

# <u>In the Khyber Pakhtunkhwa Service Tribunal</u> <u>Peshawar</u>

シ

In Re:-Implementation Application No.  $/2023^{\text{charry No.}} \frac{5017}{9844906}$ In Service Appeal No.286/2017

Arif Shah Versus Tec

Technical Education etc

Nah

an castellecter 1979 - Dans an 1979

Objection Petition on behalf of the Petitioner to the Compliance Report/Enquiry Report in Judgement dated 08-09-2021 in Service Appeal No.286/2017

Respectfully Sheweth,

- 1. That this Honourable Tribunal remitted Petitioner's Service Appeal to Respondents 08-09-2021 with certain direction to conduct proper Inquiry in accordance with law/rules. In view of peculiar facts and circumstances of the case, reinstatement of the Appellant shall be subject to the outcome of the Enquiry. Thus the Service Appeal was accordingly disposed off. (Kindly see para 4 & 5 of the judgement dated 8-9-2021)
- 2. That though no time frame was mentioned in the said Judgement/Order dated 8-9-2021, yet the same was to be finalized/completed within a reasonable time.
- 3. That after waiting for a considerable period of over 6 months, the Petitioner filed an Implementation Appeal No.249/2022 on 15-3-2022 which was noticed to Respondents for next date of hearing in mid of July 2022. This honourable Tribunal implementation enquired/asked for the of the Judgement/Order and next date was adjourned/fixed for 13-9-2022 which date too was changed due to Note Reader for 1from Department 11-2022. Thereafter no one side appeared/attended this Honourable Tribunal and as a result this Honourable Tribunal, then attached the Salaries of the Respondents. Subsequently concerned direction for appearance in Person as well as Conversion of Execution Petition into Show Cause Notice was ordered too to be issued.

- 4. That anyhow upon subsequent date of hearing i.e. 09-1-2023,
  2 newly impleaded Respondents 5 & 6, filed Inquiry Report on previous date i.e. 2 March 2023 which was perused by the Decree Holder on which the DH/Petitioner humbly submits certain Objections as under :-
  - A) That the alleged Inquiry Report was written and signed by Enquiry Committee on 09-11-2021 with certain recommendations but kept by the Respondent 5 & 6 for over 1 $\theta$  months for unknown reasons.
  - B) That the alleged Enquiry Committee has failed to inform/contact the Petitioner in writing on his mailing address for conducting Inquiry in which Date, Time and Venue of the holding of Enquiry by the Enquiry Committee was to be conveyed and hence finalized in the Petitioner's absentia.
  - C) That Petitioner was never informed for attendance/conducting Inquiry and accordingly upon fake Questionaires in Urdu drafted by the said Inquiry Committee on 9-11-2021 at their own, on photocopy of the Urdu Questionaire over which a fake signature has been reflected which the Petitioner denies.
  - D) That Inquiry Committee has not adopted the prescribd procedure duly mentioned as per Section 10, 11, 12, 14 & 15 of KP Government Civil Servants (Efficiency & Disciplinary) Rules 2011), hence without adopted the requisite procedures in violation of the above Rules would be nullity in the eyes of law.
  - E) That the aforesaid Enquiry Committee report was not routed through the Respondent 5 & 6 being competent Authority.
  - F) That further more, the Recommendation of the Enquiry Committee cannot be deemed and believed to be true which was finalized without keeping the prescribed procedure for conducting Inquiry.



G) That in addition to above, the Petitioner rendered Service for 22 months and salaries obtained from the AG KPK through Pay Slips from 1-6-2012 till 31<sup>st</sup> March 2014. Even performance in Service period was duly recognized by writing ACR by the Reporting Officer/Countersigning officer.

- H) That termination of the Petitioner from service was verbal instead of in writing.
- That the Petitioner has categorically denied the recovery and re-payment of Salaries amounting to Rs.3,38,232/- to FIA/ACC allegedly shown on 5-10-2015 as no signature of the Petitioner or his Witnesses are there. Witnesses signatures shown are of the FIA own Officials which have no concern with the Petitioner.
- J) That Petitioner intends to enclose some documents regarding Advertisement of the Post in newspaper, interview letter and sketch from the Despatch Register which traced recently regarding the instant case which is also a necessary documents in the above titled case. These documents are enclosed as Annexure-C, D & E respectively.
- K) That Petitioner such denial of re-payments have been duly reflected in his Rejoinder to 2<sup>nd</sup> Service Appeal No.286/2017 as well as in Ist Service Appeal No.1131/2014 which was too remitted to the Departmental Appellate Authority on 6-5-2016.

