

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1232/2016

Date of Institution ... 09.12.2016

Date of Decision ... 19.04.2018

Harir Sultan; D/o Syed Walayat Ali Shah, Laboratory Assistant (BPS-7), Govt. Girls High School And Khel, Orakzai Agency. ... (Appellant)

VERSUS

1. The Agency Education Officer, Orakzai Agency at Hangu and 2 others. ... (Respondents)

MR. KHUSH DIL KHAN,  
Advocate

--- For appellant.

MR. KABIRULLAH KHATTAK,  
Additional Advocate General

--- For respondents.

MR. AHMAD HASSAN,  
MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER (Executive)  
--- MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The brief facts are that she was appointed as Laboratory Assistant against deceased Quota vide order dated 30.03.2015. She submitted arrival report on 31.03.2015 and started performing duty. Monthly salaries were also paid to the appellant as per pay roll available on record. That vide impugned order dated 17.08.2016 major penalty of removal from service was imposed on her. She preferred departmental appeal on 31.08.2016, which was not responded within the stipulated period, hence, the instant service appeal.

### ARGUMENTS

3. Learned counsel for the appellant argued that she was appointed as Laboratory Assistant against deceased employee quota vide order dated 30.03.2015. She submitted arrival report on 31.03.2015 and started performing duty. Monthly salaries were also received by the appellant, as per pay roll available on file. That vide impugned order dated 17.08.2016 major penalty of removal from service was imposed on her. The main charges leveled against her were that she did not possess the required qualification at the time of her appointment. As regular inquiry in the mode and manner prescribed in the rules was not conducted, so she was not treated according to law and rules. Charge sheet and statement of allegations were not served on her. All the proceedings were carried at the back of the appellant. Reliance was placed on Case Law reported as 2000 SCMR 1743 and PLD 2011 Peshawar 47.

4. Learned Additional Advocate General argued that as reported by the locals of the area the appellant was not the widow of late Syed Jihad Hussain. The appellant was the wife of Syed Arbab Hussain. As such she was not eligible to be considered for appointment against deceased quota. A committee was also constituted to verify the documents produced by the appellant. After scrutiny it was found that the appellant was illegally appointed. She lacked the basic requisite qualification for appointment as Laboratory Assistant. All codal formalities were observed before imposition of major penalty of removal from service.

### CONCLUSION

5. It is clear beyond doubt that her appointment was made by the Agency Education Officer Orakzai Agency, at Hangu, after fulfillment of all codal formalities. It was the responsibility of Respondent No. 1 to have scrutinized her testimonials before appointment. In this case the Peshawar High Court, Peshawar

held that order passed by an authority against interest of a person without providing him an opportunity of hearing would be an illegal order. In addition to above the appellant served the department for more than an year and as such vested rights accrued in her favour so her case is also covered under the principle of Locus Poenitentiae. We are of the view that action taken by the respondent is illegal, unlawful and not tenable in the eyes of law. Careful perusal of appointment order revealed that fact finding enquiry committee was constituted to dig out facts pertaining to the qualification possessed by her and whether she was eligible for appointment as Lab Assistant. The enquiry committee in its recommendations proposed withdrawal of appointment order dated 30.03.2015. Recommendations of the enquiry committee are in line with the procedure invogue for dealing with similar nature cases. However, in this case vide impugned order date 17.08.2016 major penalty of removal from service was imposed on her without observing codal formalities. Neither proper inquiry was conducted under the rules nor any opportunity of showing cause was afforded to the appellant. As such she was condemned unheard.

6. As a sequel to above, the appeal is accepted and the impugned order is set aside. The respondents are directed to conduct proper inquiry as per procedure invogue in the relevant rules within a period of 90 days after receipt of this judgment. Parties are left to bear their own costs. File be consigned to the record room.


  
(AHMAD HASSAN)  
MEMBER


  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

ANNOUNCED  
19.04.2018

14.02.2018

Agent to counsel for the appellant and Assistant AG for respondents present. Due to general strike of the bar, the case is adjourned. To come up for arguments on 19.04.2018 before D.B.

  
(Ahmad Hassan)  
Member(E)

  
(M. Hamid Mughal)  
Member(J)

Order

19.04.2018

Counsel for the appellant and Additional A.G. for respondents present. Arguments heard and record perused.

Vide detailed judgment of today of this Tribunal placed on file, the appeal is accepted and the impugned order is set aside. The respondents are directed to conduct proper inquiry as per procedure invogue in the rules after receipt of this judgment. Parties are left to bear their own cost. File be consigned to the record room.

Announced:  
19.04.2018

  
(AHMAD HASSAN)  
Member

  
(MUHAMAMD AMIN KHAN KUNDI)  
Member

22.05.2017

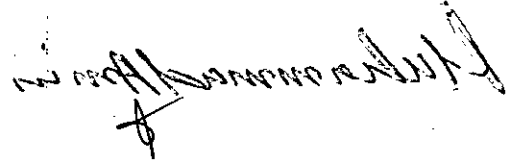
Agent to counsel for the appellant and Mr. Muhammad Adeel Butt, Additional AG for the respondent present. Agent to counsel for the appellant submitted rejoinder which is placed on file. To come up for arguments on ~~14.9.2017~~ before D.B.

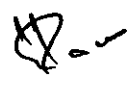
  
(Gul Zeb Khan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

14.09.2017

Junior to counsel for the appellant present. Learned Additional Advocate General for the respondents present. Junior to counsel for the appellant seeks adjournment on the ground that learned counsel for the appellant is not available today. adjourned. To come up for arguments on 13.12.2017 before D.B.

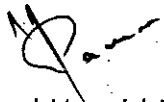
  
Member  
(Executive)

  
Member  
(Judicial)

13.12.2017


Appellant in person present. Learned AAG for the respondents present. Appellant requested for adjournment as his counsel is not available. Adjourned. To come up for arguments on ~~14.02.2018~~ before D.B

  
(Gul Zeb Khan)  
MEMBER

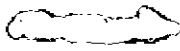
  
(Muhammad Hamid Mughal)  
MEMBER


17.04.2017

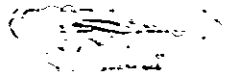
Appellant in person and Mr Daud Jan Supdt, alongwith Addl, AG for the respondents No. 1 and 2 present. Written reply submitted on behalf of respondents No. 1 and 2. None present on behalf of respondent no. 3 hence, proceeded ex-parte. To come up for rejoinder and arguments on 22.05.2017

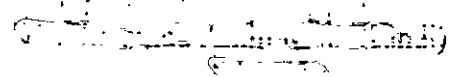
  
(Muhammad Amin Khan Kundi)

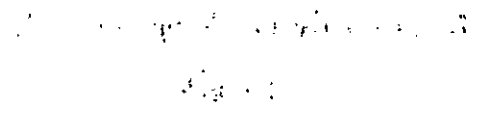
Member



  
The appellant requested for time to file rejoinder.  
The court granted time to the appellant and the respondent.  
The court granted time to the appellant and the respondent.







