

13.11.2017

Counsel for the appellant and Mr. Kabeerullah Khattak, Addl. AG alongwith Faiz Muhammad, Assistant for the respondents present. Arguments heard and record perused.

This appeal is disposed of as per our detailed judgment in connected service appeal No. 678/2013, entitled "Sher Zada Versus the Director Health (FATA) Department, Peshawar and another". Parties are left to bear their own costs. File be consigned to the record room.

Muhammad Amin
Member

[Signature]
Chairman

ANNOUNCED
13.11.2017

688/2013

13.12.2016


Counsel for the appellant and Mr. Said Muhammad, Head Clerk alongwith Additional AG for the respondents present. Representative of the respondents submitted before the court that record of the appellant is available with the Agency Surgeon Officer and he will produce the same before the next date. Representative of the respondents is directed to produce the appointment order of the appellant alongwith salary issued to him and other related documents. To come up for record and arguments on 20.4.17 before D.B.


(ASHFAQUE TAN)
MEMBER


(MUHAMMAD AMIR NAZIR)
MEMBER

20.04.2017

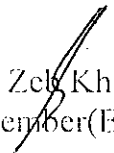
Counsel for the appellant present. Mr. Said Muhammad, Head Clerk alongwith Mr. Muhammad Adeel Butt, Additional AG for the respondents also present. Representative of the respondent-department submitted record which is placed on file. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 12.07.2017 before D.B.



(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

12.07.2017

Counsel for the appellant and Asstt. AG ~~for~~ the respondents present. Counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 13.11.2017 before the D.B.


(Gul Zeh Khan)
Member(E)


(M. Amin Khan Kundi)
Member(J)

09.07.2015

Counsel for the appellant and Mr. Muhammad Maaz Madni, Assistant Litigation Officer alongwith Addl: A.G for respondents present. Rejoinder submitted. Learned counsel for the appellant requested for adjournment that due to rush of work he could not be prepared the arguments. File to come up for arguments on 01-01-2016.


Member


Member

01.01.2016

Clerk to counsel for the appellant and Mr. Maaz Madni, Assistant Litigation Officer alongwith Assistant AG for respondents present. Arguments could not be heard due to incomplete Bench. To come up for arguments on 27.5.2016 before D.B.


Member

27.05.2016

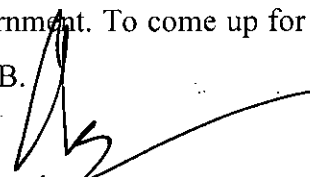
Counsel for the appellant and Mr. Maaz Madni, Assistant Litigation Officer alongwith Addl: AG for respondents present. Learned counsel for the appellant requested for adjournment. Adjourned for arguments to 28.9.2016 before D.B.


Member


Member

28.09.2016

Counsel for the appellant and Addl. AG for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 08.02.2017 before D.B.


Member


Chairman

694/13

10 13.01.2015

Counsel for the appellant and Mr. Muhammad Maaz Madni, Assistant Litigation Officer on behalf of respondents with Addl: A.G present. Another request for submission of written reply/comments was made despite the fact that last chance was extended to the respondents on the previous date.

It is noted with concern that the government functionaries do not pay due attention towards direction of the court despite the fact that they are public servants and obliged to adhere to the orders of the Court including defending the interest of the government. Let the respondents be informed that in future, concerned authorities are to be dealt with strictly in accordance with law.

Last chance is extended with the direction to the respondents to submit written reply/comments on 16.01.2015.


Chairman

12. 16.01.2015

Counsel for the appellant and Mr. Muhammad Maaz Madni, Assistant Litigation Officer alongwith Addl: A.G for respondents present. Comments submitted. To come up for rejoinder as well as final hearing/arguments before D.B on 9.7.2015 alongwith connected appeals No. 678, 679,680,681,682,683,684,685,686,687,688,689,690,691,692,693 and 695to 703 of 2013.


Chairman

BEFORE THE SERVICES TRIBUNAL
KHYBER PAKHTUNKHWA, PESHAWAR

Appeal No. 688/2013

Mst. Safia Bibi LHV

..... Appellant

Versus

Director Health (FATA) & Anothers..... Respondents

Para wise joints comments on behalf of respondent No. 1.

