

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No 1565/2022

Mst;Shagufta Bibi PST (BPS-12

R/O Rahim Ud Din Killi P.O Sakhakot Dargai Malakand

.....**APPELLANT**

VERSUS

- 1 The Secretary (E &SE) Department, Khyber Pakhtunkhwa Peshawar.
- 2 The Director (E &SE) Department Khyber Pakhtunkhwa, Peshawar.
- 3 The District Education Officer (Female) District Malakand at Batkhela.

.....**RESPONDENTS**

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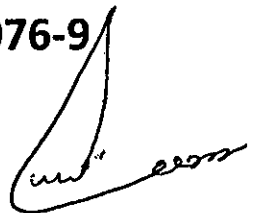
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Deponent

CNIC # 15302-0865076-9

NAEEM KHAN

Superintendent



Office of the DEO (F) Malakand

Mobil No 0344-9772160

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**Service Appeal No 1565/2022****Mst;Shagufta Bibi PST (BPS-12****R/O Rahim Ud Din Killi P.O Sakhakot Dargai Malakand.****.....APPELLANT****V E R S U S**

- 1 The Secretary (E &SE) Department, Khyber Pakhtunkhwa Peshawar.
- 2 The Director (E&SE) Department Khyber Pakhtunkhwa Peshawar
- 3 The District Education Officer (Female) District Malakand at Batkhela.

.....RESPONDENTS**PARA WISE COMMENTS ON BEHALF OF THE RESPONDENTS 1 TO 3.****Respectfully Sheweth;-****Preliminary Objection****ON FACT**

1;- Correct to the extent that the appellant is working as PST, but in-correct her statement recording her duty. She remained absent on the basis of fake medical certificate and as a result she was removed from service. Fake- bogus medical Certificate /Verification are Annexed. (A & B)

2;- As stated in the above para No 1, the real position of medical certificate has been discussed and need no more discussion.

3;- As stated earlier, the medical leave certificate is a self-made story and misleading her favor.

4;- As stated by appellant her self, the show cause notice was issued with the mentioned allegation (Long absence, fake medical certificate and misuse of Fund)

Show cause notice is Annexed as (C)

5;- Correct to the extent that the appellant was removed from service due to her long absence and misconduct against this order, the appellant challenged it in this Hon,ble Tribunal through S.A No 1038/2016. It was decided that appellant be Re-instated and a De-novo inquiry be made in connection to back benefits. As a result the appellant was Re-instated Vide Order No 5541-47 dated 28-10-2019. As the second part of the judgment as concerned a De-novo inquiry was made and found that the appellant remained will full absent w.e.f. 01-9-2015 to 31-12-2015. It is pertinent to mention here that it is the period which the appellant considered as (MEDICAL LEAVE) and the real position of this

leave is already discussed as (FAKE) in the forgoing paras. It is further stated that according to prayer of the appellant, that the appellant may be Re-instated w.e.f. 06-06-2016. The appellant clam her salaries and other emoluments for the mentioned period. In this regard a very strong authority exists as 2003 S.C M 228 Citation (a) Civil Service.....Pay entitlement to.....when there is no Work, there is No Pay. Authority is Annexed as (D)

It is further stated that the appellant tried to mis-guide this Hon,ble Tribunal by her tricks which is not a good practice.

Judgments in the S.A 1038/2016 is Annexed (E)

6;- Correct to the extent that the appellant was Re-instated but her claim of the date i.e. 06-06-2016 was denied due to the reason of her absence. The period 06-06-2016 to 29-8-2019 was passed in the litigation and the appellant remained ABSENT From duty.

7;- As explained in the above para, when there is no work, there is no pay, the appellant has no right for the salaries, she remained without performing duty at any station.

8;- No comments.

OBJECTION ON GROUND

A;- In correct and not admitted. She was proved guilty of being absent and was declared as ineligible for the salaries for the period when she did not perform her duties.

B;- As explained that the medical certificate regarding MATERNITY LEAVE was fake and self made,which is already annexed.

C;- As stated time and again, the appellant tries from every angle to prove her false statement as true but have no any reasonable proofs. She remained absent, killed the precious time of the innocent kids, deprived them from their fundamental right of free and compulsory education as mentioned in Article 25 A of the constitution of Pakistan.

D;- Incorrect and not admitted, the para is only repetition. The De-novo inquiry declared the appellant absent and there was no doubt in this connection.

E;- As the judgment in the mentioned appeal was announced on 28-10-2019,the appellant was Re-instated from that day.

