Form- A

FORM OF ORDER SHEET

Court of_____

Execution Petition No._____ 29/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	17.01.2023	The execution petition of Mr. Muhammad Ashfaq submitted today by Mr. Muhammad Zafar Tahirkheli Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____. Original file be requisitioned. AAG has noted the next date. The respondents be issued notices to submit compliance/implementation report on the date fixed. By the order of Chairman REGISTRAR

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: M. Asif Faq Vs Govt of K.P

S#	Muhammad Asif CONTENTS	YES	NO
1	This Appeal has been presented by: Mohammad Raja	✓	
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?	✓	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15	Whether numbers of referred cases given are correct?		
16	Whether appeal contains cutting/overwriting?		
17	Whether list of books has been provided at the end of the appeal?		
18	Whether case relate to this court?	✓	
19	Whether requisite number of spare copies attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?	✓	
22	Whether index filed?		
23	Whether index is correct?		
24	Whether Security and Process Fee deposited? On		
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On		
26	Whether copies of comments/reply/rejoinder submitted? On		
27	Whether copies of comments/reply/rejoinder provided to opposite party? On		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: Mohammad Raja Advocate

Signature:

Dated: 16-10-2023

BEFORE THE SERVICE TRIBUNAL, KHYBER PUKHTOONKHWA
PESHAWAR

E. P. No. 29/2023

Service Appeal No. 06 / 2022

Muhammad Ashfaq **VERSUS** Govt of Khyber Pakhtunkhwa etc.

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INDEX

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Date:- 13-01-2023

Muhammad Zafar Khan (Tahirkheli)
ASC,
87, Alfalah Street, Cantt Colony,
Peshawar.
0300-9597670

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR

Execution petition No. 29 /2023
in
Service Appeal No. 06 / 2022

Muhammad Ashfaq,
District Food Controller (BS-17) Buner
r/o Sehat Medicos, Malakand road, Takhtbahi, District Mardan

.....Petitioner

Versus

1. Chief Secretary,
   Government of Khyber Pakhtunkhwa, Peshawar.

2. Secretary Food Department, Government of KPK, Peshawar.

3. Director Food Department / Directorate, Government of KPK, near Haji Camp Adda, GT road Peshawar, Peshawar.

.....Respondents

=========

PETITION FOR IMPLIMENTATION OF DECISION DATED 29-09-2022 PASSED SERVICE APPEAL NO. 06 / 2022

=========

Respectfully Sheweth

1. The petitioner had filed a service appeal before this Hon'ble Tribunal No. 06 / 2022 for his reinstatement in service as District Food Controller (BPS-17), which was accepted vide judgment of this Hon'ble tribunal dated 29-09-2022. (copy annexed)

2. The petitioner on acceptance of his service appeal submitted an application for his reinstatement dated 06-12-2022 before the worthy Secretary Food Department in view of the decision of the august Service Tribunal Khyber Pakhtunkhwa, Peshawar but was not replied till the filing of instant implementation petition.

3. The respondent department has been reluctant to implement the decision of the Hon'ble Service Tribunal, in-spite of his repeated requests. Hence the present petition.

4. The matter and parties are within the jurisdiction of this Hon'ble Tribunal.

In view of the above, it is therefore, most humbly requested that by accepting this petition the Respondent Department may kindly be directed to implement the decision of this Hon'ble Tribunal dated 29-09-2022, while reinstating the petitioner in service with all back benefits w.e.f 08-09-2021.

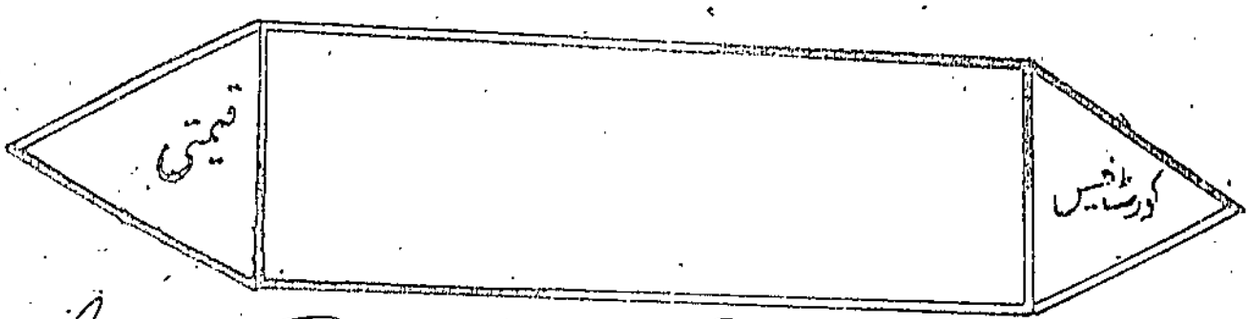
Petitioner,

Through,

Peshawar, dated
13th Jan, 2023

(MUHAMMAD ZAFAR TAHIRKHELI)
ASC

(2)



