

12/9/2017

Counsel for the appellant and Muhammad Adeel Butt, AAG alongwith Hameed-ur-Rehman, AD for the respondents present. The learned counsel for the appellant argued the case at some length, but when this Tribunal referred to a recent judgment of the august Supreme of Pakistan 2017 SCMR 890 the learned counsel sought some time. Granted. To come up for further arguments before this DB on 11/10/2017.


MEMBER

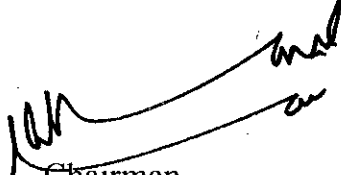

CHAIRMAN

11.10.2017

Counsel for the appellant and Mr. Kabeerullah Khattak, Addl. Advocate General for the respondents present. Arguments heard and record perused.

This appeal is dismissed as per our detailed judgment of today in connected service appeal No. 984/2015 entitled "Badshah Islam Vs. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar and others". Parties are left to bear their own costs. File be consigned to the record room.


Member


Chairman

ANNOUNCED
11.10.2017

01.03.2017

Counsel for appellant and Mr. Hameed-ur-Rehman, AD (litigation) alongwith Mr. Muhammad Adeel Butt, Additional AG for respondents present. Learned counsel for appellant requested for adjournment. Adjournment granted. To come up for arguments on 18.05.2017 before D.B.



(AHMAD HASSAN)
MEMBER



(ASHFAQUE TAJ)
MEMBER

18.05.2017

Counsel for the appellant and Mr. Muhammad Adeel Butt Additional AG for the respondents present. Counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 12.09.2017 before D.B.



(Gul Zeb Khan)
Member



(Muhammad Amin Khan Kundi)
Member


24.05.2016

Agent of counsel for the appellant, M/S. Khurshheed Khan, SO and Hameedur Rahman, AD alongwith Addl. AG for the respondents present. Requested for adjournment. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 26.07.2016 before S.B.


Chairman

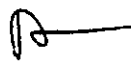
26.7.2016

Counsel for the appellant and M/S Khurshheed Khan, SO and Hameedur Rahman, AD alongwith Addl. AG for the respondents resent. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 24.11.2016.


Chairman

24.11.2016

Counsel for the appellant and Assistant AG for respondents present. Rejoinder submitted which is placed on file. To come up for arguments on 01.03.2017.



(ABDUL LATIF)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

11.09.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant is serving as DPE in BPS-17. That being M.Sc in Health and Physical Education appellant was entitled to BPS-17 with effect from 13.11.2007 on the basis of notification of the Provincial Government of the even date i.e 13.11.2007 but appellant promoted later on with immediate effect regarding which he preferred departmental appeal which was not responded and hence the instant service appeal on 7.9.2015.

That the appellant is entitled to up-gradation and financial benefits thereof with effect from 13.11.2007.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 26.11.2015 before S.B. Notice of application for condonation of delay be also issued for the date fixed.


Chairman

26.11.2015

Counsel for the appellant present. Security and process fee not deposited. The same be deposited within a week, where-after notices be issued to the respondents for written reply/comments for 24.3.2016 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

24.03.2016

Counsel for the appellant, M/S Khurshid Khan, SO and Hameed-ur-Rehman, AD (lit.) alongwith Assistant AG for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 24.5.2016 before S.B.

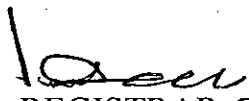


Chairman

FORM-A

FORM OF ORDER SHEET

Court _____

Case No. 995/2015

| | Date of order/ proceedings | Order or other proceedings with signature of Judge/ Magistrate |
|----|-------------------------------|---|
| 1 | 2 | 3 |
| 1. | 07.09.2015 11-9-15 | <p>The appeal of Mr. Amanullah presented to-day by Syed Younis Jan, Advocate may be entered in the institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;">  REGISTRAR </p> <p>This case be put up before the S.Bench for preliminary hearing on <u>11-9-15</u></p> <p style="text-align: right;">  CHAIRMAN </p> |

BEFORE THE KHYBER PAKHTOONKHA SERVICE TRIBUNAL PESHAWAR.

Appeal NO 995 /2015

Amanullah Khan **Appellant.**

VERSUS

The Govt:of KPK through its Chief Secretary and others.

.....Respondents.


I N D E X.

| Sr NO. | Description of documents. | Annex: | Page. | |
|-----------|---|--------|-------|----|
| | | | From | TO |
| 1. | Grounds of appeal. | | 01 | 05 |
| 2. | Affidavit. | | 06 | |
| 3. | Addresses of Parties. | | 07 | |
| 4. | Copy of Departmental appeal | "A" | 8 | |
| 5. | Copy of Order/notification dated / / | "B" | 9-10 | |
| 6. | Letter/Notification dated 13.11.2007. | "C" | 11-12 | |
| 7. | Copy of Certificate. | "D" | 13 | |
| 8. | Copy of appointment order. | "E" | 14 | |
| 9. | Copy of order of EPS 17 — Personal. | "F" | 15 | |
| 10. | Application for condonation of Delay with affidavit. | "F" | 16-18 | |
| 11. | <u>Vakalat Nama</u> | | 19 | |

Dated: 19/2015

Appellant _____

Through



(SYED YOUNUS JAN)

Advocate Peshawar High Court,
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal NO. 495 of 2015.

K.P.K. Province
Service Tribunal
Diary No. 1044
Dated 7-8-15

Amanullah, Director, Physical Education (D.P.E)
Government Higher Secondary School, No. 2,
Peshawar Cantt: District Peshawar..... Appellant

VERSUS.

1. The Govt: of K.P.K. through its Chief Secretary
2. The Secretary elementary and Secondary Education
Khyber Pakhtoonkhwa Peshawar.
3. The Director Elementary and Secondary Education
Khyber Pakhtoon Khawa Peshawar.
4. The Secretary Establishment Department Khyber
Pakhtoonkhwa Peshawar.
5. The Secretary Finance Department Khyber Pakhtoonkhwa
Peshawar.

