

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT SWAT

Appeal No. 751-M//2023

Ayub Zarin.....Appellant
V/S

Secretary Higher Education ,
Peshawar & others.....Respondents

(Reply on behalf of Respondent No. 4 & 5)

INDEX

| S.NO. | PARTICULAR. | ANNEXURE. | PAGE. |
|-------|---------------------------------------|-----------|-------|
| 1. | Reply | ----- | 1-3 |
| 2. | Affidavit | ----- | 4 |
| 3. | Pay Revision Rules 1978 | A | 5-7 |
| 4. | KP Civil Pension Rules 1.8(b) | B | 8 |
| 5. | Central Treasury Rules 213, 214 & 224 | C | 9-11 |

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Y. M. I.
Deponent

4-07-23

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BEFORE SERVICES TRIBUNAL, KHYBER PAKHTUNKHAWA, CAMP COURT SWAT

Appeal No: 751-M of 2023.

M/S Ayub Zarin..... (Appellant)

The Secretary Higher Education KPK & others.....(Respondent)

(Para-wise Reply on behalf of Respondent No:4 & 5)Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6194

Dated 26.06.23

Preliminary Objections:

- 1) That Appellant has no cause of action and *locus standi*.
- 2) That Appellant has not come to this Court with clean hands.
- 3) That Appellant has concealed material facts from this honorable Court.
- 4) That instant Appeal is badly time bard.
- 5) That Finance Department KPK is competent forum in the instant case which has not been made Respondent in the Appeal.

Respectfully Sheweth:

Para-1 is correct.

Para-2 needs no comments from answering Respondents.

Para-3 relates to Respondents No: 1,2 & 3.

Para -4 is correct.

Para-5 is correct partially to extent that Respondent No.1 imposed recovery of over-drawn amount of Rs. 625,395/= upon the Appellant. The other facts stated in Paara-5 are incorrect. The monthly Pension and value of commuted portion of Pension of Appellant was required to be calculated on the basis of his actually admissible Basic Pay of BPS-20 i.e. Rs. 127,720/= instead of incorrect and inflated amount of Basic Pay i.e.

Rs. 132,230/= . The correct position of the matter is elaborated hereunder;

- I. The Appellant, while holding the post of Assistant Professor (B-18) was promoted as Associate Professor (B-19) on 11.06.2013.
- II. The Appellant was drawing Basic Pay @ Rs.47000/=PM as Assistant Professor(B-18) on 10.06.2013. On his promotion to BPS-19 as Associate Professor as on 11.06.2013, the Basic Pay of the Appellant was fixed @ Rs.50200/= under Para 10(1)(i) of the Khyber Pakhtunkhawa Civils Servants Pay Revision Rules,1978.
- III. In terms of Rule-7 of Pay Revision Rules, *ibid*, the Appellant was not entitled to Annual Increment as on 1st December, 2013 for having service less than six (6) months in the BPS-

19 on said date which is a prerequisite condition for grant of annual increment to a civil servant under said Rule.

- IV. While allowing Annual Increments to all other serving, otherwise eligible government employees in the district, through computerized mechanical process, the Annual Increment was also added mistakenly in the basic pay of the Appellant on 1st December, 2013 to which the Appellant was not entitled under rules i.e. Rule 7 of Pay Revision Rules, 1978.
- V. Based upon mistake stated in sub-Para-(IV), the Basic Pay of the Appellant remained inflated by one extra increment from 1/12/2013 onward till his retirement forming Last Pay drawn as Rs.132,230/=PM against the legally admissible stage of Rs.127,720/=PM.
- VI. The error was pointed out at the time of issuing him Last Pay Certificate (LPC) on the eve of his retirement from service for calculation of pensionary benefits admissible under relevant Rules.
- VII. The Respondent No.1, being Pension Sanctioning Authority in respect of Appellant, has rightly worked out over paid amount of Rs. 625,395/= for recovery from the Appellant besides sanctioning him correctly admissible amount of monthly pensions, *as well as*, value of commuted portion of pension, to which the Respondent No.1 is fully competent and responsible under the prevailing Law & Pension Rules.
- VIII. The claim of Appellant for allowing him monthly Pension and value of commuted portion of pension on the basis of exaggerated amount of Basic Pay Rs.132,230/= does not constitute a legitimate demand, hence, denied.

