


## FORM OF ORDER SHEET

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

Restoration Application No. 754/2023

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	12.10.2023	<p>The application for restoration of Execution petition No. 146/2018 received today by registered post through Mr. Rashid Iqbal Khan Jadoon Advocate. It is fixed for hearing before touring Single Bench at A.Abad on . Original file be requisitioned.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.

*Restoration Appli. No-754/2023*

CMA No \_\_\_\_\_ of 2023

IN

Execution Petition No: 146 of 2018

Shahid Iqbal S/O Shamraiz Khan, C.T teacher, GHS Maira Mandroach,  
Abbottabad, Resident of; House No 127, Link Road Narian Cantt, Tehsil &  
District Abbottabad.

Petitioner

Versus

District Education Officer (Elementary & Secondary Education  
Department), Abbottabad and others.

Respondents

APPLICATION FOR RESTORATION OF TITLED EXECUTION  
PETITION WHICH WAS ADJOURNED SINE DIE THROUGH ORDER  
DATED 21/10/2020 PASSED BY KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR (CAMP COURT ABBOTTABAD).

**INDEX**

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4	Copy of High Court Judgment dated 14/06/2023	B	7 to 11
5	Power of Attorney	C	12 to 13

*(Signature)*  
(Shahid Iqbal)

Petitioner

Through

*(Signature)*  
(Rashid Iqbal Khan Jadoon)  
Advocate IBC Islamabad  
Attorney Abbottabad.

Abbott Law Chamber, Office No 6,  
Ground Floor, Ayub Tanoli lawyer plaza  
Abbottabad. 0333-5025002, 0316-9343818

①

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.

Khyber Pakhtunkhwa  
Service Tribunal

*Restoration Application No. 754/2023*  
CMA No \_\_\_\_\_ of 2023

Diary No. 8269

IN

Dated 12-10-23

Execution Petition No: 146 of 2018

Shahid Iqbal S/O Shamraiz Khan, C.T teacher, GHS Maira Mandroach, Abbottabad, Resident of; House No 127, Link Road Narian Cantt, Tehsil & District Abbottabad.

Petitioner

Versus

District Education Officer (Elementary & Secondary Education Department), Abbottabad and others.

Respondents

APPLICATION FOR RESTORATION OF TITLED  
EXECUTION PETITION WHICH WAS ADJOURNED SINE  
DIE THROUGH ORDER DATED 21/10/2020 PASSED BY  
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR (CAMP COURT ABBOTTABAD).

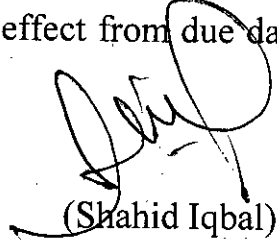
Respectfully Sheweth,

- 1) That petitioner's titled execution petition, relating to advance Increments on higher qualification, in pursuance of final Judgment, passed by this Honourable Tribunal on 12/05/2009 at Camp Court Abbottabad, was pending, in the meanwhile respondents on appearance, stated about an appeal which was pending before the Supreme Court of Pakistan relating to Act "Khyber Pakhtunkhwa cessation of payment of arrears on advance increments on higher education qualification Act" (KPK ACT NO IX OF 2012 dated 15/05/2012).
- 2) That due to appeal pending before the Supreme Court of Pakistan, this Honourable Tribunal in titled execution petition, passed an order dated 21/10/2020 for adjournment Sine die, till the decision of Apex Court. Copy

of Execution Petition and order dated 21/10/2020 are annexed as Annexure "A" & "A-1"

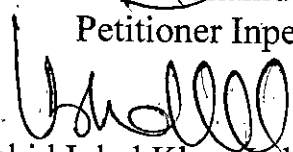
- 3) That the same matter of (KPK ACT NO IX OF 2012 dated 15/05/2012) is now decided by Honourable Peshawar High Court Peshawar on 14/06/2023, whereupon there is no suspension or stay order is passed by Apex Court nor seen and now petitioner is legally entitled to reopen the matter of titled execution petition for its disposal as it is very old pending execution matter of final judgment. Copy of High Court Judgment dated 14/06/2023 is annexed as Annexure "B"

It is therefore respectfully prayed that titled execution petition may please be restored for implementation the judgment dated 12/05/2009 and grant of advance increments of M.A & B.A with effect from due date, with all back benefits.