بعدالمتثنا Service Tribunal KP Peshawar

میں ڈگری دار ڈگری مندرجہ ذیل کی اجرائی کے واسطے درخواست حسب آرڈر ۲۱ قاعدہ ۱۱ ضابطہ دیوانی ۱۹۰۸ء دائر کرتا ہوں

۱ نمبر شمار	۲ نام فریقین	۳ نوعیت ڈگری	۴ رقم ڈگری	۵ رقم جو ڈگری ادا کی گئی	۶ درخواست ماد نسبق معہ نمبر	۷ نتیجہ ڈگری یا حکم مورخہ اور دیگر امور کی توضیح	۸ نوعیت جو دیا گیا	۹	۱۰
05/2022	Muhammad Ashfaq Vs Govt of KP etc 1- Chief Sec. KPK Peshawar 2- Sec. Forest Peshawar 3- Director Forest Dept KP Peshawar 4- Conservator Forest Peshawar	نوعیت ڈگری	29-09-2022	Nil	Nil	Respondents may kindly be directed to submit reply/comments on behalf of respondents No. 1 to 4 by 20-01-2023	Nil	Respondents may kindly be directed to submit reply/comments on behalf of respondents No. 1 to 4 by 20-01-2023	Petitioner has challenged the impugned order dated 29-09-2022 whereby the appellant was awarded major penalty of reduction to lower stage for two years. Hence this petition.

جناب عالی

Attested & Accepted

نائب قاصد

17/01/23

تصدیق کی جاتی ہے

میں تصدیق کرتا ہوں کہ میاں محمد اشفاق ولد [illegible] ۲۲ سال پیشہ [illegible] ۲۲ سال سے [illegible]

ATTESTED
Gul Daraz
Advocate High Court Peshawar

(3)

BEFORE THE SERVICE TRIBUNAL, KHYBER PUKHTUNKHWA PESHAWAR

Service Appeal No. 06 / 2022

Muhammad Ashfaq **VERSUS** Govt of Khyber Pakhtunkhwa etc.

Affidavit

I, Muhammad Ashfaq s/o Muhammad Safdar, the petitioner, state on Oath that the contents of the above petition are true and correct to the best of my knowledge and belief, and nothing has been kept concealed from this Hon'ble Tribunal.

DEPONENT

CNIC No. 16102-9322383-9

ATTESTED
Gul Daraz Khan
Oath Commissioner
Adv. Cantonment Court Peshawar

Date:- 13th January, 2023

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE RIBUNAL PESHAWAR

Service Appeal No. 06/2022

BEFORE: **MRS. ROZINA REHMAN ... MEMBER (J)**
MISS FAREEHA PAUL ... MEMBER(E)

Muhammad Ashfaq, Ex-District Food Controller (BS-17) Buner, R/O Sehat Medicos, Malakand Road, Takhtbhai, District Mardan.
.... (*Appellant*)

Versus

1. **Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.**
2. **Secretary Food Department, Government of Khyber Pakhtunkhwa, Peshawar.**
3. **Director Food Department/Directorate Government of Khyber Pakhtunkhwa, Peshawar.**

.... (*Respondents*)

Mr. Muhammad Zafar Tahirkheli,
Advocate ... For appellant

Mr. Muhammad Jan,
District Attorney. ... For respondents

Date of Institution.....05.01.2022.
Date of Hearing.....29.09.2022
Date of Decision..... 29.09.2022

ATTESTED

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 08.09.2021, whereby the

penalty of removal from service was imposed upon the appellant against which his departmental appeal dated 04.10.2021 was not decided within the statutory period of limitation.