Copies of Rejoinders in both the Service Appeals are also enclosed herewith as Annexure-A & B for ready reference.

L) That Petitioner may also be allowed to point out other malafide points adopted by the Respondents in the titled case with permission of this Honourable Tribunal. Prayer:- It is, therefore humbly prayed that above Objections over the delayed Inquiry Report by the newly impleaded Respondents 5 & 6 having no plausible and reasonable explanation for such considerable delay, which may please be taken into consideration and decide the Petitioner's Implementation Application on its own merits in the situation and circumstances explained above.

Arif Shah

Petitioner

Through phase

0 <u>4</u>

(Anwar Shah)

Advocate High Court

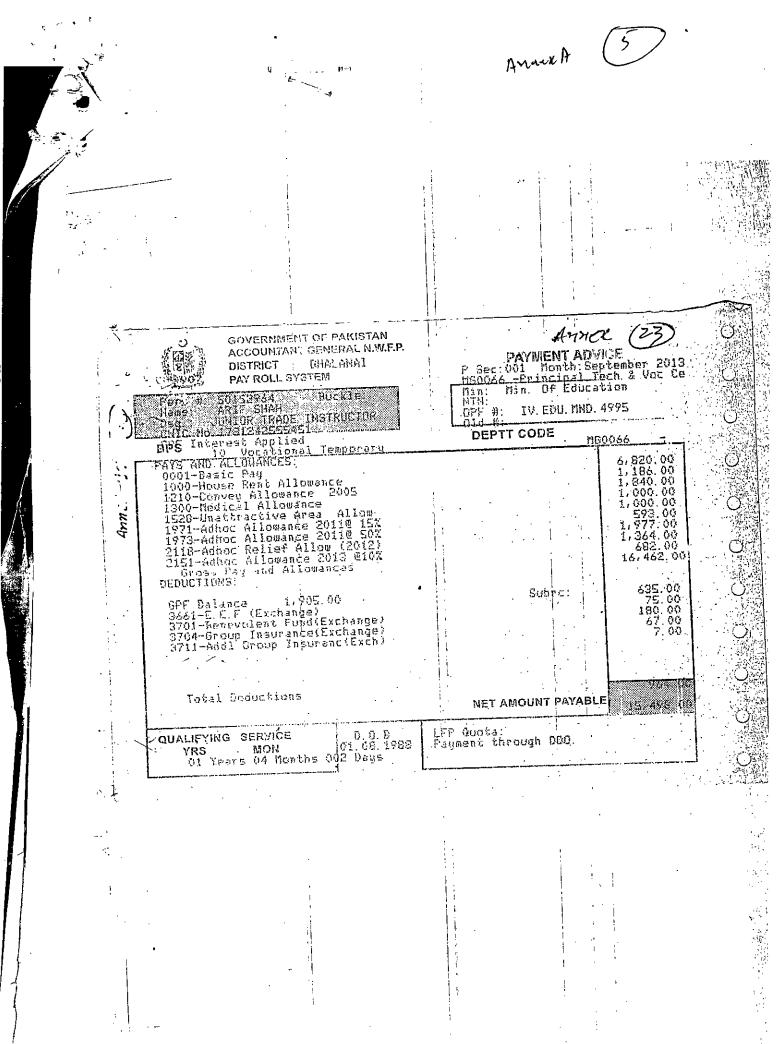
Peshawar

#### AFFIDAVIT

I, Arif Shah Petitioner solemnly affirm and declare on oath that the contents of the instant Objection Petition are true and correct according to my knowledge and belief and that nothing has been concealed intentionally from this Honourable Court.