If this Hon,ble Tribunal deems fit her re-instatement from 06-06-2016, will be followed but as the question of salaries for the absent period is concerned, has already replied in the light of Supreme Court Judgment.

F;- In correct and not admitted it was the fault on the appellant side, that she submitted fake medical certificate and if the appellant consider the same certificate genuine,the Medical Officer concerned of RHC Sakhakot District Malakand be called along with record to provide real situation. Perhaps the Doctor statement will provide satisfaction to the appellant and the real position

will help the parties. Moreover it will save the precious time of this Hon,ble Tribunal as well as the education department.

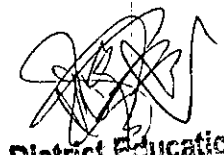
G;- In correct and not admitted the superior court has a strong authority in this regard, which has been already discussed in the forgoing paras. There is no any chance in favor of the appellant for salaries for the period of absentee.

H;- In correct and not admitted the appellant cries over spilt milk. There is a strong proof of fake medical certificate, and the whole story is standing on the basis of false statement.

I;- The respondent also seek permission of this Hon,ble Tribunal to advance other grounds and proof at the time of hearing.

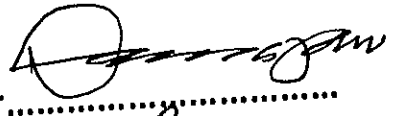
PRAYERS

As explained, the whole story is self made and fake, may please be dismissed.

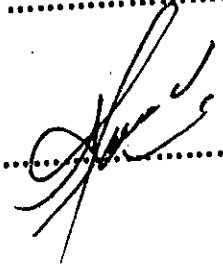


District Education Officer
(F) Malakand at Peshawar

Respondent No 3 D.E.O (F) Malakand.....



Respondent No 2 Director of (E & SE) Peshawar.....



Respondent No 1 Secretary (E&SE) Peshawar.....

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No 1565/2022

Mst;Shagufta Bibi PST (BPS-12

R/O Rahim Ud Din Killi P.O Sakhakot Dargai Malakand.

.....APPELLANT

VERSUS.

EDUCATION DEPERATMENT

AFFIDAVIT

I, do hereby solemnly affirm and declare on oath that all the contents of the accompanying parawise comments are true and correct to the best of my knowledge and belief and all the coddle formalities were fulfillle

Attested


Irshad Hussain
Oath Commissioner
Distt: Courts Malakand
NO. _____ Date 18-8-2023



DISTRICT EDUCATION OFFICER

(FEMALE) MALAKAND AT BATKHELA

Amxx-A P-5

45 1/6 / 29-12-2015

Medical No. 2 Rs.

OUT-PATIENTS DEPARTMENT

NAME.....
YEARLY NO.....
DATE.....

No. Rs. 3/-
OUT-PATIENTS DEPARTMENT

NAME Wajid Ahmad Khan
YEARLY NO. 578
DATE 17-11-2015
DISEASE.....

FACE VALUE RUPEES 3/-

This pt Mrs Shagufta is advised to have

Postnatal maternity leave of 45 days i.e from 15/11/2015 to

29/12/2015
Dr. Manjama Khanna
M.O RHC Sakhalot
17/11/2015

ATKSTU

Naeem Khan
Supdt: BPS-17
SDEO (F) Bathhela

P.T.C.

Naeem Khan
Supdt: BPS-17
SDEO (F) Bathhela

Handwritten signature

Handwritten notes in Urdu

Handwritten notes in Urdu

DR. SAADAT AHWAF
S.M.O R.H.I
Sakinkori

Handwritten notes in Urdu

Handwritten notes in Urdu
23/12/2015
SM, H/C RHC
Sakinkori

Handwritten notes in Urdu

Handwritten notes in Urdu
12-11-2015
SM, H/C RHC
Sakinkori

D.F. (F)

Annex B

SHOW CAUSE NOTICE

I, Dilshad Begum District Education Officer (F) Malakand, as a competent authority under the Khyber Pakhtunkhwa Government servant (E&D) Rules 2011 do hereby serve upon you Mst. Shagufta PST GGPS No.1 Khanori District Malakand.

As per inquiry report submitted by the SDEO(F) Swat Ranizai at Batkhela vide her office memo: No.834 dated 6.01.2016 now and your written statement that you have directed your duty assigned to you being a Primary School Teacher.

Ongoing through the materials on record and other connected papers, I am satisfied that you have committed the following acts/omissions specified in rule-3 of Khyber Pakhtunkhwa Civil Servant (E&D) rules 2011.