Para-6 pertains to Respondent NO:1.

Para-7, needs no comments from answering Respondent.

GROUND:

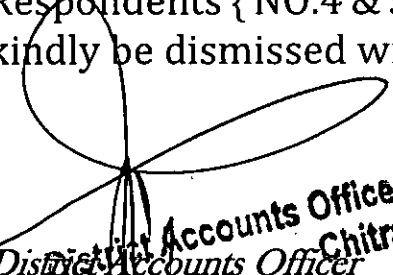
- A. **Incorrect.** The action of Respondents regarding recovery of over-paid amount of public moneys from the Appellant, is fully covered by rules i.e. Rule 1.8(b) of KPK Civil Pension Rules, read with, Rules 213, 214 & 224 of Central Treasuries Rules (CTRs). ✓
- B. **Incorrect.** The Appellant is bound to return, any time, an amount drawn or availed by him during his service which if found inadmissible under rules. Rule 1.8(b) of Civil Pension Rules refer.
- C. **Incorrect.** The payment of one extra increment on 1.12.2013 to which the Appellant was not entitled was a procedural

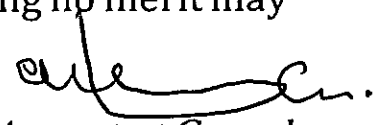
mechanical mistake and the same may be treated as an "*omission*" and not as "*commission*" which dose not, in any way, confer *bonafide* to the Appellant.

- D. Incorrect.** Under Rule 1.8(b) of KPK Civil Pension Rules every pensioner is liable to return any of amount(s) draw by him or paid to him during his service which, if found inadmissible to him under the prevailing law/rules, in judicial or departmental proceedings.
- E. Incorrect.** There arise no need of issuing Show Cause Notice to the Appellant because it was a routine course of scrutiny of pensionary documents by the Pension Sanctioning Authority (Respondent No.1) rather disciplinary proceedings under E&D Rules requiring issuance of Show Cause Notice.
- F. Incorrect.** Hence denied.
- G. Incorrect.** The benefits claimed by the Appellant was the result of a procedural mechanic lapse in the Computer System requiring rectification and same was not a concession to be continued under the shadow of any misinterpretation of rules or statute or any of the orders of the competent authority.
- H. Incorrect.** Hence denied.
- I. Incorrect.** Hence denied.
- J. Incorrect.** Hence denied.
- K. Incorrect.** Hence denied.
- L. Incorrect.** Hence denied.
- M. Incorrect.** Hence denied.
- N. Incorrect.** Hence denied.
- O. Incorrect.** Hence denied.
- P. Incorrect.** Hence denied.
- Q. Incorrect.** Hence denied.
- R. Incorrect.** Hence denied.
- S. Incorrect.** Hence denied.
- T. Incorrect.** Hence denied.
- U. Incorrect.** Hence denied.
- V. No comments.**

PRAYER:

Keeping in view above mentioned facts, it is therefore, humbly been prayed that grievance of the Appellant is not based on legally known facts and nothing else rests on the part of answering Respondents {NO.4 & 5}. Hence, Appeal in hand, having no merit may kindly be dismissed with cost.


District Accounts Officer
Chitral
Chitral Lower (Respondent No.4)


Accountant General
Khyber Pakhtunkhaw, Peshawar
(Respondent No.5).

ANNEX:

5

The N.W.F.P. Civil Services Pay Revision Rules, 1978

NOTIFICATION.

31st May, 1978.

S. S. S.
ACCOUNTS OFFICER
O/o A.G. Khyber Pakhtunkhwa

No. F. D. S. O. (PRC)/1-2/77.—In exercise of the powers conferred by section 26 of the North-West Frontier Province, Civil Servants Act, 1973, the Governor of the North-West Frontier Province is pleased to make the following rules namely:—

THE NORTH-WEST FRONTIER PROVINCE, CIVIL SERVICES PAY REVISION RULES, 1978.

1. Short title application and commencement.—(1) These rules may be called the North-West Frontier Province, Civil Services Pay Revision Rules, 1978.