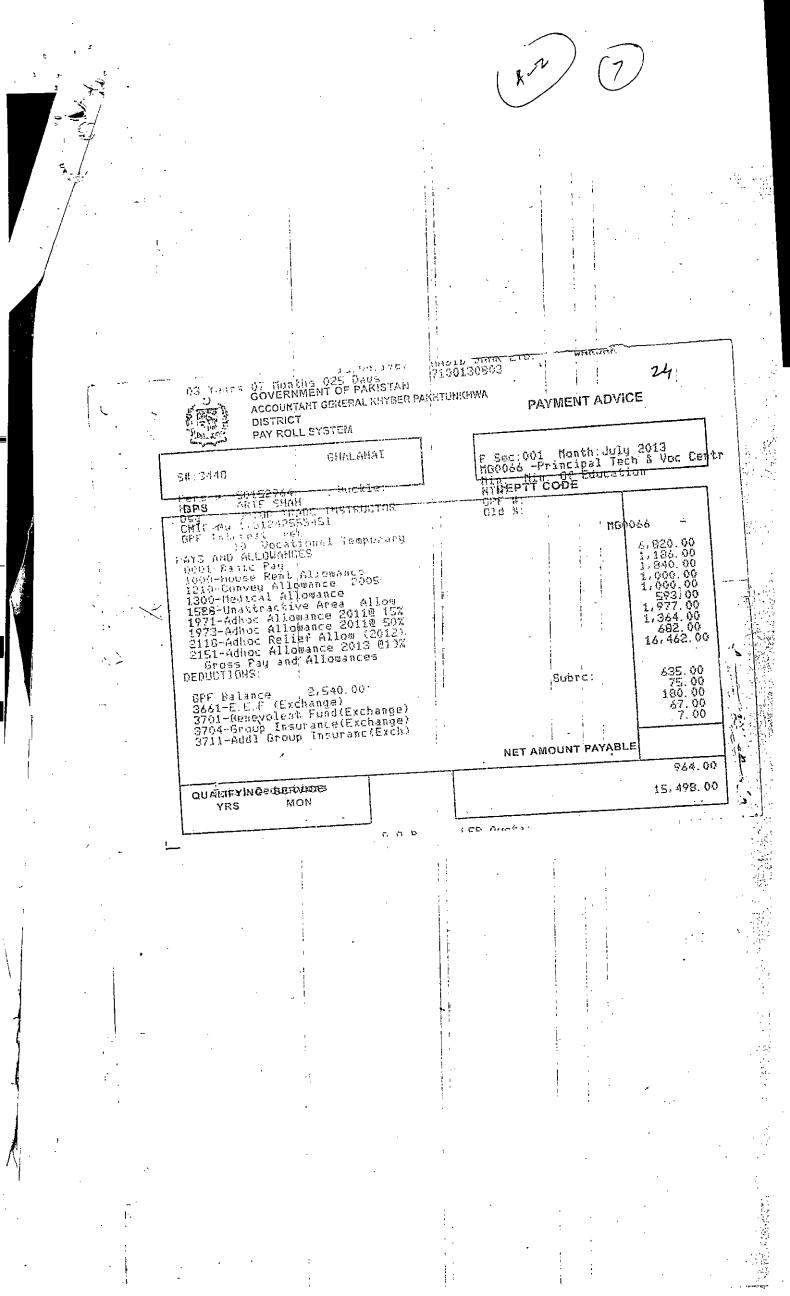
Deponent de



, , , , , , , , , , , , , , , , , , ,		. <u>.</u>		A - 1	6	
	BPS	ABIN CHAH		PAYMENT AI P Sec: 001 Month HD00050 Frint Les Nin: Nin. OF Ed. NIN: DFF H: IV.EOU.M DEPTT CODE	December 2013 <u>Tech &amp; Vac</u> 2 scation <u>NG 4995</u>	o o o
	4 AYS 0001 1000 1210 1300 1521 1377 1977 1977	MAD ALLOWANCES: -Nasic Pau -Coavey Allowance -Coavey Allowance -Dedical Allowance -Unsttractive, Ares (-Adhoc Allowance 20 3-Adhoc Allowance 20 3-Adhoc Allowance 20 1-Adhoc Allowance 20 1-Adhoc Allowance 20 CTIONS:	110 152 110 502 12012) 113 0102 113 0102	Subrci	7,240.00 1,186.00 1,840.00 1,900.00 1,000.00 1,000.00 593.00 1,977.00 1,440.00 17:008.00 17:008.00	O O
		Jolahoe 3.810. 1-E.E.F (Exchange) 1-Denevalent Fund(E 1-Group Insurance) 1-Addl Group Insura 701.51 Deductions	vo xchange) ychange) yc(Exch)	NET AMOUNT PAY		0
	QUAL	IFYING SERVICE RS MON 01 Years 07 Nouths	0. 0. 8. 01. 08. 1938   Pi 603. Days	Buota syment through DDB		
	<b>D</b>					
Ň					-	
						τς '.