  
(Shahid Iqbal)

Petitioner Inperson

Through

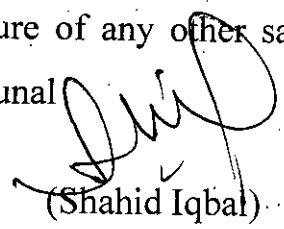


(Rashid Iqbal Khan Jadoon)  
Advocate IBC Islamabad  
Attorney Abbottabad.

Abbott Law Chamber, Office No 6,  
Ground Floor, Ayub Tanoli lawyer plaza  
Abbottabad. 0333-5025002, 0316-9343818

VERIFICATION

I do here by verified that contents of instant application is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Tribunal and same nature of any other same nature petition is not pending before Honourable Tribunal

  
(Shahid Iqbal)

Petitioner Inperson

Annexure A,

(3) (4)



BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.

Khyber Pakhtunkhwa  
Service Tribunal

Execution Petition No: 146 of 2018

Diary No. 722

Dated 16/05/2018

Shahid Iqbal S/O Shamraiz Khan, C.T teacher, Government High School  
Maira Mandroach, Abbottabad, Resident of; House No 127, Link Road  
Narian Cantt, Tehsil & District Abbottabad.

Appellant

Versus

- 1 District Education Officer (Elementary & Secondary Education Department), Abbottabad.
- 2 District Comptroller of Accounts, Abbottabad.
- 3 Accountant General Khyber Pakhtunkhwa Peshawar.
- 4 Director of (Elementary & Secondary Education Department) Khyber Pakhtunkhwa Peshawar.
- 5 Secretary to Govt of Khyber Pakhtunkhwa (Elementary & Secondary Education Department) Peshawar.
- 6 Secretary to Govt of Khyber Pakhtunkhwa, Finance Department Peshawar.

Respondents

EXECUTION PETITION FOR IMPLEMENTATION OF  
JUDGMENT DATED 12/05/2009 PASSED BY KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR (CAMP  
COURT ABBOTTABAD).

PRAYER

Filed to-day

Registrar

IT IS RESPECTFULLY PRAYED THAT RESPONDENTS MAY  
PLEASE BE DIRECTED TO IMPLEMENT THE JUDGMENT  
DATED 12/05/2009 AND GRANT OF 06 SIX ADVANCE  
INCREMENTS OF M.A FROM ITS DUE DATE WITH ALL  
BACK BENEFITS.

Certified to be true copy

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Respectfully Sheweth,

- 1) That petitioner's service appeal relating to advance Increments on his higher qualification was accepted by this Honourable Service Tribunal on 12/05/2009 at Camp Court Abbottabad. Copy of service appeal and judgment is annexed as Annexure "A" & "B".
- 2) That prior to implementation of the judgment dated 12/05/2009, An Act "Khyber Pakhtunkhwa cessation of payment of arrears on advance increments on higher education qualification Act" (KPK ACT NO IX OF 2012 dated 15/05/2012) was promulgated/published by the Government of Khyber Pakhtunkhwa/respondents.
- 3) That the pending implementation matter was legally suspended/hanged in the presence of KPK ACT NO IX OF 2012, so petitioner challenged it through service appeal before this Honourable Tribunal. Copy of service appeal is annexed as Annexure "C".
- 4) That the same service appeal is now decided on 21/03/2018 and petitioner is allowed to seek all his remedies/rights available to him under the law, hence through instant execution petition he is legally entitled for implementation of judgment dated 12/05/2009 and grant of 06 advance increment of MA & 04 advance increment of BA instead of 03. Copies of withdrawal application and order dated 21/03/2018 are annexed as Annexure "D" & "E".

It is therefore respectfully prayed that respondents may please be directed to implement the judgment dated 12/05/2009 and grant of 06 six advance increments of M.A from its due date, with all back benefits.

**VERIFICATION**

I do here by verified that contents of instant appeal is correct and true according to my best knowledge and belief and nothing has been suppressed from this Honourable Tribunal and same nature of any other implementation petition is not pending before Honourable Tribunal.