- (a) Absence from duty. According to the enquiry that the school remained closed since long and you come to school after the expiry of three/four months and then marked your signature in the teachers attendance register for three/four months on the same day.
- (b) Guilty of misconduct and applied for maternity leave with effect from 29.9.2015 to 14.11.2015 vide O.P.D slip No.1874 dated 29.9.2015 and w.e from 15.11.2015 to 29.12.2015 vide RHC Sakhakot O.P.D slip No.528 dated 12.11.2015 are verified from the Incharge Doctor were found Fake and bogus.
- (c) PTC Funds have been allotted to the school, but no repair/work has been done in the last three years up till now.

2. (i) On the basis of the afore mentioned valid grounds and facts, the undersigned being the competent authority in exercise of the powers conferred under Rules-5(1)(a) of the Khyber Pakhtunkhwa (E&D) Rules, 2011, deem it un-necessary to conduct inquiry and therefore, decided to dispense with the inquiry procedure required under Rules-10(1) of the rules ibld.

(ii) As a result thereof, I as competent authority, have tentatively decided to impose upon you the major penalty of Removal from service under rules 4 (b) (iii) of the Khyber Pakhtunkhwa Civil Servants (E&D) Rules 2011.

You are therefore, directed to furnish your reply to the show cause notice as to why the Aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

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

COMPETENT AUTHORITY
DISTRICT EDUCATION OFFICER (FEMALE)
MALAKAND AT BATKHELA.

Endst: No. 295-47 /FNo/Complaint/PST (F)/

Dated 21/01 /2016.

Copy of the above is forwarded to:-

1. The P/A to Director Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
2. The SDEO(F) Swat Ranizai at Batkhela w/r to her office memo: No.834 dated 6.01.2016 and with the direction to serve the said show cause notice on the accused teacher.
3. Mst. Shagufta PST GGPS No.1 Khanori Malakand with the remarks, that her reply should reached to this office within seven days positively.

Supdt:-
Served the notice to the
concerned teacher through ASDEO
circle concerned

26/1/2016

Received
28/1/2016

DISTRICT EDUCATION OFFICER (FEMALE)
MALAKAND AT BATKHELA.

Attest

Naeem Khan
Supdt: BPS-17
SDEO (F) Batkhela

2003 S C M R 228

[Supreme Court of Pakistan]

Present: Syed Deedar Hussain Shah and Tanvir Ahmed Khan, JJ

Syed NIAZ HUSSAIN SHAH BUKHARI, TECHNICIAN (PROCESS)---Petitioner

versus

OIL AND GAS DEVELOPMENT CORPORATION LIMITED through Chairman, OGDC
Head Office, Islamabad---Respondent

Civil Petition For. Leave to Appeal No-51 of 2002, decided on 11th September, 2002.

(On appeal from judgment dated 2-11-2001 passed by the Federal service Tribunal, Islamabad. in
Appeal No. 1076(R)CE of 2000)

(a) Civil service-

---Pay, entitlement to---When there is no work, there is in no pay.

(b) Civil service-

--- Salary, refund of---Civil servant after obtaining stay order against his transfer was allowed to continue his duties at. original place. where he was paid salary for about three years. ---Authority deducted from salary of civil servant the amount paid to him as salary for the period when he remained absent from duty---Service Tribunal dismissed appeal of civil servant-- Validity---Civil servant had not performed his duties either at original place or at transferred place, thus, was not entitled to salary---Period for which refund of salary was effected from civil servant was the period for which, he had not worked---When there was no work, there was no pay---Recovery had rightly been effected from civil servant---Impugned judgment was not open to exception as there was no jurisdictional error or misconstruction of facts and law---No substantial question of law of public importance as envisaged under Art. 212(3) of the Constitution was made out---Supreme Court dismissed petition for leave to appeal in circumstances---Constitution of Pakistan (1973), Art. 212(3).

Sadiq Muhammad Warraich, Advocate Supreme Court and Ejaz Muhammad Khan,
Advocate-on-Record (absent) for Petitioner.

Sardar Muhammad Aslam, Dy. A.G. and M.S. Khattak, Advocateai-Record for Respondent.


Date of hearing: 11th September, 2002.

JUDGMENT

SYED DEEDAR HUSSAIN SHAH, J.---Petitioner seeks leave to appeal against that judgment of

1 of 3

2/24/2016 12:52 AM

Attst


Naeem Khan
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SDEO (F) Bathinda

imposed major penalty of removal from service vide order dated 06.06.2016 on
the allegation of absence from duty. The appellant filed departmental appeal on

the Federal Service Tribunal., Islamabad (hereinafter referred to as the Tribunal) passed in Appeal No. 1076(R)CE of 2000 dated 2-11-2001, whereby appeal filed by the petitioner was dismissed.