Preliminary objections

1. That the appellant has no cause of action/locus standi to file the present appeal.
2. That the appellant is estopped by his own conduct to file the instant appeal.
3. That this Honorable Service Tribunal has got no jurisdiction to entertain the instant appeal.
4. That the instant appeal is bad for mis joinder & non-joinder of necessary parties.
5. That the present appeal is barred by law.
6. That the appeal is not maintainable in its present form.
7. That the present appeal is bad in its present form, hence not maintainable and liable to be dismissed

Respectfully Sheweth;

ON FACTS

1. Incorrect, neither any posts were advertised nor the appellant was selected by the Departmental Selection Committee. Moreover, the appellant have not attached appointment order or NIC with the appeal.
2. Incorrect, the appellant has not been appointed nor did he perform any duty.
3. Incorrect, the official concerned has never been paid any salary as he has not been appointed.
4. Incorrect, no Departmental Appeal has been made.

0 - 12
16 - 1 - 15

ON GROUNDS

- A. Incorrect, the appellant has not been appointed so he is not entitled for salary.
- B. Incorrect, as per Paras mentioned in the facts of the reply.
- C. Incorrect, the appellant has not been appointed nor did perform any duty therefore, not entitle for salary.
- D. Incorrect, as per paras mentioned above.
- E. Incorrect, as per paras mentioned above.
- F. Incorrect.
- G. No comments.

It is therefore most humbly prayed that the appeal of the appellant may kindly be dismissed with cost.

Respondent No. 01

AF 157/115
Director Health Services (FATA)
FATA Secretariat, Peshawar

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

Service Appeal No. 688 /2013

Mrs Safia bibi VS Director Health (FATA) & anthers:

REJOINDER ON BEHALF OF APPELLANT

RESPECTFULLY SHEWETH:

Preliminary Objections:

- (1-7) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 Incorrect. The appellant was appointed as ^{LHV} ~~PHN~~ in BPS-9 vide order dated 31-12-011 on the proper recommendation of the Departmental selection Committee. Moreover, the appellant attached Service Book with the appeal, wherein page 4 A it is clearly mentioned that the appellant was appointed on dated 31-12-011. Furthermore many staff of para-medics are appointed against other post which are mentioned in notification dated 30.9.2011. Similarly many employees are drawing pay/allowances w.e.f 1.7.2013 to 31.10.2014 which are also working against other posts. Further more the documents annexed by the appellant is genuine and not forged.(copy of the notification dated 30.9.2011 and allowances w.e.f 1.7.2013 to 31.10.2014 are attached as Annexure-R1&R2)
- 2 Incorrect. The appellant was appointed as ^{LHV} ~~PHN~~ in BPS-9 vide order dated 31-12-011 on the proper recommendation of the Departmental selection Committee and he continuously performed his duty as a civil

servant, which is evident from performance certificate which is attached with the appeal.

- 3 Incorrect. The appellant has been paid salary up to August 2012 by the concerned official. (Copy of salary slip of August 2012 is attached as Annexure- R3)
- 4 Incorrect. The appellant has filed departmental appeal which is attached as D on page 6 with main appeal. Besides that the appellant and other colleagues had also filed a joint application / appeal which was properly endorsed and reported back by the concerned office. The denial of the respondents is thus not tenable mere by denying that fact. *(copy of joint Appeal and report back by the concerned office are attached as R 4 and R 5)*

GROUND:

- A- Incorrect. The appellant was appointed as ^{Lot V} ~~Technician (Diploma)~~ in BPS-9 vide order dated 31-12-011 on the proper recommendation of the Departmental selection Committee and he continuously performed his duty as a civil servant and has paid salary up to August 2012 by the concerned official and after September 2012 stoppage of monthly salaries of the appellant and not taking action on the departmental appeal of the appellant is against the law, rules, norms of justice and material on record. Therefore not tenable and liable to be set aside.
- B- Incorrect. While para B of the appeal is correct.
- C- Incorrect. The appellant was appointed as ^{Lot V} ~~Technician (Diploma)~~ in BPS-9 vide order dated 31-12-011 on the proper recommendation of the Departmental selection Committee and he continuously performed his duty as a civil servant and has paid salary up to August 2012 by the concerned official. Therefore the appellant is entitled for salaries after September 2012 till date as the appellant is still in service and has not been terminated so far.
- D- Incorrect. While para D of the appeal is correct.
- E- Incorrect. While para E of the appeal is correct.
- F- Not replied according to para F of the appeal. Moreover para F of the appeal is correct.

G- No comments.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

^{resp}
APPELLANT

Through:

M. Asif Yousafzai
(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.
&

(TAIMUR ALI KHAN)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.