\*\* ;

V



Volveers 04 Nonths 024 Days 53 GOVERNMENT OF PAKISTAN 5) ACCOUNTANT GEN-RAL KHYBER PAKHTUNKHWA 8-111 24 N PAY ROLL SYSTEM PAYMENT ADVICE S#: 529 -снаганат. SW: 529 Pers M: 50152954 Name: APIF SHAH HSB: JUNIUR TRADE INSTRUCTOR HSB: JUNIUR TRADE INSTRUCTOR FAYS AND ALLOWANCES: 10 Vocational Temporary 0001-Hasic Pay 1000-House Reat Allowance 1210-Convey Allowance 2005 1300-Hedical Allowance 2011 1528-Unattractive Area Allow 1973-Adhoc Allowance 20110 502 2118-Adhoc Relief Allow (2012) ۰. P Sec:001 Month:April 2013 MS0066 -Frincipal Tech & Voc Ce Min: Min. Of Education Û AMMCR-1 G的EPTT CODE Úï . i 1160066 ł 5,820.00 1,186.00 1,940.00 1,000.00 1,000.00 593.00 1,977.00 1,364.00 i. i ÷- -Bross Fay and Allowances GPF Balance 635.00 3661-E.E.F (Exchange) 3701-Renevolent Fund(Exchange) 3704-Group Insurance(Exchange) 3711-Addl Group Insuranc(Exch) 15,780.00 Ù Subre: 635.00 75.00 180.00 67.00 7.00 3 Tatal Daductions MET AMOUNT PAYABLE 11 QUALIFYING SERVICE YRS MON  $Q_{ab}$ Ce. رن 14,815.00 D. D. B LFP Guote: .no. Years 11 Honths Dod Daus ayment र्चारा रागेर 600 0.2

	moner & (g)
• •	
فاسمعصم	New (Left) The Detort
	GS&PDNWFP_1061 F.S2000 Pads of 100 L22.6.2000(57)
	(CONFIDENTIAL REPORT)
	TECHNICAL STAFF.
	CONFIDENTIAL REPORT FOR THE YEAR ENDING 31ST DECEMBER 200 .
	1. Name_Arit Shah
	2. Name of Service Junior Trade Instructor
	3. Qualification Metrick
	4. Total service on 31st December 01 06 M
	5. Scale of pay and present pay <u>BPS-1</u> : Rs. 6820/- P/M
	6. Various posts held during the year with period 01. Y 06 M C Tracke Instruct
	7. Period of report <u>1-1-2013 31-12-2013</u>
	Particulars remarks on:
	1. Judgement and sense of proportion
	2. Initiative and drive
	<ol> <li>Technical knowledge and application</li> <li>Good</li> </ol>
- 	4. Supervision and control over students <u>Wurase</u>
	$\sim$
	6. Co-operation with staff <u>great</u>
	7. Relation with public grad
	8. Suitability for promotion guilable for promotion
•	9. Knowledge of lanague fusher urder Infut
	General Remarks:- He is a very homent and voligion pann. He down his dreety Mey good hat he
	MUHAMMAD IQBAL G.T.I EK
	Name (in Biock Lieuers) and