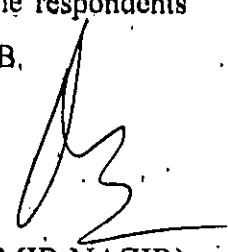
22.12.2016

Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal, the appellant has impugned order dated 17.08.2016 vide which the appellant was awarded major penalty of removal from service. Against the impugned order the appellant filed departmental appeal on 31.08.2016 which was not responded within the statutory period, hence the instant service appeal.

Since the instant appeal is within time and matter required further consideration of this Tribunal therefore, the same is admitted for regular hearing, subject to deposit of security and process fee within 10 days. Notices be issued to the respondents for written reply/comments for 30.01.2017 before S.B.

Appellant Deposited  
Security & Process Fee

27.12.2016



(MUHAMMAD AAMIR NAZIR)  
MEMBER

30.01.2017

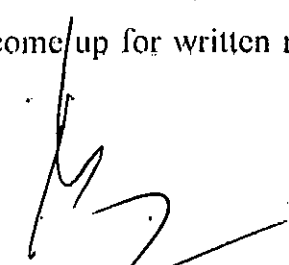
Counsel for appellant and Mr. Muhammad Adeel Butt, Additional AG for respondents present. Written reply by respondents not submitted. Learned Additional AG requested for further time for submission of written reply. To come up for written reply/comments positively on 06.03.2017 before S.B.



(ASHFAQUE TAJ)  
MEMBER

06.03.2017

Clerk to counsel for the appellant and Mr. Daud Jan, Superintendent alongwith Addl: AG for respondents present. Written reply not submitted. Requested for adjournment. Request accepted. To come up for written reply/comments on 17.04.2017 before S.B.

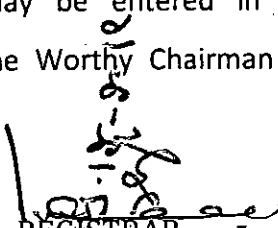



(MUHAMMAD AAMIR NAZIR)  
MEMBER

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 1232/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	14/12/2016	<p>The appeal of Mst. Harir Sultan resubmitted today by Mr. Khushdil Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	15-12-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>22-12-2016</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>




The appeal of Mr. Harir Sultan Laboratory Assistant GGHS And Khel Orakzai Agency received today i.e. on 09.12.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Memorandum of appeal may be got signed by the appellant.

No. 2076 /S.T,

Dt. 13/12/2016

Mr. Khushdil Khan Adv. Pesh.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

*Sir, Resubmitted.*

*Thanks*

*C*

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1232 /2016

Harir Sultan,  
D/o Syed Walayat Ali Shah,  
Laboratory Assistant (BPS-7)..... Appellant

Versus

The Agency Education Officer,  
Orakzai Agency at Hangu & others..... Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-4
2.	Copy of an office order whereby appellant was appointed as Laboratory Assistant (BPS-7).	30-03-2015	A	0-5
3.	Copy of letter of respondent No. 2 whereby the appointment of appellant was approved.	20-03-2015	B	0-6
4.	Copy of the charge report whereby appellant assumed her duty with Medical Fitness Certificate.	31-03-2015	C	7-8
5.	Copies of the extracts of pay roles.		D	9-11
6.	Copy of demand draft whereby an amount of Rs. 200 was sent.	02-04-2015	E	0-12
7.	Copy of impugned notification whereby awarded major penalty of Removal from service.	17-08-2016	F	0-13
8.	Copy of departmental appeal with receipt of registered post.	31-08-2016	G	14-15
9.	Wakalat Nama			

Through

Harir Sultan  
Appellant

Khush Dil Khan  
Advocate,  
Supreme Court of Pakistan

Uzma Syed,  
Advocate,  
High Court Peshawar.

Dated: 05/12/2016

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 1232 /2016**

**Khyber Pakhtukhwa  
Service Tribunal**

Diary No. 1281

Dated 09-12-2016

Harir Sultan,  
D/o Syed Walayat Ali Shah,  
Laboratory Assistant (BPS-7),  
Govt. Girls High School And Khel,  
Orakzai Agency .....Appellant

Versus

1. The Agency Education Officer,  
Orakzai Agency at Hangu.
2. The Director,  
Education FATA Secretariat,  
Warsak Road, Peshawar
3. The Principal,  
Govt. Girls High School,  
And Khel, Orakzai Agency.....Respondents

**SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST  
THE IMPUGNED ORDER DATED 17-08-2016 THEREBY  
APPELLANT WAS REMOVED FROM SERVICE AGAINST  
WHICH SHE FILED DEPARTMENTAL APPEAL UNDER  
REGISTERED POST ON 31-08-2016 WHICH WAS NOT  
DISPOSED OF WITHIN STATUTORY PERIOD OF 90 DAYS.**

Respectfully Sheweth,

**Filed to-day** Facts giving rise to the present appeal are as under:-

**Registrar**  
9/12/16

1. That appellant's husband Jehad Hussain (Late) was PTC teacher in the Education Department FATA who was died during his service. Since at the relevant time, none of his

children had attained the age prescribed for the appointment therefore she applied for her appointment against any suitable post commensurate with her qualification against the deceased employees sons/widow quota under Sub-Rule 4 of Rule 10 of the Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules, 1989 with updated amendments.