APPEAL U/S 4 OF KHYBER PAKHTOONKHWA SERVICE TRIBUNAL ACT

1974 ACCORDING TO THE DEPARTMENTAL APPEAL OF THE APPELLANT

WHICH IS STILL PENDING BEFORE THE RESPONDENT NO. 1 AND AFTER

LAPSE OF THE STATUTRY PERIOD NO ORDER BE COMMUNITION HAS

BEEN MADE ON THE SAME SO FAR.

(COPY OF THE DEPARTMENTAL APPEAL ANNEXURE "A").

PRAYER IN APPEAL.

That on acceptance of this appeal the order/
notification dated 15-06-2009 may kindly be varied/modifide
to the extent that the same may kindly be made effective
from ^{July} ~~12-89~~ or 13.11.2007 and a such the department

...?...

may kindly be directed to consider the promotion of the appellant to BS 17 regular from ~~30-12-1989~~ ^{July} 1989 or 13.11.2007 instead of immediate effect with all other Service benefit. Any other remedy/ relief available in the circumstances of the case may also kindly be granted to the appellant.

(Order/notification dated 15-06-09 is Annexure "B".
and dated 13.11.2007 is Annexure "C".

Respectfully submitted:-

BRIEF FACTS GIVING RISE TO THIS APPEAL ARE:-

1. That the qualification of the appellant is M.A/MS.c. in health and Physical Education whose ~~result~~ was declared ⁱⁿ passed July, 1989 exam. (Copy of Certificate is Annexure "D").

2. That ~~on the recommendation of the EPK Panel~~ ^{Sher} ~~the appellant~~ the appellant was appointed / *regularized* as Director Physical Education in EPS 16 and then on the basis of Court decision EPS 17 Personnal was awarded to the appellant vide order dated 22-08-89 with full benefits attached EPS 17.

(Appointment order and Order dated 3-05-1987 and order dated 22-08-2009 are Annexure "E" & "F".

...3...

3. That the Govt: of KPK on 13.11.2007 issued a letter/notification vide which the posts of DPEs and Librarians were upgraded to regular BPS 17 for the existing incumbents who hold Master degrees in relevant subjects i.e. MA/MS.c in health and Physical Education in case of the appellant .(The said notification is Annexure "C" above).

4. That as the appellant is /was highly qualified, fit and thus was fully eligible for award of regular BPS 17 in light of the above referred notification/letter so he agitated the matter with the authority but of no use, so he filed departmental appeal/representation before the respondent NO.1 which is still pending in after lapses of statutory period no order/communication has been made on the same so far, hence this appeal on the following amongst other grounds.

G R O U N D S :-

A. That the act and omission of the respondents is illegal, unconstitutional against facts and material on the record, therefore is not tenable and need the interference of this Honourable Tribunal

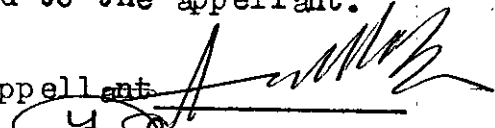
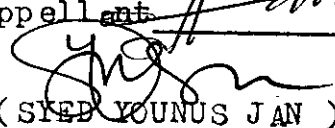
- A. That act and omission of the respondents is not only factually incorrect and legally untenable but also is based on their malafide intention and is also against the well established Principle of Natural justice and is discriminatory in nature.
- C. That the act and omission of the respondents is also against the laws /rules /policies/notification of the Provincial Govt: especially against the notification dated 13.11.2007.
- D. That the case of the appellant is very much similar and identical with those numerous cases in which the higher/superior Courts and Tribunal as well as this Honourable Tribunal has given a similar relief to other colleagues of the appellant and the appellant is also intitled to the same relief /treatment .
- E. That the department has also given a similar relief to other colleagues of the appellant including his Junior so on this score also the appellant is also entitled to the same relief.
- F. That the appellant was well qualifide ,fit and thus was quite eligible for the award of regular EPS 17 at the time of and in light of the letter

dated 13.11.2007. So the impugned notification dated 15-06-2009 vide which the promotion of the appellant to regular FPS 17 has been made with immediate effect is neither legal, nor justifiable.

G. That the appellant is/was a Govt./Civil Servant and legal and constitutional guarantee is /was available to him to be treated equally and in accordance with law. He however has not been treated as such.

It is therefore prayed that on acceptance of this appeal the order /notification dated 15-06-2009 may kindly be varied/modified to the extent that the same may kindly be made effective from ^{July} ~~30-12-87~~ or 13.11.2007 and as such the department may kindly be directed to consider the promotion of the appellant to FPS 17 regular from 30-12-87 or 13.11.2007 instead of immediate effect with all other service benefits. Any other remedy/relief available in the circumstances of the case may also kindly be granted to the appellant.

Dated 19/2015

Appellant 
Through: 
(SYED YOUNUS JAN)
Advocate Peshawar High Court
Peshawar.

BEFORE THE KHYBER PAKHTOONKHW A SERVICE TRIBUNAL PESHAWAR.

Appeal NO. of 2015

6

AmanullahAppellant

VERSUS.

The Govt: of KPK through its Chief Secretary and others.

...Respondents.

AFFIDAVIT.

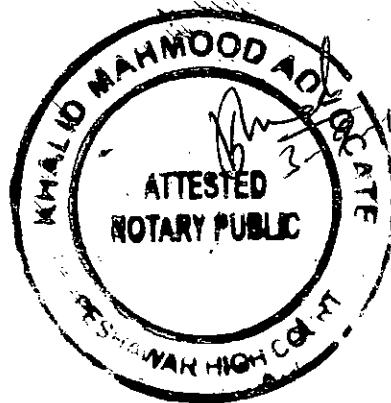
I, Amanullah, (appellant) do hereby solemnly
on oath
affirm and declare that the contents of the appeal are
true and correct to the best of my knowledge and belief
and nothing has been concealed from this Honourable
Tribunal.

Dated

19/2015

Deponent

[Signature]



(Handwritten mark)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No _____ / 2015

AmanullahAppellant

Versus

Govt. of K.P.K. through its
Chief Secretary and othersRespondents.