2. Through this single judgment, this appeal as well as connected service appeal No.07/2022, titled Muhammad Azam Khan, Ex-Assistant Food Controller (BPS-16) Buner Versus Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar and others, are decided.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was selected and appointed as District Food Controller (BPS-16) in the Food Department on 25.10.2013 through Khyber Pakhtunkhwa Public Service Commission, which was later on upgraded to BPS-17. While serving as District Food Controller, Buner, the appellant was suspended vide order dated 18.03.2020 and was served with charge sheet and statement of allegations, wherein certain charges were leveled against him. An inquiry committee consisting of Mr. Zubair Ahmad, Director Food, Khyber Pakhtunkhwa and Mr. Shareef Hussain, Additional Secretary, Home Department was constituted to inquire into the matter. The inquiry committee submitted its report, wherein no solid or concrete allegation of any sort stood proved against the appellant, however, he was served with show cause notice dated 23.07.2020 to which he submitted his reply on 08.08.2020. He was provided with an opportunity of personal hearing on 15.12.2020. In consequence of his personal hearing, the Special Secretary, Establishment Department remitted the case back to the inquiry committee with certain observations communicated vide letter dated

08.04.2021. The inquiry committee submitted their findings with reference to objections raised by the competent authority vide letter dated 05.07.2021. The competent authority in complete disregard to the findings of the inquiry committee, instead of recalling the disciplinary proceedings against the appellant or serving him with second show cause notice in view of the fresh findings of the inquiry committee, passed the impugned order of removal from service dated 08.09.2021. Feeling aggrieved, the appellant submitted departmental appeal dated 04.10.2021 which was not decided till the lapse of statutory period of limitation; hence this service appeal.

4. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Assistant Advocate General and perused the case file with connected documents in detail.

5. Learned counsel for the appellant presented the case in detail and informed about the matter behind initiating the inquiry. According to him, 4000 Metric tons of PASSCO wheat was allocated to District Buner, which was to be supplied through a Government Carriage Contractor namely M/S Javid & Co. The contractor was directed by the Director Food, Khyber Pakhtunkhwa vide letter dated 27.11.2019 to lift 4000 Metric tons of FAQ wheat from six dispatching centers of PASSCO from Punjab within stipulated period of 15 days and supply it to PRC District Buner. As per agreement, the contractor was bound to deliver the entire allocation within the stipulated time expiring on 11.12.2019.In case of violation of terms & conditions of agreement, the procedure and penalties were provided in

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clause 6.3 & 7 of the said agreement. Initially the appellant was telephonically directed by the Director Food, Khyber Pakhtunkhwa Peshawar to nominate a Food Inspector for dispatches of PASSCO wheat from Punjab to be delivered at PRC Buner, to which he submitted his inability through letter dated 28.11.2019 due to non-availability of executive staff i.e FGI and FGS at his office at Buner. The contractor supplied only 380.088 M.Tons quantity of PASSCO wheat at Buner and was thus served with a letter dated 10.12.2019 by the appellant to dispatch and deliver the remaining wheat to PRC Buner within the stipulated time. The appellant served 06 reminders to the contractor vide letters dated 11.12.2019, 13.12.2019, 16.12.2019, 19.12.2019, 24.12.2019 and 26.12.2019 to expedite the delivery of PASSCO wheat, but to no avail. During that, the stipulated period expired on 11.12.2019. Similarly, the appellant addressed two letters to Director Food, Khyber Pakhtunkhwa dated 11.12.2019 and 26.12.2019, wherein it was categorically informed that the Carriage Contractor for supply of PASSCO wheat from Punjab to PRC Buner had failed to deliver the wheat within the stipulated time of 15 days expiring on 11.12.2019. The Director Food also addressed two letters dated 04.12.2019 and 11.12.2019 to M/S Javid & Co. about their slow lifting and delivery of wheat and directed them to complete the supply within the stipulated period expiring on 11.12.2019. Learned counsel for the appellant contended that letters addressed to the contractor by Director Food, Khyber Pakhtunkhwa were testament to the fact that he was duly informed by the appellant in his capacity as DFC Buner well within time

about the slow lifting and supply of PASSCO wheat to District Buner. Learned counsel further argued that inspite of intimation by the appellant before time about the reckless attitude of the carriage contractor, the Director Food vide office order dated 27.12.2019 appointed Mr. Muhammad Iqbal, Divisional Assistant Director Food, Malakand to conduct inquiry in respect of wheat dispatches from Multan and Alipur zones to PRC Buner and fix responsibility. The inquiry officer submitted his recommendations, in the light of which the appellant was suspended vide order dated 18.03.2020. He was served with a charge sheet and statement of allegations and an inquiry committee was constituted. Learned counsel for the appellant contended that Director Food, Khyber Pakhtunkhwa, who was in fact party to the whole proceedings, was made one of the members of the inquiry committee. He further invited the attention to the point that the matter of loading of wheat from collection points, its dispatch to different districts and delivery did not fall within the competence of District Food Controller. He mentioned about the letter dated 29.11.2019 and 31.12.2019 addressed to G.M (Field) PASSCO, Lahore where the Director Food, Khyber Pakhtunkhwa had categorically mentioned officials of Food Department Khyber Pakhtunkhwa deputed for different dispatching zones in Punjab under the strict supervision of Mr. Gulab Gul, Assistant Food Controller Bannu for smooth dispatches of PASSCO wheat to the destination stations of Khyber Pakhtunkhwa. They were directed to report the daily lifting position to the respective zones to Mr. Ibrahim, Assistant Director Food (S), Food Directorate and Mr. Niaz