2. Briefly stated that facts of the case are that on 4-7-1994, the petitioner was transferred from Missa Kiswal to Peer Koh. He felt that transfer order so issued was mala fide and he was punished being the Union Official of the respondent/Corporation, therefore, he approached the NIRC for restraining the order under Regulation 32 of NIRC Procedure and Functions and Regulations; 1974 and a stay order against his transfer to Peer Koh was granted and he was allowed to continue and perform his duties at Missa Kiswal and also paid his salary that after about 3 years the respondent started deductions from the salary of the petitioner i.e. the amount which had been paid to him as salary, during the period he worked at Missa Kiswal on the strength of the stay order of NIRC.

3. Feeling aggrieved, the petitioner approached the Tribunal by way of appeal, which was dismissed. Hence, this petition.

4. We have heard Ch. Sadiq Mohammad Warriach, learned counsel for the petitioner, who, inter alia, contended that that petitioner's absence from duty from 2-7-1994 to 8-8-1994 and 5-10-1994 to 10-9-1996 was wrongly treated as Extra Ordinary Leave (EOL) and the Office Memorandum dated 13-2-1999 issued by the respondent/Head Office may be cancelled; that the Tribunal had not exercised its jurisdiction fairly and the recovery/deduction of the amount already drawn by the petitioner from the respondent is unwarranted.

5. Sardar Muhammad Aslam, learned Dy.A.G. vehemently controverted the contention of the learned counsel for the petitioner and pointed out that no doubt NIRC issued an injunction to the petitioner but the same was re-called by the Tribunal on 18-8-1996. He has also referred to the appeal of the petitioner which is at page 57 of the paper book, in which he has stated as under:

"I had reported for duty at Pirkoh Gas Field. Therefore, regularizing the period of stay, ordered by the Court as E.O.L is injustice with me."

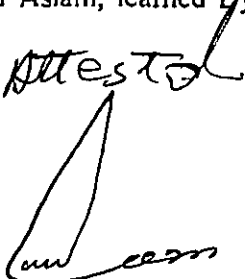
On his application office submitted summary to the Chief Personnel Officer of the respondent/Corporation, which reads as under:

"(70) Reference para-180/N, it is submitted that as per message No.MK.1331 dated 26-11-1999 (PR244/Cor.) O.M.(F), Missa Kiswal, Mr. Niaz Hussain Shah was relieved from Missa Kiswal Oil Field, for Pirkoh Gas Field. He neither reported at Pirkoh nor at Missa Kiswal Oil Field, after getting stay order from NIRC. O.K(F), Missa Kiswal Oil Field, did not confirm whether he performed any official duty during his stay (off & on) at Missa Kiswal. Mr. Niaz Hussain neither claimed any field benefit like messing/D.A. and Rota facilities nor paid by the Location Incharge due to his non-performance of any duty.

"(71) In view of above, if approved by Manager (Personnel), his request may be regretted in the light of earlier decision as per para. 141-A, please."

The perusal of the above document shows that the petitioner did not perform his usual duties and was not entitled to salary as claimed by him.

6. Sardar Muhammad Aslam, learned Dy.A.G. further pointed out that recovery was already been

Attested

Naeem Khan
Supdt: BPS-17
SDEO (F) Bathhela

effected from the petitioner and that Office Memorandum referred to hereinabove was entirely in accordance with the O.G.D.C. Service Regulations, 1974. It was also pointed out by him that the petitioner in due course of service has already been promoted , to his Managerial post. ,

7. We have considered the arguments of the learned counsel for the parties and have carefully examined the record, which shows that the period for which recovery of refund of the salary was effected from the petitioner was the period for which he did not work. By now, it is settled law that when there is no work there is no pay. The petitioner did not perform his' i duties as mentioned hereinabove and recovery was rightly effected from him; thereafter, he was promoted to the post of Manager. The impugned judgment is entirely based on proper appreciation of the material available with the Tribunal. We further find that there is no jurisdictional error or misconstruction of facts and law. The impugned judgment is not open to exception.

8. Moreover, a substantial question of law of public importance, as envisaged under Article 212(3) of the Constitution, is not made out.

9. For the facts, circumstances and reasons stated hereinabove, we are of the considered opinion that this petition is without merit and substance, which is hereby dismissed and leave to appeal declined.

S.A.K./N-100/S

Petition dismissed.