ADDRESSES OF THE PARTIES.

Appellant.

Amanullah, Director, Physical Education (D.P.E)
Government Higher Secondary School No.2, Peshawar
Cantt: District Peshawar.

Respondents.

1. The Govt:of Khyber Pakhtoonkhwa through its Chief Secretary Civil Seretriate Peshawar.
2. Secretary Elementary and Secondary'Khyber Pakhtoonkhwa Civil Secretriate Peshawar. Education
3. The Director Elementary and Scondary Education Khyber Pakhtoonkhwa near Govt: Higher Secondary School Peshawar City GT Road Peshawar.
4. The Secretary Establishment Department Khyber Pakhtoonkhwa Civil Secretriate Peshawar.
5. The Secretary Finance Department Khyber Pakhtoonkhwa Civil Secretriate Peshawar.

Dated: 19/2015

Appellant _____

Through:

(Handwritten signature)
(SYED YOUNUS JAN)
Advocate Peshawar High Court
Peshawar.

To

The Worthy Chief Secretary,
Government of K.P.K. Peshawar

Annex 'A'
(8)

Subject: DEPARTMENTAL APPEAL/REPRESENTATION

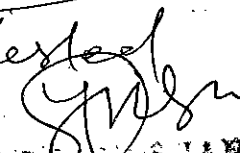
Through: PROPER CHANNEL

Sir,

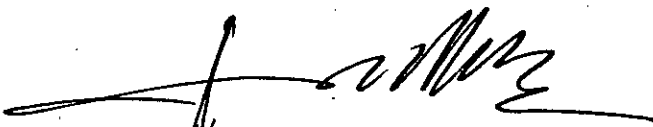
1. That the appellant/applicant is M.A/M.Sc. in Health and Physical Education whose ~~report~~ ^{was passed in July 89} was declared ~~passed~~ ^{reaffirmed} he was appointed/as Director, Physical Education EPS-16 on 3-05-87 and then in the light of court decision EPS-17 (personal) was awarded to him vide order dated 24-8-2009
2. That on 13-11-07 the Government of K.P.K. issued a letter/ Notification vide which the posts of D.P.Es. were upgraded from BS-16 to BS-17 (regular) for the existing incumbents who hold Master Degrees in relevant subjects i.e. M.A/M.Sc. in Health & Physical Education in case of the appellant.
3. That vide order dated 15-08-09 the appellant/applicant has been promoted to BS-17 on regular basis but with immediate effect instead of ~~13-11-2007~~ ^{July 1989}
4. That the appellant is entitled on various grounds for his promotion on regular basis to EPS-17 from ~~13-11-07~~ ¹³⁻¹¹⁻⁰⁷ instead of immediate effect but he has illegally and un-constitutionally been ignored for the same for no good reasons.
5. That the appellant/applicant agitated the matter with the authority time and again but of no use, hence this appeal.

Your goodself is therefore, requested Sir, that the letter/Notification dated 15-08-09 may kindly be effective from ~~13-11-2007~~ ^{July 1989} instead of immediate effect and as such the regular promotion of the appellant to BS-17 may kindly be considered from 13-11-2007 or July 1989 instead of immediate effect with all other service benefits.

Appellant/Applicant

Attested


BYED YOUSUF JAM
 M.A.B.E. in Law, Government Law College
 Advocate High Court Peshawar
 Federal District Court.


 Amanullah Khan
 D.P.E

G.H.S No 2 Peshawar Cantt:

(1)

**GOVERNMENT OF NWFP
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT**

Dated Peshawar the 15-6-2009.

Annex "B"
⑨

NOTIFICATION

NO.SO(PE)2-6/E&SE/DPCMEETING/LIB/09: Consequent upon recommendations of the Departmental Promotion Committee, the competent authority is pleased to promote the following Twenty Three (23 Male) & Thirteen (13 Female) DPEs from BS-16 to BS-17 according to their seniority on regular basis with immediate effect:-

MALE DPEs

| S.No | Name & Designation of Officers | Place of Posting | Remarks |
|------|--|----------------------------------|-------------------------|
| 1. | Mr. Abdul Hameed ADO's (sports) O/O EDO E&SE Lakki | GHSS Langarial Abbottabad. | Against Vacant Post |
| 2. | Mr. Amanullah Khan DPE GHSS Tajazai Lakki | GHSS Tajazai Lakki | Already occupied by him |
| 3. | Q.S. Mohibullah Shah DPE GHSS Karak | GHSS Karak | -do- |
| 4. | Muhammad Aslam DPE GHSS Abdul Khel Lakki | GHSS Abdul Khel Lakki | -do- |
| 5. | Mr. Sardar Ali DPE GHSS Ghani Dehri Malakand Dargai | GHSS Ghani Dehri Malakand Dargai | -do- |
| 6. | Muhammad Hashim DPE GHSS No. 3 Peshawar City | GHSS No.3 Peshawar City | -do- |
| 7. | Muhammad Saeed ADO (Sports) EDO E&SE Swabi | GHSS Rhich Bhan Abbottabad | Against Vacant Post |
| 8. | Muhammad Ibrahim ud Din DPE GCPE (M) Karak | GHSS Boi Abbottabad | -do- |
| 9. | Mr. Deedar Khan DPE GHSS Chamkani Peshawar | GHSS Chamkani Peshawar | Already occupied by him |
| 10. | Mr. Abdul Sattar DPE GHSS, Gul Imam Tank | GHSS Gul Imam Tank | -do- |
| 11. | Muhammad Saeed Shah DPE GHSS Kawiu Mansehra | GHSS Kawiu Mansehra | -do- |
| 12. | Mr. Khaki Rehman DPE GEC (M) Mir Ali NWA | GEC (M) Mir Ali NWA | -do- |
| 13. | Mr. Habib Ullah DPE GHSS Dargai Charsadda | GHSS Dargai Charsadda | -do- |
| 14. | Mr. Habibullah DPE GHSS Mamash Khel Bannu | GHSS Mamash Khel Bannu | -do- |
| 15. | Mr. Zahoor Ahmad DPE GHSS Manki Sharif Nowshera | GHSS Manki Sharif Nowshera | -do- |
| 16. | Mr. Lal Bacha DPE GHSS Mansabdar Swabi | GHSS Mansabdar Swabi | -do- |
| 17. | Abdur Rauf DPE GHSS Wadpaga Peshawar | GHSS Wadpaga Peshawar | -do- |
| 18. | Mr. Fakhir Zaman Shah DPE, GHSS Dhand Saghri, Kohat | GHSS Dhand Saghri, Kohat | -do- |
| 19. | Mr. Wali-ur-Rehman DPE, GCPE Karak | GCPE Karak | -do- |
| 20. | Mr. Kamran Ali, DPE GHSS, Nagri Bunairi | GHSS Nagri Bunair | Already occupied by him |
| 21. | Mr. Muhammad Iqbal, DPE GHSS Tehkal Bala Pesh: | GHSS Tehkal Bala Pesh: | -do- |
| 22. | Muhammad Arif DPE, GHSS Bam Khel Swabi | GHSS Bam Khel Swabi | -do- |
| 23. | Mr Zard Ali Khan DPE GHSS Urmar payan Peshawar | GHSS Urmar payan Peshawar | -do- |

