

2nd Feb, 2023

Clerk of learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

Lawyers are on strike, therefore, the case is adjourned. Office is directed to notify the next date on the notice board as well as on the website of the Tribunal. To come up for arguments on 16.03.2023 before D.B.

SCANNED
Per [Signature]
[Signature]



(Muhammad Akbar Khan)
Member (E)




(Kalim Arshad Khan)
Chairman

07th Dec. 2022

Counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General alongwith Faheem Khan, Assistant for the respondents present.

While submitting the comments/reply, the respondents should have annexed the entire record of enquiry proceedings but they have not annexed a single document which speaks about the conduct of the respondents and their irresponsible attitude towards conduct of the court cases. Respondents are directed to produce the entire record of enquiry proceedings within a week before the date fixed. Copy of the same be also provided to learned counsel for the appellant. To come up for arguments on 02.02.2023 before the D.B.

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

17-03-2020

~~_____ to the _____ of _____
_____ _____ _____ _____ _____~~

~~_____~~

~~1. The _____ of _____
_____ _____ _____ _____
_____ of the _____ _____ _____
_____ that _____ of the _____ _____
_____ appeal _____ may _____ according _____~~

~~2. _____ _____ _____
_____ _____ _____ _____~~

~~_____ _____
_____~~

~~_____ _____
_____~~

8th Nov. 2022 Counsel for the appellant present.

Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Arguments on restoration application heard and record perused.

02. Instant application has been submitted on 11.10.2022 for restoration of Service Appeal No. 321/2015, which was dismissed in default on 04.10.2022. The ground mentioned in the application is that on the relevant day the learned counsel for the appellant was busy in Honourable Peshawar High Court.

03. Since the application is within time and in the interest of justice, instant appeal is restored to its original number. Notices be issued to the respondents. To come up for arguments on 07.12.2022 before the D.B.

04. **Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 8th day of November, 2022.**


(FARZEHA PAUL)
Member(E)





(ROZINA REHMAN)
Member (J)

All the respondents was put on notice

Form-A
FORM OF ORDER SHEET

Court of _____

Restoration Application No. 600/2022

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	11.10.2022	<p>The application for restoration of appeal no. 32/2015 submitted today by Mr. Saadullah Khan Marwat Advocate. It is fixed for hearing before Division Bench at Peshawar on <u>19-10-22</u>. Original file be requisitioned. Notices be issued to applicant and his counsel.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>
	19 th Oct., 2022	<p>Junior to counsel for the appellant present.</p> <p>Notice of application for restoration of appeal be issued to the respondents. To come up for reply/comments and arguments on restoration application on 08.11.2022 before D.B.</p> <p> (Fareeha Paul) Member (E)</p> <p> (Kalim Arshad Khan) Chairman</p>

By order of
19-10-22
R.H.

1

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

Restoration Appli. No. 600/2022



M. P. No. _____ / 2022

IN

S.A No. 32 /2015

Muhammad Ayub

versus

Govt. of KP & Others

**APPLICATION FOR RESTORATION OF SERVICE
APPEAL NO. 32/2015 DISMISSED BY THIS
HONORABLE TRIBUNAL VIDE ORDER DATED 04-10-
2022 FOR NON PROSECUTION:**

Respectfully Sheweth,

1. That the subject Appeal was pending disposal before this hon'ble Tribunal which was fixed for final hearing on 04-10-2022.
2. That on the said dated i.e. 04-10-2022, the same was dismissed for want of prosecution due to non appearance of the counsel as well as of the appellant. (Copy Attached)
3. That on the said date counsel for appellant was busy before High Court while other Counsels namely Arbab Saifu-ul-Kamal and Amjad Nawaz were appearing at Camp Court Swat of the Tribunal.
4. That Mst. Uzma Advocate appeared before the hon'ble Bench to adjourn the same due to none availability at the time of calling of the case, yet the same was dismissed in default.
5. That the case is matured for final hearing and to be decided on merit not on technical grounds.

It is, therefore, most humbly prayed that the application be accepted as prayed for after restoring the same and to decide it on merit.

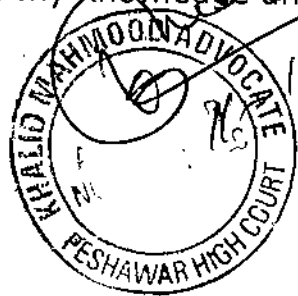
Applicant/Legal Heirs

Through 3 Shah Khan
Saadullah Khan Marwat
Advocate

Dated 10-10-2022

AFFIDAVIT

I, Saadullah Khan Marwat Advocate, Counsel for Appellant do hereby solemnly affirm and declare that contents of **Application** are true and correct to the best of my knowledge and belief while.



3 Shah Khan
DEPONENT



BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 32 /2014

Muhammad Ayub S/o Attaullah Khan,
R/o Hakeem Topa, Lakki Marwat, Ex-Deputy
District Education Officer, E&SE, Department,
Peshawar. Appellant

1477
29/12/2014

Versus

1. Chief Minister, Govt. of KP, Peshawar
Through R. No. 2.
2. Chief Secretary, Govt. of KP, Peshawar.
3. Secretary, Govt. of KP, E&SE
Department, Peshawar.
4. Director Education, E&SE Department,
Peshawar.
5. District Education Officer (Male), E&SE
Department, Peshawar. Respondents

⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL
ACT, 1974 AGAINST OFFICE NOTIFICATION
NO. SO(S/M)E&SED/4-17/2013/MIR AZAM
AND OTHERS, DATED 23.09.2014 OF R. NO. 1,
WHEREBY MAJOR PENALTY OF COMPULSORY
RETIREMENT WAS IMPOSED UPON
APPELLANT FOR NO LEGAL REASON.**

⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄⇄

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Respectfully Sheweth:

That on the recommendations of PSC KP, appellant was appointed as Head Master B-17 in the year, 1992 and was promoted to the post of Principal, B-18 in 2004. In the year 2008, he was posted as District Officer in the department.

7/1/15

27.06.2022

Learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant 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 04.10.2022 before the D.B.

(Rozina Rehman)
Member (J)

(Salah-ud-Din)
Member (J)

4th Oct, 2022

1. None present for the appellant. Mr. Naseer Ud Din Shah, Asst: AG for respondents present.
2. Called several times till last hours of the court but nobody turned up on behalf of the appellant. In view of the above, the instant appeal is dismissed in default.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 4th day of October, 2022.*

(Farzeha Paul)
Member(E)

(Kalim Arshad Khan)
Chairman

Date of Presentation of Application 05/10/2022
Number of Words 800
Copying Fee 10/-
Urgent
Total 10/-
Name of Copyies
Date of Completion of Copy 10-10-22
Date of Delivery of Copy 10-10-22

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

27.06.2022

Learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant 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 04.10.2022 before the D.B.



(Rozina Rehman)
Member (J)



(Salah-ud-Din)
Member (J)

4th Oct, 2022

1. None present for the appellant. Mr. Naseer Ud Din Shah, Asst: AG for respondents present.

2. Called several times till last hours of the court but nobody turned up on behalf of the appellant. In view of the above, the instant appeal is dismissed in default.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 4th day of October, 2022.*



(Farheha Paul)
Member(E)



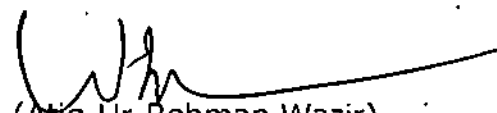
(Kalim Arshad Khan)
Chairman

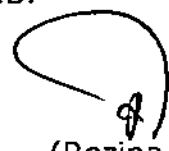
21.08.2021

Appellant present through counsel.

Mr. Kabir Ullah Khattak learned Additional Advocate General for respondents present.


Former made a request for adjournment. Adjourned. To come up for arguments on 29.11.2021 before D.B.


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


(Rozina Rehman)
Member (J)

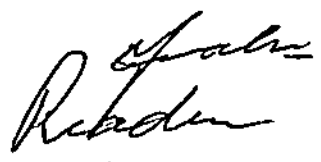
29-11-2021

Due to unavailability of DB, the case is adjourned to 7-03-2022


Reader

7-3-22

Due to Retirement of the Honble Chairman, the case is adjourned on 27-6-22


Reader

30.1.