2. That the case of appellant was duly processed and after due scrutiny, the respondent No. 1 has made the appointment of appellant as Laboratory Assistant (BPS-7) by an office order dated 30-03-2015 (**Annexed-A**) and posted in the Govt. Girls High School And Khel Orakzai Agency which was duly approved by the respondent No. 2 vide letter dated 20-03-2015 (**Annexed-B**).
3. That in pursuance of her appointment order, the appellant assumed the charge of her duty on 31-03-2015 (**Annexed-C**) after completing all the requisite codal formalities including Medical Fitness Certificate and since then she was regularly performing her duties efficiently and without any complaint and she was paid monthly salaries accordingly as evident from the extracts of pay roles of latest months as (**Annexed-D**). Moreover she also deposited an amount of Rs. 200 for verification of her educational testimonial from the Controller of Examination vide copy of demand draft dated 02-04-2015 (**Annexed-E**).
4. That after lapse of sufficient long time, the respondent No. 1 issued a notification on 17-08-2016 (**Annexed-F**) thereby imposing major penalty of "**Removal from service**" upon the appellant on the plea that her matriculation is without science subjects. She filed departmental appeal before respondent No.

2 under registered post on 31-08-2016 (**Annexed-G**) which was not disposed of within statutory period of 90 days.

Hence the present appeal is submitted on the following amongst other grounds:-

**GROUNDS:**

- A. That the appointment of appellant as Laboratory Assistant was made by competent authority after due process and scrutiny of educational testimonials in pursuance of which she joined her service and she was regularly performing her duties for which she was paid monthly salaries. Thus at this belated stage, the objection of respondent's authority has no legal justification, that her matriculation was not with science subjects and removed her from service in harsh manner.
- B. That appellant has served the department for more than one year continuously without any complaint so vested rights have been accrued in her favour which could not be taken away under the principle of locus poenitentiae.
- C. That appellant was not treated in accordance with law and rules on subject for the reasons that neither a regular inquiry was conducted in the matter nor she was served on any show cause notice or charge sheet and the entire proceedings was carried out at her back in slip shod manner which is not warranted by the rules on subject thus the impugned order based on such illegal and defective inquiry has no legal sanctity and liable to be set aside.
- D. That before passing the impugned order neither any notice has been given to appellant nor an opportunity of personal hearing

was given to her thus she was condemned unheard and thus the impugned order is illegal, without lawful authority and of no legal effect being violative of the principle of natural justice and liable to be set aside.

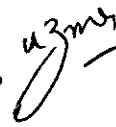
It is, therefore, humbly prayed that on acceptance of this service appeal, the impugned order dated 17-08-2016 may graciously be declared illegal, without lawful authority, mala fide and of no legal effect and be set aside and appellant may kindly be reinstated into service with all back benefits.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through

حریہ سلطان  
Appellant

Khush Dil Khan,  
Advocate,  
Supreme Court of Pakistan.

Uzma Syed,   
Advocate,  
High Court Peshawar.

Dated: 05 / 12 / 2016

(5)

Annex-A

P-5

OFFICE OF THE AGENCY EDUCATION OFFICER ORAKZAI AGENCY AT AGENCY

APPOINTMENT ORDER.

Reference Finance Division wing No: (E&AD) 3-1/2003 dated 22-10-2005.Mst. Harir Sultan D/O Syed Walayat Ali Shah is hereby appointed as Laboratory Assistant at Govt: Girls High School And Khel Orakzai Agency from the deceased Quota in BPS No 7 @ Rs, 5800/- PM (5800-320-15400) plus usual allowances as admissible under the rules from the date of their taking over charge.

TERMS & CONDITION.

1. Charge report in duplicate should be submitted to all concerned.
2. The appointment order is made purely on temporary basis & liable to termination at any time without assigning any reason/notice.
3. If the candidate wants to resign he will to give one month prior notice or forfeit one month pay in lieu thereof.
4. He /She /they would not be handed over charge if his age exceed 45 years or less then 18 years.
5. If he/She/they field to take over charge with in 15 days his appointment order will be automatically cancelled.0
6. He/She/they should produced her health and age certificate from the Agency surgeon Orakzai Agency.
7. He/She/they will be consider as regular but without pension or gratuity in term of section 19 of the government of KPK civil servants act 1973 as amended by the NWFP civil servants amended act 2005.
8. He/She/they will in lieu of pension and gratuity be entitled to receive such amount contributed by them towards the contributory provident fund along with contribution made by the Govt: to their account in the said fund in the prescribe manner as per Govt rules/Policy.
9. He/She/they is entitled to get all benefit of regular employees except pension and gratuity.

Agency Education Officer  
Orakzai Agency at Hangu.

Endst No 5794-97  
Copy to the:-

Dated Hangu 30/03 /2015.

1. Political Agent Orakzai Agency
2. Director of Education FATA Secretariat Peshawar w/r to his No: 3246 dated 20-3-2015.
3. Agency Accounts Officer Orakzai Agency at Hangu.
4. Head Mistress GGHS And Khel Orakzai Agency
5. AAEO Concerned
6. Candidate concerned.

Agency Education Officer  
Orakzai Agency at Hangu.

ATTESTED

6

Anna B. B. P. 6

FAM NO. : 0919212110

20 Mar. 2015 11:23AM P2



FATA SECRETARIAT  
 DIRECTORATE OF EDUCATION  
 KHYBER PAKHTUNKHWA, WARSAK ROAD PESHAWAR, PAKISTAN  
 PHONE: 091-9210166 FAX 091-9219216  
 No. 3246 /  
 Date Pesh: the 20 / 3 / 2015

To

The Agency Education Officer,  
Orakzai Agency at Hangu

Subject: APPROVAL FOR APPOINTMENT AS "LABORATORY ASSISTANT"  
(BPS-07) UNDER "DECEASED SON QUOTA"

Memo:

I am directed to refer to your office letter No. 5304 dated 18.02.2015 in respect of Harir Sultan widow of Syed Jihad Syed resident of Kalaya Lower, Orakzai Agency on the above noted subject, containing request for appointment / recruitment against the post of Laboratory Assistant (BPS-07) under "DECEASED SON QUOTA".

Being a competent authority as well as Agency Cadre post in the subject case may be disposed-off strictly in accordance with the existing rules & policy at your own level, please.

*Sd -*  
Deputy Director (F&A)

No. & Date As Even Above

Copy to the:

1. PA to Director Education FATA.
2. Official concerned.

*[Signature]*  
18-3-15  
Deputy Director (F&A)

*[Signature]*  
**ATTESTED**

(ESTab)  
20/3/15

*[Signature]*  
17/03



Handwritten signature and text at the top right.