Annex

133

Provided further that the pay of the ~~existing~~ civil servants already fixed in the Revised National Pay Scales under Letter No. FD (SO) PRC/1-2/77, dated the 16th May, 1977, shall be deemed to have been so fixed under these rules.

(3) The dearness allowance, special dearness allowance and additional dearness allowance referred to in the preceding sub-rule shall not be admissible to those who draw pay in the Revised National Pay Scales.

(4) No specific orders for crossing of efficiency bar will be necessary if by virtue of the formula given in sub-rule (2), the pay of a civil servant is fixed at a stage beyond the efficiency bar.

(5) The pay of every civil servant covered by this rule shall be fixed both in the scale of his substantive post and the scale of the post held by him in a temporary/officiating capacity or on ad hoc basis, or if already fixed under Letter No. FD (SO) PRC/1-2/77, dated 16th May, 1977, shall be deemed to have been fixed under these rules.

7. Increments in the Revised National Pay Scales.—The increments in the Revised National Pay Scales shall fall due on 1st day of December, following the completion of, at least six months' service at a stage in the relevant Revised National Pay Scale.

8. Admissibility of next higher Revised National Pay Scale—
(1) A civil servant holding post in the Revised National Pay Scales 1 to 15, who has reached the maximum of a Revised National Pay Scale shall be allowed the next higher Revised National Pay Scale with effect from the 1st day of December of the year in which he completes one year of such service at the said maximum as counts for increment under these rules, subject to the condition that there is no adverse entry in the Annual Confidential Reports of the civil servant in Revised National Pay Scale 4 to 15 for the last four years. If this condition is not fulfilled, he shall wait at the said maximum till he has earned in succession four Annual Confidential Reports without any adverse entry and his move over to the next higher Revised National Pay Scale shall take effect from the 1st day of December of the year, following the year for which he earns the fourth such annual confidential report.

Movover case

(2) (a) A civil servant who has reached the maximum of Revised National Pay Scale 16 or 17 shall be brought to Revised National Pay Scale 17 or 18, respectively, with effect from the 1st day of December of the year in which he completes three years of such service at the aforementioned maximum as counts for increment under these rules subject to the condition that there is no adverse entry in his Annual Confidential Reports from the year of reaching of maximum upto the year of moving over (both years inclusive). If this condition is not fulfilled he shall wait at the maximum till he has earned in succession four annual confidential reports without any adverse entry and his move over to the next higher Revised National Pay Scale shall take effect from the 1st day of December of the year following the one for which the last such report is earned.

(b) A civil servant holding post in Revised National Pay Scale 16 shall be allowed to move over only to Revised National Pay Scale 17 and the one holding post in Revised National Pay Scale 17 shall be allowed to move over only to the Revised National Pay Scale 18.

[Signature]
ACCOUNTS OFFICER
O/o A.G., Khyber Pakhtunkhwa

Amended scale
Scale R-23/1997
at Sol. Secy. A.M.N.F.

5

9. Fixation of pay on transfer from a lower scale to a higher scale. — When a Civil servant is allowed to draw pay on the next higher Revised National Pay Scale under rule 8 or his post having been upgraded his pay on the higher scale shall be fixed at a stage next above his pay on the lower scale.

10. Fixation of pay on promotion. — (1) Subject to the provisions of rule 11 —

(i) Where a civil servant is promoted from a lower to a higher post in Revised National Pay Scales 2 to 19 where the stage in the Revised National Pay Scale of the higher post, next above the pay of the civil servant concerned in the pay scale of the lower post, gives a pay increase equal to or less than a full increment of the pay scale of the higher post, the initial pay in the Revised National Pay Scale of the higher post shall be fixed after allowing a premature increment in the Revised National Pay Scale of the higher post;

(ii) Where a civil servant is promoted from a lower post to a higher post in Revised National Pay Scale 20 and above after completion of the minimum length of service prescribed for the relevant grade, his pay in the scale of the higher post shall be fixed at the stage next above his pay in the scale of the lower post; and

(iii) Where a lower and a higher pay scale have been prescribed for the same post, the pay on promotion from the lower to the higher scale upto National Pay Scale 19 shall be fixed in the manner given in clause (i) above.

(2) If, by virtue of the benefit admissible under rule 3, a civil servant at the time of his promotion to a higher post is already drawing pay in the Revised National Pay Scale of the higher post, he will be allowed one advance increment in that scale with effect from the date of promotion.