^{resp}
DEPONENT

10/3/14

صدا - سٹیجنگ شوٹنگ سٹیجنگ ڈیپارٹمنٹ فنانسنگ سٹیجنگ ورکنگ گروڈ لکھنؤ

عنوان :- سٹیجنگ سٹیجنگ (کادری) سٹیجنگ سٹیجنگ سٹیجنگ

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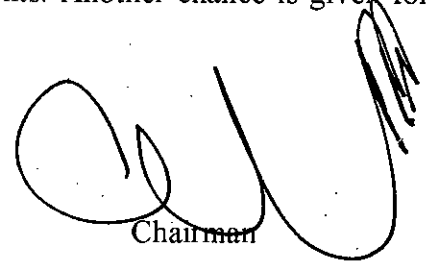
D/AS Report Status of the case and reply immediately - 2 day 10/3/14

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711176
PSS AIR

(8)

6.3.2014

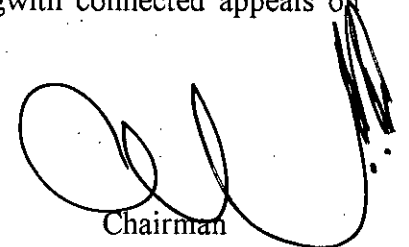
Counsel for the appellant and Mr. Muhammad Maaz Madni, Assistant Litigation Officer on behalf of respondents with AAG present. Written reply has not been received, and request for further time made on behalf of the respondents. Another chance is given for written reply/comments on 5.6.2014.


Chairman

(9)

5.6.2014

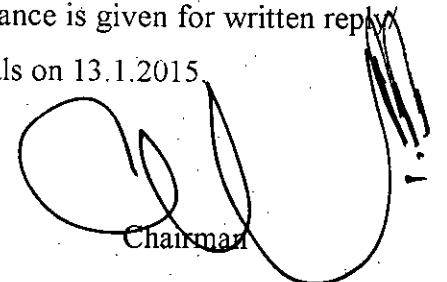
Counsel for the appellant and Mr. Muhammad Maaz Madni, Assistant Litigation Officer on behalf of respondents with AAG present. Request for further time made on behalf of the respondents due to security situation prevailing in the area. Yet another chance is given for written reply/comments alongwith connected appeals on 11.9.2014.


Chairman

(10)

11.9.2014

Counsel for the appellant and Mr. Kabirullah Khattak, AAG for the respondents present. Neither representative of the respondents is present nor written reply has been furnished despite yet another chance given for the purpose on the previous date. On the request of learned AAG, a last chance is given for written reply/comments alongwith connected appeals on 13.1.2015.


Chairman

5 04.10.2013

Counsel for the appellant present and heard on preliminary. Contended that the appellant has not been treated in accordance with law/rules. The appellant took over charge w.e.f 04.12.2011 since he performed his duty as verified by respondent No.2 vide page No.6 of the instant appeal but he has not paid monthly salary. He filed departmental appeal on 02.01.2013 which has not been responded with statutory period of 90 days, hence the present appeal on 18.04.21013. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections/limitation. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notice be issued to the respondents. Case adjourned to 05.12.2013 for submission of written reply.


Member.

6 04.10.2013

This case be put before the Final Bench P for further proceedings.


Chairman

2 05.12.2013

Clerk of counsel for the appellant and Mr. Muhammad Maaz Madni, Assistant Litigation Officer on behalf of respondents with AAG present. To come up for written reply/comments on 6.3.2014.


Chairman

18.6.2013

(B)

Munshi to Counsel for the appellant present. In pursuance of the Khyber Pakhtunkhwa Service Tribunals (Amendment) Ordinance 2013, (Khyber Pakhtunkhwa ord. II of 2013), the case is adjourned on note Reader for proceedings as before on 20.8.2013.


Reader

20.08.2013

(A)



No one is present on behalf of the appellant. Case is adjourned. To come up for preliminary hearing on 04.10.2013..