31 2015  
3

ATTESTED

Head Mistress  
G. H. S. ...  
Agency

Handwritten signature: Janki Bai

Handwritten signature: Janki Bai

Handwritten signature: Janki Bai

ST 94-97 ...  
30 2015  
3

Lab/Assistant ...  
Case No

Handwritten signature: Janki Bai

(7)

Handwritten text: Hammer, P. 7

**MEDICAL CERTIFICATE.**

Name of Official..... *Mrs. Harir Sultan*

Cast of race..... *Islam / Orakzai*

Father's Name..... *S. Wilayat Ali Shah*

Residence..... *Village & P.O. Marai Billa Dostli & Tehsil Kohat*

Date of Birth..... *01-4-1996*

Exact height by measurement..... *5-2*

Personal mark of identification..... *Black Mole near Nick*

Signature of the Official .....

Signature of Head of office.....

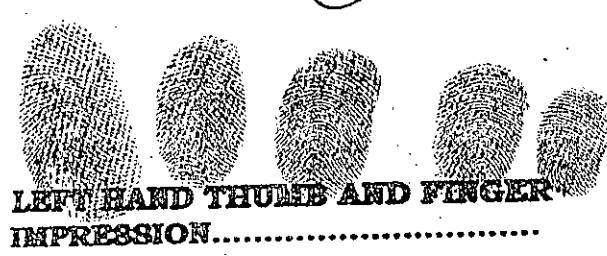
Seal of office.....

I do hereby certify that I have examined Mr. *Harir Sultan* candidate for employment in the office of the *Education Dept Orakzai* and can not discover that he had any disease communicable or other constitutional affection or bodily infirmity except *None*

I do not consider this as disqualification for employment in the office of the *ABO Orakzai* His age according to his own statement is *18* Years *11* Months and *30* Days by external appearance he is about *Nineteen (19)* years.

**ATTESTED**

Medical Superintendent  
Civil Hospital  
31/3/2015 Agency Surgeon  
Orakzai at Hangu.



LEFT HAND THUMB AND FINGER IMPRESSION.....

10

Annex: "D"  
P19

Orakzai at Hang

S#:

P Sec:001 Month:December,2015  
OI1121 -Head Mistress GGHS And Khe  
Min. Of K.A & N.A & S.F.R

Per# #: 50234149 Buckle:  
Name: HARIR SULTAN  
LABORATORY ASSISTANT  
NIC No. 1430119530250  
Interest Applied  
07 Active Permanent

NTN:  
GPF #:  
Old #:

OI1121

PAY AND ALLOWANCES:	
0001-Basic Pay	7,905.00
1000-House Rent Allowance	1,059.00
1210-Convey Allowance 2005	1,932.00
1300-Medical Allowance	1,500.00
1528-Unattractive Area Allow	1,500.00
1973-Adhoc Allowance 2010@ 50%	1,765.00
2151-Adhoc Allowance 2013 @10%	870.00
2174-Adhoc Relief Allow-2014	580.00
2199-Adhoc Relief Allow @10%	790.00
Gross Pay and Allowances	17,901.00

DEDUCTIONS:

3000 Balance	3,118.00	Subrc:	686.00
3001 E.E.F (Exchange)			75.00
3002 Benevolent Fund(Exchange)			180.00
3004 Group Insurance(Exchange)			67.00
3711-Addl Group Insuranc(Exch)			7.00

Total Deductions	1,015.00
	16,886.00

D.O.B	LFP Quota:	4	KALAYA ORAKZAI AGENC
01.04.1996	HBL		
00 Years 09 Months 003 Days	17507900056301		

ATTESTED  
G

**Government of Pakistan**  
District Accounts Office Orakzai at Hang  
Monthly Salary Statement (February-2016)



(a) Annex-D

**Personal Information of Mr HARIR SULTAN d/w/s of SYED WALAYAT ALI SHAH**

Personnel Number: 50234149      CNIC: 1430119530250      NTN:  
Date of Birth: 01.04.1996      Entry into Govt. Service: 30.03.2015      Length of Service: 00 Years 11 Months 002 Days **P9**

**Employment Category: Active Permanent**

Designation: LABORATORY ASSISTANT      00000016-Min. Of K.A & N.A & S.F.R  
DDO Code: OI1121-Head Mistress GGHS And Khel, Orakza Agency  
Payroll Section: 001      GPF Section: 001      Cash Center:  
GPF A/C No:      Interest Applied: Yes      GPF Balance: 4,490.00  
Vendor Number: -  
Pay and Allowances:      Pay scale: BPS For - 2015      Pay Scale Type: Civil      BPS: 07      Pay Stage: 1

Wage type		Amount	Wage type		Amount
0001	Basic Pay	7,905.00	1000	House Rent Allowance	1,059.00
1210	Convey Allowance 2005	1,932.00	1300	Medical Allowance	1,500.00
1528	Unattractive Area Allow	1,500.00	1973	Adhoc Allowance 2011@50%	1,765.00
2151	Adhoc Allowance 2013 @10%	870.00	2174	Adhoc Relief Allow-2014	580.00
2199	Adhoc Relief Allow @10%	790.00			0.00

**Deductions - General**

Wage type		Amount	Wage type		Amount
3007	GPF Subscription - Rs 686	-686.00	3661	E.E:F (Exchange)	-75.00
3701	Benevolent Fund(Exchange)	-180.00	3704	Group Insurance(Exchange)	-67.00
3711	Addl Group Insuranc(Exch)	-7.00			0.00

**Deductions - Loans and Advances**

Loan	Description	Principal amount	Deduction	Balance

**Deductions - Income Tax**

Payable: 0.00      Recovered till February-2016: 0.00      Exempted: 0.00      Recoverable: 0.00

Gross Pay (Rs.): 17,901.00      Deductions: (Rs.): -1,015.00      Net Pay: (Rs.): 16,886.00

Payee Name: HARIR SULTAN  
Account Number: 17507900056301  
Bank Details: HBL, 221750 KALAYA ORAKZAI AGENCY, KALAYA ORAKZAI AGENCY., ORAK ZAI AGENCY

Leaves:      Opening Balance:      Availed:      Earned:      Balance:

Permanent Address:      Domicile: NW - Khyber Pakhtunkhwa      Housing Status: No Official  
City: orakzai  
Temp. Address:      Email: kharirsultan99@gmail.com  
City:

