qualifications prescribed by the Board for direct recruitment will be allowed advance increments at the following rates with effect from 1.7.1970 provided he has not previously received advance increments on this account on appointment or during service for the same qualifications:-

	EXAMINATION	ADVANCE INCREMENT
(i)	Intermediate (Full subjects) OR Intermediate (English Only with Honour in a Pakistani Classical Languages Examination) OR D.Com Examination	One increment
(ii)	B.A (Full subjects) OR B.A (English only) with Honours in a Pakistani / Classical Languages Examination.	one increment
(iii)	M.A./M.Sc. One increment	

2. An employee who improves upon the prescribed qualifications upto M.A./M.Sc shall be entitled to the grant of three advance increments in total, which will be given to

him on passing each Examination at the rate of one increment from time to time i.e. one for Intermediate, another for B.A./B.Sc and one for M.A./M.Sc.

3. Seasonal staff or employees recruited on purely temporary basis shall not be eligible for the advance increments
4. Grant of advance increment/s shall be subject to satisfactory record of service.
5. Should the grant of advance increment/s involve crossing of efficiency bar, entitlement of advance increment/s shall be subject to the employees' crossing the efficiency bar with the orders of the competent authority.
6. In the case of employees improving their qualifications after 1.10.1970, the date of declaration of the result of the relevant examination shall be taken into account for the purpose of giving effect to the grant of advance increment/s to the employee concerned.
7. Employees below the rank of junior clerks shall be eligible for one advance increment on passing Secondary School Certificate Examination.
8. No employee of the Board will be allowed 4th increment for improvement of Academic Qualifications during the service of the Board.

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CHAPTER XXVIII

**QUALIFICATIONS AND MODE OF APPOINTMENT
OF EMPLOYEES OF THE BOARD
MINIMUM QUALIFICATIONS**

Minimum qualifications for appointment shall be as follows:-

(1) Secretary, Controller, Audit officer, Deputy Secretary/
Controller.

(i) Master's Degree in the 1st Division and five years
experience.

OR

(ii) Master's Degree in the Second Division or Bachelor
Degree in the First Division and ten years experience.

OR

(iii) Bachelor's Degree in the Second Division and 15 years
experience.

(2) (a) Assistant Secretary/Controller.

(i) Master's Degree in the First Division.

OR

(ii) Master's Degree in the Second Division or Bachelor's
Degree in the First Division and five years experience.

OR

(iii) Bachelor's Degree in the Second Division and ten
years experience.

(b) Director of Physical Education.

(c) Bachelor's Degree with senior diploma in
Physical Education.

(3) Superintendents/Head Assistants (in the case of direct
recruitment only.)

(i) Master's Degree in at least Second Division or
Bachelor's Degree in the First Division.

(ii) Bachelor's Degree in Second/ Third Division with
seven years experience.

(4) Assistant/Junior Auditors (in the case of direct recruitment
only).

(i) Bachelor's Degree in the Second Division or a Higher
Degree.

(ii) Bachelor's Degree in the Third Division and five years
experience.

(5) Senior Clerks (in the case of Direct recruitment only).

(i) Bachelor's Degree.

OR

(ii) A certificate of having passed the Higher Secondary
Examination (Intermediate) and five years experience.

OR

(iii) Secondary School Certificate Examination in 1st
Division and a shorthand speed of 100 words per
minute as stenographer.

(6) Junior Clerks

(i) Secondary School Certificate Examination in the 1st
Division.

OR

(ii) Secondary School Certificate Examination and a speed
of at least 30 words per minute in typing.

(iii) English only of Secondary School Certificate
Examination with 1st Division marks and a speed of at
least 30 words per minute in typing.

OR

(iv) A certificate of having passed the Higher Secondary
(Intermediate) Examination.

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**AUDIT NOTE ON THE ACCOUNTS OF BOARD OF
INTERMEDIATE AND SECONDARY EDUCATION ABBOTTABAD
FOR THE YEAR 2010-11 TO 2012-13.**

Name of Assistant Director (Audit): - Muhammad Shams Rehman

Period of Audit: - 2010-11 to 2012-13

INTRODUCTION.

The accounts of Board Intermediate Secondary Education Abbottabad were last audited upto 30/06/2009. The Audit Note issued to the Chairman Board Intermediate Secondary Education Abbottabad with the request to furnish annotated reply showing action taken on the Audit Note but no annotation submitted. The Audit Note was discussed in detail and reproduced in Part-I of the Audit Note whereas Part-II deals with the result of the current audit.