(3) If a civil servant before reaching the maximum of a Revised National Pay Scale is promoted to a higher pay scale between the 2nd June and the 30th November, of a calendar year and his initial pay in the latter scale is fixed with reference to his pay in the former scale, he may, at his option, get his pay re-fixed in the higher scale with effect from the 1st day of December of the year of his promotion with reference to his presumptive pay on that date in his pre-promotion scale; provided that his promotion is not subject to the length of service prescribed in Annexure 'B'

11. Admissibility of increments on promotion to a post in Revised National Pay Scale 18 and above — If a civil servant is appointed by promotion to a post in Revised National Pay Scale 12 or above before he completes the length of service prescribed for the higher post in Annexure 'B', he shall be entitled to draw the pay —

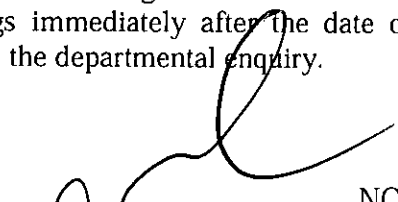
(i) at the minimum of the Revised National Pay Scale of the higher post till such time as he completes the prescribed length of service and the next increment shall accrue to him on the first day of December, following the completion of the prescribed length of service; or following the completion of at least six months' service in the scale, whichever is later

(ii) admissible to him from time to time in the lower post held by him immediately before his promotion to the higher post, if that be more beneficial to him till such time as he completes the prescribed length of service when his pay shall be fixed in the manner prescribed in rule 10 and the next increment shall accrue to him in the manner prescribed in rule 7.

ACCOUNTS OFFICER
O/o A.G. Khyber Pakhtunkhwa

- 1.7 In any case where pension or gratuity is not admissible under these rules, a competent authority may grant pension which will, not save in most exceptional circumstances, exceed Rs. 100 a month or a gratuity not exceeding the equivalent value of that amount; provided that the general spirit of the rules is observed.
- 1.8 (a) Good conduct is an implied condition of every kind of pension. Government may withhold or withdraw a pension or any part of it if the pensioner be convicted of serious crime or be found to have been guilty of grave misconduct either during or after the completion of his service, provided that before any order to this effect is issued, the procedure regarding imposition of the penalty of removal from service shall be followed.
- (b) Government reserve to themselves the right of recovery from the pension of Government pensioner on account of losses found in judicial or departmental proceedings to have been caused to Government by the negligence, or fraud of such Government pensioner during his service, provided that such departmental proceedings shall not be instituted after more than a year from the date of retirement of the Government pensioner.
- (c) In case the amount of pension granted to a Government servant be after wards found to be in excess of that to which he is entitled under the rules, he shall be called upon to refund such excess.
- * (d) Except with the previous sanction of the Provincial Government, no pensioner shall, within a period of two years from the date of his retirement take part in any election or engaged in political activity of any kind.

In future all Civil Servants who are under enquiry be excluded from the enquiry proceedings under the E&D Rules after attaining the age of superannuation and they may be allowed full pensionery benefits as provided under the rules. However it has further been decided that if some pecuniary loss caused to the Government is likely to be proved against a Government Servant who superannuates before decision of the case against him, an FIR should be lodged against him for judicial proceedings immediately after the date of superannuation and exclusion of his name from the departmental enquiry.


ACCOUNTS OFFICER
 O/o A.G. Khyber Pakhtunkhwa

NO.SOR-II(S&GAD)3-29/97-Vol-II
 GOVERNMENT OF NWFP,
 SERVICES & GENERAL ADMN. DEPARTMET

Dated Peshawar, the 22nd August 1998.

* Added by Finance Department (West Pakistan) Notification No. FD (SR-V) 1286/65, dated 15th June, 1965.

Code No.
FSL - 010

COMBINED SET OF TREASURY RULES VOLUME - I & II

(APPLICABLE TO THE FEDERAL CIVIL SERVANTS IN PAKISTAN)

Amended, Corrected & Modified

by

HAMID ALI ZAKA ALI
(M.A., M.Ed., LL.B.) (ADVOCATE)
(Exponents of Civil Service, Labour, Taxation & General Laws)

Upto-date Amendments Incorporated
REVISED EDITION
1994

[Signature]
ACCOUNTS OFFICER
O/o A.G. Khyber Pakhtunkhwa

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209. All paid vouchers must be stamped 'paid', or so cancelled that they cannot be used a second time. Stamps affixed to vouchers must also be cancelled so that they may not be used again.