*(Handwritten signatures and stamps)*

**ATTESTED**

*(Handwritten signature)*

System generated document in accordance with APPM 4.6.12.9 (SERVICES/28.02.2016/00:30:36/v1.1)  
\* All amounts are in Pak Rupees  
\* Errors & omissions excepted



P. 10

Orakzai at Hang

P Sec:001 Month:August 2015  
OI1121 -Head Mistress GGHS And Kh  
Min. Of K.A & N.A & S.F.R

NTN:  
GPF #:  
Old #:

1  
ID # : 50234149  
Name: HARIR SULTAN  
Buckle: LABORATORY ASSISTANT  
CNIC No.1430119530250  
GPF Interest Applied  
07 Active Permanent

OI1121  
7,490.00  
1,059.00  
1,932.00  
1,500.00  
1,500.00  
1,765.00  
870.00  
580.00  
562.00  
73,272.00

PAYS AND ALLOWANCES:  
0001-Basic Pay  
1000-House Rent Allowance  
1210-Convey Allowance 2005  
1300 Medical Allowance  
1528-Unattractive Area Allow  
1973-Adhoc Allowance 2010@ 50%  
2151-Adhoc Allowance 2013 @10%  
2174 Adhoc Relief Allow-2014  
2174 Adhoc Relief All 7.5%  
Gross Pay and Allowances

Subrc: 530.00  
75.00  
180.00  
67.00  
7.00

DEDUCTIONS:  
GPF Balance 530.00  
3661-E.E:F (Exchange)  
3701-Benevolent Fund(Exchange)  
3704-Group Insurance(Exchange)  
3711-Addl Group Insuranc(Exch)

Total Deductions 859.00  
72,413.00

D.O.B: 01.04.1996  
00 Years 05 Months 003 Days  
LFP Quota: 4  
HBL  
17507900056301

KALAYA ORAKZAI AGENC

ATTESTED

19

Annex-E  
Annex: "E"  
P. 12



نیشنل بینک آف پاکستان  
National Bank of Pakistan

Exactly Rs=200/-

Demand Draft

APU B 0873284  
NBP

Rs. = 200/-

Dated. 02-04-2015

On Demand Pay to Controller of Examination BISE Peshawar

Rupees Two Hundred only

or order

To National Bank of Pakistan

value received  
For National Bank of Pakistan

University Campus Bz Peshawar

Muhammed Iqbal Bangas  
Operation Manager

Code No. (0388)

Rehman Sadique

OFFICER

National Bank of Pakistan  
MANAGER

ATTESTED

13

Annex-<sup>10</sup> "F"  
P. 13

**NOTIFICATION**

1. **WHEREAS** Mr Sawad Ali and Mr Mantaj Ali had reported that Mst Harir Sultan had been recruited as Laboratory Assistant at GGHS Andkhel against deceased quota showing herself as the widow of syed Jehad Hussain whereas she is the wife of said Arbab Hussain and has her SSC privately in Humanity group and not in science group that was a pre-requisite for laboratory assistant post, a copy of the complaint had also been sent to Additional chief secretary FATA, Director Education FATA, PA Orakzai Agency.

2. **AND WHEREAS** a committee was appointed consisting of Mr Doulat Shah AAEO (M) and Mst Khurshida jan AAEO(F) to dig out the whole cases and submit a detailed report and documentary proof to proceed further into the matter in accordance with the rules.

3. **AND WHEREAS** the committee after having examined the record has submitted its report after conducting a deep and detailed scrutiny of papers from all the relevant aspects and reported that Mst Harir Sultan laboratory Assistant had been illegally appointed against the post of laboratory Assistant at GGHS And khel as she was possessing SSC in humanity group and not in natural science group that was pre-requisite for the said post under the rules .

4. **And whereas** the enquiry committee recommended that her appointment order issued vide this office No.5794-97 dated 30/03/2015 should be withdrawn and the appointing authority, the then AEO, should be recommended for disciplinary proceedings to the respective competent authority.


5. **NOW THEREFORE** In exercise of the Powers conferred under Rules-4 (b) iii of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011, the competent Authority, the Agency Education officer, is pleased to impose major penalty of " **Removal from service** "upon Mst Haris Sultan GGHS Andkhel Orakzai Agency with immediate effect on account of her ineligibility of possessing the prerequisite qualification of SSC (Sc) for the post, in public interest, in the light of the Notification circulated vide No. SO/(PE)4-10/SSRC/Ministerial Staff/2013.

(Atiq ur Rahman)  
Agency Education Officer,  
Orakzai Agency at Hang.  
(The Competent Authority)

Endstt No.2657-64 dated Hangu the:17/08/2016

Copy for information:-

1. Additional Chief Secretary, FATA secretariat Peshawar.
2. Director Education FATA Secretariat Peshawar.
3. Political Agent Orakzai Agency.
4. Agency Accounts officer Orakzai Agency.
5. Head Mistress GGHS Andkhel lower Orakzai
6. AAEO (C) local office.
7. Harir Sultan Laboratory Assistant.

  
Agency Education Officer,  
Orakzai Agency at Hang

**ATTESTED**

14

Annex. "G"  
19.14

To

The Director,  
Education FATA Secretariat,  
Warsak Road, Peshawar.

**Subject: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED 17-08-2016 PASSED BY THE AGENCY EDUCATION OFFICER ORAKZAI AGENCY AT HANGU THEREBY APPELLANT WAS REMOVED FROM SERVICE WITH IMMEDIATE EFFECT.**

Respected Sir,

1. That appellant's husband Jehad Hussain (Late) was PTC teacher in the Education Department FATA who was murdered during service. Since at the relevant time, none of the children has attained the age prescribed for the appointment therefore she applied for her appointment against any suitable post commensurate with her qualification against the deceased employees sons/widow quota under Sub-Rule 4 of Rule 10 of the Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules, 1989 with updated amendments. The educational qualification of appellant is metric.
2. That the case of appellant was duly processed and after due scrutiny, the Agency Education Officer Orakzai Agency at Hangu has made the appointment of appellant as Laboratory Assistant (BPS-7) vide order dated 30-03-2015 (Annexed-A) and posted in the Govt. Girls High School And Khel Orakzai Agency which was duly approved by the Directorate of Education FATA Secretariat vide letter dated 20-03-2015 (Annexed-B).
3. That in pursuance of her appointment order, the appellant assumed the charge of her duty on 31-03-2015 (Annexed-C) after completing all the requisite codal formalities including Medical Fitness Certificate and since then she was regularly performing her duties efficiently and without any complaint and she was paid monthly salaries accordingly as evident from the extracts of pay roles of latest months as (Annexed-D).
4. That all of sudden, the impugned order dated 17-08-2016 (Annexed-E) was issued by the Agency Education Officer Orakzai Agency at Hangu (Mr. Atiq Ur Rehman) thereby appellant was removed from service in arbitrary manner without any notice, show cause notice and charge sheet etc