(Shahid Iqbal)  
Petitioner in person

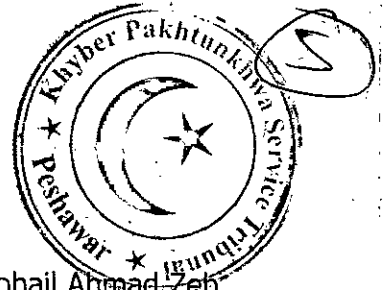
(Shahid Iqbal)  
Petitioner in person

**Certified to be true copy**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

E.P. 146/2018

Annexure A-1



21.10.2020

Petitioner in person present.

Usman Ghani learned District Attorney alongwith Sohail Ahmad Zeb

Litigation Assistant for respondents present.

From the record, it is evident that the present petitioner and others filed service appeals U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for grant of advance increments with all back benefits on the basis of Para-05(i) (c) of the Notification No. FD (PRC) 1-1 /89 dated 11.08.1991 issued by Finance Department and in pursuance of judgment passed by the August Supreme Court of Pakistan and vide judgment dated 12.05.2009 in appeal No.1276/2007, all the appeals were accepted. In the meanwhile, Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Qualification Bill 2012 having been passed by the Provincial Assembly Khyber Pakhtunkhwa on 8<sup>th</sup> May, 2012 and assented to by the Governor Khyber Pakhtunkhwa on 11<sup>th</sup> May, 2012, was published as an Act of the Provincial Legislature of Khyber Pakhtunkhwa. This Act was challenged before the Service Tribunal as well as in the August High Court. Appeals pending in the Service Tribunal were withdrawn by the appellants vide order dated 21.03.2018 of this Tribunal. Writ Petitions were allowed vide order dated 08.06.2017 and the official respondents were directed to provide the benefits of advance increments according to the notification dated 11.08.1991 on attaining higher qualification during service. The respondent departments challenged the said order in the August Supreme Court of Pakistan and vide order dated 18.12.2019 of the August Supreme Court of Pakistan, leave was granted and the impugned judgment passed by the Hon'ble Peshawar High Court was suspended.

*[Handwritten signature]*  
21/10/20

Certified *[Signature]*

Khyber  
Service Tribunal  
Peshawar

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In view of the above discussion, the instant execution proceedings are adjourned sine die till the decision by the August Supreme Court of Pakistan. Petitioner is at liberty to seek its restoration after the decision by the August Supreme Court of Pakistan. File be consigned to the record room.

*[Signature]*  
**Certified to be true copy**

*[Signature]*  
(Rozina Rehman)  
Member (J)  
Camp Court, A/Abad

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal.  
Peshawar

Date of Presentation: 03/10/23  
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Date of Delivery of Copy: 03/10/23



Annexure B,

7

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
**JUDICIAL DEPARTMENT**

**W.P. No.3081-P/2012 with CM No.1672-P/2022**

**Anayat Ullah Khan and others**

**Vs.**

**Government of Khyber Pakhtunkhwa through Chief  
Secretary, Peshawar and others**



**Date of hearing** 14.06.2023  
**Petitioner(s) by:** M/s. Noor Muhammad Khattak and L.  
Nawab Ali Noor, Advocates:  
**Respondent(s) by:** Mr. Amir Javed, Advocate General  
Khyber Pakhtunkhwa and Barrister  
Muhammad Yaseen Raza Khan, Addl:  
Advocate General a/w Mr. Fazl-e-Khaliq,  
Litigation Officer, DEO (M&F), Swabi.

\*\*\*\*\*

**JUDGMENT**

\*\*\*\*\*

**IJAZ ANWAR, J.** Through this single judgment, we intend  
to decide the instant writ petition and Writ Petitions, listed  
below, since in all these cases, similar questions of law and  
facts are involved. The connected writ petitions are:-

- i. *W.P. No.913-P/2014 titled, Muhammad Iqbal and others Vs. Government of Khyber Pakhtunkhwa through Secretary to Government, Finance Department, Peshawar and others.*
- ii. *W.P. No.1418-P/2014 titled, Molvi Muhammad and others Vs. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department, Peshawar and others*
- iii. *W.P. No.2053-P/2014 titled, Saeed Ullah and others Vs. Government of Khyber Pakhtunkhwa through Secretary S&GAD, Peshawar and others*
- iv. *W.P. No.1182-P/2018 titled, Muhammad Rehman and others Vs. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others*
- v. *W.P. No.2326-P/2019 titled, Muhammad Anwar Vs. Government of Khyber*