, e ,

,

- --

Avoror ( Ames 24 Luci Directorate of Industries, Mineral Technical Education FATA Secretariat, Warsak Road, Peshawar. No.DIM&TE/FATA/Admn:/ 2701-(A) Dated: <u>2/4</u> \_\_2014. То The Principal, Govt: Technical Institute, E/Ghund (Mohamand Agency). STOPPAGE OF SALARY. Subject;-I am directed to refer this office telephone message regarding stoppage of salary. you are directed to stop the pay Mr.Arif Shah, Junior Trade Instructor of your Institute with effect from 01.04.2014 under intimation to this office. ı f ASSISTANT DIRECTOR Technical Education (FATA)

٥ì

## BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

REJOINDER IN SERVICE APPEAL NO. 286/201

ARIF SHAH (APPELLANT)

VS '.DDL:CHIEF SECRETARY FATA AND OTHERS (RESPONDENTS)

# Rejoinder on behalf of the Appellant to the comments submitted by the Respondents

Respectfully Sheweth,

Rejoinder on behalf of the Appellant to the comments of Respondents is submitted hereunder :

#### PRELIMINARY OBJECTIONS

All the Preliminary Objections raised by the Respondents from serial No. A to L being incorrect, hence denied as the Appellant's Service Appeal is competent, the Appellant has not concealed any fact intentionally from this Honourable Tribunal, Appeal has not filed with malafide intention, he has Cause of Action, his Appointment was never illegal or fraudulent in his individual capacity, the instant fresh Service Appeal is within time, doctrine of locus poenitentiae is applicable in his case and he should not be condemned for mistake of others and the legal procedure was not followed in termination of his service as his stoppage of salary and termination was based on verbal basis by the Respondent-4 which cau ed gross miscarriage of justice to the Appellant. Procedures alien to service law was adopted by the Respondents. Moreover Appellant has never deposited/ the amount of salary received by him as erroneously held by the Respondents but instead some one other has deposited which fact is evident from the Treasury Challan which does not bear the signature of the Appellant as the Appellant denies the Recovery of the amount and even also denied in earlier Rejoinder in Service Appeal No.1131/2014 No departmental Enquiry was conducted in Appellant's association to prove his

appointment as illegal, thus, no opportunity of defense was afforded to the Appellant and action taken was in Appellant's absentia, which is/was a g iss illegality committed by the Respondents. The Respondents, instead of decision on his Departmental Appeal within stipulated period of one month given by this Honourable Tribunal, treated into Personal hearing and conducted deno vo enquiry in violation of this Honourable Tribunal order as evident from letter dated 9-12-2016 which besides time barred, was in utter violation of the Enquiry Rules/Regulations, thus, highly defective one and bears no value in the eye of Service law. It is pertiment to add here that FSL Report regarding scanned signature cannot be believed as the same test was taken in Appellant's absentia.

2

REPLY ON FACTS

a. Para No.1. needs no rejoinder being admitted by the Respondents in view of furnishing no comments.

b. Para No.2 Since the Respondents expressed no comments duly admitted to Para No.2 of the Service Appeal. However it is added that Respondents failed to comply the order dated 6-5-2016 within stipulated period of one month from the receipt of the order which in fact was for decision of his Departmental Appeal dated 12-6-2014 but the Respondents in utter violation and contravention of this Honourable Tribunal, treated Personal Hearing etc which is evident from letter lated 9-12-2016. From the above, it is crystal clear that the Respondents conveyed compliance report on 16-12-2016 delayed by almost 7 months against the stipulated period of one month i.e. upto 20-6-2017. Hence the Respondents plea in the instant para of the comments is incorrect while the Appellant's plea in the main Service Appeal is correct.

c. Para No.3. Not correct as scribed, hence denied. Basically after appointment as Junior Trade Instructor, the Appellant worked for a period of 22 months from 1-6-2012 to 31<sup>st</sup> March 2014 and received proper Salaries on month to month basis from AG. It is

pertinent to mention here that Appellant terminated verbally oy the Respondent-4 on the letter was of Asstt Director Technical Education FATA addressed to Respondent-4. Copy of letter addressed to Respondent-4 is enclosed herewith as Annexure-A. Moreover against the said verbal stoppage of Salary and termination. the Appellant had filed Service Appeal before this Honourable Tribunal in Oct/Nov 20114 while FIR against the Appellant was lodged in January 2015 in which the Appellant is on Bail and the Appellant is regularly attending the trial in the learned Court of FIA. Rest of the story is fabricated one as mentioned in this para of the comment while the plea raised in the main Service Appeal is correct.