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2/24/2016 12:52 A.

imposed major penalty of removal from service vide order dated 06.06.2016 on

Annex-E

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 1038/2016

Date of institution ... 06.10.2016

Date of judgment ... 30.08.2019



Mst. Shagufta Bibi, Ex:PST (BPS-12),
GGPS Khanori No. 1, District Malakand

... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
2. The Director (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (F), District Malakand.
4. The District Account Officer, District Malakand. ... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 06.06.2016 WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE WAS IMPOSED ON THE APPELLANT WITHOUT CONDUCTING REGULAR INQUIRY IN THE MATTER AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

Mr. Noor Muhammad Khattak, Advocate

.. For appellant.

Mr. Muhammad Jan, Deputy District Attorney

.. For respondents.


Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. HUSSAIN SHAH

.. MEMBER (EXECUTIVE)

ATTESTED

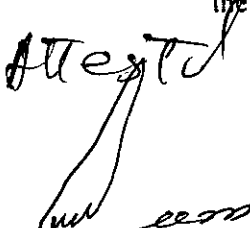

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the

appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Education Department as Primary School Teacher. She was imposed major penalty of removal from service vide order dated 06.06.2016 on the allegation of absence from duty. The appellant filed departmental appeal on



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24.06.2016 which was not responded hence, the present service appeal on 06.10.2016.

3. Respondents were summoned who contested the appeal by filing of written reply comments.

4. Learned counsel for the appellant contended that the appellant was appointed as Primary School Teacher in the year 2010. It was further contended that the appellant was performing her duty regularly without any complaint. It was further contended that the appellant was imposed major penalty of removal from service via order dated 06.06.2016 but neither charge sheet, statement of allegation was served or framed upon her nor proper inquiry was conducted nor any show-cause notice along with copy of inquiry was handed over to her. It was further contended that neither any absence notice was issued to the appellant nor any absence notice/show-cause notice was published in two newspaper as required under rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rule, 2011 therefore, the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set aside. It was also contended that the alleged absence period was also for a short period of 2/3 months therefore, the major penalty of removal from service is very harsh as the appellant was having more than six years service in her credit therefore, prayed for acceptance of appeal.

*6/07-8-02
30
M. Amin
12/11*

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving as Primary School Teacher in Education Department. It was further contended that the appellant has produced fake medical prescription and remained absent from duty without permission of lawful authority. It was further contended that all the codal formalities were fulfilled before imposing major penalty of removal from service therefore, the competent

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Naeem Khan
Naeem Khan
Supdt: BPS-17
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authority has rightly imposed major penalty of removal from service and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Education Department as Primary School Teacher. She was imposed major penalty of removal from service on the allegation of absence from duty without permission of lawful authority but the record reveals that neither charge sheet, statement of allegation was served upon the appellant nor proper inquiry was conducted nor any show-cause notice alongwith copy of any inquiry report was handed over to the appellant nor any absence notice was issued by the competent authority to her nor any advertisement regarding her absence was published in two newspaper as required under rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rule, 2011 therefore, the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside. As such, we partially accept the appeal, set-aside the impugned order and reinstate the appellant into service without back benefits. However, the respondent-department are at liberty to conduct de-novo inquiry in the mode and manners prescribed under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rule, 2011 within a period of ninety days from the date of copy of receipt of this judgment. The issue of back benefits will be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
30.08.2019

Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Hussain Shah
Certified to be true copy (HUSSAIN SHAH)
MEMBER
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 30-08-19
Number of Words 1200
Copying Fee 16-00
Urgent —
Total 16-00
Name of Copyist [Signature]
Date of Completion of Copy 30-09-19
Date of Delivery of Copy 30-09-19

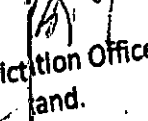
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AUTHORITY LETTER.

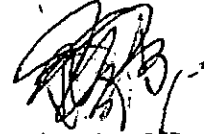
I District Education Officer (Female) Malakand do hereby authorize Naeem Khan Supdtt:
O/O of the undersigned to attend the Khyber Pakhtunkhwa Service Tribunal in connection with
filling of Para-wise comments in service appeal No.1565/2022 title of Mgufta Bibi VS Govt: of
Khyber Pakhtunkhwa Peshawar.


District Education Officer (Female),
Malakand.

District Education Officer
Malakand

AUTHORITY LETTER.

I District Education Officer (Female) Malakand do hereby authorize Mr, Naeem Khan Supdtt:
O/O of the undersigned to attend the Khyber Pakhtunkhwa Service Tribunal Court in connection with
filling of Para-wise comments in service appeal No.1565/2022 titled pf Mst: Shagufta Bibi VS Govt: of
Khyber Pakhtunkhwa Peshawar.



District Education Officer (Female),
Malakand.

**District Education Officer
Female Malakand**