210. Vouchers and acquittance rolls which are not required to be submitted to the Accountant General, shall be filed and retained carefully in the office concerned as important documents till they are destroyed under the orders of competent authority.

211. All sub-vouchers to bills must be cancelled in such a manner that they cannot be subsequently used for presenting fraudulent claims or other fraudulent purposes.

The provisions of rule 297 with regard to cancellation and destruction of sub-vouchers relating to contingent expenditure shall apply generally to sub-vouchers in respect of other classes of payments, unless they are governed by special departmental regulations or orders of the Government to the contrary.

Overcharges

212. Subject to such special orders as the Government may issue in any individual case, the responsibility for an overcharge shall rest primarily with the drawer of a bill, and it is only in the event of culpable negligence on the part of the controlling officer or of the Treasury Officer that the question of recovery from either of them may be considered.

Audit Objections and Recoveries

213. Every Government servant must attend promptly to all objections and orders communicated to him by the Accountant General.

214. When an Accountant General disallows a payment as unauthorised, the disbursing officer is bound not only to recover the amount disallowed without listening to any objection or protest but to refuse to pay it in future till the Accountant General authorises the payment to be resumed; that no warning slip has been received by the Government servant against whom the retrenchment has been ordered or that being received, it has been answered, are facts with which the disbursing officer shall have no concern.

NOTE 1.—If a Government servant from whom a recovery is ordered is transferred to the jurisdiction of another disbursing officer, the order of recovery should be passed on to that disbursing officer without delay.

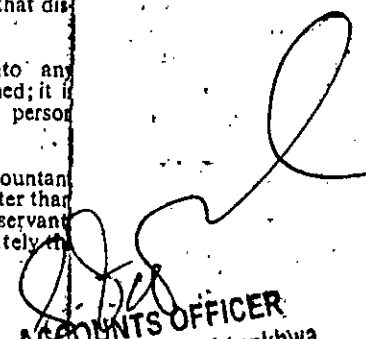
NOTE 2.—A disbursing officer must not, when a retrenchment is ordered, enter into any correspondence with either the Accountant General or the Government servant concerned; it is his duty simply and promptly to carry out the orders he has received, and to leave the person aggrieved to refer the case to the proper authority.

NOTE 3.—Representations and protests against retrenchments ordered by the Accountant General may not ordinarily be considered by the administrative authorities if submitted later than three months after the date of receipt of the intimation by the aggrieved Government servant. This provision does not remove from the disbursing officer the duty of enforcing immediately the recovery of a retrenchment order under this rule.

215. Recoveries may be one third of pay unless the drawing the excess, acted

NOTE.—For the purpose of

216. A register shall be kept in every other disbursing office for the Accountant General. Separate registers shall be kept in the office of the person in charge of the nature and amount of the over-payment has been a


ACCOUNTS OFFICER
Olo A. G. Khyber Pakhtunkhwa

Recoveries
from pay
by T.A. bill
by Ash.

11

House Rent Deductions

223. (1) When demands for rent of public buildings, recoverable from Government servants, are received from the Public Works Divisional Officer or any other authority in charge of such buildings, the Government servants who draw their own pay bills, and heads of offices in the case of non-gazetted Government servants, shall make the necessary deductions as specified in the demands from the next bill in which pay is drawn. After the recovery has been made, one copy of the demand statement which will be rendered in duplicate shall be returned to the authority from which it was received after noting the amounts recovered, the other copy being attached to the bill, from which the recovery has been made. In noting the deductions in the bills, the head of account to be credited and other particulars as given in the demand statement must be shown.

(2) If the rent recoverable from a Government servant is limited to a certain percentage of the emoluments of the Government servant, the particulars of such emoluments shall be noted in the remarks column of the demand statement before its return. Where, after the return of the demand statement, the emoluments of a Government servant are changed retrospectively such changes shall either be shown in the next demand statement or intimated to the authority concerned by a special letter.