*Attested*

**ATTESTED  
EXAMINER  
Peshawar High Court**

*Pakhtunkhwa through Secretary  
Education, Peshawar and others*  
vi. *W.P. No.1680-P/2021 titled, Ghandal  
Khan Vs. District Education Officer  
(Male), Peshawar and others*

2. In the instant writ petition, the petitioners have prayed for the following relief:-

*"It is, therefore, humbly prayed that on acceptance of this writ petition, this Hon'ble Court may be pleased to declare the act as against the basic norms of law & rules repugnant to constitution, law and practice/policy as such no legal effect liable to be set-aside".*

3. In all these petitions, the petitioners have mainly questioned the vires of the Khyber Pakhtunkhwa Cessation of Payment of Arrears on Advance Increments on Higher Educational Qualification Act, 2012 (hereinafter to be referred as "the Act").

4. Comments were called from the respondents who furnished the same, wherein, they opposed the issuance of desired writ asked for by the petitioners.

5. Arguments heard and record perused.

6. Perusal of the record transpires that the petitioners have questioned the vires of "the Act" on the ground that promulgation of "the Act" had defeated the judgments of the superior Courts. He further contended that vested rights of the petitioners have accrued in the matter and placed reliance on the judgments reported as "FECTO Belarus Tractor Ltd Vs. Government of Pakistan through Finance Economic Affairs and others (PLD 2005 SC 605), 2013

*Attested*  
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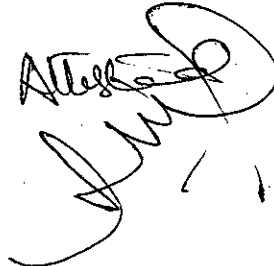
ATTESTED  
EXAMINER  
Peshawar High Court

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SCMR 1749, 2013 SCMR 1752 (Contempt of Court Proceedings case) and AIR 1975 SC 2199”.

7. On the other hand, the learned Advocate General, Khyber Pakhtunkhwa has referred to a recent judgment of the Hon'ble Supreme Court of Pakistan passed in the case titled “The Divisional Superintendent, Pakistan Railways, Rawalpindi and others Vs. Syed Irshad Ali Abid (2021 PLC (C.S.) 277)” and contended that the grant of increments on higher educational qualification has since been discontinued through Notification dated 13.09.2001, as such, it is a past and closed transaction and that necessary time was granted to the employees who have any claim, albeit, when they failed to claim the same for long ten years, as such, “the Act” in question was promulgated. He has also produced a letter dated 29.04.2010 issued by the Additional Secretary (Regulation), Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing), whereby, clarification was given about the advance increments on higher educational qualification and according to which, a period of sixty days was provided for the remaining claims and argued that even then, petitioners have failed to claim the advance increments at the relevant time.

8. During the course of hearing, learned counsel for the petitioners has produced letters/applications which were duly placed on file and contended that the rights of the petitioners to the grant of advance increments were secured

Attested  


ATTESTED  
 EXAMINER  
 Peshawar High Court

10

and guaranteed by a Government's circular letter dated 11.08.1991 and that the case of the petitioners was matured at the relevant time before the cut-of-date i.e. 13.09.2001 when the grant of such increments was discontinued. He also referred to a judgment of the Hon'ble Supreme Court of Pakistan passed in "CPLAs No.525 and 526/2007 decided on 19.07.2007".

9. At this stage, the learned Advocate General, Khyber Pakhtunkhwa, representing the respondents, contended that the civil servants, who were holding higher educational qualification prior to discontinuation of advance increments in the year, 2001, are entitled for the benefit flowing from circular letter dated 11.08.1991, however, those who have improved their qualification after the notification dated 13.09.2001, under no circumstances, can claim the same benefit and that the bar created through "the Act" would be equally applicable.

10. In view of the above, we, without commenting upon the vires of "the Act" and in view of the statement of the learned Advocate General, Khyber Pakhtunkhwa, dispose of this and the connected writ petitions and direct the respondents to consider the case of the petitioners in the light of circular letter dated 11.08.1991 and in case, they fulfill the condition mentioned therein for the grant of advance increments prior to the cut-of-date, they be allowed such benefit. It is, however, clarified that only the case of the present petitioners shall be

Attested  
[Signature]

ATTESTED  
EXAMINER  
Peshawar High Court

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considered and that others cannot claim such benefits, having not agitated the matter at the relevant time.