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 688/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	18/04/2013	<p>The appeal of Mst.Safia Bibi presented today by Mr. M. Asif Yousafzai, Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	24-4-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>18-6-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No 688 2013

Mst Safia Bibi

VIS

Agency Surgeon (NWA) & Others

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1	Memo of Appeal		1-3
2	Appointment Order / <i>Leave</i> <i>Part</i>	A	04 - 4-A
3	Arrival Report	B	05
4	Performance Certificate	C	06
5	Departmental Appeal	D	07
6	Wakalat Nama		

Safia Bibi
Appellant

Safia Bibi

Through:

M. Asif Yousafzai
M. ASIF YOUSAFZAI
ADVOCATE

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

Appeal No. 688 /2013

Mst Safia Bibi LHV
North Waziristan Agency,

**Khyber Pakhtunkhwa
Service Tribunal
Peshawar**
No. 784
Dated 18/4/13

APPELLANT

VERSUS

1. The Director Health (FATA), Department, Warsak Road, Peshawar.
2. The Agency Surgeon, North Waziristan Agency, Miranshah.

RESPONDENTS

.....

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 FOR GRANTING MONTHLY PAY WITH EFFECT FROM SEPTEMBER, 2012 TILL DATE AND ONWARD AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF NINETY DAYS.

.....

PRAYER:

.....

THAT ON ACCEPTANCE OF THIS APPEAL, THE RESPONDENTS MAY BE DIRECTED TO PAY MONTHLY SALARIES TO THE APPELLANT WITH EFFECT FROM SEPTEMBER, 2012 TILL DATE AND ONWARD BEING STILL IN SERVICE AND PERFORMING DUTY. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND PROPER THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filed to the
Level
18/4/13

RESPECTFULLY SHEWETH:

1. That the appellant was appointed as Lady Health Visitor in BPS-9 vide order dated 31-12-2011 on the proper recommendation of the Departmental Selection Committee. The appellant took over charge on 01-01-2012 (F.N) in pursuance his appointment order. It is worth to mention here that after joining duties proper service book of the appellant has also been maintained till-date being civil servant and employee of the Health Department on FATA side at N.W.A. The Appointment order recorded/mentioned in the Service Book, the copy of which is attached as Annexure-A and Arrival Report is attached as Annexure-B.
2. That the appellant has been continuously performing his duty as civil servant of the Health Directorate FATA in N.W.A. upto the entire satisfaction of his superior and there are no complaints against the appellant so far.
3. That all of sudden that without passing any proper order, the pay of the appellant has been stopped since September, 2012 and when the appellant asked from the concerned office about the salaries he was orally told that his pay has been stopped by the Agency Surgeon. *Performance Certificate al Ann'2*
4. That then the appellant forthwith filed an appeal on 20.10.2012 and waited for 90 days but no action has been taken on *depar* departmental appeal of the appellant so far, hence the present appeal on the following grounds amongst the others: Copy of Appeal is attached as Annexure-D.

GROUND:

- A) That not paying the monthly salaries to the appellant and not taking any action on the departmental appeal of the appellant, is against the law, facts, norms of justice, therefore, not tenable.

- B) That the appellant is still in service performing his duty and has not been terminated so far, therefore, the appellant is entitled for his claim of the monthly salaries illegally.
- C) That not paying the monthly salaries to the appellant and stoppage of pay without any proper order, actually amounts to an arbitrary act on the part of the respondents which is not tenable in the eyes of law.
- D) That the appellant has not been treated according to law and rules and has been deprived from the monthly salaries despite proper performance of duty, thus the action of the respondents is totally illegal and without lawful authority.
- E) That being a civil servant, the appellant is entitled to the salaries of the post in accordance with Section-17 of the Civil Servant Act, 1973.
- F) That the appellant has been condemned unheard and no prior chance of defense or hearing was provided to the appellant while stopping his monthly salaries.
- G) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that the appeal of the appellant maybe accepted as prayed for.

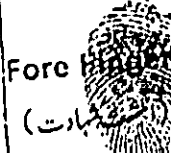
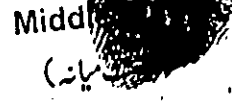
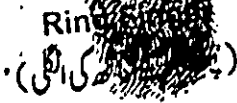
Safia Bibi
Appellant
Safia Bibi

THROUGH:

M. Asif Yousafzai
(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

- 1- Name (نام) MSI Sapia hidi 4
- 2- Nationality and Religion Pakistan / Islam
- 3- Residence (قومیت اور مذہب) SWA
- 4- Father's name and residence (مستقل رہائش) Ulabi Bachash
- 5- Date of birth by christian era as nearly as can be ascertained (والد کا نام اور پتہ) 15-6-88
- 6- Exact height by measurement (تاریخ پیدائش مطابق مسیحی) 5-6'
- 7- Personal mark of identifier (قد و قامت) Nil
- (نشان شناخت)

8. Left hand/right hand thumb and finger-impresions of (Non-gazetted officer)
(مرد کی صورت میں بائیں اور عورت کی صورت میں دائیں ہاتھ کی انگلیوں کے نشانات)



9. Signature of Govt. Servant
(سرکاری ملازم کے دستخط)

Sapna

10. Signature and designation of the Head of the Office or other Attesting officer
(تصدیق کنندہ دفتر کے دستخط اور مہر)

[Signature]
[Stamp]

Note: The entries in this page should be renewed or re-attested at least every five years and the signatures in lines 9 and 10 should be dated. Finger prints need no be taken after every 5 years under this rule.

