

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.**

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6175

Dated 23/6/23

S.A # 734/2023

Mr. Awais Khan Khattak Appellant

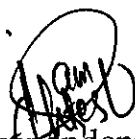
Versus

Govt of Khyber Pakhtunkhwa,
Through Secretary, Higher Education,
Khyber Pakhtunkhwa, Peshawar
& others.....

Respondents

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Respondents

**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR**

S.A # 734/2023

Awais Khan Khattak

~~Khyber Pakhtunkhwa~~ Appellant
Service Tribunal

Versus

Govt. of Khyber Pakhtunkhwa
Through Secretary, Higher Education Peshawar
& Others.....

Distry No. 6175

Dated 23-06-23

Respondents

SUBJECT: PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 & 4

Respectfully Sheweth: -

Preliminary Objections:-

1. That the appellant has got no cause of action/locus standi to file the instant Service appeal.
2. That the appellant has not come to this Honourable Tribunal with clean hands and is trying to conceal material facts.
3. That the appellant is estopped by his own conduct to file the instant service appeal.
4. That the instant service appeal is time barred.
5. That this Hon'ble Tribunal lacks jurisdiction under Section 4(b)(i) of the Khyber Pakhtunkhwa Service Tribunal Act 1974 to entertain the instant service Appeal.

Facts: -

- 1) Correct:
- 2) Pertain to record.
- 3) Correct to the extent that father of the appellant was Lab Attendant at Govt Khushkhal Khan Khattak Degree College, Akora Khattak, Initially he was retired pre-mature but later on the present appellant file writ partition before High Court for appointment against Quota (**Annex-A**) which was dismissed by the court vide Judgment dated 06.11.2018 (**Annex-B**) against which the appellant filed CPLA in Supreme Court of Pakistan and the Supreme Court vide order dated 31.05.2023 directed the respondents to place the case of his father before the Medical Board. And in compliance of decision of Supreme Court the case of his father was placed before the Medical board and father of the appellant was retired on medical ground vide notification dated 08.12.2022 (**Annex-C**) Direction were also issued from the office of respondent No. 1 to respondent No.2 vide letter dated 06.12.2022 to consider the appellant for appointment against 100% Medical/Invalidation Quota (**Annex-D**) and respondent No.2 accordingly appoint him against the vacant post of Chowkidar vide order dated 05.01.2023 (**Annex-E**) and the appellant took the charge of the said post & also receiving salary (**Annex-F**)
- 4) Correct. That the invalidation quota is subject to the availability of vacant post and the post of chowkidar was vacant on which he was appointed and performing his duties (**Annex-G**)
- 5) As already explained in proceeding paras.

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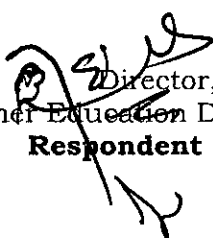
6) Incorrect. As already explained in proceeding paras. Moreover, this Hon'ble Tribunal lacks jurisdiction to entertain the instant service appeal


Grounds: -


- a) Incorrect. As already explained in the proceeding paras. The appellant has already been appointed and he has already availed the said quota.
- b) Incorrect. That the letter is in accordance with law/rule.
- c) As already explained in proceeding paras.
- d) Incorrect. As already explained in detail in para 3 of facts. At the time of appointment of the appellant the post of Chowkidar was vacant (**Annex-H**) and he was appointed against the available vacant post as per rules/Law.
- e) That the said rule have already been implemented.
- f) All posts of Class-IV are of same scale. The appellant is just trying to mislead the Hon'ble Tribunal
- g) That the representation/application was decided in accordance with rules/Law
- h) Correct to the extent that the lists of retired/deceased class-iv are maintained by respondents No. 3.
- i) That the respondents may be allowed to raise additional grounds at the time of arguments.

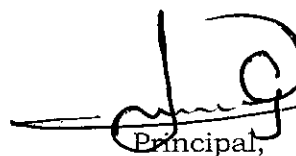
Prayer: -

It is, therefore, humbly prayed that the instant case is based on misconception/misstatement, hence may graciously be dismissed with appropriate cost.