ATTESTED



(5)

P.15

of which she was aggrieved and submits this departmental appeal on the following among other grounds:-

**GROUND:**

- A. That appellant was not treated in accordance with law and rules and she was unlawfully removed from service in arbitrary manner without observing the codal formalities which is not sustainable and liable to be set aside.
- B. That the impugned order passed at the back of appellant and she was condemned unheard neither she was issued show cause notice or charge sheet with statement of allegations nor provided an opportunity of personal hearing and thus the impugned order is illegal, being violative of principle of natural justice.
- C. That appellant was fully qualified for the job and her appointment was made after due process of scrutiny with the approval of Directorate of Education FATA Secretariat, Peshawar and accordingly she served the department efficiently which created vested rights in her favour which could not be taken away under the principle of locus poenitentiae.

It is, therefore, humbly requested that on acceptance of this departmental appeal, the impugned order may graciously be set aside and appellant may kindly be reinstated into service with all back benefits.

Yours faithfully

Harir Sultan D/o Syed Walayat Ali Shah,  
Laboratory Assistant (BPS-7),  
Govt. Girls High School And Khel Orakzai Agency.

Mail Address: 9-B, Haroon Mansion, Kyber Pakhtunkhwa, Peshawar.

Dated: 31/8/2016

**ATTESTED**

No. 1346

For Insurance Notices see reverse. Stamps affixed except in case of uninsured letters of not more than the initial weight prescribed in the Post Office Guide or on which no acknowledgement is due.

Received a registered\* addressed to He Date-Stamp 31/8/2016

\*Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before or when necessary. (in words) Insured

Insured for Rs. (in figures) \_\_\_\_\_

If insured. Insurance fee Rs. Rs. 100 } Weight 100g } Kilo Grams

Name and address of sender Syeda  
Harir Sultan

WAKALAT NAMA

IN THE COURT OF

Sup. Service Tribunal Peshawar

Harir Sullān

Laboratory Assistant

Appellant(s)/Petitioner(s)

VERSUS

The Agency Education Peshawar

Oralangi Agency of Hangu  
+ other

Respondent(s)

I/We Harir Sullān do hereby appoint  
Mr. Khush Dil Khan, Advocate Supreme Court of Pakistan in the above  
mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-

- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this \_\_\_\_\_

Attested & Accepted by

Khush Dil Khan,  
Advocate,  
Supreme Court of Pakistan

Uzma Syed,  
Advocate,  
High Court Peshawar  
9-B, Haroon Mansion  
Off: Tel: 091-2213445

Harir Sullān

Signature of Executants

14301-1953025.0

**BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Appeal No: 1232/2011

Harir Sultan Lab: Assistant (BPS-7) GGHS Andkhel Orakzai Agency.....Appellant.

**VERSUS**

1. The Agency Education Officer Orakzai Agency.
2. The Director Education FATA Warsak Road Peshawar.
3. The Principal GGHS AndKhel Orakzai Agency.....Respondents.

**Para-wise comments on behalf of respondent No: 1 & 2.**

**Respectfully Sheweth:**

**Preliminary Objections:**

1. That the appellant has got no cause of action to file the instant appeal.
2. That the appellant has not come to this Honourable Tribunal with clean hands.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct to bring the present appeal.
5. That the appeal is bad due to mis-joinder and non-joinder of necessary parties.
6. That the appeal is barred by law and no departmental appeal is made to the competent authority against the impugned order. Hence not maintainable under Section-4 of Service Tribunal Act 1974.
7. The appeal is badly time barred.

**On Facts:**


1. Incorrect. Respondents No.1 Agency Education Officer Orakzai Agency informed the Director Education FATA that as reported by the locals Mr. Suad Ali and Mr. Muntaj Ali that the appellant is not the widow of late Syed Jehad Hussain. The appellant Mrs. Hairs Sultan is the wife of Syed Arbab Hussain. Therefore as per sub-rule of Rule-10 of Khyber Pakhtunkhwa, appointment promotion and transfer the appellant is not entitled for appointment against deceased Quota.
2. Pertains to record.
3. Pertains to record.
4. Incorrect. A committee was constituted to dig out the whole cases and submit a detailed report and documentary proof to proceed further into the matter in accordance with rules. The Committee after having examined the record has submitted its report after conducting a deep and detailed scrutiny of papers from all the relevant aspects and reported that Mst Harir Sultan Laboratory Assistant had been illegally appointed. The committee also recommended that the appointment order of the appellant should be withdrawn so after completing requisite formalities, the removal order was passed.

**Grounds:**

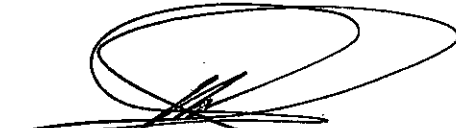
- A. Incorrect. As explained in Para-4 above.
- B. Incorrect. Due to lack of pre-requisite qualification of SSC (Science). The Competent Authority removed the services of the appellant under rule-4 (b) of Khyber Pakhtunkhwa (E&D) rules-2011.
- C. Incorrect. As explained in Para-B above.
- D. Incorrect. After fulfillment of all codal formalities, the services of the appellant has been removed by Competent Authority.

In light of the above facts, it is humbly prayed that the appeal may very kindly be dismissed having no legal force.

Respondent NO.1

  
Agency Education Officer  
Orakzai Agency

Respondent NO.2

  
Director Education FATA






**AFFIDAVIT**

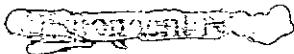
We the above respondents do hereby declare and affirm on oath that the above comments are true and correct to the best of our Knowledge and belief and nothing has been concealed from this Honorable Tribunal.