M. Tufail Muhammad/Kaleem Khan Mahsood/Final Notification/09

(P.T.O.)

Attested
[Signature]
SYED YOUSUF JAN
B.A.L.L. 3 Ed, Certificate Sharia Law
Associate High Court Peshawar
Federal Shariat Court.

(2)

FEMALE DPEs

10

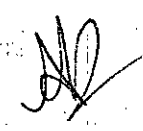
| S.No | Name & Designation of Officers | Place of Posting | Remarks |
|------|---|---------------------------------|-------------------------|
| 1. | Mst. Samina Habib DPE RITE(F) Kohat. | RITE(F) Kohat. | Already occupied by her |
| 2. | Mst. Gul Nar DPE GGHSS Comp: Abbottabad. | GGHSS Comp: Abbottabad. | -do- |
| 3. | Mst. Abida Parveen DPE GGHSS Malakpura Abbottabad | GGHSS Malakpura Abbottabad | -do- |
| 4. | Mst. Robina Shaheen DPE GGHSS S.K.Bala Bannu. | GGHSS S.K.Bala Bannu. | -do- |
| 5. | Mst. Sughra Afandi DPE GGHSS Gujrat Mardan. | GGHSS Gujrat Mardan. | -do- |
| 6. | Mst. Sujhaat Begum DPE GGHSS Takhtbhai Mardan | GGHSS Takhtbhai Mardan | -do- |
| 7. | Mst. Saima Gui DPE GGHSS Topi Swabi | GGHSS Topi Swabi | -do- |
| 8. | Mst. Sadia Hazrat DPE GGHSS Kopar Malakand | GGHSS Kopar Malakand | -do- |
| 9. | Mst. Saira Iltaf DPE GGHSS Abbottabad | GGHSS Abbottabad | -do- |
| 10. | Mst. Dil Afroz DPE GGHSS Utmanzai Charsadda | GGHSS Utmanzai Charsadda | -do- |
| 11. | Mst. Robina Shaheen DPE GGHSS Katlang Mardan. | GGHSS Katlang Mardan. | -do- |
| 12. | Mst. Riffat Shaheen DPE GGHSS Garhi Habibullah Mansehra | GGHSS Garhi Habibullah Mansehra | -do- |
| 13. | Mst. Arifa Saleem, DPE GGHSS Khairabad Nowshera | GGHSS Khairabad Nowshera | -do- |

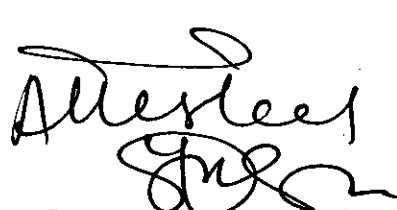
**SECRETARY TO GOVT OF NWFP
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT**

Endst; of even no. & date:

Copy is forwarded to:-

- 1) Secretary to Govt of NWFP, Establishment Department, Peshawar.
- 2) Special Secretary (Regulation), Establishment Department, Govt of NWFP Peshawar.
- 3) Secretary to Govt. of NWFP, Finance Department, Peshawar.
- 4) Director (E&SE) NWFP Peshawar.
- 5) Executive District Officer (E & SE) concerned.
- 6) The Accountant General NWFP.
- 7) District Accounts Officer concerned.
- 8) Deputy Database Administrator (EMIS) Elementary & Secondary Education Peshawar.
- 9) PA to Secretary Elementary & Secondary Edu: Department
- 10) Officer concerned
- 11) Master file


**(ARIF JAMIL)
SECTION OFFICER
(PRIMARY)**


**SYED YOUNUS JAN
B.A.L.L.B. B Ed. Certificate Baran Reg
Advocate High Court Peshawar
Federal Shariat Court.**

Annex C
(11)

GOVERNMENT OF N.W.F.P.
SCHOOLS & LITERACY DEPARTMENT
Dated, Peshawar the 13/11/2007.

NOTIFICATION.

No. SOG/S&L/1-69/06/Vol-1/DPE/LIB: Sanction of the competent authority is hereby accorded to the upgradation of the posts of Librarians and Directors Physical Education (D.P.Es) from BS-16 to BS-17 (Regular) for the existing incumbents who hold Master Degree in the relevant subject in the Schools & Literacy Department NWFP with immediate effect as per following details:-

- 1) Promotion against the upgraded posts (from BS-16 to BS-17) shall be made in the prescribed manner and in accordance with the service rules to be framed as per relevant provisions of the NWFP Civil Servants (Appointment, Promotion and Transfer) Rules 1989 read with the NWFP Civil Servants Act, 1973.
- 2) The Librarians and D.P.Es who hold the diploma in the relevant subject will stay in BS-16 till such time, they acquire Master degree in the respective subject. On acquiring Master Degree in the relevant subject, their posts will be upgraded on case to case basis from BS-16 to BS-17 (Regular) and promotion (from BS-16 to BS-17) would be given as per laid down procedure and in accordance with the service rules to be framed. However their existing seniority will remain intact.
- 3) All the vacant posts of Librarians and D.P.Es in Schools & literacy department in BS-16 are hereby upgraded to BS-17, appointments against which would be made from amongst the persons who hold Master degree in the relevant subject, in the prescribed manner.
- 4) In future Librarians and D.P.Es will initially be recruited on the basis of Master degree in the relevant subject in BS-17 (Regular).
- 5) Henceforth no appointment of Librarians and D.P.Es in BS-16 shall be made on the basis of diploma, being declared as "Dying Cadre".