5

d. Para No.4 Not correct as scribed, hence denied. Position has already been explained in the Para No.3 above. It is also added that Age Relaxation is not prohibited under the relevant law which can be granted to persons on case to case basis who are over age which is permissible. Appellant being an outsider, has no knowledge of internal procedure of a department before appointment. Hence the plea of the Respondent is incorrect while the plea raised by the Appellant in the main para of the Service Appeal is correct.

e. Para No.5. Not correct as scribed. The Respondents admitted and confirmed that the Appellant was informed telephonically to attend the office of the Deputy Director FATA. It is confirmed that the Appellant was not associated in Enquiry Process as Enquiry Rules/Procedure which is a gross per illegality and negligence on their part, hence all action taken against the Appellant in absentia have no value in the eye of law. Moreover there is no lack of qualification both academically and professionally for which documentary proof necessary for the said post were duly annexed with the main Service Appeal. Hence the plea in comments of the Respondents are

incorrect while the plea raised in the main Service Appeal is correct.

4

f. Para No.6 Not correct as scribed, hence denied. Basically after appointment, Appellant started his duties with Responent-4 College from the date of his appointment for a period of one year and 10 months and got his salaries through Government Exchequer i.e. AG KPK. Even in response to his good performance, the Respondent No.4 wrote his ACR with his excellent performance, copy of the said ACR is also enclosed herewith as Annexure B. It is also pertinent to mention here that no recovery was actually affected from the Appellant which was also denied in earlier Rejoinder in previous Service Appeal No.1131/2014 and even deny now as there is no signature of the Appellant existed/reflected upon the said Recovery Memo. It is also added that enquiry Report is not binding upon the Appellant as the entire proceedings were initiated in his absentia which has no legal affect upon the Appellant's right. Hence the plea taken in the comments by the Respondents are incorrect while the plea raised by the Appellant in the main Service Appeal are correct.

g. Para No.7 Not correct as scribed, hence denied. In the instant para, Respondents the admitted Appellant's stoppage of salary as well as service was that terminated through Respondent-4 telephonically It is also evident that prior to verbal termination, no procedure of issuance of Show Cause Notice, Charge Sheet etc was issued. Even Appellant informed in writing or associated in Enquiry process was not and all kind of action was taken in his absentia which is a gross injustice in violation of service law of the land. hence all the actions taken against the Appellant was in violation of prescribed law of service, principle of natural justice pesides judgement of the upper Courts that non should be condemned unheard which

is nullity in the eyes of law. So the plea raised in the comments in the instant para by the Respondents is not correct while the plea raised in the main Service Appeal is correct.

h. Replies to Para No.8 to 11. Not correct as scribed. hence denied. After remand by this Honourable Tribunal on 6-5-2016 a stipulated period of one month was given for decision of Appellant's Departmental Appeal by the Departmental Appellant Authority but the Respondents violated the said Order by delaying for about 7 months and also treated into Personal Hearing, which was against the direction of this Honourable Tribunal Order, Hence the Respondents deviated and failed to implement the said order in accordance with the Tribunal Order, therefore has no legal value and sanctity in the eye of law. Hence the remaining story of the Respondents is fabricated one and cannot be believed so it is evident that the plea raised in the comments of the Respondents are not correct while the plea raised in the main Service Appeal are correct. Moreover the Respondents rejected the Departmental Appeal on 16-12-2016 but was submitted as compliance report in this Appellant's Execution Petition No.109/2016 in this Honourable Tribunal which was disposed off on 3-3-2017, hence by counting time limitation from order of this Honourable Tribunal dated 3-3-2017, the Appellant's instant Service Appeal is within time.

12. Reply to Para No.12. Appellant was really aggrieved of the impugned rejection of Departmental Appeal by the Departmental Appellate Authority delayed by approx 7 months on 16-12-2016 coupled with this Honourable Tribunal order dated 3-3-2017 in violation of this Honourable Tribunal order dated 6-5-2016, hence is relevant for the Appellant.