PART-I (PREVIOUS AUDIT)

1. **NON DEDUCTION OF INCOME TAX AMOUNTING TO RS.17224/-
(PARA-8 OF 1990-91).**

The para is related to the non deducting of income tax amounting to Rs.17,224/- from M/S Motors Ltd.. Neither tax exemption certificate was produced nor recovery made.

The needful is still awaited.

2. **IRREGULAR DRAWAL OF HOUSE SUBSIDY ALLOWANCE
AMOUNTING TO RS.22,387/- (PARA-13 1990-91).**

A sum of Rs.22,387/- was paid to Mr. Rustam Khan Assistant Secretary of Examination on account of Housing Subsidy for which he was not entitled. Justification/recovery is still awaited.

3. **EXCESS PAYMENT OF RS.1,600/- (PARA-14 OF 1990-91).**

Rs.45,451/- were drawn vide Cheque No. 09829444 dated 5.9.90 out of which expenditure account of Rs.1,600/- was not shown to audit.

The needful is still awaited.

4. **SUSPECTED EMBEZZLEMENT OF RS.12,000/- (PARA-15 OF 1990-91).**

Rs.12,000/- were paid vide voucher No.69 dated, 21.11.90 to Mr. Aurangzeb Khan but expenditure account was not shown to audit.

Corrective action is still awaited.

5. **IRREGULAR DRAWAL OF RS.29008/- ON ACCOUNT OF
CONVEYANCE ALLOWANCE BY THE BOARD EMPLOYEES
(PARA-20 OF 1990-91).**

The amount of Rs.29,008/- was paid to Board Employees at Abbottabad as Conveyance Allowance which was not allowed/admissible to them. Recovery is still awaited.

Secondary Education Deptt's Notification No.SO(B/T) E&SED/6-5/012/BISE Abbottabad dated 26-11-2012. He was promoted to the post of Professor B-20 w.e.f 27-5-2013 vide Establishment Deptt: Notification No.SO(E-I)E&AD/9-88/2013 dated 27-5-2013, whereas his pay and allowances were fixed in the Board in B-20 instead of B-19 in light of Finance Deptt: Notification No.FD(PRC)1-1/2012 dated 17-8-2012. The term and conditions of deputation is settled by the competent authority w.e.f 27-11-2012 to 26-05-2013 in B-19 & w.e.f 28-05-2013 to 25-11-2014 in B-20 vide No.SO (COLLEGES-I)HED/1-1/2013 dated 17-09-2013 and in light of Para-13 of the said terms no fringe benefits and promotion are to be allowed unless the prior consent of the Provincial Govt: is obtained in the instant case no approval of the Provincial Govt: has been obtained for the grant of B-20 instead of B-19.

The matter is brought into the notice of higher authority to either ex-post facto sanction may be obtained by the Provincial Govt: or the excess payment regularized or the same payment may be worked out and recovered from the concerned under intimation to audit.

424. (i) GRANT OF IRREGULAR INCREMENTS AND
(ii) PERSONAL UP-GRADATION TO MR. MOHAMMAD JAVED
SUPERINTENDENT.

(i) Mr. Mohammad Javed was promoted to the post of Junior Clerk B-5 w.e.f 2-7-1977 and was promoted to Senior Clerk B-7 w.e.f 1-10-1983 they have been granted two advance increments on FA w.e.f 20-10-1989 and 1-6-1991 respectively.

According to Finance Deptt's letter No.FD(SR-V)2-145/97/Vol-V and No.FD (SR-V)2-145/98 dated 14-3-1998 and 31-8-1999 respectively qualification increments has not been granted for those categories of posts where certain percentage of posts is reserved for direct recruitment and the post are rest of reserved for promotion, the qualification prescribed for direct recruitment will be treated the prescribed qualification in the case of promotion also and the advance increments shall be allowed only if officials possess or acquire higher qualification over and above qualification prescribed for direct recruitment: However, where there is no such quota reserved to direct recruitment, the qualification of the lower post from which the employee has been promoted shall be treated as prescribed qualification for the post.

In light of Para-5 of Chapter XXVII of the Board calendar there is two way of selection of the Senior Clerk one by promotion among the Junior Clerks on the basis seniority cum fitness and the second one direct recruitment for which the qualification of Bachelor Degree or higher Secondary Education (Intermediate) and five years experience.