Sd/-

SECRETARY TO GOVERNMENT OF NWFP
SCHOOLS & LITERACY DEPARTMENT.

Endst: No. FD (SOSR-II) 10-7 / 03 / VOL - III Dated, Peshawar the, 13/11/2007
Copy is forwarded for information and necessary action to :-

- 1) The Accountant General, NWFP, Peshawar.
- 2) All District Accounts Officers in NWFP.
- 3) All Agency Accounts Officers in NWFP.

Attested
[Signature]
BYED YOUNUS KHAN
B.A.L.L.B. B Ed. Certificate No. 117
Advocate High Court Peshawar
Federal Shariat Court.

[Signature]
13/11/07
(MUNAWAR KHAN)
SECTION OFFICER (SR-11)
FINANCE DEPARTMENT
GOVERNMENT OF NWFP.

(P.T.O.)

12

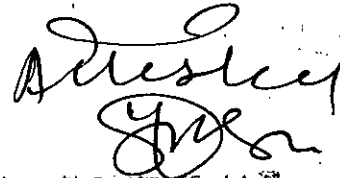
Endst:No. & Date Even.

Copy is forwarded to:-

- 1) Secretary to Government of NWFP, Establishment Department.
- 2) Secretary to Government of NWFP, Finance Department.
- 3) P.S to Chief Minister NWFP, Peshawar.
- 4) P.S to Chief Secretary NWFP, Peshawar.
- 5) Director Schools & Literacy, NWFP, Peshawar.
- 6) Director, Curr; & Teachers Edu; NWFP, Mandian Abbottabad.
- 7) Director of Education FATA NWFP, Peshawar.
- 8) P.S to Minister of Education, NWFP, Peshawar.
- 9) P.S to Secretary Schools & Literacy NWFP, Peshawar.
- 10) Office File.



(FARID AHMAD KHATTAK)
SECTION OFFICER (GENERAL)
SCHOOLS & LITERACY DEPARTMENT
GOVERNMENT OF NWFP.



SYED YOUNIS JAF
B.A.B.B. B.E.D. - certificate Shariat Law
Advocate High Court Peshawar
Federal Shariat Court.

Serial No. GU 2 01072

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

GOMAL UNIVERSITY

DERA ISMAIL KHAN

(N.W.F.P) PAKISTAN



(Session 1987-88)

AMAN ULLAH. SON of ATTA ULLAH. and

a student of the DEPARTMENT OF PHYSICAL EDUCATION,

having passed the prescribed examination in JULY, 19 89.

is this day admitted by the Gomal University to the DEGREE of

MASTER OF SCIENCE

in the FIRST Class

The subject of examination being PHYSICAL EDUCATION.

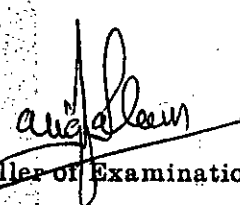
The Examination was taken as a whole/~~in parts~~

Registered No. 206-L-77


Roll No. 3559

DECEMBER 30, 19 89

Countersigned


Controller of Examinations


Vice-Chancellor


BYED YOUNUS JAN
B.A.L.L.B. & B.Ed. - Certificate Charke Law
Advocate High Court Peshawar
Federal Shariat Court.

OFFICE OF THE DIRECTOR OF EDUCATION (SCHOOLS) N.W.F.P. PESHAWAR

NOTIFICATION

Under the provision of NWFP Adhoc Civil Servants (Regularisation of Service) Ordinance of 1987, the Director of Education (Schools) N.W.F.P. is pleased to regularise the services of the following ADEOs/DPEs working in the institutions mentioned against their names with effect from the date ~~of~~ noted against each in relaxation of the relevant services rules/conditions of the appointment:-

| S.No./Name&Designation | Date of adhoc appointment. | Date of regularisation |
|---|----------------------------|------------------------|
| 1. Amanullah Khan DPE in B-16 Govt Elementary College (Male) <i>Bannu</i> | 1-11-81 | 21-1-1987. |
| 2. Mr Abdul Hamid ADEO (Phy) Office of the DEO (M) Bannu. | 1-12-81 |do..... |

Notes:-

- The above DPE/ADEO (Phy) whose services are regularised under this notification shall rank junior to those belonging to the same service/cadre, as the case may be, who are in service on regular basis on 21.1.87 and shall also rank junior to such other persons if any who is pursuance of the recommendations of the Commission made before 21.1.87 are to be appointed to the respective service or cadre irrespective of their actual date of appointment.
- The seniority interse of the ADEOs/DPEs whose services are regularised under this notification with the same service or cadre shall be determined on the basis of their continuous officiation in such service or cadre provided that if the date of continuous officiation in the case of two or more civil servants is the same, the civil servants older in age shall rank senior to the younger civil servants.

Mohammad Idrees Khan
Director of Education (Schools)
N.W.F.P., Peshawar.

Endst.No. 4581-88 / Dated Pesh the 3/5 / 1987

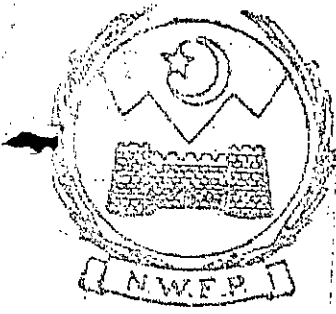
Copy forwarded for information and n/action to the:-

- PAS to Minister for Education, NWFP, Peshawar.
- Section Officer (Schools) Govt of NWFP, Education Department.
- Accountant General, NWFP, Peshawar.
- District Accounts Officer concerned.
- Divisional Director (Schools) concerned.
- Principal Elementary College, Ghoriwala Bannu.
- DEO (M) concerned.
- Officers concerned.