Ali, Assistant STO on daily basis. All the officials were further directed to resolve disputes, if any, regarding weight and quality of the dispatched wheat as per standard in the allocation order and MOU. The learned counsel referred to a statement of Muhammad Ibrahim before the Anti-Corruption Department, wherein he had frankly conceded to all the omissions regarding lifting, carriage and delivery of PASSCO wheat. After presenting all the details of the case he prayed for setting aside the impugned order dated 08.09.2021 and reinstating the appellant in service with all back benefits.

6. Learned District Attorney, on the other hand, strongly rebutted the points presented by learned counsel for the appellant and stated that out of the allocated 4000 M.Tons to Buner only 1891.263 M. Tons was delivered to PRC Buner and the remaining 2108.747 M.Tons remained undelivered. He referred to the report of inquiry committee, according to which there was no delay of 38 days as mentioned in allegation No. "a", rather more than 50% of the allocated wheat had not reached/delivered to PRC Buner and hence the charge against the appellant was proved. He stated that the inquiry report clearly mentioned that the DFC did not inform the Director Food, Khyber Pakhtunkhwa and Assistant Director, Malakand Division about the non-delivery of government wheat to PRC Buner. The letter addressed to Director Food on 11.12.2019 had reached the Directorate of Food on 31.12.2020 and it seemed that it was issued with back date on it and hence the allegation that the appellant did not inform his high ups in time was proved. He further contended that the appellant had shown

negligence in performance of his duty and hence he was rightly proceeded against as per Government of Khyber Pakhtunkhwa (Efficiency and Discipline) Rules, 2011.

7. From the arguments and record presented before us, it transpires that the appellant was District Food Controller at Buner. During the year 2019, 4000 metric tons of PASSCO wheat was allocated to District Buner and M/S Javed & Co, Carriage Contractor, Batkhela, District Malakand was hired for its handling and transportation from the Punjab to Provincial Reserve Centre. An agreement dated 04.11.2019 was signed between the Director Food, Khyber Pakhtunkhwa and the Contractor. Various officials of Food Directorate, Khyber Pakhtunkhwa were deputed for different zones under the supervision of Gulab Gul, Assistant Food Controller, Bannu for smooth dispatches of PASSCO wheat from Punjab to Khyber Pakhtunkhwa. They were directed to report the daily lifting position for respective zones to Muhammad Ibrahim, Assistant Director Food (S), Food Directorate, Khyber Pakhtunkhwa on whatsapp number and Niaz Ali, Assistant STO Section on his cell phone number on daily basis without fail. They were further directed to resolve disputes, if any, regarding weight and quality of the dispatched wheat as per standard in the allocation order and MOU. Name of the appellant was not mentioned in any of the two lists shared by the Director Food, Khyber Pakhtunkhwa with the General Manager Field, PASSCO, Lahore.

8. Record presented before us further reveals that an inquiry was conducted by an Inquiry Committee. It was noted that one of the members

ATTESTED

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Service Tribunal

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of Inquiry Committee was the Director Food who himself was a party in the entire matter, in one way or the other. The Inquiry Committee itself proved that there was no delay of 38 days rather 50% of wheat did not reach its destination i.e. PRC Buner. They did not bother to associate the officials deputed for smooth dispatch of wheat from Punjab to Khyber Pakhtunkhwa. It was further noted that the Contractor was also not associated with the inquiry. The agreement signed with him clearly mentioned penalty for not lifting the quantity specified in the work order within the stipulated time.

9. One of the points of inquiry before the inquiry committee that the appellant did not inform his high ups about non-delivery of wheat raises a question that whether the wheat was dispatched from PASSCO warehouses in Punjab? Whether it was confirmed from the officials deputed there for its smooth dispatch? The Inquiry Report did not touch this aspect.