 Director,
 Higher Education Department,
Respondent No. 1


 Secretary,
 Higher Education Department,
Respondent No. 4


 Principal,
 Govt: Khshal Khan Khattak Degree
 College, Akora Khattak, District Nowshera
Respondent No. 2


 Principal,
 Govt: Postgraduate College,
 Nowshera.
Respondent No. 3

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**BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.**

S.A # 734/2023

Mr. Awais Khan Khattak Appellant

Versus

Govt of Khyber Pakhtunkhwa,
Through Secretary, Higher Education,
Khyber Pakhtunkhwa, Peshawar
& others..... Respondents

AFFIDAVIT

I, Ihtisham, Superintendent (Litigation), Higher Education Department do hereby declare and affirm on oath that the contents of parawise comments are correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Court. ^{It is} further stated on oath that ~~the~~ in this appeal the answering respondents have neither placed ex parte nor their defense has been struck off.

(Signature)
Deponent

Identified by:

21505-2684026-1
0333-9326783

ATTESTED

(Signature)
Azmat Ali
23.6.23
Public
Complex Peshawar




DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA
RANO GHARI, CHAMKANI STOP, PESHAWAR

Tel # 091-2650024 / Fax # 091-2260181

E-mail:- dhekpkesh@gmail.com Facebook.com/dhekpkeshwar Twitter.com/dhekpkeshwar1

AUTHORITY LETTER

Mr. Ihtisham, Superintendent (lit), Directorate of Higher Education is hereby authorised to submit the para wise comments in case SA# 734/2023 titled Awais Khan Khattak versus Govt: Khyber Pakhtunkhwa on behalf of respondents.


Director

Directorate of Higher Education,
Khyber Pakhtunkhwa Peshawar

Annex - AA

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IN THE PESHAWAR HIGH COURT, PESHAWAR

W.P No. 496-P /2018

Awais Khan Khattak S/o Liaqat Ali,
R/o Mohallah Qaziyan, Akora Khattak,
Tehsil & District Nowshera.....**Petitioner**

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Higher Education, Civil Secretariat, Peshawar
2. Director Higher Education, G.T Road, Peshawar
3. Principal Government Degree College, Akora Khattak District Nowshera**Respondents**

**WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN, 1973**

Respectfully Sheweth:

1. That father of the petitioner namely Mr. Liaqat Ali was working as Libratory Attendant and appointed on 01.09.1987 in Govt. Degree College, Akora Khattak District Nowshera.



(Copy of the appointment and detailed order is attached as annexure "A").

- 2. That the father of the petitioner retired from service on 01.10.2017. (Copy of service book is attached as annexure "B").
- 3. That the father of the petitioner applied through several application to respondents for appointment of petitioner as a Lab Attendant on retired sons quota, but the respondents facticing the matter and not appoint the petitioner on the Lab Attendant post. (Copy of the application is attached as annexure "C").
- 4. That the petitioner use to visit the office of the respondent No.3 every day and every time was informed that to wait for post.
- 5. That aggrieved with petitioner has came before this Hon'ble Court in this conditional petition on the following grounds amongst the others.

GROUND:-

- A. That the act and action of not appointing the petitioner as "Lab Attendant" on Retired Sons



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quota is against law and facts. Hence untenable in the eyes of law.

- B. That on the seat of the father of the petitioner other person has been appointed but instead of appointing petitioner, on that seat Lab Attendant, clearly un constitutional.
- C. That the respondent has appointed three persons namely Afsar Ali, Shah Zaib and Allah Dad and not intentionally observed the quota reserved for retired class-iv servants in the Department.
- D. That the oral refusal of the respondents by not issuing the appointment order to the petitioner on retired sons quota is totally against law and facts as well as against government policy and rules hence untenable in the eye of law.
- E. That the respondents failed to appreciate the fact that father of the petitioner was working as Lab Attendant in their department and was retired for service on 01.10.2017.
- F. That the respondents failed to appreciate the fact the under the law respondents are bound



(4)


to appoint petitioner on the quota reserved for retired person son.

G. That the respondents are intentionally not appointing the persons on quota reserved for them as well as petitioner due to political interference on matter.