### Reply to GROUNDS

A to H. Plea raised in grounds by the Respondents being incorrect, hence denied by the Appellant. While plea raised in the main Appellant groundwise A to H are correct . The main reasons are that Appellant rendered spotless service of 22 months from 1-6-2012 to 31-3-2014 with the , Respondent-4 College and got proper salaries from the Government Exchequer also. For termination from service, the Respondents verbally stopped his salaries from 1-4-2014 and also verbally terminated the Appellant's service by the Respondent-4 on the telephonic information in absence of any Charge Sheet, Show Cause Notice and statement of allegation as well conducting of enquiry in absentia of the Appellant, which is not tenable in the eyes of law. Moreover the Respondents also violated the well established principle of Audi Alterum Partem which is also in violation of Section 24A of the General Clauses Act 1897 besides well known judgement of Federal Shariat Court reported as PLD 2010 SC-1 relevant Page No.5. It is also incorrect that the Appellant had refunded the entire amount of salaries as the Appellant in rejoinder to earlier Service Appeal No.1131/2014 and in the instant Rejoinder denies the refund of any amount. The amount shown on Appellant on his behalf have no nexus at all which is also evident from the Recovery Memo having no signature of the Appellant. It is pertinent to mention here that the Appellant is on Bail in the said FIR and attending regularly on various dates in the learned FIA Court in trial too. Moreover and Criminal Civil cases can simultaneously which have no effect on decision of the be run Service Appeal on its own merits on the basis of verbal termination which is alien to service laws of the land. Appellant was not directly informed regarding conducting

any Enquiry rather Appellant was allegedly tried to inform through another Accused elephonic process which has not value in Service law of the land.

Prayer: It is, therefore humbly prayed that on acceptance of the instant Rejoinder, the comments of the Respondents may not be considered and the Appellant's main plea in the main Service Appeal may graciously be treated as Correct and Appellant may kindly be reinstated in service with all back benefit of Service and dues as the Appellant is still jobless in view of verbal termination for which separate Affidavit was also enclosed with the main Service Appeal.

> Arif Shah Appellant Through Naqibullh Khattak Anwar Shah Advocates High Court Peshawar

#### <u>Affidant</u>

I, Arif Shah solemnly affirm and declare on oath that the contents of the instant Rejoinder are true and correct according to my knowledge and belief and that nothing has been concealed interitionally from this Honourable Tribunal. Moreover the Appellant is still unemployed and jobless from the date of his termination.

#### Deponent

77.66

Dates My State

UTTIME Nakazi Dauodzai Ida

Start Preishewert

THE FOR THE POT ARE HINDR TRADE INSTRUCTORS

Towner Midded to apose the Monada Balance Inc. Department of the Department Selector Comments on 2101 21 | Additional Comment Mathematics Inc. Horocome La start English Proc. Proc. Management in Disader Management Roard Personal Comment Comments of the Selector of the Selector of the Selector Roard Personal Comments