10. The Inquiry Committee admits in its report that the District Food Controller, Assistant Food Controller and officers of Food Department recovered the cost of major chunk of non-delivered wheat from the contractor. This indicates that the appellant and his team were vigilantly pursuing the matter; they brought it to the notice of their high ups and made efforts on their part also. Letters of Director Food dated 04.12.2019 and 11.12.2019 to the contractor proved that he was aware of slow lifting and non-delivery of wheat from Punjab to Khyber Pakhtunkhwa. When the recovery of cost of non-delivered wheat was made from the contractor and

(12)

deposited in government treasury and there was no loss to the government exchequer, then it is strange to note that why the appellant, who himself made it happen, was removed from service?

12. In view of the above discussion, the appeal in hand, as well as connected service appeal No. 07/2022, is allowed. Impugned order dated 08.09.2021 is set aside and the appellants are reinstated in service with all back benefits including salary and allowances and other benefits of service. Parties are left to bear their own costs. Consign.

13. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 29th day of September, 2022.

(ROZINA REHMAN)
Member (J)

(FAREEHA PAUL)
Member (E)

Date of Presentation of Application 13/1/23
Number of Words Page 8 of 8
Copying Fee 48/-
Urgent 50/-
Total 98/-
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Date of Preparation of Copy 13/1/23
Date of Delivery of Copy 13/1/23

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(13)

To,

The Chief Secretary,
Khyber Pakhtunkhwa, Peshawar.

Through,

Secretary Food Department,
Govt. of Khyber Pakhtunkhwa,
Peshawar.

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APPLICATION FOR IMPLEMENTATION OF JUDGMENT AND ORDER DATED 29-09-2022 OF THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR PASSED IN SERVICE APPEAL NO. 6/2022.

==========

Respectfully Sir,

Muhammad Ashfaq, Ex-District Food Controller (BS-17) Buner, (Presently) r/o Sehat Medicos, Malakand road, Takhtbahi, District Mardan, the applicant, submits most respectfully the following for your kind consideration and favour of acceptance.

1. The appellant filed a service appeal No. 06/2022 before the Hon'ble Khyber Pakhtunkhwa Service Tribunal with the request as under;

   By accepting this appeal and setting aside the impugned order dated 08-09-2021 and reinstating the appellant in service with all the benefits of service due.

2. The service appeal of the appellant was accepted by the Hon'ble Service Tribunal with the observation as under;

   .....

   12. in view of the above discussion, the appeal in hand, as well as connected service appeal No. 07-2022, is allowed. Impugned order dated 08-09-2021 is set aside and the appellants are reinstated in service with all back benefits including salary and allowances and other benefits of service. Parties are left to bear their own costs. Consign.

   13. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 29th day of September, 2022.*

   (FAREEHA PAUL)
   Member (E)

   (ROZINA REHMAN)
   Member (J)

   (Copy annexed)

3. The decision of the worthy Service Tribunal has not been implemented so far and needs immediate attention of the worthy authority.

In view of the above, it is most humbly requested that by accepting this application, the applicant may kindly be reinstated in service with all back benefits including salary and allowances and other benefits.

Dated. 6th December, 2022

Applicant
Muhammad Ashfaq Khan,
Ex- District Food Controller
(BPS-17) Buner.

V A K A L A T N A M A

In the Court of **Khyber Pakhtunkhwa Service Tribunal, Peshawar**

Service Appeal No. 06 / 2022

B.C No.	**10-7764**
Advocate	M. Zafar
Cell No.	0300-9597670
CNIC	17301-1639615-3

Petitioner
Plaintiff
Applicant
Appellant
Complainant

Muhammad Ashfaq Decree-Holder

VERSUS

Respondent
Defendant
Opponent
Accused

Govt of KP etc Judgment-Debtor

I / We **Muhammad Ashfaq** the above noted Petitioner / Appellant do hereby appoint and constitute, **Muhammad Zafar Khan Tahirkheli, ASC,** to appear, plead, act, compromise, withdraw or refer to arbitration for me / us as my / our counsels / advocates in the above noted matter, without any liability for his default and with the authority to engage any other Advocate / Counsel at my / our cost.

The Client / Litigant will ensure his presence before the Court on each and every date of hearing and the counsel would not be responsible if the case is proceeded ex-parte or is dismissed in default of appearance. All cost awarded in favour shall be the right of Counsel or his nominee, and if awarded against shall be payable by me/us.

I / We authorize the said Advocates to withdraw and receive on my / our behalf all sums and amounts payable or deposited on my / our account in the above noted matter.

Client

M. Zafar Khan Tahirkheli

Attested & Accepted (Advocates)

Dated 13-01-2023

Office **ATIQ LAW ASSOCIATES,**
87, Al-Falah Street, Besides State Life Building,
Peshawar Cantt, Phone: 091-3059910
E-mail : zafartk.advocate@gmail.com