~~27-6-2019-19, the case is adjourned to 4.8.2022~~


Reader

()

SP-11-21 11 2 1/2 hours 40 7 02 2002

[Signature]

21-6-22
Chairman the case is referred to
Dir to Department of Health

[Signature]

SP-11-21
21-6-22

[Signature]

22.03.2021

Nemo for appellant.

-8-80

Asif Masood Ali Shah learned Deputy District Attorney for respondents present.

Perusal of preceding order sheet would reveal that this case was adjourned to 22.03.2021 as another appeal in which arguments had been heard by the said bench and was fixed for order. Now, the Hon'ble Member (Judicial) of the said Bench has been transferred, therefore, office is directed to search out the second connected appeal which was fixed for order and to fix both the cases on one and the same date before any Bench. In the meanwhile, appellant/counsel be put on notice with further direction to make the deficiency by providing the Member Copy before the next date. Case is adjourned to 30/4/2021 for arguments, alongwith connected case before D.B.

(Mian Muhammad)
Member (E)

(Rozina Rehman)
Member (J)

30.4.2021

due to COVID-19, the case is adjourned to 4.8.2021 for the same


Rozina

1-1-2020

Due to summer vacation, case is adjourned to
03-2-2021 for the same as before.



Reader

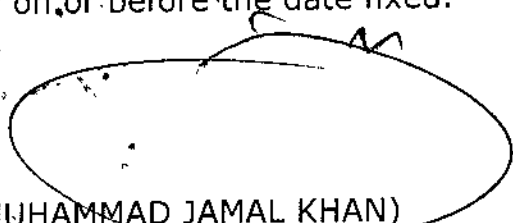
03.02.2021

None for the appellant is present. Mr. Asif Masood Ali Shah, Deputy District Attorney, for the respondents is present.

The issue raised in the instant lis is already sub-judice in another appeal in which arguments have been heard by the worthy bench of this Tribunal and is fixed for order, let a judgment/order has to be made by the bench till then the present appeal is adjourned to 22.03.2021 on which date file to come up for further proceedings before D.B.

The perusal of record reflected that Member copy has not been enclosed with the appeal, appellant is directed to make the deficiency by providing Member copy on, or before the date fixed.


(ATIQU-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

[Handwritten notes and signatures at the bottom of the page, including a signature in a circle and some illegible text.]

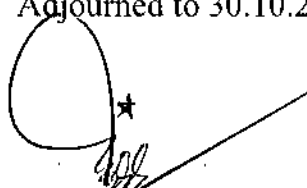
2021-02-03

02.09.2020

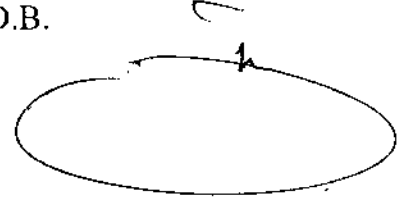
Counsel for the appellant present, Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

Learned counsel for the appellant seeks adjournment as he has not prepared the case.

Adjourned to 30.10.2020 before D.B.




(Mian Muhammad)
Member (E)



(Muhammad Jamal)
Member(J)

30.10.2020

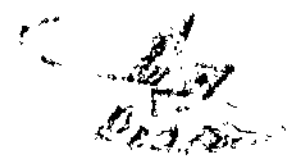
Due to public holiday, the matter is adjourned 1.1.2021 for arguments before the D.B.



Reader

30.10.2020

Handwritten notes:
Case No. 10010-19, 2020
Adjourned to 1.1.2021 before D.B.



8-5 .2020

Due to COVID19, the case is adjourned to 28/7/2020 for the same as before.

Reader

28.07.2020

Nemo for appellant. Mr. Ziaullah, DDA for the respondents present.

On previous date the matter was posted for hearing today through Reader note. Notices be issued to appellant/learned counsel for hearing before the D.B on 02.09.2020.

02.09.2020

(Muhammadi Jamial Khari) Chairman
Member

Learned counsel for the appellant/learned counsel for the respondents present.

[Signature]

[Signature]

15.01.2020

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, instant appeal is adjourned to 14.02.2020 for further proceedings/arguments before D.B.


Member

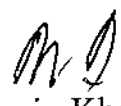

Member



14.02.2020

Junior to counsel for the appellant present. Mr. Riaz Paindakhel learned Assistant AG for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not available today. Adjourned. To come up for further proceedings/arguments on 17.03.2020 before D.B.

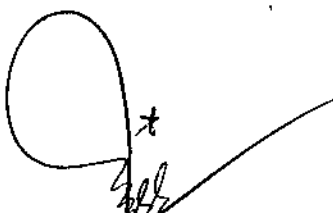

(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member



17.03.2020

None for the appellant present. Addl: AG for respondents present. Due to general strike on the call of Peshawar Bar Council, the instant case is adjourned. To come up for arguments on 08.05.2020 before D.B.


(MAIN MUHAMMAD)
MEMBER


(M.AMIN KHAN KUNDI)
MEMBER

14.11.2019

Counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present.

Learned District Attorney at the outset pointed out that although instant appeal has been fixed for hearing before the Larger/Full Bench but there is no formulation of legal/factual proposition to be considered by the Bench.

During the discussion it revealed that this Tribunal has already handed down ~~at least~~ two judgments regarding the abatement of appeal of a ~~civil servant~~ upon his demise. Apart from that some judgments by the August Supreme Court as well as learned Federal Service Tribunal have also been referred to which essentially touch the proposition.

We, therefore, consider it appropriate to remove instant appeal from the list of Larger/Full Bench and assign it to a Division Bench for decision in accordance with law after hearing learned counsel for the parties.

Adjourned to 15.01.2020 before a Division Bench.

(M. Hamid Mughal)
Member

Chairman

(Ahmad Hassan)
Member

(M. Amin Khan Kundi)
Member

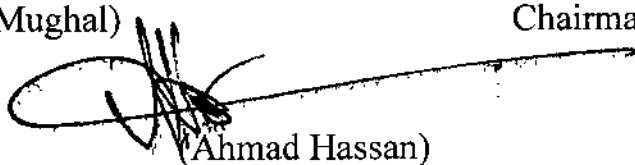
(Hussain Shah)
Member

11.07.2019

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Due to engagement of Members of this Tribunal (Mr. Muhammad Amin Khan Kundi and Mr. Hussain Shah) at Camp Court Abbottabad, the instant matter is adjourned to 29.08.2019 before Larger Bench

(Muhammad Hamid Mughal)
Member

Chairman



(Ahmad Hassan)
Member

29.08.2019

Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Mr. Muhammad Amin Khan Kundi Member of this Tribunal is on tour to Camp Court D.I Khan, therefore, the instant matter is adjourned to 14.11.2019 for arguments before Larger Bench.

(Muhammad Hamid Mughal)
Member

Chairman

(Hussain Shah)
Member

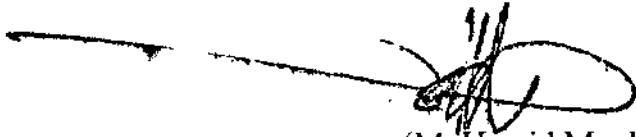
(Ahmed Hassan)
Member

321/15

14.03.2019

Miss Uzma Syed, Advocate for learned counsel for the appellant and Mr. Muhammad Jan, DDA for the respondents present.

Learned Member of Tribunal (Mr. Hussain Shah) is still indisposed, therefore, this appeal is adjourned to 02.05.2019 for arguments before the Larger Bench.



(M. Hamid Mughal)
Member

Chairman



(M. Amin Khan Kundi)
Member

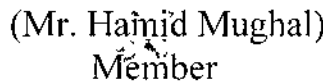


(Ahmad Hassan)
Member

02.05.2019

Counsel for the appellant and Addl: AG for respondents present.

Due to leave of one of learned Member (Mr. Ahmad Hassan), the instant matter is adjourned to 11.07.2019 for arguments before Larger Bench.



(Mr. Hamid Mughal)
Member

Chairman



(Hussain Shah)
Member



(M. Amin Khan Kundi)
Member

14.12.2018

Learned counsel for the appellant present. Learned Deputy District Attorney present. Adjournment requested. Adjourn. To come up on 29.01.2019


Member


Member


29.1.2019

Arbab Saiful Kamal Advocate for appellant and Mr. Muhammad Jan, DDA alongwith Dilawar Khan, SDEO(M) for the respondents present.