(3) Notwithstanding anything contained in this rule;

(i) the recovery of rents from Government servants of the Federal Government in respect of public buildings belonging to a Province may be made in accordance with such procedure as may be prescribed by the Government of that Province.

(ii) Heads of Local Administrations and Departments of the Federal Government may, after consultation with the Accountant General prescribe such detailed rules of procedure as may be necessary for recovery of rents of public buildings under their administrative control.

(4) The provisions of this rule apply also to other charges, e.g., additional rent recoverable for furniture, electric, water, heating and sanitary installations, charges for cost of water, electric energy, etc., which may, under the orders of competent authority, be recovered in the same way as, and together with, rents of buildings proper.

Recoveries ordered by an Accountant General

224. Deductions on account of sums disallowed from pay bills shall be made strictly in accordance with the instructions issued by the Accountant General. The recovery of a sum disallowed from a pay bill may be made from the next pay bill, and of a sum disallowed from travelling allowance bill, from the next payment of travelling allowance; but sums disallowed from a travelling allowance bill must be recovered in cash from the pay bill when the Government servant concerned does not, within a month, present any travelling allowance bill from which they can be recovered.

Attachment of

225. When the pay order of a Court of Law, in a judgment order to see that the attachment of such order from the pay

NOTE 1.—The extent to which attachment for debt is laid down in 1908. The following is an extract c

"60 (1) The following proper decree

Provided that the following p
namely:—

(i) salary to the extent of the

Provided that where such sa
of a railway or local authority t
liable to attachment has been unde
period of twenty-four months, such
further period of twelve months an
the same decree, shall be final

(i) Any allowance forming i
which the appropriate
declare to be exempt from attach
such servant while ur

Explanation 2.—In clauses
ments, excluding any allowance dec
(i), derived by a person from his em

Explanation 3. In clause (i),
(i) as respects any person in th
in the Central Government; and

(ii) deleted.
(iii) as respects any other serv

NOTE 2.—The following decla
clause (i) of the proviso to sub-sec

(1) The allowances payable
Force Acts shall be exempt from a
incurred after the 31st December,

(2) The following allowances pa
or any servant of a Railway or
major port, shall be exempt from at

(i) All kinds of travelling a
(ii) All kinds of conveyance a
(iii) All allowances granted fo
(a) uniforms, and
(b) rations.

(iv) All allowances granted as
dered by the Government

(v) All house-rent allowances.

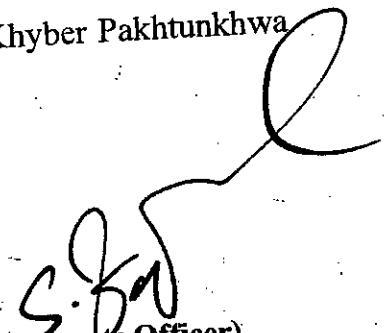
ACCOUNTS OFFICER
O/o A.G. Khyber Pakhtunkhwa



Office of the
Accountant General
Fort Road, Khyber Pakhtunkhwa
Peshawar Pakistan
Phone: 091 9211250-54

AUTHORITY LETTER

Mr. Syed Tariq Shah, Senior Auditor, (BPS-17) Office of the Accountant General Khyber Pakhtunkhwa Peshawar is hereby authorized to attend the Khyber Pakhtunkhwa Service Tribunal Peshawar on behalf of this office.


(Accounts Officer)
Litigation Section
O/o the Accountant General
Khyber Pakhtunkhwa
Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT SWAT**

Appeal No. 751-M/2023

Ayub Zarin.....Appellant
V/S

Secretary Higher Education ,
Peshawar & others.....Respondents

(Reply on behalf of Respondent No. 4 & 5)

AFFIDAVIT

I, Syed Tariq Shah, Senior Auditor , Office of the Accountant General Khyber Pakhtunkhwa Peshawar do hereby solemnly affirms & declare that the contents of reply submitted on behalf of Respondent No.4 & 5 is true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Court.

It is further stated on oath that in this appeal the answering respondent have neither been placed Ex Parte nor their defence have been struck off.

Tariq Shah
Deponent

NIC 17301-1327637-9

cell. 03469191985

ATTESTE