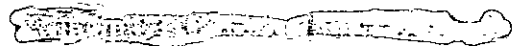
Respondent NO.1

  
Agency Education Officer  
Orakzai Agency

Respondent NO.2

  
Director Education FATA





BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1232/2016

Harir Sultan,  
D/o Syed Walayat Ali Shah,  
Laboratory Assistant (BPS-7),  
Govt. Girls High School And Khel,  
Orakzai Agency ..... Appellant

Versus

The Agency Education Officer,  
Orakzai Agency at Hangu & others..... Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Rejoinder.			1-3
2.	Copy of Tribal Domicile Certificate of the appellant		Rj/A	0-4
3.	Copy of Nikah Nama of the appellant.		Rj/B	0-5

Through

Appellant

Khush Dil Khan  
Advocate,  
Supreme Court of Pakistan

Dated: 20/05/2017

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 1232/2016**

Harir Sultan,  
D/o Syed Walayat Ali Shah,  
Laboratory Assistant (BPS-7),  
Govt. Girls High School And Khel,  
Orakzai Agency ..... Appellant

Versus

The Agency Education Officer,  
Orakzai Agency at Hangu & others..... Respondents

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE TO  
REPLY FILED BY RESPONDENTS NO.1 &2.**

Respectfully Sheweth,

**PRELIMINARY OBJECTIONS:**

Preliminary objections raised by answering respondents are erroneous and frivolous which are denied in toto. The detail reply of each one is given as under:-

- I. That appellant has cause of action and rightly filed the present appeal against the impugned order of her removal from service which is illegal being violative of the principle of natural justice.
- II. That the appellant has filed this appeal with fair hands.
- III. That no concealment of any fact has been made by appellant.
- IV. That the principle of estoppel is not applicable to present case.
- V. That the necessary parties as required by law have been arrayed.

- VI. That the appellant filed departmental appeal on 31-08-2016 under registered post before the Respondent No.2. The copy of the same with the registry receipt is on the file which remained unattended within the stipulated period of 90 days.
- VII. That the appeal is well within time. The same was filed after the expiry of 90 days within admissible time.


**REJOINDER TO REPLY OF FACTS:**

1. That the reply is evasive in nature so denied. Appellant being the widow of the Govt. Employee so her appointment was made against the quota of deceased employee by the competent authority. So for the report of the locals regarding the question that appellant was not widow of the deceased Syed Jehad Hussain is incorrect and against the facts. Neither copy of such report was communicated to appellant nor she was intimated regarding such issue through any source meaning thereby that same was done purposely with ulterior motive. Copies of Tribal Domicile Certificate and Nikah Nama are attached as **(Rj/A & Rj/B)**.
2. Furnished no comments meaning thereby they have admitted the facts thereof.
3. Furnished no comments meaning thereby they have admitted the facts thereof.
4. That the reply is incorrect so denied. Neither committee has been appointed nor appellant was intimated regarding any proceedings in the matter. The appointment of appellant was made by the competent authority in view of provisions of Rule 10 Sub-rule 4 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989.

**REJOINDER TO REPLY OF GROUNDS:**

- A. Furnished no reply meaning thereby they have admitted contents of Ground-A.
- B. That the appellant was not treated in accordance with law and rules on subject. On one side the authority has applied the provisions of rule 4 (b) of the Khyber Pakhtunkhwa (E&D) Rules, 2011 for the purpose of awarding major penalty of removal from service but on the other side the Respondent Authorities have been failed to observe the other provisions of the said rules before passing the impugned order which is not sustainable and liable to be set aside.
- C. Furnished no reply meaning thereby they have admitted contents of Ground-C.
- D. Incorrect.

It is, therefore, humbly prayed that the reply of answering Respondents No. 1 & 2 may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through **Appellant**  
  
**Khush Dil Khan**  
Advocate,  
Supreme Court of  
Pakistan

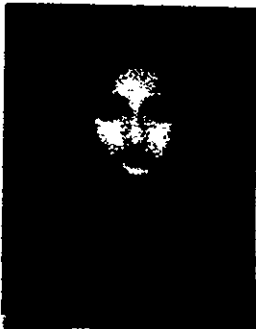
Dated: 20/05/2017



R/A.P.4

# TRIBAL DOMICILE CERTIFICATE

## ORAKZAI AGENCY



(Prescribed Vide Commissioner Peshawar Division  
Memo No: 20611-23/CP/12/3/316/TA, Dated 3-11-1960,  
Read with Memo No: 9704/13/FR, Dated 10-7-1969)

Certified that Mr./Mrs HARIR SULTAN (QURAT-UL-AIN)

Son/Daughter/Wife of JEHAD SYED

belong to a recognized tribe of Orakzai Agency

Section SAIDAN

Sub-Section KALAYA SAIDAN

Residence / Village CHAR KHEL

and his / her father /husband is a permanent bonafide resident of Tribal Area of Orakzai Agency and he/she is an eligible candidate to avail himself / herself of the seats reserved for the SPECIAL AREA OF KOHAT DIVISION (ORAKZAI AGENCY)

POLITICAL TEHSILDAR / NAIB TEHSILDAR  
ORAKZAI AGENCY  
POLITICAL TEHSILDAR  
LOWER ORAKZAI (KALAYA)

ASSISTANT POLITICAL AGENT  
ORAKZAI AGENCY  
Assistant Political Agent  
Lower Orakzai Agency

COUNTERSIGNED BY  
POLITICAL AGENT  
ORAKZAI AGENCY

No 64378 /PAO

Dated 22/1/15

Handwritten initials/signature at the bottom of the page.

## بیان حثی ملکانان

- 1- ملک سید نعیم سید ولد سید قاسم شاہ قوم سیدان چہ کلابہ سیدان گاؤں کلابہ
- 2- ملک سید یاسر علی شاہ ولد سید عاقل جان قوم سیدان چہ کلابہ سیدان گاؤں کلابہ
- 3- ملک سید نازک حسین ولد سید ہاشم جان قوم سیدان چہ کلابہ سیدان گاؤں کلابہ
- 4- ملک سید حسن جان ولد سید سیدان جان قوم سیدان چہ کلابہ سیدان گاؤں اجری خیل
- 5- ملک سید لال صلاح جان ولد سید یوسف جان قوم سیدان چہ کلابہ سیدان گاؤں کلابہ
- 6- ملک سید بھر حسین ولد سید عقیل قوم سیدان چہ کلابہ سیدان گاؤں چاری خیل