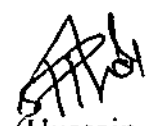
Learned counsel for the appellant requests for time to provide five complete sets of brief in view of constitution of Larger Bench. May do so within a fortnight. Adjourned to 14.03.2019 for arguments before the Larger Bench.


(M. Hamid Mughal)
Member


Chairman



(M. Amin Khan Kundi)
Member


(Ahmad Hassan)
Member


(Hussain Shah)
Member

17.08.2018

Learned counsel for the appellant and Mr. Kabir Ullah khattak learned Additional Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 10.10.2018 before D.B.

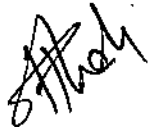

(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member


10.10.2018

Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 26.11.2018 before D.B.


Member



Member



26.11.2018


Learned counsel for the appellant Mr. Riaz Paindakhel learned Assistant Advocate General for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourn. To come up for arguments on 14.12.2018 before D.B.



Member


Member

12.03.2018


Junior counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Junior counsel for the appellant seeks adjournment on the ground that learned senior counsel for the appellant is not available today. Adjourned. To come up for arguments on 23.04.2018 before D.B.



(Muhammad Amin Khan Kundi)
Member


(Muhammad Hamid Mughal)
Member

23.04.2018


Counsel for the appellant and Addl: AG for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 06.07.2018 before D.B.


(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

06.07.2018

Counsel for the appellant in person present. Mr. Sardar Shoukat Hayat, Addl: AG for respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 17.08.2018 before D.B.


(Muhammad Amin Kundi)
Member

08.11.2017

Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 21.12.2017 before D.B.



(Gul Zeb Khan)
Member (E)



(Muhammad Amin Khan Kundi)
Member (J)

21.12.2017

Due to Judicial Officer's Conference today, case is adjourned to 15.02.2018 for the same before the D.B.




Reader

15.02.2018

Learned counsel for the appellant and Mr. Muhammad Jan, learned DDA for the respondents present. Learned counsel for the appellant stated that similar nature case has been fixed on 12.03.2018, the same may clubbed with that appeal. Request accepted. To come up for arguments alongwith connected appeal on the date already fixed i.e 12.03.2018 before D.B.




(Ahmad Hassan)
Member(E)




(Muhammad Hamid Mughal)
Member(J)

14.04.2017


Counsel for the appellant present. Mr. Hameed-ur-Rehman, AD (litigation) alongwith Mr. Ziaullah, Government Pleader for the respondents also present. Original record received. To come up for replication for restoration of appeal as well as arguments on 26.07.2017 before D.B.



(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

26.07.2017


Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for and arguments on 27.10.2017 before D.B.


(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

27.10.2017

Appellant with counsel present. Mr. Ziaullah, Deputy District Attorney alongwith Muhammad Wisal, ADO (litigation) for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 08.11.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

16.12.2016

Counsel for the appellant and Asst: AG for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 20.02.2017.

(MUHAMMAD AAMIR NAZIR)
MEMBER

(ASHFAQUE TAJ)
MEMBER

20:02-2017

Counsel for the appellant and Mr. Hameed ur Rehman, AD (Litigation) alongwith Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant submitted an application for restoration of ^{official recd.} 601/2014. Record of the Subject Appeal be requisitioned. To come up for further proceedings on 14.02.2017 before D.B.

(MUHAMMAD AAMIR NAZIR)
MEMBER

(AHMAD HASSAN)
MEMBER

29.03.2016

Counsel for the appellant, M/S Khurshid Khan, SO and Hameed-ur-Rehman, AD (lit.) alongwith Assistant A.G for respondents present. Written statement submitted. Learned counsel for the appellant informed the Tribunal that the appeal is maintainable despite death of appellant as financial benefits involved to which the legal heirs are entitled. Directed to submit list of legal heirs including rejoinder before D.B on 18.7.2016.

Chairman

18.07.2016

Counsel for the appellant and Mr. Muhammad Jan, GP. Counsel for the appellant requested for time to file rejoinder. To come up for rejoinder and list of legal heirs on 19.10.2016.

Member

Member

88-1-22

19.10.2016

Counsel for the appellant and Mr. Ziaullah, GP for respondents present and submit legal heirs. To come up for rejoinder and arguments on 16-12-16.

(PIR BAKHSH SHAH) MEMBER

(ABDUL LATIF) MEMBER

4
11.05.2015

Counsel for the appellant and Mr. Khurshid Khan, SO alongwith Assistant AG for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply on 30.7.2015 before S.B.


Chairman

5 30.07.2015

15.10.2015
None present for appellant. M/S Khurshid Khan, SO and Javed Ahmed, Supdt. alongwith Addl. A.G for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 15.10.2015 before S.B.


Chairman

15.10.2015

Since 15.10.2015 has been declared as public holiday on account of 1st Muharram-ul-Haram, therefore, case is adjourned to ~~26-7-15~~ for the same.


Reader

26.1.2016

Counsel for the appellant, M/S. Khurshid Khan, SO and Hameed-ur-Réhmān, AD (lit.) alongwith Addl. A.G for respondents present. Learned Addl. A.G informed the Tribunal that the appellant has died and as such the appeal has become infructuous. Learned counsel for the appellant seeks adjournment to confirm the news of the death of the appellant. Adjourned for further proceedings to 29.3.2016 before S.B.



Chairman

Appeal No. 32/2015
Mr. Muhammad Asif

2
23.01.2015

Counsel for the appellant present, and requested

adjournment. Request accepted. To come up for preliminary hearing on 04.03.2015.


Member

3.
04.03.2015

Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, the appellant has impugned order dated 23.09.2014, vide which the major penalty of compulsory retirement upon the appellant has been imposed upon the appellant. Against the above referred impugned order appellant filed review ~~petition~~ ^{petition} before respondent No.1 for setting aside ~~the~~ ^{the} impugned punishment on 20.10.2014, which was not responded within the statutory period and hence the instant appeal on 07.01.2015. He further contended that neither proper enquiry has been conducted against the appellant nor opportunity of personal hearing has been given to the appellant.

Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. To come up for written reply/comments on 11.05.2015.


Member



Appellant's
Security & P

Form- A

FORM OF ORDER SHEET

Court of

Case No. 32/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	07.01.2015	<p>The appeal of Mr. Muhammad Ayub resubmitted today by Mr. Saadullah Khan Marwat Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to Bench _____ for preliminary hearing to be put up there on _____</p> <p style="text-align: right;">CHAIRMAN</p> <p style="text-align: center;">26-1-15</p> <p style="text-align: right;"></p>

This is an appeal filed by Mr. Muhammad Ayub today on 29/12/2014 against the order dated 23.09.2014 against which he preferred/made a departmental appeal on 20.10.2014 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, which is premature as laid down in an authority reported as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action and also removing the following deficiencies.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Copy of enquiry report (Annexure-B) is incomplete which may be completed.
- 3- Annexures of the appeal may be attested.

No. 1738 /ST,

Dt 29/12 /2014

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Saadullah Khan Marwat Adv. Pesh.

Sir

Resubmitted M. As regard enquiry report, the same is not provided to appellant the same could be requisitioned from the dept, if needed.

Submitted M.

ky



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BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

S.A No. 32 /2014

Muhammad Ayub Versus Chief Minister & others

I N D E X

S.#	Description of Documents	Annex	Page
1.	Memo of Appeal		1-5
2.	Appointment of J/C, 01.10.2012	"A"	6-7
3.	Recommendation of IC,	"B"	8
4.	Show Cause Notice / Covering letter, 25.05.2014	"C"	9-10
5.	Application for supply of Enquiry Report, 30.06.2014	"D"	11
6.	Reply to Show Cause Notice, 01.07.2014	"E"	12-13
7.	Letter for Personal Hearing before Secretary ED, 28.08.2014	"F"	14
8.	Impugned order of Compulsory Retirement, 23.09.2014	"G"	15
9.	Review Petition, 20.10.2014	"H"	16

Appellant

Through



Dated: 27.12.2014

(Saadullah Khan Marwat)
Advocate
21-A Nasir Mension,
Shoba Bazar, Peshawar.
Ph: 0300-5872676

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 32 /2015

Muhammad Ayub S/o Attaullah Khan,
R/o Hakeem Topa, Lakki Marwat, Ex-Deputy
District Education Officer, E&SE, Department,
Peshawar. Appellant

147
29/12/2014

Versus

1. Chief Minister, Govt. of KP, Peshawar
Through R. No. 2.
2. Chief Secretary, Govt. of KP, Peshawar.
3. Secretary, Govt. of KP, E&SE
Department, Peshawar.
4. Director Education, E&SE Department,
Peshawar.
5. District Education Officer (Male), E&SE
Department, Peshawar. Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL
ACT, 1974 AGAINST OFFICE NOTIFICATION
NO. SO(S/M)E&SED/4-17/2013/MIR AZAM
AND OTHERS, DATED 23.09.2014 OF R. NO. 1,
WHEREBY MAJOR PENALTY OF COMPULSORY
RETIREMENT WAS IMPOSED UPON
APPELLANT FOR NO LEGAL REASON.**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth:

That on the recommendations of PSC KP, appellant was appointed as Head Master B-17 in the year, 1992 and was promoted to the post of Principal, B-18 in 2004. In the year 2008, he was posted as District Officer in the department.