Deputy Director (Schools)
for Director of Education (Schools)
NWFP, Peshawar.

Attended
[Signature]
BYED YOUSUF JAM
M.A.B.S. B Ed, Certificate Sharia Law
Advocate High Court Peshawar
Federal Shariat Court.

Annex 9 P⁴
15



GOVERNMENT OF NWFP
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated Peshawar the 24-8-2009.

ORDER.

NO.SO(PE)9-10/DPE/09/Court Case(10 DPE). In order to implement the Judgement of Supreme Court of Pakistan dated 3-4-2009 in C.P.L.A Nos. 491-P to 500-P of 2006, the competent authority is pleased to grant BS-17 (personal) to the following officers of Elementary & Secondary Education Department from the date of regular appointment or on acquiring Master Degree which ever is later.

| 1 | 2 | 3 | 4 | 5 |
|-------|---------------------|---|-----------------------------|----------------------------------|
| S.No. | Petition No. | Present Address & Designation | Date of regular appointment | Date of acquiring Master degree. |
| 1 | CPLA No. 491-P/2006 | Mr. Khalid Tanveer DPE GHSS Hassanzai Charsadda... | 22-10-1990 | 30-5-1981 |
| 2 | CPLA No. 492-P/2006 | Mr. Hazrat Ali DPE Govt. College of Physical Edu. Karak | 20-10-1990 | 31-12-1989 |
| 3 | CPLA No. 493-P/2006 | Mr. Muhammad Aslam DPE GHSS Abdul Khel Lakki | 22-10-1990 | 1-9-1985 |
| 4 | CPLA No. 494-P/2006 | Mr. Said Nawaz DPE GHSS Bogara Karak | 10-2-1991 | 21-10-1983 |
| 5 | CPLA No. 495-P/2006 | Mr. Amanullah DPE GHSS Tajazai Lakki | 1-11-1981 | 30-12-1989 |
| 6 | CPLA No. 496-P/2006 | Mr. Shamsul Islam DPE GHSS Musazai Peshawar | 20-10-1990 | 30-5-1981 |
| 7 | CPLA No. 497-P/2006 | Mr. Muhammad Shah DPE GHSS No.3 DIKhan | 22-10-1990 | 31-12-1989 |
| 8 | CPLA No. 498-P/2006 | Mr. Tajamul Zaman DPE GHSS No.4 DIKhan | 22-10-1990 | 31-12-1989 |
| 9 | CPLA No. 499-P/2006 | Mr. Gulistan Khan ADO(Sports) O/O EDO (E&SE) DIKhan | 22-10-1990 | 31-12-1989 |
| 10 | CPLA No. 500-P/2006 | Mr. Abdul Hamid DPE GHSS Shakardara Kohat | 21-11-1981 | 31-12-1989 |

SECRETARY
ELEMENTARY & SECONDARY
EDUCATION DEPARTMENT.

Endst. No. FD(PRC)KC/FD/(SR.I)12-3/99.

Dated Peshawar the, 22-8-2009.

Copy forwarded for information & necessary action to the:-

- 1- The Accountant General NWFP Peshawar.
- 2- The District Accounts Officers concerned.

SECTION OFFICER (SR-3)

Endst. Of even Number & Date.

Copy of the above is forwarded to:-

- 1- The Director Elementary & Secondary Education NWFP Peshawar.
- 2- The Section Officer (SR-I) Finance Department w/r to his letter No. KC/FD(SR.I)12-3/99 dated 3-6-09.
- 3- The Executive District Officers Elementary & Secondary Education concerned.
- 4- Officers concerned.

(ARIF JAMIL)
SECTION OFFICER (PRIMARY)

Attested
STEED TOUQUEER JAM
Advocate High Court Peshawar
Federal Shariat Court.

16

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. _____ / 2015

Amanullah Applicant/Appellant

Versus

Government of K.P.K. through its
Chief Secretary and others Respondents.

APPLICATION FOR CONDONATION OF DELAY (IF ANY).

Respectfully submitted:

The applicant/appellant submits as under:-

That firstly the act and omission of the respondents /department is illegal, unconstitutional and void and secondly as financial matter is involved in the matter and the cause of action is the running cause of action, therefore, no limitation runs against the appellant/applicant, but even if this Honourable Tribunal considers the departmental appeal time barred then this application for condonation of delay if any on the following amongst other grounds:-

GROUNDS:

1. That in the matter in hand the cause of action is continuous cause of action and the impugned act and omission of the respondents come in the purview of the definition of continuous wrong, therefore, in the matter the cause of action starts on first date and ends on the last date of every months/every year, therefore, no question of delay arises in the matter.
2. That the law requires that the matters should/must be decided on merits rather than on technical grounds including the limitation.

3. That the appellant/applicant has got a very good case in his favour therefore, technicalities including the point of limitation(The delay if any) are ignorable.
4. That the appeal of the appellant before this Honourable Tribunal is well within time and strictly in accordance with law contained in Section 4 of the NWFP now Khyber Pakhtunkhwa Service Tribunal Act 1974,
5. That if the delay if any is not condoned the applicant/appellant will suffer an irreparable loss to his seniority, promotion and all other service benefits.
6. That the delay if any has been caused by the delaying tactics of respondents/department and the appellant cannot be held responsible for the same.
7. That in so many similar and identical cases this Honourable Tribunal has ignored the point of limitation and in so many cases has condoned the delay, therefore, in this case also the same point is ignorable/condonable.

It is, therefore, respectfully prayed that on acceptance of this application in the best interest of justice the delay if any in filing departmental appeal may kindly be condoned/ignored and the appeal of the appellant/applicant may kindly be decided on merits. Any other remedy/relief available in the circumstances of the case may also kindly be granted to the applicant/appellant.