H. That any other grounds will be raised at the time of arguments with the prior permission of this Hon'ble Court.

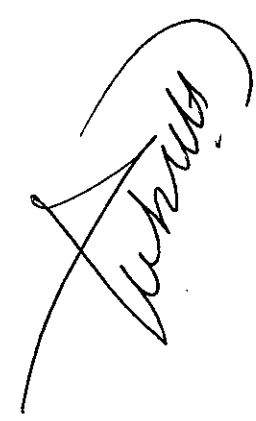
It is, therefore most humbly prayed that on accepting of this Writ Petition, the respondents may kindly be directed to appoint the petitioner on the retired sons quota as Lab Attendant as soon as possible.

Any other relief which this Hon'ble Court deems appreciate in the circumstances of the case and not specifically asked for may kindly also be granted.

Petitioner
Through 

Zafar Ali Khan
Advocate, High Court

Dated 20.01.2018



(5)

CERTIFICATE:-

Certified on instructions of my client that petitioner has not previously moved this Hon'ble Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 regarding the instant matter, thus the filed Writ Petition may kindly be fixed before the Worthy D.B of this Hon'ble Court.

[Signature]
ADVOCATE

LIST OF BOOKS

1. Constitution of Islamic Republic of Pakistan, 1973.
2. Any other law book as per need.

[Signature]
ADVOCATE

[Signature]

Annex-B

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PESHAWAR HIGH COURT PESHAWAR
FORM "A"

ORDER SHEET

Serial No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary
1	2	3
	06.11.2018	<p><u>WP No. 496-P/2018.</u></p> <p>Present:</p> <p>Mr. Zafar Ali Khan, Advocate for petitioner.</p> <p>*****</p> <p><u>ROOH-UL-AMIN KHAN, J:-</u> Through the instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 petitioner seeks employment against the quota reserved for the children of retired employees, as his father got retired from the respondents' department as Laboratory Attendant on 01.10.2017.</p> <p>2. Initially comments of respondents were called for which were submitted, wherein the services of petitioner's father is admitted, however his retirement was controverted on the ground that he had premature retired from service, not on attaining the age of</p>

Subbiah
27/11/2018

Loakus

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		<p>superannuation while according to their policy one of the children of a retiring civil servant on superannuation /invalidation is entitled for employment.</p> <p>3. In view of the above this writ petition being without any substance is dismissed. However, the petitioner may avail any other alternate remedy under the law, if so desired.</p> <p><i>Announced on; 6th of November, 2018</i></p> <p style="text-align: right;"><i>Roo-ul-Amin</i> JUDGE</p> <p style="text-align: right;"><i>[Signature]</i> JUDGE</p>
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Zarshad

(DB) Hon'ble Mr. Justice Rooh-Ul-Amin Khan & Hon'ble Mr. Justice Ishtiaq Ibrahim

[Signature]

Annex - C

12

NOTIFICATION

Subject: **CORRIGENDUM IN R/O LIAQAT ALI, EX. LAB ATTEND, RETIREMENT**

With reference to letter No, 23837/CA-VII/Estt: Branch/A-167/GKKKDC Akora Khattak dated 08-12-2022, for corrigendum in the retirement Notification of Ex-Lab Attendant dated 15-09-2017 in the light of Honorable Supreme court order dated 31-05-2022 for constituting a Medical board furthermore the concerned Ex- Servant Liaqat Ali was Examined by the Medical Board dated 14-11-2022, consisted of four medical officers and senior medical officer as chairmah, as per medical report of the Medical board dated 14-11-2022 declared the concerned Ex-Servant Liaqat Ali as still symptomatic. In the light of medical board report and as per directions of Directorate Higher Education (Letter No mentioned above) retirement of the Ex-Servant Liaqat Ali Lab-Attendant, retirement notification of dated 15-09-2017 is replaced by retirement notification on Medical Grounds (Invalidation retirement).



Principal
Govt: K.K.K. Degree College Akora Khattak

Endst No 548-553, dated 08-12-2022.