Thus the employee was not entitled for the grant of said increments.

(ii) Mr. Mohammad Javed Superintendent was granted personal up-gradation from B-16 to B-17 w.e.f 2-10-2010 vide office order No.15/A/03-Estt/02-10 dated 2-10-2012 in the light of policy and criteria for up-gradation of posts issued vide Govt: of Khyber Pakhtunkhwa Finance Deptt's (Regulation Wing) (b) (iii-v). Beside the employee has been granted re-fixation of pay on 1-12-2012 in B-17 after allowing annual increment in B-16 due to his option.

According to the up-gradation policy 2010 those employee will be granted personal up-gradation who do not have further promotion chance and have stayed on one position for a reasonably long time, whereas according to Para-I (C) of the mode of appointment of the Board calendar 2/3 posts of Assistant Secretary / Assistant Controller B-17 is to be filled through promotion from the next lower grade in the cadre on Seniority cum merit, thus the employee is neither entitled for the grant of personal up-gradation from B-16 to B-17 in the presence of reasonable chance for promotion to the post of Assistant Secretary / Assistant Controller B-17, nor entitled for the grant of annual increment on 1-12-2012.

Therefore the matter is brought into the notice of the Board authority for corrective action under intimation to audit.

**BEFORE THE HON'BLE KPK SERVICE TRIBUNAL, CAMP
COURT, ABBOTTABAD**

Service Appeal No. 353 /2019

MOHAMMAD JAVED(APPELLANT)

V E R S U S

DIRECTOR, LOCAL FUND, AUDIT DEPARTMENT AND OTHERS

....(RESPONDENTS)

=====
Reply / Written Statement on behalf of respondents No.4 to 6 and 8
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...RESPONDENTS No. 4 to 6
BISE Abbottabad

Through:

Dated:- _____ 2019


(Syed Altaf Hussain Shah)
Advocate High Court,
Abbottabad.

BEFORE THE HON'BLE KPK SERVICE TRIBUNAL,
CAMP COURT, ABBOTTABAD

Service Appeal No. 353 /2019

MOHAMMAD JAVED(APPELLANT)

V E R S U S

DIRECTOR, LOCAL FUND, AUDIT DEPARTMENT AND OTHERS

....(RESPONDENTS)

Reply / Written Statement on behalf of respondents No.4 to 6

Respectfully Sheweth,

PRELIMINARY LEGAL OBJECTIONS:-

1. The appellant, admittedly, being an employee of a corporate body i.e. BISE, and exclusively governed by the Rules and Regulations as embodied in the calendar of the Board of Intermediate and Secondary Education, rather than those as made under the Civil Servant Act, cannot file the instant appeal within the competence of the service Tribunal.
2. The Regulations of the Board of Intermediate, governing the terms and conditions of its employees, such as the appellant, are not statutory in nature nor would the adoption of the Rules of Civil Service provide them such cover as to make the instant

instant appeal, therefore, being incompetent, is liable to be dismissed in limini.

3. The appellant was entitled only to a single "qualification increment" within the provision of Chapter-XXIX of the Board's calendar and, therefore, the incident or the act of awarding him second increment for the same qualification on the basis of an extraneous notification, such as the one dated 11/08/1991, was illegal, contrary to and in contravention of the provision of the Chapter *ibid* and, thus, the appellant is not entitled to any benefit of the principle of *locus poenitentiae*.
4. The award of dual increment to the appellant, being illegal and unwarranted as also being a mistake of law and fact, does not create a perpetual right in favour of the appellant and, as such, the benefits so illegally and unauthorisedly received by the appellant, remained subject to deduction or recovery at the time of final settlement of his Pensionary benefit, and, hence the impugned action, being within the competence of the competent authority, is not amenable to challenge by way of the instant appeal before the Service Tribunal.
5. Without prejudice to the above objections, the instant appeal is hopelessly barred by limitation neither is the appellant entitled to the benefit of section-5 read with section-14 of the limitation Act.