29/12/14

7/1/15

2. That the then EDO, Lakki Marwat, Mr. Abdul Malik advertised posts of Junior Clerks, B-07 along with other posts of male and female teachers, i.e. AT, TT, PST, DM, CT, PET, etc, in Daily Mashriq, dated 06.10.2011 in the department. Till the closing date, 20.10.2011, 572 applications were received in the office.

Committee, comprising of:-

1. Mir Azam Khan, District Education Officer, Chairman.
2. M. Ayub Khan, District Officer, Member.
3. Shafi Ullah Khan, H.R.D.O, Member.
4. Noor Alam Wazir, Section Officer (Budget), Member.
5. Mir Ajab Khan, Superintendent, Member.
6. Haroon Badsha, Junior Clerk, Member.

was constituted who conducted typing test. Scrutiny Committee scrutinized the record of the candidates and for the purpose, 118 candidates out of 266 appeared.

During recruitment process, the EDO, Abdul Malik was transferred on 18.02.2012 and Mir Azam Khan was posted as EDO, Lakki Marwat now DEO. He took over the charge of the post on 20.02.2012 and completed the remaining process within 07 months i.e. constitution of DSC, merit list, etc.

Merit list of 16 candidates was finalized and consequently issued appointment orders on 01.10.2012. Fresh candidates were also taken into task at the time of preparation of Merit List. (Copy as annex "A")

3. That after issuing of the appointment orders of the ineligible, 3rd Divisioner, relatives, etc by ignoring candidates having qualifications of FA/BA/DIT/MA made complaints over the said appointments to high ups and then to probe into the matter, two members Inquiry Committee was constituted, comprising of:-

1. Mr. Abdul Ghafoor Baig, Special Secretary, HED Peshawar.
2. Mr. Attaullah Khan, Principal, RITE, Peshawar, probed into the matter and Mir Azam Khan, DEO, Lakki Marwat was mainly held responsible for appellant of

ineligible, unjustified and relatives Junior Clerks and recommended:-

- a. Mir Azam Khan, DEO for Major penalty of removal from service.
- b. Shafiullah, rep. of DC Office for inefficiency.
- c. Muhammad Ayub, DDO for inefficiency.
- d. Noor Alam, Departmental rep. Warning.
- e. Haroon Bacha, Junior Clerk for disciplinary action.

And also declare all the appointments to be null and void, being illegal. (Copy as annex "B")

4. That on 25.05.2014, appellant was served with show cause notice by R. No. 1 under KP, Govt. Servants (E&D) Rules, 2011 with allegations of
 - i. Inefficient
 - ii. Misconduct.

Directly and not through the Inquiry Committee vide covering letter of SO (S/M) of E&SE Department, dated 18.06.2014. (Copy as annex "C")

Here it is pertinent to point out that appellant was not served with any charge sheet and statement of allegation but only DEO, S&SED, so one chance of defence was curtailed by the authority which is against the norms of law, justice and enquiry procedure.

5. That after receipt of the said show cause notice, appellant submitted application on 30.06.2014 to the authority to provide him complete enquiry report to able him to submit reply but in vain. (Copy as annex "D")
6. That on 01.07.2014, appellant submitted reply to the show cause notice by denying the allegations. (Copy as annex "E")
7. That on 28.08.2014, SO (S/M) of E&SE Department wrote letter to appellant that R. No. 1 has authorized Secretary, Govt. of KP, Establishment Department, Peshawar for personal hearing before him on 01.09.2014, so he should attend his office on the said date.

This act of the authority was not only in contrary of law on the subject but no such example exists in law, meaning thereby that he was not provided opportunity of personal hearing, being mandatory. (Copy as annex "F")

8. That on 23.09.2014, major penalty of Compulsory retirement was imposed upon appellant by R. No. 1. (Copy as annex "G")
9. That on 20.10.2014, appellant submitted review petition before R. No. 1 for setting aside the impugned punishment which met dead response till date. (Copy as annex "H")

Hence this appeal, inter alia, on the following grounds:-

GRUNDS:

- a. That the principal accused, Mir Azam Khan, DEO, E&SED was served with charge sheet for illegal appointment of Junior Clerks while appellant was not served with any charge sheet, thus one chance of defence was curtailed for no legal reason.
- b. That representative of the department namely Noor Alam Wazir was only awarded with warning while as per the verdicts of the apex court, on one and the same charge, all shall be dealt with equally and fairly but in the case in hand, some were given major punishments while others were awarded with minor punishments, so discrimination inter se the employee was made.
- c. That the Inquiry Committee made recommendations to declare the appointment orders of Junior Clerks to be null and void, being illegal but no action in this respect till date was taken and the beneficiaries of the illegal appointments are still enjoying benefits of the posts.
- d. That in the whole service law, there exists no concept of personal hearing through substitute who has no role in the subject matter no is aware with the fact of the case but in

A

6

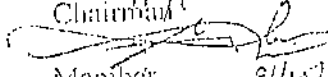
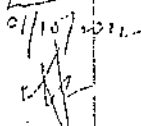
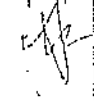
1-10-12

MINUTES OF THE MEETING OF DEPARTMENTAL PROMOTION/SELECTION COMMITTEE

HELD ON 1st October AT 10.00 AM AT LAKKI MARWAT

A meeting of departmental promotion/selection committee was held on 01/10/2012 at 10.00 am in the office of the Executive District Officer (E&SE) Education Lakki Marwat.

The following attended the meeting.

- 1 Mr, Mir Azam Khan EDO (E&S) Education Lakki Marwat
 - 2 Mr. Noor Alam Khan Wazir, SO (Budget) Admn. Deptt: (E&SE)
 - 3 Representative of District Coordination Officer Lakki Marwat
 - 4 Mr, Mohammad Ayub Khan DO (E&SE) Education Lakki Marwat
- Chairman 
 Member 
 Member 
 Member

The meeting was started with the recitation of Holy Quran. The Chairman welcomed to all the participants and stated that some posts of Junior Clerks are lying vacant in (E&SE) Lakki Marwat on which the candidates on merit in attached merit list may be appointed as Junior Clerk in BPS-07 on the available vacancies as per laid down policy with immediate effect.

A) Nature of Appointment:-

Initial recruitment appointed Junior Clerk BPS-07

B) Sanction Strength

86 posts of junior clerk have been sanctioned in Elementary and Secondary Education Department Lakki Marwat.

C) Current Position:-

Out of 86, 11 eleven posts of Junior Clerk are lying vacant since long due to Promotion, newly created and retired in the following High/Higher (M/F) Schools, the detail is as under:-

S.NO	Name of School	Junior Clerk	Remarks
1	GHS Bachakan Ahmad Zai	01	Retired
2	GHS Nar Mohammad Khan Ghazni Khel	01	Due to promotion
3	GHIS Shakh Quli Khan	01	-do-
4	GHSS Masha Mansoor	01	-do-
5	GGHS Nar Azad Chandu Khel	01	Newly Created Post
6	GGHS Bachakan Ahmad Zai	01	-do-
7	GHS Aghzar Khel	01	-do-

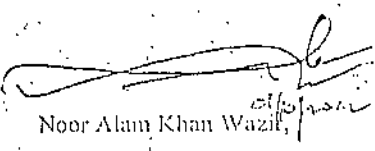
position explained above, the total number of vacant posts of Junior Clerks (BPS-07) lying available to be filled by selection on merit amongst eligible, candidates of the merit list of Junior Clerk are eleven (11) to be filled under the existing rules. As per undisputed/Final Merit list of Junior Clerks in Elementary & Secondary Education Lakki Marwat (Merit List Copy attached) the panel of eleven (11) candidates on merit list of Junior Clerk are placed before the departmental promotion/selection committee for perusal and appointment against the existing available vacancies as indicated above.