نوٹ: اس صفحہ کے مندرجہ کم از کم پانچ سال بعد تصدیق ہونا ضروری ہیں اور نمبر 9 اور 10 میں دستخطوں کے نیچے تاریخ لکھنی چاہیے

10	11	12	13		14	15
Date of termination or appointment	Reason of termination (such as promotion, transfer, dismissal)	Signature of the head of the office or other Attesting officer	Nature and duration of leave taken	Allocation of period of leave of average pay up to four months (or earned leave not exceeding 120 days) to which leave salary is debitable to another Government	Signature of the head of the office or other attesting Officer	Reference to any recorded punishment or censure, reward or praised of the Government servants
تاریخ انقطاع ملازمت	انقطاع ملازمت کی وجہ ترقی یا برطرفی	دستخط افسر مجاز	رخصت کی نوعیت و میعاد	پارہہ تک کی رخصت کے لئے اوسط تنخواہ کا تعین Period رہہ Government to which debtable کون سا حکومت کا قلمدان	دستخط افسر مجاز	سزا یا بڑایا غیر مناسب کارکردگی کا ریکارڈ
			Approved as L.H.V.			
			Rs 15109 plus usual allowances			
			Administrative, up to the rank of Sub-Staff			
			basis against the post of L.H.V.			
			vide A.S. No. 886-89 dt 27-2-01			
					Agency-Sub-Staff L.H.V. Agency Muzaffargarh	
		Approved				

5
مہنت عذوب الیہ کی کہیں طلبہ پیران شاہ

گزارش کی مالی ہے۔ کہ قریب ایک ہجرت 74-72-34
مردم 2011-12 کی جو اس میں آج مردم 2012-13
عزت حاصل ہوا۔ لہذا اطلاع اور اس عرض کی ہے

الکافین

مردم 2012-13

ایکے مالک ہار صنفہ بی بی

اس میں ایک وی میں ان شاہ

H/C
To Keep on record

Handwritten signature

Handwritten signature
T-1-2012

PERFORMANCE CERTIFICATE

Certified that ~~Mr.~~ Mst Safia Bibi ~~STO~~ D/O Ilaahi Baloch.

is performing his/her/ Govt duty regularly from the date of appointment tili date.

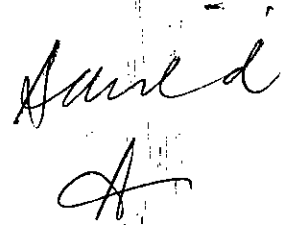
There is no Complaint agst him/her. He/she has a good moral character.



Agency Surgeon

North Waziristan Agency

Miranshah



② جہاں - ڈائریکٹر ایجوکیشن سروسز قائم اور سب لوگ لکھنؤ

پہلے واسطے لکھتے رہے لیکن نادر اور سر سنان الہی نے ان

توان - وہ پہلے میرے ریگنڈراف pay

نہایت آدے کیلئے گزارنے کا کوئی فیہ نہ تھی تو

میں ریگنڈراف کیلئے لکھتے رہے لیکن میرے پاس 2012
میں وہی نہ تھی لیکن وہ میرے بندے کی تھی

فردی کے لئے اس کے ہالا کو شکایت کا کوئی رقم نہیں دیا

میرا پاس ہے کہ میرا تنخواہ ریگنڈراف کے پاس ہے جس سے وہ پاس

الکھنؤ

تاریخ: 13-1-2012

امید
سینئر
سینئر

Amid
A

VAKALAT NAMA

NO. _____ /20 13.

IN THE COURT OF _____

Sajia bibi

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Ajmy Sugni and others

(Respondent)
(Defendant)

I/we _____

Sajia bibi

Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar,** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____ /20

new

(CLIENT)

ACCEPTED

M. Asif Yousafzai

M. ASIF YOUSAFZAI
Advocate

M. ASIF YOUSAFZAI

Advocate High Court,
Peshawar.

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240