Copy forwarded for information & further necessary action:

- 1) Director Higher Education, Khyber Pakhtunkhwa, Peshawar.
- 2) District Account Office Nowshera.
- 3) Coordinator JMC Nowshera, Principal GPGC Nowshera.
- 4) Official concerned.
- 5) In charge Class-IV.
- 6) Office Record.

Principal
Govt: K.K.K. Degree College Akora Khattak



Better Copy

OFFICE OF THE PRINCIPAL
GKKDC AKORA KHATTAK(NSR)

No. _____ Dated 08/12/2022

Notification

Subject: **CORRIGENDUM IN R/O LIAQAT ALI E- LAB ATTEND
RETIREMENT ORDER**

With reference to letter No. 23837/CA-VII/Estt Branch/A-167/GKIKD Akora Khattak and M2IV-4, dated 06.12.2022 for corrigendum in the retirement Notification of Ex-Lab Attendant dated 15.09.2017 in the light of Honourable Supreme Court order dated 31.05.2022 for constituting a Medical Board, furthermore the concerned Ex-Servant Liaqat Ali was Examined by the Medical Board dated 14.11.2022, consisted of four Medical Officers and Senior Medical Officers as Chairman, as per medical report of the medical Board dated 14.11.2022 declared the concerned Ex-servant Liaqat Ali as still symptomatic. in the light of Medical Boated report and as per directions of Directorate of Higher Education (Letter No. mentioned above) retirement of the Ex-servant Liaqat Ali Lab Attendant, retirement Notification of dated 15.09.2017 is replaced by retirement notification on Medical grounds (invalidation retirement).

Principal,

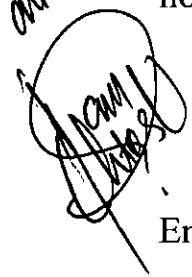
Govt KKK Degree College Akora Khattak

Endst No. 548-553 dated 08.12.2022

Copy forwarded for information and further necessary action:-

1. Director Higher Education Khyber Pakhtukhwa Peshawar.
2. District Account Office Nowshera.
3. Coordinator JMC Nowshera, Principal GPGC Nowshera.
4. Official concerned.
5. In charge Class-IV
6. Office record.

Govt KKK Degree College Akora Khattak

checked


Annex - D



**DIRECTORATE OF HIGHER EDUCATION
KHYBER PAKHTUNKHWA
RANO GHARI NEAR CHAMKANI MOR, PESHAWAR**

-mail:- dhekpesh@gmail.com Facebook.com/dhekpeshawar Twitter.com/dhekpeshawar1

No. 22837 /CA-VII/Estt: Branch/A-167/GKKKDC Akora Khattak M21 V-4 Dated Peshawar the 6 /12 /2022

To

The Principal,
Government Khushal Khan Khattak College,
Akora Khattak (Nowshera).

Subject: - REQUEST FOR APPOINTMENT IN LIGHT OF SUPREME COURT OF PAKISTAN ORDER DATED 31.05.2022 AND MEDICAL BOARD REPORT DATED 21.11.2022.

Respected Sir, السلام عليكم

I am directed to refer to the subject noted above and to enclose herewith a copy of application along with Judgement of the Honorable Supreme Court of Pakistan and a report of the Standing Medical Board in respect of Mr. Liaqat Khan father of the Petitioner Mr. Awais Khan Khattak, with the request to make corrigendum in the retirement notification of the official concerned and accordingly consider the petitioner for appointment as Class-IV under 100% Medical Invalidation Quota, please.

(Gohar Khan)

DEPUTY DIRECTOR (ESTABLISHMENT)

Endst. No 22837 / Estt: Branch/A-167/ GKKKDC Akora Khattak M21 V-4

Copy of the above is forwarded to P.S to Secretary Higher Education Archives & Libraries Department, Peshawar.

DEPUTY DIRECTOR (ESTABLISHMENT)

Annex - E

14-7-7

OFFICE OF THE PRINCIPAL
G.K.K.D.C. AKORA KHATTAK (NSR)
E-mail: gs_akora@yahoo.com Phone: (0923)633263
NO _____ Dated 05/01/2023.