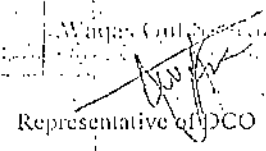
The detail of the candidates according to the merit list are as under.

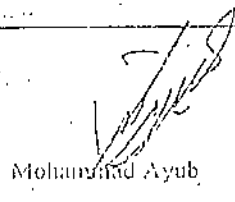
S.No	Name and father name of candidate
1	Sibghatullah S/O Mir Ajab
2	Aftab Ullah S/O Behram Khan
3	Naveed ullah S/O Nasar Ullah
4	Sulaiman Khan S/O Eadiu Zaman
5	Hikmat Ullah S/O Rehmat Ullah Khan
6	Mohammad Imran S/O Mohammad Ayub
7	Sifat Ullah Khan S/O Amir Nawaz
8	Mohammad Aftab Khan S/O Ayub Khan
9	Rafi Ullah Khan S/O Arif Ullah Khan
10	Noor Zaman S/O Akbar Zaman
11	Waqas Gul S/O Khushail Khan

Waiting list

S. No	Name and Father Name
12	Obid Ullah Khan, S/O Habib Ullah Khan
13	Latif ur Rehman, S/O Manz Ullah Khan
14	Rehmat Ullah, S/O Khan Mir
15	Sohail Abbas, S/O Syed Tofail Hussain Shah
16	Muhammad Khalil, S/O Mehraban Khan


Noor Alam Khan Wazir

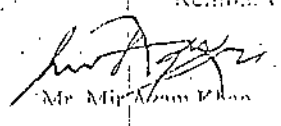

Representative of DCO



Mohammad Ayub

SO (Budge)
(E&SE) Edu: Deptt:
Khyber Pakhtun Khwa
Member

Lakki Marwat
Member

District Officer (M)
(E&S) Education Lakki


Mr. Mir Alam Khan

Attested


B

8

Recommendations

The Enquiry Committee, in view of the foregoing findings, recommends that:

1. The conduct of the accused officer constitutes "*misconduct*" under Rule-2(i) of Government of Khyber Pakhtunkhwa E&D Rules, 2011 and deserves *Major Penalty* of "*Removal from Service*" under Rule-4 (b) (iii) of the Rules *ibid*. The conduct of other members of the Selection Committee namely, Mr. Shafiqullah

(Representative of DC Lakki) and Mr. Muhammad Ayub, ex-DDO Education, Lakki also constitutes "*inefficiency*" and deserve to be proceeded against under Rule-3 (a) of the Rules *ibid*. Mr. Noor Alam who also failed to fulfill his responsibilities effectively in the capacity of *departmental representative* should be issued warning and may not be allowed to represent *on behalf of the department*, in future. All the appointments of Junior Clerks made *vide order bearing No. 7675-89 dated 01/10/2012* be declared *null and void* being "*illegal*" and fresh applications for recruitment against the vacancies be processed in accordance with the *laid down criteria by properly observing 33 % quota* reserved for promotion of Class-IV servants.

2. Mr. Haroon Badshah, ex-Junior Clerk Dy; District Education Officer (Female) Lakki, now at Government High School, Titter Khel, Lakki has negatively influenced the selection process of Junior Clerks by close linkages with the accused officer made himself liable to be proceeded against under Rule-3 (c) of the Rules *ibid* and be posted out of the District.

(Abdul Ghafoor Baig)
Special Secretary, Higher Education,
Khyber Pakhtunkhwa, Peshawar /
(Enquiry Officer)

(Attaullah Khan)
Principal, (RITE), Peshawar /
(Enquiry Officer)

C 9 25-5-14

SHOW CAUSE NOTICE

I, Pervez Khattak, Chief Minister Khyber Pakhtunkhwa, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve you, Mr. Muhammad Ayub, Ex-Deputy District Education Officer BS-18 (now Principal GHSS Tajazai Distirct Lakki Marwat as follows:

- i. That consequent upon the completion of inquiry conducted against you by the inquiry committee for which you were given opportunity of hearing; and
- ii. On going through the findings and recommendations of the inquiry committee, the material on record and other connected papers including your defence before the inquiry committee.

I am satisfied that you have committed the following acts/omissions specified in rule-3 of the said rules:

- (i) Inefficienct
- (ii) Mis-conduct

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of Removal from service under rule 4 of the said rules.

3. You are, thereof, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within seven days or not more than fifteen days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

5. A copy of the findings of the inquiry officer/ inquiry committee is enclosed.

Attested
by

Pervez Khattak
(PERVEZ KHATTAK)
CHIEF MINISTER KHYBER PAKHTUNKHWA
COMPETENT AUTHORITY
25.05.2014.

Mr. Muhammad Ayub, Ex-Deputy District Education Officer BS-18
(now Principal GHSS Tajazai Distirct Lakki Marwat

REGISTERED



To

10
198-6-14

GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

No.SO (S/M) E;&SED/4-17/2013/Mir Azam Ex-DEO Lakki & others
Dated Peshawar the June 18, 2014

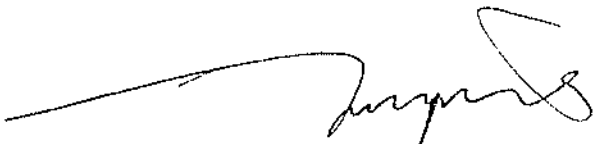
Mr. Muhammad Ayub,
Ex-Deputy District Education Officer (BS-18)
Lakki Marwat. (Now Principal BS-18 GHSS Tajazai District Lakki Marwat).

Subject: - **SHOW CAUSE NOTICE**

I am directed to refer to the subject noted above and to enclose herewith a copy of the Show Cause Notice wherein the Competent Authority (Chief Minister Khyber Pakhtunkhwa) has tentatively decided to impose upon you the Major Penalty of "Removal from Service" under Rule-4 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 in connection with the charges leveled against you.

2. You are therefore directed to furnish your reply to the Show Cause Notice as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
3. Your reply should reach to this Department within Seven (07) days of the delivery of this letter otherwise ex-parte action shall be taken against you.
4. Copy of findings of the inquiry report is enclosed herewith.

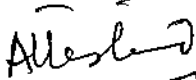
Encl: As Above:



(MUJEEB-UR-REHMAN)
SECTION OFFICER (SCHOOLS/MALE)

Endst: Even No. & Date:

Copy of the above is forwarded to the:-

- i. Director, E&SE Department Khyber Pakhtunkhwa.
- ii. PS to Secretary E&SE Department Khyber Pakhtunkhwa.


Attested


SECTION OFFICER (SCHOOLS/MALE)

Received on
30/07/2014

D

11

30-6-14

No. 1

Dated Lakki 30.06.2014

From: Muhammad Ayub, Ex DDED
E&SE Education, Lakki.

To: Chief Minister
Through Mujee-ur-Rehman, SD School/Male,
E&SE Education Department, Khyber Pakhtunkhwa.

Subject:- Show Cause Notice.

Memo:- Reference Section Officer (S/M) E&SED Department, Letter
No. SD(S/M) E&SED/4-17/2013/Mir Azam & others, dated
18.06.2014.

In this connection, it is stated that copy of Inquiry report by
Inquiry Officer has not been attached with Show Cause Notice as
provided under Rule 14 (4) (c) of KPK Govt. Servant (E&D) Rules,
2011. It is the legal right of Govt. Servant.

It is, therefore, requested to provide me the inquiry report
copy so that I will reply accordingly.

Sd/-
Muhammad Ayub
Ex-DDED E&SE Education Lakki.

Attested
my

E

12

No. 2 Dated Lakki 01.07.2014

From: Muhammad Ayub, Ex DDED
E&SE Education, Lakki.

To: The Hon'ble Chief Minister,
Khyber Pakhtunkhwa,
Pervez Khattak.

Subject:- Reply to Show Cause Notice.

Respected Sir,

With reference to show cause notice dated 25.05.2014, received through Section Officer (Schools/Male) E&SE education Department, Khyber Pakhtunkhwa letter No. SO (S/M) E&SED/4-17/2013/Mir Azam Ex-DEO & others, dated Peshawar the June 18, 2014. Reply to show cause notice is submitted as under please.