Announced  
Dt:14.06.2023

*[Handwritten signature]*

JUDGE

*[Handwritten signature]*

JUDGE

(DB) Hon'ble Mr. Justice Haz Anwar and Hon'ble Mr. Justice Syed Muhammad Attique Shah

\*Muhammadullah\*

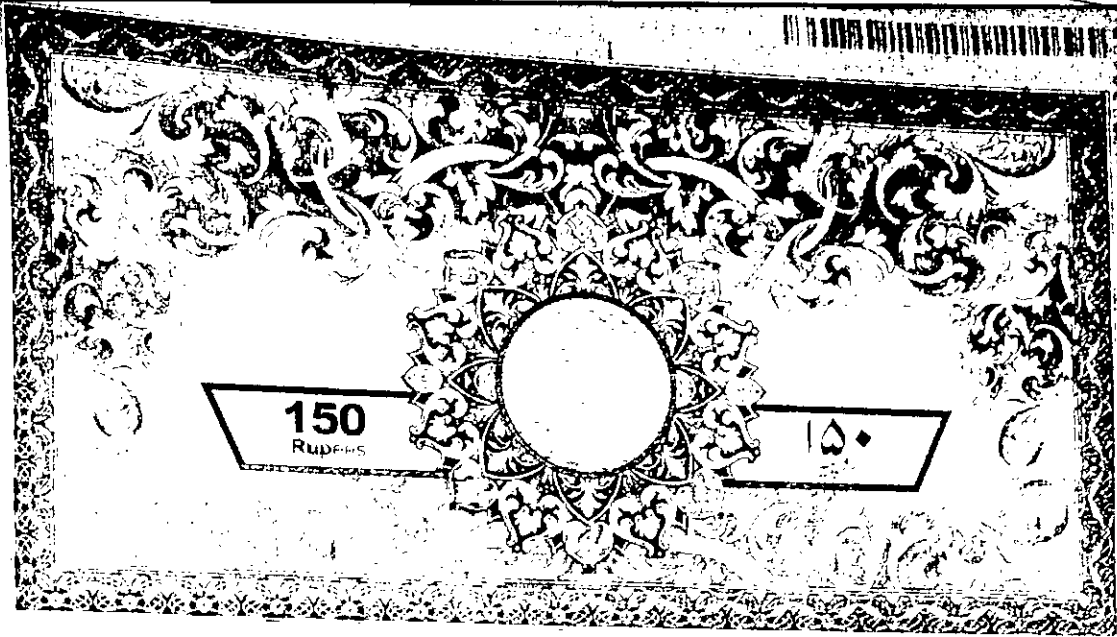
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EXAMINER  
Peshawar High Court, Peshawar  
Authorized Under Article 8, 7 of  
the Qanoon-e-Shahadat Act 1984

03 OCT 2023

*[Handwritten signature]*

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**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

EXECUTION PETITIONS FOR IMPLEMENTATION OF FINAL  
JUDGMENT DATED 12/05/2009 PASSED AS JUDGMENT IN REM  
IN APPEAL NO 1276 OF 2007

**POWER OF ATTORNEY**

**NAME & OTHER PARTICULARS OF ATTORNEY**

**Mr Rashid Iqbal Khan Jadoon Advocate IBC Islamabad Abbott Law  
Chamber, Office No 06 Ground Floor, Ayub Tanoli lawyer plaza Abbottabad.**

We

- 1). Sardar Irshad Ali S/O Ali Afsar, SDEO, Tehsil Havelian, District  
Abbottabad. E.P No 630/2023
- 2). Qazi Masood-ur-Rehman S/O Qazi Ghulam Iftari, Senior C.T  
teacher, GHS Pind Gugran, Haripur. E.P No 141/2018
- 3). Muhammad Haroon S/O Muhammad Ayub, SST GHS Shargu,  
Abbottabad. E.P No 142/2018
- 4). Naveed S/O Abdur Rehman, S.P.E.T teacher, GHSS Bandi  
Dhundan, Abbottabad. E.P No 143/2018
- 5). Rashid Lateef S/O Abdul Lateef, Retired Senior Arabic teacher,  
GHSS Bandi Dhundan, Abbottabad. E.P No 145/2018
- 6). Shahid Iqbal S/O Samraiz Khan, C.T teacher, GHS Maira  
Mandroach, Abbottabad. E.P No 146/2018