OFFICE ORDER:

Consequent upon the Supreme Court order and subsequent recommendations of the Selection committee, the Competent Authority is pleased to appoint Mr. Awais Khan S/O Liaqat Khan as Chowkidar BPS-03, against vacant post under 100% medical invalidation quota with effect from taking over charge of the post with the following terms and conditions.

Terms & conditions

1. His appointment is subject to the production of Medical fitness certificate from District Head Quarter Hospital Nowshera.
2. He will be initially, on probation for a one year.
3. His services shall be governed under the service rules & regulations of the Provincial Government applicable to the Government employees of the same category.
4. His services are liable to terminated on one-month prior notice from either side. In case of resignation from the service, one-month prior notice will be given by the civil servant or in lieu thereof one month's salary, if any, shall be forfeited.
5. His appointment is subject to the verification of character & antecedents to the satisfaction of the appointing authority. His services will be liable to be terminated without any notice if they are not found fit subsequently.
6. His documents if needed, have to be verified from the concerned departments & if found incorrect, his services shall stand cancelled.
7. He is required to report for duty within 30 days of the issue of this order positively otherwise his appointment shall stand cancelled.
8. Charge reports shall be submitted to all concerned.
9. No TA/DA is allowed on joining the post.

Principal
Govt: K.K.K. Degree College Akora Khattak

Endst No 586-592, dated 05-01-2023.

Copy forwarded for information & further necessary action:

- 1) Director Higher Education, Khyber Pakhtunkhwa, Peshawar.
- 2) District Account Office Nowshera.
- 3) Coordinator JMC Nowshera, Principal GPGC Nowshera.
- 4) Copy to Manager Employment Exchange District Nowshera.
- 5) Appointee concerned.
- 6) In charge Class-IV.
- 7) Office Record.

Principal
Govt: K.K.K. Degree College Akora Khattak
Govt: K.K.K. D.C.
Akora Khattak

(Handwritten signature)

Government of Khyber Pakhtunkhwa
District Accounts Office Nowshera
Monthly Salary Statement (April-2023)



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Annex F

Personal Information of Mr AWAIS KHAN d/w/s of LIAQAT KHAN

Personnel Number: 01021809 CNIC: 1720198919867 NTN:
Date of Birth: 03.02.1990 Entry into Govt. Service: 05.01.2023 Length of Service: 00 Years 03 Months 027 Days

Employment Category: Active Permanent

Designation: CHOWKIDAR 80003625-GOVERNMENT OF KHYBER PAKH
DDO Code: NR4034-GOVT COLLEGE AKORA
Payroll Section: 001 GPF Section: 001 Cash Center:
GPF A/C No: Interest Applied: No GPF Balance: 3,080.00
Vendor Number: -
Pay and Allowances: Pay scale: BPS For - 2022 Pay Scale Type: Civil BPS: 03 Pay Stage: 0

Wage type	Amount	Wage type	Amount
0001 Basic Pay	14,260.00	1001 House Rent Allowance 45%	2,120.00
1210 Convey Allowance 2005	1,785.00	1300 Medical Allowance	1,500.00
2311 Dress Allowance - 2021	1,000.00	2312 Washing Allowance 2021	1,000.00
2313 Integrated Allowance 2021	600.00	2341 Dispr. Red All 15% 2022KP	1,442.00
2347 Adhoc Rel Al 15% 22(PS17)	1,442.00		0.00

Deductions - General

Wage type	Amount	Wage type	Amount
3003 GPF Subscription	-770.00	3501 Benevolent Fund	-600.00
3534 R. Ben & Death Comp Fresh	-300.00	3541 DC Pension Emp KP 2022	-1,426.00
3990 Emp. Edu. Fund KPK	-70.00		0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 0.00 Recovered till April-2023: 0.00 Exempted: 0.00 Recoverable: 0.00

Gross Pay (Rs.): 25,149.00 Deductions: (Rs.): -3,166.00 Net Pay: (Rs.): 21,983.00

Payee Name: AWAIS KHAN
Account Number: 000290736898
Bank Details: UNITED BANK LIMITED, 210290 Akora Khattak Branch Akora Khattak Branch, Nowshera

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address: City: NOWHSERA Domicile: NW - Khyber Pakhtunkhwa Housing Status: No Official
Temp. Address: City: Email:

(132584/26.04.2023/12:37:05) 2) All amounts are in Pak Rupees 3) Errors & omissions excepted

Handwritten signature and stamp of the District Accounts Officer, Nowshera.