1. It is stated that copy of Inquiry report by Inquiry Officer has not been provided to me with show cause notice by S.O (Schools/male) which is my legal right. Without Inquiry report, it is impossible to reply clearly and properly to show cause notice.
2. I have been served as DDEO (M) Lakki, not appointing authority. The appointing authority is DEO in district level Hence it is injustice to punish me on appointment, whereas appointment of J/C has been done by DEO.
3. Typing/Test for J/C was conducted by Abdul Malik, Ex-EDO under supervision of two principal and S/C and Asst: I was not the member of this committee.
4. Interview was also conducted by Abdul Malik along with principals and Dealing Asstt: I was not member of Interview Committee.

5. Abdul Malik, Ex-EDO has been transferred and Mir Azam took over the charge of DEO, E&SE Lakki.
6. A meeting of Selection Committee has been arranged. The following members participated the meeting.

1. Noor Alam Khan S.D. E&SE Education, KPK.
2. Shafi Ullah Nominee by DCO Lakki.
3. Mir Azam DEO, Lakki.
4. Muhammad Ayub DDEO, Lakki.
5. Haroon Bacha Dealing Junior Clerk.

S. No. 1 to 3 checked the record and signed the DSC remarks. I was transferred from school to DEO office. Therefore, has little knowledge about policies and rules of appointment. So after the approval and signature by the three elders, I also signed DSC remarks.

Sir, I am innocent and have not committed any irregularities, hence prayed that I may very kindly be exonerated from the charges leveled against me.

Note: I desire to be heard in person please.

Attested
by

Sd/-
Muhammad Ayub
Ex-DDED E&SE Education Lakki.

REGISTERED/ BY FAX



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

No.SO(S/M) E&SED/4-17/2013/Mir Azam and others.
Dated Peshawar the August 28, 2014

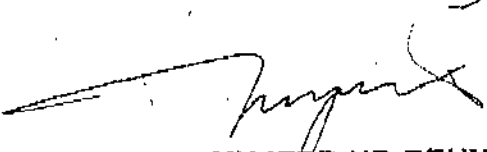
To

- i. Mr. Muhammad Ayub,
Headmaster BS-17 GHS Muhammad Amir Wali
District Lakki Marwat.
- ii. Mr. Shafiullah Khan,
Private Secretary BS-17 to Deputy Commissioner
Lakki Marwat.

Subject: - PERSONAL HEARING IN REVIEW PETITION/ REPLY TO SHOW CAUSE NOTICE IN DISCIPLINARY ACTION AGAINST MR. MIR AZAM EX-DISTRICT EDUCATION OFFICER (BS-19) MALE LAKKI MARWAT ON ACCOUNT OF ILLEGAL APPOINTMENT OF JUNIOR CLERKS BS-07 IN E&SE LAKKI MARWAT AND OTHERS.

I am directed to refer to the subject noted above and to state that it has been intimated by the Establishment Department, Khyber Pakhtunkhwa Peshawar vide letter No. SOR-I (E&AD)8-44/2013 dated 22-08-2014 and to state that the Chief Minister Khyber Pakhtunkhwa has authorized Secretary Establishment Department Khyber Pakhtunkhwa Peshawar for personal hearing before him on 01-09-2014 at 1100 hours in his office.

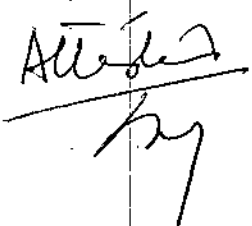
2. You are hereby directed to ensure your presence during the personal hearing with the Secretary Establishment Department Khyber Pakhtunkhwa Peshawar on the above mentioned date, time and venue.


(MUJEEB-UR-REHMAN)
SECTION OFFICER (SCHOOLS/MALE)

Endst: Even No. & Date:

Copy of the above is forwarded to the:-

- i. Director, E&SE Khyber Pakhtunkhwa Peshawar.
- ii. Section Officer (R-I) Establishment Department Khyber Pakhtunkhwa w/r to his letter referred to above.
- iii. PS to Secretary E&SE Department Khyber Pakhtunkhwa.


SECTION OFFICER (SCHOOLS/MALE)

REGISTERED



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated Peshawar the September 23, 2014

NOTIFICATION

NO.SO(S/M)E&SED/4-17/2013/Mir Azam and others:

WHEREAS Mr. Muhammad Ayub

Ex-Deputy District Education Officer (BS-18), Male Lakki Marwat (now Headmaster GHS Muhammad Amir Wali District Lakki Marwat) was proceeded against under the Khyber Pakhtunkhwa Govt: Servants (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the charge sheet and statement of allegations.

2. AND WHEREAS inquiry committee was constituted comprising the following officers to conduct formal inquiry against the accused officer, for the charges leveled against him in accordance with the rules.

- i. Mr. Abdul Ghafoor Baig, Special Secretary (BS-20), Higher Education, Archives & Libraries Department Khyber Pakhtunkhwa Peshawar.
- ii. Mr. Attaullah Khan Principal BS-20, RITE Male Peshawar.

3. AND WHEREAS the Inquiry committee after having examined the charges, evidence on record and explanation of the accused officer has submitted the report.

4. AND WHEREAS a show cause notice was served upon Mr. Muhammad Ayub Ex-Deputy District Education Officer (BS-18), Male Lakki Marwat (now Headmaster GHS Muhammad Amir Wali District Lakki Marwat) dated 25-05-2014 circulated to him on 18-06-2014.

5. AND WHEREAS the Competent Authority (Chief Minister, Khyber Pakhtunkhwa) after having considered the charges and evidence on record, inquiry report, explanation of the accused officer in response to the Show Cause Notice and personal hearing granted to him by Secretary Establishment Khyber Pakhtunkhwa on behalf of Chief Minister Khyber Pakhtunkhwa on 08-09-2014 at 11:00 a.m. is of the view that the charges against the accused officer have been proved.

6. NOW, THEREFORE, in exercise of the powers conferred under section 14 of Khyber Pakhtunkhwa Govt: Servants (Efficiency & Discipline) Rules, 2011, the Competent Authority (Chief Minister, Khyber Pakhtunkhwa) is pleased to impose major penalty of "compulsory retirement" upon Mr. Muhammad Ayub Ex-Deputy District Education Officer (BS-18), Male Lakki Marwat (now Headmaster GHS Muhammad Amir Wali District Lakki Marwat) with immediate effect.

SECRETARY

Endst: of Even No. & Date:

Copy forwarded to the: -

- 1- Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 2- PSO to Chief Minister Khyber Pakhtunkhwa Peshawar.
- 3- Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar.
- 4- District Education Officer (Male), Lakki Marwat.
- 5- Mr. Muhammad Ayub, Headmaster GHS Muhammad Amir Wali District Lakki Marwat.
- 6- District Accounts Officer Lakki Marwat.
- 7- PS to Chief Secretary Khyber Pakhtunkhwa Peshawar.
- 8- PS to Secretary, E&SE Department, Khyber Pakhtunkhwa.
- 9- Office order file.

Attested by

(MUJEEB-UR-REHMAN)
SECTION OFFICER (SCHOOLS/MALE)

Appeal No. 32/2015
Mr. Muhammad Asif

23.01.2015

Counsel for the appellant present, and requested adjournment. Request accepted. To come up for preliminary hearing on 04.03.2015.

Member

3.
04.03.2015

Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, the appellant has impugned order dated 23.09.2014, vide which the major penalty of compulsory retirement upon the appellant has been imposed upon the appellant. Against the above referred impugned order appellant filed review petition before respondent No.1 for setting aside ~~the~~^{the} impugned punishment on 20.10.2014; which was not responded within the statutory period and hence the instant appeal on 07.01.2015. He further contended that neither proper enquiry has been conducted against the appellant nor opportunity of personal hearing has been given to the appellant.

Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. To come up for written reply/comments on 11.05.2015.

Member

Appellant Dep.
Security & P


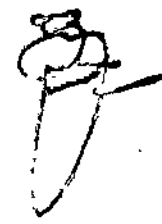
Form- A

FORM OF ORDER SHEET

Court of

Case No.