Dated 19/2015

Applicant/Appellant
Through
(Syed Younus Jan)
Advocate Peshawar High Court.
Peshawar.

18

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. _____ / 2015

Amanullah Applicant/Appellant


Versus

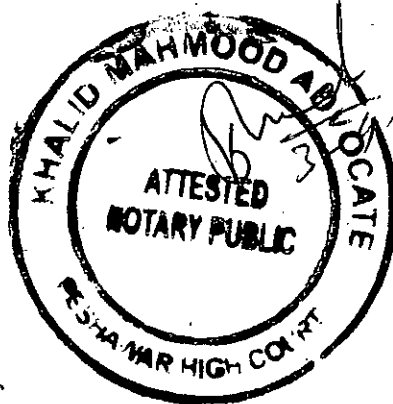
The Government of K.P.K. through its
Chief Secretary and others Respondents.

AFFIDAVIT.

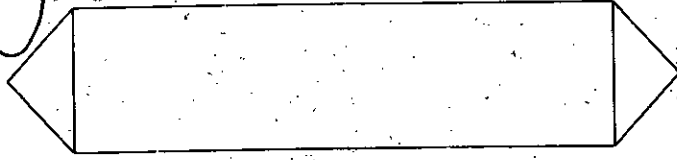
I, Amanullah, applicant (appellant) to hereby solemnly affirm and declare on Oath that the contents of the attach application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal

Dated 19/2015

Deponent 



بعدالت KPK سرویسز کمپنی



ان کے لئے
اما اللہ صاحب
(رہنما)

2015ء پنجاب

03 ماہ ستمبر

مورخہ

مقدمہ

اما اللہ صاحب
(رہنما)

دعویٰ سرویسز کمپنی

جم سال 2015

باعث تحریر آنکہ

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

آن مقام کیلئے سید لولیس جان ایڈووکیٹ
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یا اہیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

2015

03 ماہ ستمبر

03

المرقوم

العبد گواہ العبد

مقام KPK سرویسز کمپنی کے لئے منظور ہے۔

اما اللہ صاحب

ATTD YOUNUS JAM
Advocate High Court Peshawar
Federal Shariat Court.

Accepted

BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 995/2015

Aman Ullah Khan DPE GHSS No: 2 Peshawar Cantt:Appellant.

VERSUS

Secretary E&SE Department, Khyber Pakhtunkhwa & others.Respondents

JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS No: 1-5.

Respectfully Sheweth:-

The Respondents submit as under:-

PRELIMINARY OBJECTIONS.

- 1 That the Appellant has got no cause of action / locus standi.
- 2 That the instant Service Appeal is badly time barred.
- 3 That the Appellant has concealed material facts from this Honorable Tribunal, hence liable to be dismissed on this score.
- 4 That the Appellant has filed the instant appeal on mala -fide motives.
- 5 That the Appellant has not come to this Honorable Tribunal with clean hands.
- 6 That the Appellant is not entitled for the relief he has sought from this Honorable Tribunal.
- 7 That the instant Service Appeal is against the prevailing law & rules.
- 8 That the instant Appeal is based on mala-fide intentions just to put extra pressure on the Respondents for gaining illegal service benefits.
- 9 That this Honorable Tribunal has got no jurisdiction to adjudicate upon the present service appeal.
- 10 That the appeal is not maintainable in its present form & circumstances of the case.
- 11 That the appeal is bad for mis-joinder & non-joinder of the necessary parties.
- 12 That the instant Appeal is barred by law.
- 13 That the Notifications dated 15/6/2009 is legally competent.
- 14 That the instant Service Appeal is barred by law.
- 15 That the Appellant is not entitled for the grant of promotion wef 13/11/2007.

ON FACTS

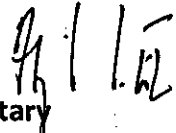
- 1 That Para-I, needs no comments being pertains to the academic & professional qualification of the appellant.
- 2 That Para-2, also needs no comments, being pertains to the service record of the appellant.
- 3 That Para-3 is correct to the extent that the Govt: of Khyber Pakhtunkhwa, vide Notification dated 13/11/2007 has upgraded the DPEs & Librarians from BPS-16 to 17 (Personal) with the conditions of MA/M. Sc in Health & Physical Education from the recognized University at least in 2nd Division with the additional conditions that in future all DPEs will be recruited in BPS-17 regular on the basis above said qualification by declaring the DPRE post in BPS-16 as a dying cadre post in the Respondent Department (Copy of the said Notification is attached as Annexure-A).
- 4 That Para-4 is incorrect & misleading on the grounds that the case of the appellant for the grant of promotion from BPS-16 to 17 vide the impugned Notification dated 15/6/2009 with reference to S/No: 3 of the said Notification is the result of the Notification No: SO (PE)/2-6/E&SED/ DPC/LIV/DPE(BPS-16 to 17)/09 dated 13/11/2007, vide which the appellant has been promoted against the BPS-17 (Regular) post by the Respondent Department in the interest of public service & immediate effect with the conditions that the appellant will retain his inter- se-seniority in BPS-17 alongwith his batch mates as in BPS-16 in the Respondent Department, hence the plea of the appellant regarding making the impugned Notification dated 15/6/2009 effective from 13/11/2007 is illegal & without any merits. Hence the instant appeal is liable to be dismissed in favour of the Respondents in the interest of justice on the following grounds inter alia (Copies of the said Notifications are Annex: B&C) :-


Grounds

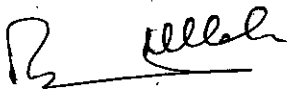
- A Incorrect & denied, the act of the Respondents vide Notification dated 15/6/2009 in favour of the appellant is within legal parameter & is legally competent & is liable to be maintained in favour of the Respondents in the interest of justice.
- B Incorrect & denied. Detailed reply has already been given in the foregoing paras.
- C Incorrect & denied. The appellant has been treated as per law & upgradation policy by the Respondents vide Notification dated 15/6/2009 by promoting them in BPS-17 with immediate effect in the interest of justice.
- D Incorrect & denied. The statement of the appellant is baseless and without any merit & is liable to be struck down in favour of the Respondents.
- E Incorrect & denied. Detailed reply of this ground has already been given in Para-4 of the instant reply, hence needs no further comments.
- F Incorrect & denied. The appellant has been treated as per law, rules & criteria vide the impugned Notification dated 15/6/2009, by the Respondents.
- G Incorrect & misleading. The appellant has been treated as per law, rules & criteria vide the impugned Notification dated 15/6/2009, issued by the Respondents. However, the Respondent seek leave of this Honorable Tribunal to submit additional case law & record at the time of arguments.