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Annex - G

DIRECTORATE OF HIGHER EDUCATION

KHYBER PAKHTUNKHWA

RANO GHARI NEAR CHAMKANI MOR, PESHAWAR

E-mail:- dhekpsh@gmail.com Facebook.com/dhekpshawar Twitter.com/dhekpshawar1

No. 4537 /CA-VII/Estt: Branch/A-167/GDC Akora Khattak (Nowshera) M 21 V-1 P-186 Dated Peshawar the 13/03 /2023

To

The Principal,
Government Khushal Khan Khattak Degree College,
Akora Khattak (Nowshera).

Subject: - REQUEST FOR APPOINTMENT ON THE POST OF NAIB QASID/LAB ATTENDANT INSTEAD OF CHOWKIDAR.

Respected Sir, السلام عليكم

I am directed to refer to your Letter No. 636 Dated 20-02-2023 on the subject noted above and to enclose herewith a copy of Notification No. SO(R-VI)E&AD/1-3/2015 Dated 19-04-2016 of Establishment Department (Regulation Wings) Government of Khyber Pakhtunkhwa wherein it has been clarified that the appointment under Deceased/Medical Invalidation Quota (100%) shall be made subject to the availability of a vacant post. In the subject case a post of Chowkidar was vacant against which the appellant Mr. Awais Khan Khattak, Chowkidar was appointed. Hence he may be informed accordingly, please.

Encl: As Above

(Gohar Khan)

DEPUTY DIRECTOR (ESTABLISHMENT)

Endst. No. 4538 /

Copy of the above is forwarded to the Mr. Awais Khan Khattak, Chowkidar, Government Khushal Khan Khattak Degree College, Akora Khattak (Nowshera) w/r to his application.



DEPUTY DIRECTOR (ESTABLISHMENT)

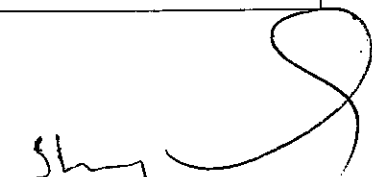
NAME OF THE COLLEGE: Govt: Khushal Khan Khattak Degree College Akora Khattak (Nowshera)
MONTHLY STATISTICAL RETURN DEC-2022 Email Address of Statistical Branch: stat.higher.edu@gmail.com
DDO CODE OF COLLEGE: NR-4034

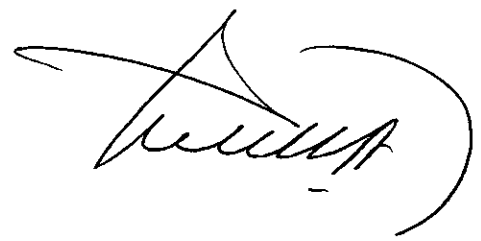
Sanctioned & Working Ministerial Staff Strength

Ministerial Staff	Sanction Posts	Filled/Working Posts	Vacant Posts	Remarks
Superintendent B-17	0	0	0	Show Detail of Surplus/Filled Post
Assistant B-16	1	1	0	
Senior Clerk B-14	1	1	0	
Junior Clerk B-11	1	1	0	
Lab Assistant B-7	3	3	0	
Pesh Imam B-9	0	0	0	
Others	0	0	0	

Category wise/ Grade wise Sanction Post of all kind of Class-IV Staff

Class-IV Staff	Sanction Posts	Filled/Working Posts	Vacant Posts	Remarks Show Detail of Surplus/Filled Post
Chowkidar	2	1	1	
Sweeper	2	2	0	
Mali	1	1	0	
Naib Qasid	2	2	0	
Lab Att	3	3	0	
Behashti	1	1	0	


Principal
Govt: K.K.K. Degree College
Akora Khattak (Nowshera)



ANNEX-H