32/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	
1	07.01.2015	<p>The appeal of Mr. Muhammad Ayub resubmitted today by Mr. Saadullah Khan Marwat Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2		<p>This case is entrusted to Bench _____ for preliminary hearing to be put up there on _____</p> <p style="text-align: right;">CHAIRMAN</p> <p>28-1-2015</p> <p style="text-align: right;"></p>

This is an appeal filed by Mr. Muhammad Ayub today on 29/12/2014 against the order dated 23.09.2014 against which he preferred/made a departmental appeal on 20.10.2014 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, which is premature as laid down in an authority reported as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action and also removing the following deficiencies.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Copy of enquiry report (Annexure-B) is incomplete which may be completed.
- 3- Annexures of the appeal may be attested.

No. 1738 /ST,

Dt 29/12 /2014

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA

Mr. Saadullah Khan Marwat Adv. Pesh.

sin

Resubmitted Mr. As regard enquiry report, the same is not provided to appellant the same could be requisitioned from the dept, if needed.

submitted at

ky

11/11/12 - 10/10/12

8E7
8/1/98



BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

A. No. _____/201

Muhammad Ayub

versus

C.M & others

List of Legal Heirs of Late of Muhammad

Ayub Khan:

Respectfully Sheweth,

1. That the subject appeal is fixed for hearing on 19-10-2016.
2. That during the dependency of appeal, appellant died at his natural death and left the heirs as per the attached profarma.

It is, therefore, most humbly requested that the list of legal heirs of appellant be placed on file.

Applicant

Through



Date: 19-10-2016

Saadullah Khan Marwat
Advocate

16 20-10-14
The Honourable chief Minister,
Khyber Pakhtun khwa Peshawar.

SUBJECT: Review petition against notifaction No: SO (s/m) E&SED/ 4-17/2013/ Mir Azam
Ex-EDO dated 23-09-2014.

Respected Sir,


Most respect fully I beg to state that reference notification No: SO (s/m)
E&SED/4-17/2013/ Mir Azam Ex-DEO Lakki datedd 23-09-2014 the penalty of
"Compulsory retirement" has been imposed on the under signed (your good
self (Copy attched).

I most humbly request your good self to absolve the said penalty with the
following requests.

- (1) Ex-DEO Abdul Malik advertised the vacant J/clerk BPS-7 posts in 2011 in district
Lakki. Typing test and interview have been conducted by him.
I was not member in the said commettees. Due to his transfer appointment order
has not been issued. The new commer DEO prepared merit list on the baises of
typing test marks and arranged DSC (districe selction commettee) metting and
request to Secretary E&SED for representative. He nominate SO budget Mr Noor
Alam for this purpose. SO, departement reperesentative, attended the DSC meeting
in the office of EDO E&SED Lakki. He checked the merit list prepared by EDO and
D/Asstt: Mir Ajab and approved it. DSC meeting remarks were signed by SO. (Copy
attached).
- (2) On the application of one class-iv inquiry has been loadged by Director E& SED
Peshawar. Inquiry commettee came to office of EDO Lakki and called only EDO. No
charg sheet or question ear have been issued to the under signed.
- (3) After the report of inquiry commettee CM (chief minister) arranged formal inquiry.
No charg sheet was issued to the under signed by formal inquiry commettee.
- (4) Suddenly showcause from your good self "removal from service "has been received.
Reply has been submitted. After the reply the penalty of "compulsoy retirement"
has been imposed on the under signed.
- (5) Sir, I have been served as DDEO, not appointing authority. Appointing authority in
district level is DEO.
- (6) Merit list and DSC list has been signed by SO E&SED and D/Asstt Mir Ajab also
but they were not penalised because they have approached to the inquiry
officers.

It is; there fore, requested that the said penalty of "compulsory retirement" may
be absolve please. It is injustice to punish two or three while exanorate the two
member by inquiry commettee.

20/10/14
Muhammad Ayub
Ex-DEO E&SED
Lakki Peshawar



یعدالت جناب سرسٹریٹریٹل صوبہ سندھ پشاور

اسلانت

جناب

محمد ایوب بنام محمد تقی میر

دعویٰ اپیل

باعث شکریہ ایٹکہ

⑤

⑤

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیسٹے سعید اڈاس خان دسروت سے ایڈوکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل صاحب کو کرنے راضی نامہ و تقریر ثالثہ و فیصلہ بر عطف دینے جواب دہی اور اقبال دعویٰ اور بصورتہ ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور رضی دعویٰ اور درخواست ہسٹم کی تقدیر اور اس پر دستخط کرنے کا اختیار ہوگا نیز بصورتہ عدم پیروی یا ڈگری کی طرفہ یا اپیل کی برآمدگی اور مشورتی نیز دائر کرنے اپیل نگرانی و نظارتی و پیروی کرنے کا اختیار ہوگا اور بصورتہ ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقریر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا و دوران مقدمہ میں جو خرچہ و ہرجانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقیاد فرجیہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم 27/12/14

العبد

العبد

العبد

ارباب نیف اسکاں ایڈوکیٹ

سعید اللہ خان دسروت ایڈوکیٹ

Muhammad Ayub

من روپیہ نامہ ایڈوکیٹ

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR.

Application No: /2017
In Service Appeal No: 601/2014

Muhammad Ayub (Late) Ex-Dy: DEO (M) Lakki MarwatApplicant

Versus

Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar & others.Respondents

REPLY TO THE APPLICATION FOR RESTORATION OF THE TITLED CASE FOR & ON BEHALF OF THE RESPONDENTS.

Respectfully Sheweth:-

The Respondents submit as under:-

PRELIMINARY OBJECTIONS.

- 1 That the Applicant has got no cause of action / locus standi
- 2 That the Applicant has concealed material facts from this Honorable Tribunal in the instant case.
- 3 That the application is not maintainable in its present form.
- 4 That the instant application is barred by law
- 5 That the Applicant is not competent to file the instant appeal against the respondents.
- 6 That the Honorable Tribunal has no jurisdictions to review its order. Hence the application is liable to be rejected.

[Handwritten signature and date: 2/5/2017]

ON FACTS

- 1 That Para-1 is correct that the titled Service Appeal was pending adjudication against the impugned order/Notification vide which the appellant has been reverted from BPS-18 to 17 against the above mentioned post by the Respondent Department.
- 2 That Para-2 is also correct that another Service Appeal No: 32/2015, under the same titled is pending for disposal in this Honorable Tribunal against the impugned Notification regarding compulsory retirement from service of the appellant during his life time .
- 3 That Para-3 is correct that the appellant has died & his appeal has now became of no legal force & has been dismissed on account of non pursuance by both the Council as well as legal heirs of the appellant.
- 4 That Para-4 is incorrect. The case of the appellant has correctly been dismissed by this Honorable Tribunal in view of Para-3 of the present reply on behalf of the Respondents.

[Handwritten mark]

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal # 32/2015.

Muhammad Ayub, Ex-Dy: D.E.O (M) E&SE, Lakki MarwatAppellant
VERSUS
Secretary E&SE, Deptt: Govt: of Khyber Pakhtunkhwa & others..... Respondents

Parawise comments on & for behalf of Respondents No. **2, 3 & 4**

Respectfully Sheweth,

The Respondents submit as under:-

Preliminary Objections:-

1. The appellant has got no cause of action/ locus standi.
2. The instant appeal is badly time barred.
3. The appellant has concealed the material facts from this Hon 'able Tribunal, hence is liable to be dismissed on this score.
4. The appellant has not come to this Hon 'able court with clean hands.
5. The appellant has filed the instant appeal on malafide intensions just to pressurize the Respondents for illegal service benefits.
6. The present appeal is liable to be dismissed for mis-joinder & non joinder of necessary parties.
7. The instant appeal is against the prevailing law and rules.
8. The appellant is estopped by his own conduct to file the instant appeal.
9. The instant appeal is not maintainable in its present form and also in the present circumstances of the issue.
10. That the order dated 23-10-2014 is legally competent and is liable to be maintained in favour of the Respondents.
11. That the appellant has found guilty by the competent authority, hence the order dated 23-10-2014 against the appellant.
12. That this Hon'able Tribunal has got no jurisdiction to entertain the instant service appeal.

FACTS.

1. Para-1 needs no comments being relates to the Service record of the appellant.
2. Para-2 correct to the extent that the then E.D.O (M) E&SE, Lakki Marwat has advertised some posts of various teaching caders including A.T, TT, PST, DM, CT & PET etc vide advertisement dated 06-10-2011 published in the daily Mashriq Peshawar with the closing date for the submission of applications for the appointment against the above noted posts was fixed 20-10-2011, wherein the appellant has found guilty by the competent authority for his willful irregularities in the above said appointment orders by ignoring the deserving candidates from their due and legal rights of appointments against the above said various teaching cadre posts in the Respondent Department.