Prayer

In view of the above made submissions, it is humbly requested that this Honorable Tribunal may very graciously be pleased to dismiss the instant appeal with cost in favour of the respondent Department.


Secretary
E&SE Department Khyber
Pakhtunkhwa, Peshawar
(Respondents No: 1&2)
21/6/2016



Director
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 3).


Secretary
(Finance) Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 5).


Secretary
(Etab:) Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 4)

AFFIDAVIT

I, Khaista Rehman Asstt: Director (Lit: II) E&SE Department Khyber Pakhtunkhwa, Peshawar do hereby solemnly affirm and declare on oath that the contents of the instant Parawise Comments in the titled Service appeal are true & correct to the best of my knowledge & belief & that nothing has been concealed from the ambit of this Honorable Tribunal.


Deponent

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In re:- Service Appeal No. 995 / 2015

AmanullahAppellant

Versus

The Government of K.P.K. and othersRespondents.

REPLICATION ON BEHALF OF APPELLANT TO THE JOINT
PARA-WISE COMMENTS OF RESPONDENTS NO.1 - 5

Respectfully submitted:

Replication to the preliminary objections

1-12)

The preliminary objections raised by the respondents in these paras are incorrect, false, misconceived and are based on no evidence, hence denied. Moreover, it is submitted that the appellant has got a valid cause of action/locus standi to challenge the illegal acts and omissions of the respondents. The appeal is well within time, no facts have been concealed from this Hon'ble Tribunal and no dirty hands have been shown or proved each and every fact has been narrated by the appellant in his appeal and all the necessary parties have been arrayed by him in his appeal, no misjoinder or non-joinder has been shown or proved by the respondents. No malafide on the part of the appellant has been shown or proved while the same is proved on the part of the respondents. The appeal is maintainable in its present form and in the present circumstances and there could be no other form but in which it has been submitted and the same is not barred by any law but has been submitted strictly in accordance with laws/Rules. Moreover, being a matter of terms and conditions of service this Hon'ble Tribunal has got a valid jurisdiction.

Replication to the facts.

- 1) Needs no replication.
- 3&4) In these paras the contents of the appeal have been admitted as correct, therefore, need no replication.
- 2&5) The contents of these paras of the reply are incorrect, false and misconceived, hence denied while the contents of these paras of the appeal are correct, true and clear crystal. Moreover, it is submitted that as the matter of non-filing of a departmental appeal is concerned in this regard, it is submitted that firstly this Hon'ble Tribunal may kindly see that whether in light of the law laid down by the august Supreme Court in cases of Hameed Akhtar Niazi Versus The Secretary Establishment Division, Govt. of Pakistan and others reported in 1996 SCMR page 1185 and Tara Chand and others Versus Karachi Water & Sewerage Board Karachi & others in light of the law laid down in these judgments the respondents were legally bound/required to grant the relief to the appellant being a similarly placed person but by not doing so the respondents have not only committed the contempt of court but have also disregard the judgments passed by this Hon'ble Tribunal and therefore have rendered themselves to bear its consequences, secondly as compelled by the Department, the appellant has properly filed a departmental appeal and then this appeal., and even the fact of filing departmental appeal has been stated by the appellant on affidavit and the strong legal presumption would be that the copy of the departmental appeal attached to the instant appeal is sent to the respondents (competent authority) very before and after lapse of a considerable period what action has been taken on the same.

Replication to the grounds

- A-G) The contents of these paras of the reply are incorrect, false, misconceived and without proof, hence denied, moreover, it is submitted that as the appellant was highly qualified, fit and thus was fully eligible for award of BPS-17 as ~~personal~~ ^{regular} grade at the

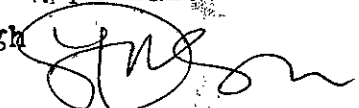
time and in light of para-1 of the letter/Notification dated 13-11-2007, so the impugned act and omissions of the department/respondents is not only factually incorrect and legally untenable but also is based on the malafide intention of the respondents and is against the principles of natural justice and is neither in accordance with law nor is based on facts or law. The stand of the appellant is neither baseless nor is against the factual position but the act and omission of the respondents is not in legal sphere and even the appellant has not been treated in accordance with laws/Rules and the appellant has got cogent Proof/evidence in his favour which he will produce before the Hon'ble Tribunal at the time of arguments.

It is, therefore, prayed that on acceptance of the above and facts narrated and grounds mentioned in the appeal, the appeal of the appellant may kindly be accepted and the relief claimed in the appeal may kindly be granted to the appellant.



Appellant

through



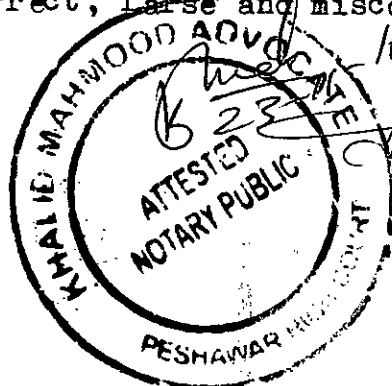
(Syed Youngs Jan)
Advocate, Peshawar


PESHAWAR

23-11-2016

AFFIDAVIT/COUNTER AFFIDAVIT

I, Amanullah, D.P.E. (the appellant) do hereby solemnly affirm and declare on oath that the contents of this replication are true, correct and clear crystal and nothing has been concealed from this Hon'ble Tribunal while the contents of the reply of the respondents are incorrect, false and misconceived.




Deponent