Attest  
*[Signature]*

(48)

w.e.f. 15.04.2016. Copy of the said notification was also sent to all the principals of medical colleges in KPK. It is worth mentioning that in consequence of the said notification, in the 11<sup>th</sup> Board of Governors meeting dated 21.07.2016, the paramedics and nurses were approved to be included in the said package, consequently, the mala fides of respondent No.1 are reflected from notification No.MTI/BOG/ATH/09/2016 dated 24.09.2016 wherein through the instant notification, the respondent No.1 set a deaf ear towards grant of the HPA to the petitioners however, issued the said notification in favour of the paramedics and nursing staff working at Ayub Teaching Hospital w.e.f. 15.04.2016 resultantly the respondent No.1 violated the decision in their 11<sup>th</sup> meeting of the Board of Governors to the effect that the said allowance was admissible to the petitioners as well w.e.f. 15.04.2016 and left the petitioners from the said facility.

- g)
- j) That another classic example of the mala fides of respondent No.1 is notification No.MTI/BOG/HPA/20/2017 dated 16.03.2017 wherein the respondent No.1 without the approval of the Board of Governors had issued an executive order under the garb of notification and mentioned that the paramedic staff working as employees in the Ayub Medical College will be granted Rs.10,000/- per month as HPA and had expressed that the rest be deducted from their salaries. This once again being total mala fide act of respondent No.1 is liable to be set aside.
- k) That subsequently, a notification No.FD(SOSR-11)8-18/2015-16 dated 23.02.2017 was issued by respondent No.2 regarding disbursement of HPA to paramedic and

MC/2017

150  
Rupees۱۵۰  
روپیہ

- 7). Arshad Khan S.O Mir Afzal Khan Senior C.T teacher GHSS No 3 (English Medium), Abbottabad. E.P No 148. 2018
- 8). Muhammad Iqbal S.O Khan Bahadar Khan Retired C.T teacher, GMS Phulwali, Abbottabad. E.P No 149. 2018

We, deponents, do hereby solemnly affirm and declare on oath that we appoint above named (Mr Rashid Iqbal Khan Jadoon Advocate) as attorney, to act on our behalf, to appear, plead for us in the titled case in which the same may be tried or heard and any other proceedings arising out of or connected herewith and he would be competent to exercise all the powers which we our self hold as petitioners, he is authorized all powers, to institute case, to submit any kind of application or reply, argue the case, in short, all powers or authority which we are entitled being petitioners, would be transferred to above named attorney through instant power of attorney.

Sworn at Abbottabad on this 07th day of October, 2023.

1) Sardar Taseer Ali  
CNIC No 13101-0824655-3

2) Qazi Masood-ur-Rehman  
CNIC No 13302-0429473-5

3) Muhammad Haroon  
CNIC No 13101-0920920-5

4) Naveed  
CNIC No 13101-0904990-3

5) Rashid Lateef  
CNIC No 13503-0593241-9

6) Shahid Iqbal  
CNIC No 13101-0946665-9

7) Arshad Khan  
CNIC No 13101-0718940-3

8) Muhammad Iqbal  
CNIC No 13101-2401093-1

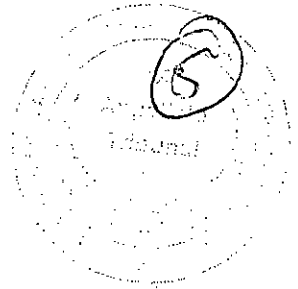


Attested  
Rashid Iqbal Khan



GROUNDS

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- a). As per Para 6. The petitioners being of different cadre than the support and administrative staff are not entitled to MTI allowance.
- b). As per Para 6.
- c). Incorrect. Since the petitioners do not fall in the cadre of support and administrative staff, they are not entitled to MTI allowance and does not give them any vested right to claim the same.
- d). as per Para c).
- e). Incorrect. The petitioners do not fall under the cadre of support & administrative staff.
- f). As per Para c).
- g). Incorrect. As per Para 7.
- h). Incorrect. HPA allowance was sanctioned after approval by BOG.
- i). As per Para h).

FILED TODAY

ARUNACHAL PRADESH LEGISLATURE  
SECRETARIAT  
DISSEMINATION SECTION

43/3/14