3. Para-3 is correct to the extent that the appellant in collusion with the then E.D.O and others subordinate staffs have been found guilty of misconduct and irregularities with regard to the appointments against the above said teaching cadres posts in the Respondent Department by ignoring the merit, criteria and recruitment policy for the purpose of pleasing relatives and blue eyed candidates and has thus ill name both in printing and electronic media alongwith hundreds complaints regarding the above said rules violation by the appellant which has resultantly initiation of the departmental proceeding under the E&D Rules 2011, wherein the appellant alongwith other official have been found guilty of the above said charges and his thus resultantly order dated 23-09-2014 after observing all the required formalities by the Respondent No.3 in the light of facts and circumstance of the case.
4. Para-4 is correct that the appellant has been serve a show cause notice containing the statement of allegations with regard to the above said in efficiency, irregularities in a capacity of Dy: District Education Officer in Education Department.
5. Para-5 is correct to the extent that the appellant has submitted reply to the show cause notice wherein he has willfully concealed material facts and mitigating circumstances of the case hence, he has been proceeded under the E&D Rules 2011 which has resulted in his compulsory retirement service vide notification dated 23-09-2014 issued by the respondent No. 3 in the light of the facts and circumstance of the case as well as mandatory provision of relevant law.
6. Para-6 is correct hence no further comments.
7. Para-7 is correct to the extent that the appellant was called for personal hearing vide order dated 18-06-2014 by the Respondent No.3 under the relevant provision of law and natural justice, however, the Respondents could not satisfied by the appellant with regard to the alleged statement of allegations and the Respondent No. 3 has acted as per law, rules and inquiry report submitted by the inquiry officers, hence the order dated 23-09-2014 against the appellant by the Respondent No. 3.
8. Para-8 is correct hence, no comments.
9. Para-9 is needs no comments as detail reply of this para has already been given in the above mentioned paras, however, the respondents submits on the following grounds inter-alia.

GROUND.

- A. Incorrect and denied: The appellant has been served a show cause notice containing the statement of allegations regarding in his inefficiency and misconduct with regard to alleged irregularities in the appointment orders pertaining to the various teaching cadre posts in district Lakki Marwat and upon this the appellant has been proceeded under E&D Rules 2011 wherein he

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 601 /2014

Muhammad Ayub Khan versus

Secretary & Others

Application for Restoration of the Subject Appeal

Respectfully Sheweth,

1. That the subject appeal was pending disposal before this hon'ble Tribunal wherein major punishment of reduction from B-18 to B-17 was imposed upon appellant.
2. That in another appeal No. 32 / 2015 punishment of compulsory retirement in B-18 was imposed upon appellant, pending disposal before this hon'ble Tribunal.
3. That both the appeals were simultaneously running the hon'ble Tribunal but appeal in hand, regarding reduction was perhaps abated due to the death of appellant.
4. That on 15-02-2016, counsel for appellant enquired about both the appeals from the office and it was disclosed for the first time that appeal in hand has since been abated on account of the death of appellant while appeal No. 32 / 2015 regarding compulsory retirement is still pending adjudication.
5. That in the appeal in hand, punishment of reduction from B-18 to B-17 was imposed while in appeal No. 32 / 2015, punishment of compulsory retirement was awarded.
6. That question of law point and grade is involved as to whether punishment of reduction to B-17 from B-18 will prevail or that of compulsory retirement in B-18 shall take place because both the impugned orders are in contradiction.

Jan 15 2014

- 7. That appellant has rendered service spread over 3-Decads and benefits of the same in shape of monitoring benefits is required to go to the bereaved family of the diseased.
- 8. That as stated earlier, fact of abetment of the said appeal came into the knowledge of the counsel of appellant on 15-02-2016 as another appeal in the name of appellant was also running in the Tribunal and in such a situation, no distinction drawn.

It is, therefore, most humbly requested that the appeal be restored and the same be decided on merit by clubbing it with A. No. 3215 regarding compulsory retirement in B-18 and reduction in B-17 from B-18.

Appellant

Through

Ecoop

Muhammad Imran Khan s/o Appellant

Through

Saadullah Khan

Saadullah Khan Marwat

Arbab Saif Ul Kamal

Arbab Saif Ul Kamal

Advocates,

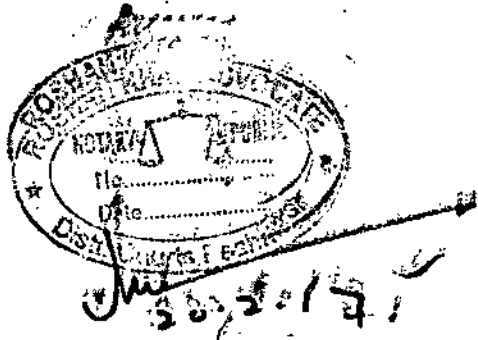
Dated: 20-03-2017

AFFIDAVIT

I, Muhammad Imran Khan S/o Muhammad Ayub Khan (late), R/o Hakeem Topa, Lakki Marwat, do hereby solemnly affirm and declare that contents of the **Application** are true and correct to the best of my knowledge and belief.

Ecoop

DEPONENT





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923
Date 8-11-17

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A. No. 601/2014

Fixed for 08.01.2017

Next date 01/12/17

Muhammad Ayub Khan versus Secretary & Others

APPLICATION FOR CLARIFICATION OF POSITION.

Respectfully Sheweth,

1. That applicant filed two appeals No. 601/2014 and 32/2015 against reduction in grade and compulsory retirement.
2. That appeal No. 601/2014 was disposed off in absence of the counsel, while in the other appeal the date was changed.
3. That on 20-03-2017, applicant submitted application for restoration of the subject appeal but the same application inadvertently placed in Appeal No. 32/2015 instead of Appeal No. 601/2014 or in separate file. (Copy Attached)
4. That order sheet was scribed in Appeal No. 32/2015 which is pending disposal.
5. That the Tribunal was required to requisitioned the Appeal No. 601/2014 or separate file was to be maintained to put the application dated 20-03-2017 in the same.

It is, therefore, most humbly requested that Appeal No. 601/2014 requisitioned and application be placed on the same by scribing separate order sheet in the same.

Applicant

Imran Khan S/O appellant

Through

Saad Ullah Khan Marwat

Advocate

Dated 08-11-2017.

1

7-2-2014

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

Muhammad Ayub Khan versus

S.A No. 601/2014

Secretary & Others

Application for Restoration of the Subject Appeal


Respectfully Sheweth,

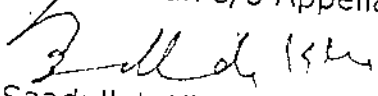
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7. That appellant has rendered service spread over 3-Decads and benefits of the same in shape of monitoring benefits is required to go to the bereaved family of the diseased.
8. That as stated earlier, fact of abetment of the said appeal came into the knowledge of the counsel of appellant on 15-02-2016 as another appeal in the name of appellant was also running in the Tribunal and in such a situation, no distinction drawn.


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Appellant

Through 
Muhammad Imran Khan s/o Appellant


Through 
Saadullah Khan Marwat

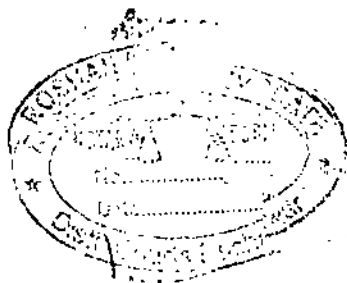
Dated: 20-03-2017


Arbab Saif Ul Kamal
Advocates,

AFFIDAVIT

I, Muhammad Imran Khan S/o Muhammad Ayub Khan (late), R/o Hakeem Topa, Lakki Marwat, do hereby solemnly affirm and declare that contents of the **Application** are true and correct to the best of my knowledge and belief.


DEPONENT



1

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

Muhammad Ayub Khan versus

S.A No. 601/2014

Secretary & Others

Application for Restoration of the Subject Appeal

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Appellant

Through

Muhammad Imran Khan s/o Appellant

Through

Saadullah Khan Marwat

Dated: 20-03-2017

Arbab Saif Ul Kamal

Advocates,

AFFIDAVIT

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DEPONENT