بیان کرتے ہیں کہ ہم سی/اسماۃ حرر سلطان (قرۃ العین) مکدا زوجہ زوجہ جہاد سید قوم سیدان چہ کلابہ سیدان گاؤں چاری خیل کو ذاتی طور پر جانتے ہیں اور اس بات کی تصدیق کرتے ہیں کہ وہ انجمنی ہذا میں اپنا ذاتی مکان اور جائیداد رکھتا ہے۔ اور انجمنی ہذا میں بمقام چاری خیل رہائش پذیر ہے۔ حصار موجب ہے اور اپنا موجب بدست ملک سید محمد سلیمان وصول کرتا ہے۔ قوم کے ساتھ جملہ نفع و نقصان میں برابر کا شریک ہے۔ غلط بیانی کی صورت میں ہم مبلغ دس لاکھ روپے جرمانہ ادا کرنے کے پابند ہوں گے۔ سن کر درست حلیم کیا۔

1- العہد سید نعیم سید  
2- العہد سید یاسر علی شاہ  
3- العہد سید نازک حسین

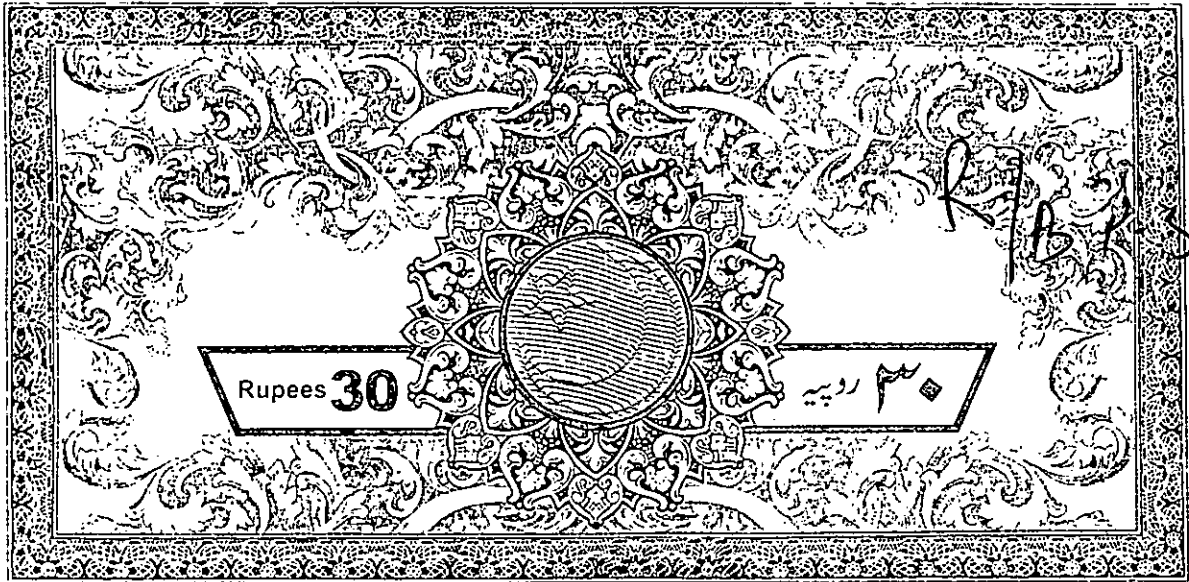
ملک سید نعیم سید ولد سید قاسم شاہ قوم سیدان ملک سید یاسر علی شاہ ولد سید عاقل جان قوم سیدان ملک سید نازک حسین ولد سید ہاشم جان قوم سیدان  
21603-9539137-9 21603-1430834-7 21603-9667635-3

4- العہد سید حسن جان  
5- العہد سید لال صلاح جان  
6- العہد سید بھر حسین

ملک سید حسن جان ولد سید سیدان جان قوم سیدان ملک سید لال صلاح جان ولد سید یوسف جان قوم سیدان ملک سید بھر حسین ولد سید عقیل قوم سیدان  
21603-6416949-7 21603-8989835-9 14301-7024940-3

ATTESTED

POLITICAL SENSIBAR  
LOWER CHAKZAI KALAYA



### FAMILY PROOF (NIKAHNAMA)

I, Malik **SYED BASAR HUSSAIN** S/O Mr. **SYED AQEEL** resident of Village **CHAR KHEL** Sub Section **KALAYA SAIDAN** Section **SAIDAN** District **ORAKZAI AGENCY**, do hereby declare that the Nikah between;

Mr. **JEHAD SYED** S/O. Mr. **SYED SHABAB HUSSAIN** resident of Village **CHAR KHEL** Sub Section **KALAYA SAIDAN** Section **SAIDAN** District **ORAKZAI AGENCY**

and Mst. **HARIR SULTAN (QURAT-UL-AIN)** D/O. Mr. **SYED WALAYAT ALI SHAH** resident of Village **MARAI BALA** Tehsil & District **KOHAT**.

on **25-03-2012** has read by Maulvi **GUL BAHAR ALI (HASNAIN AGHA)** S/O. **AMEER MEHDI** resident of Village **TRANGI** Section **BAR MUHAMMAD KHEL** S/Section **KHOIDAD KHEL** with mahar (مہر) **Rs. 1200/-** in a large gathering of locality in my presence.

سید کبیر حسین

Malik: **SYED BASAR HUSSAIN**  
N.I.C. No. 14301-7024940-3

I swear and affirm that I have read the above mentioned Nikah on the mentioned date and Mahar in a large gathering of locality.

مولوی گل بہار علی  
مدرسہ اہل بیت انوار المدارس گلپانہ  
اورکزئی ایجنسی

Maulvi: **GUL BAHAR ALI**  
N.I.C. No. 90305-0100605-7

ATTESTED

*[Signature]*  
POLITICAL  
POLITICAL TERSILDAR LOWER  
ORAKZAI AGENCY.

COUNTERSIGNED  
COUNTERSIGNED

*[Signature]*  
Assis Agam  
ASSISTANT POLITICAL AGENT  
ORAKZAI AGENCY.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

No 915 /ST

Dated 27 /04/2018

To

The Agency Education Officer,  
Government of Khyber Pakhtunkhwa,  
Orakzai Agency at Hangu.

Subject: **ORDER/JUDGEMENT IN APPEAL NO. 1232/2016, MR.HARIR  
SULTAN.**

I am directed to forward herewith a certified copy of Judgment/Order dated 19/04/2018 passed by this Tribunal on the above subject for strict compliance.

**Encl: As above**

*ole*  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.