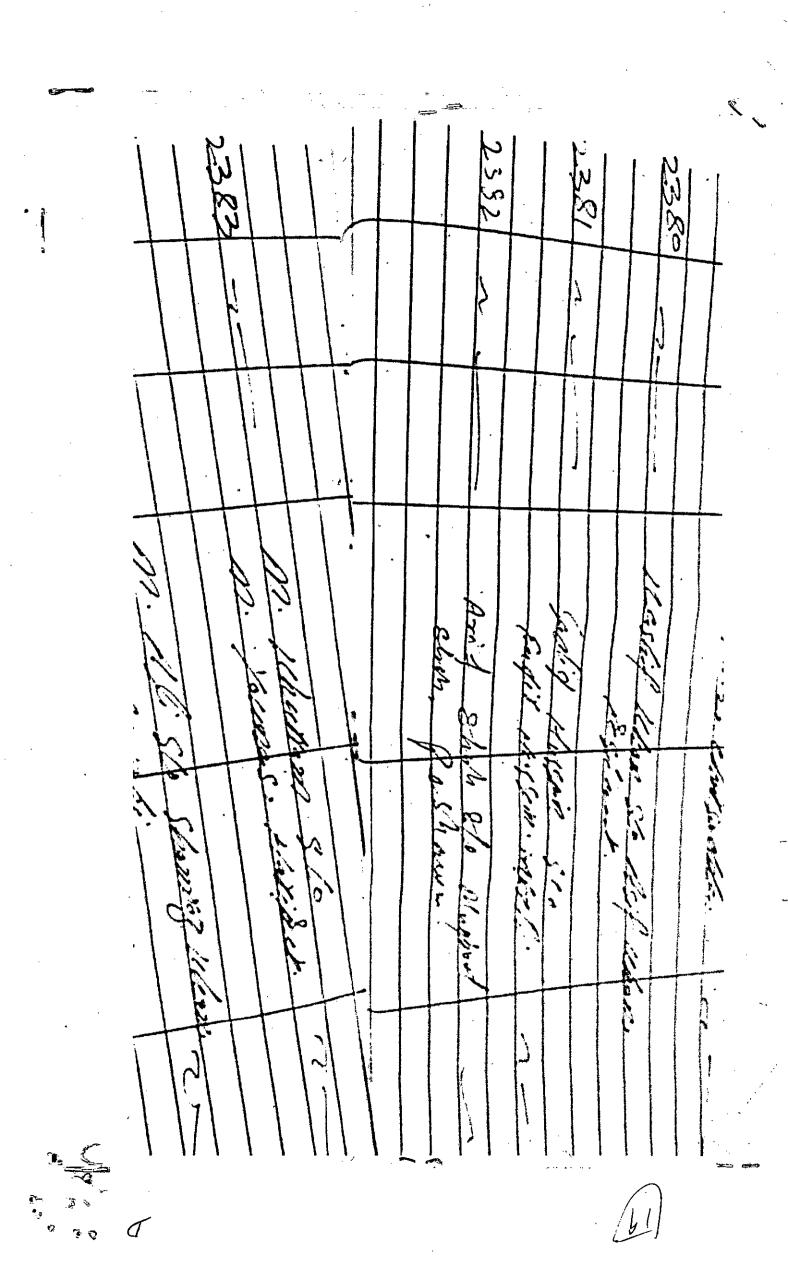
You strated the provided of Comments and Correctioned Harves

1 K 🕺

Note - No TADA is allowed in this regard,

DIRECT CL DEVELOP TRANING

ار این معرفی اور این معرفی ا وهرانه



E \_c (20) ę, STATISTICS In .... Non Appendix Line and La statistic to Contraction of the second W. Market UL-IAA UX المراسيد عماد لمع الم الم العازية مراوعه (بالعر) 18171 كدى كمحودهم واللا مت المعالم ومعداد المراد المراجل مال ADCALLES MELSEY BPS-10 Ne - Even se will and i.,E لسعير في المراد مردان ( المردان ) 4 ALL STRAK 5.0 BPS-10 FJ 44 تخطيعا عليمت الووجع الموال مراز الرائ منز (مردد) كماريان 1010000 1015/2011 A.M. L. E, 10:00 21/3/2011 And (1) 51 فيقعل عساعم وماعروي في الروي السوكر في (والد) 2 مقام: كود منعد يستيك بالمد ويعتم بكريتك ستر (عما عمن) ١٥٠٨ الأستريل المعيت حيات آباد بشاور 3 ليت: ميرو 10:00 (17/3/2011 بالت 10:00 بيك 4.10:00 Cand 26/3/2011 and 16/24 المتوافظة : (1) مطور المحت بشكرما أن الميدواد مادة كالا ما ي ورخما ست بمدرا ساوك تعدين شعه كا يتلاا العمران المجاد المادن الماعدد يد حلى ادمال كري (2) ينا معدى كالاتكرا المريدة من المك بعد موصول موضال در فواستون بالمي هم كالمودكش كما جانية (3) الي المكى اسادا الرديو ... دوران التي تحرة الا وي المحافظ الماسية المالية المسينة المسلمة المسلمة المحال كريد - (5) إلا في حريك وعاجت كوهمت سكومية المحاسكة عدى في (٥) ترج عدا عروي شرك كريد كريد والول كرك كمكان استادى استكري المعالية المعالية المحادث القاليان المالي المالي الم م واغرادي قوت NIM