REPLY ON FACTS:-

1. Needs no reply nor comments.

3. Not denied. It would, however, not be impertinent to submit that the appellant was not entitled to the benefit of dual increment on the basis of any notification in addition to except Regulation as provided under Chapter XXIX of the Board's calendar. The second grant of increment to the appellant besides being illegal and unwarranted at law, was also a mistake of the law and fact and, as such, did not create a vested or a perpetual right in favour of the appellant.
4. Incorrect, hence denied.
5. Being a matter of record, needs no reply nor any comment.
6. Not denied except that the objection, as was raised by the Auditor, was valid and within his competence because the audit department is entrusted with the duty to consider overall effect of the instant case in the interest of efficient management of public money.
7. Being a matter of record, not denied. It is however, pertinent to submit that the appellants' application was neither competent nor entertainable within the competence of the Chairman, BISE.
8. The writ petition, as cited in the instant Para of the appeal, was dismissed as withdrawn. However, without any specific direction, the appellant was set at liberty to approach competent forum. It is also pertinent to state that appellant, not being a civil servant, has, once again,

9. Incorrect. The instant appeal, before this honourable service tribunal, being incompetent, is not maintainable.

REPLY ON GROUNDS:-

- a) Incorrect and untenable.
- b) The instant appeal is incompetent. The appellant is not a Civil Servant nor are the Terms and Conditions of his service governed by the Rules or Regulation as provided under the civil servant Act and, therefore, the appellant is not entitled to the benefit of any such judgment or decision as claimed in the instant Para of the appeal.
- c) The instant Para of the appeal, for the same reason as stated above, creates no title or benefit in favour of the appellant.
- d) Incorrect and untenable. An illegal order does not create a vested right nor does it attract the provision of section-21 of the general clauses Act.
- e) Not denied as laid.
- f) No discrimination has been meted out to the appellant. None of the provisions of the constitution has been violated. An illegal order or proceedings, such as the one impugned herein, does not create a vested or a perpetual right in favour of the appellant which remained subject to final determination at the time of final settlement of

- g) Denied, because the right, as claimed in the instant appeal, is not a kind of right as generated under Article-4 and 25 of the constitution. Moreover, violation of any fundamental right is amenable only to the constitutional jurisdiction of the superior courts.
- h) Incorrect and untenable. The instant matter is governed by the law and principle of Master and servant and this honourable Tribunal is not competent to entertain the instant appeal which is liable to be dismissed.

In view of the above submissions, it is very humbly prayed that the instant appeal, being incompetent, beyond the jurisdiction of this honourable Tribunal, untenable and devoid of any merits, may graciously be dismissed.

Response to paras 4 to 6

BISE Abbottabad

Through:



(Syed Altaf Hussain Shah)

Advocate High court, Abbottabad.

Dated:- _____/2019

BEFORE THE HON'BLE KPK SERVICE TRIBUNAL,
CAMP COURT, ABBOTTABAD

Service Appeal No. 353 /2019

MOHAMMAD JAVED(APPELLANT)

V E R S U S

DIRECTOR LOCAL FUND AUDIT DEPARTMENT AND OTHERS

....(RESPONDENTS)

Reply / Written Statement on behalf of respondents No.4 to 6

AFFIDAVIT

I, Muhammad Ashfaq Senior scale Stenographer legal branch BISE, Abbottabad, duly authorized by the Competent Authority, do hereby solemnly affirm and declare on oath that the contents of instant *Written Comments* are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.


DEPONENT

Dated:- _____/2019

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

TB

No.

APPEAL No. 353 of 20 19

Muhammad Javed

Appellant/Petitioner

Versus

Director Local Fund Audit KPK Pesh.

RESPONDENT(S)

Notice to Appellant/Petitioner

Muhammad Javed Ex-
Assistant Secy. Academic Board
of Intermediate & Sec. Education
Abbottabad

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 18-2-2020 at 1.00 PM

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

at Camp Court Abbottabad

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

TB

No.

APPEAL No..... 353 of 20 19

Muhammad Janed

Appellant/Petitioner

Versus

Pesh.

Director Local Fund Audit KPk

RESPONDENT(S)

✓
Notice to Appellant/Petitioner

Muhammad Janed Ex-
Assistant Secy. Academic
Board of Intermediate & Sec.
Education Abbottabad

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 19-11-2020 at 9:00 AM

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

at Camp Court A. Abad

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

FB

No.

APPEAL No. 353 of 20 19

Muhammad Javed

Appellant/Petitioner

Versus

Director Local Fund Peshawar

RESPONDENT(S)

Counsel

Notice to Appellant/Petitioner

Mabiz Muhammad Waseem

Advocate High Court
Abulabad

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 19/11/2020 at 9:00 AM

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

at Camp Court A Abad

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.