

BEFORE THE KHYBER PAKHTUKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 1963/2023

Rahim ullah..... Appellant.

Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar and others..... Respondents.

(Para Wise Reply on behalf of Respondent No. 4)

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6. *Aulhany Leeli*

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Y. J. J.
Deponent

17301-1327637-9

0346-9191985

22-12-23

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No.1963/2023

Rahim Ullah.....Appellant.

V/S

Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar and others.....Respondents.

(Para wise reply on behalf of Respondent No.4 &5)

Preliminary Objections:-

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 9981

Dated 19-12-2023

- 1) That the Appellant has no cause of action.
- 2) That the Appellant has no locus standi.
- 3) That the Appellant has not come to this Court with clean hands.
- 4) That the Appeal in hand having no merits hence liable to be dismissed.
- 5) That the Appeal of the Appellant is barred by Law/rules.
- 6) That the Appellant has not complied with Section 79, 80 CPC.
- 7) That the instant Appeal is time barred.
- 8) That the identical cases C.P No.14/2013 titled Ahmad Khan Dehpal V/s Government of Balochistan and others dismissed by the Supreme Court of Pakistan vide its judgment dated: 23/01/2013 and Appeal No.1377/2008 Titled Naseeb Khan V/s EDO (E & SE) Kohat and others dismissed by the Service Tribunal Peshawar vide its judgment dated: 26/05/2009, as well as Civil Appeal No.71 of 2017 titled Mushtaq Ahmad V/s Accountant General Khyber Pakhtunkhwa and others has been dismissed by the Additional District judge-IV D.I Khan vide its judgment dated: 31/01/2018(Annex- A, B & C).
- 9) That Finance Department as well as (S&GAD) Department Peshawar are the necessary parties in the instant case which the appellant has not made as Respondants.
- 10) That the appellant is bad due to joinder and miss-joinder of necessary parties.


Respectfully Sheweth:-


- 1) That at the time of appointment the administrative department concerned prepared and entered the D.O.B in Service Book/Service Roll of every Government Servant and send to concerned DAO/AG office. After entering the said information in the "SAP System" for starting the salary DAO/AG returned the same Service Book/Service Roll to the administrative department concerned being their permanent property.
- 2) Relates to record, however liable to be provided by the appellant.
- 3) Incorrect to the extent that being a Government Servant the Service Book/Service Roll is the authentic document to verify the D.O.B of the appellant which clearly shows that the D.O.B of the appellant has been written without any cutting as 21.03.1960 and in light of para 116 of GFR VOL-1 read with S & GAD (Regulation Wing) letter No.SOR(S & GAD) 5/(40)/87, dated: 15-02-1989. The D.O.B of any Government Servant once recorded in the Service documents gets finality and cannot be changed/alterd except in case of clerical mistake. The Government Servant can apply for correction of D.O.B within Two years from the date of his entry into Government Service. (Annex-D ~~& B~~). Hence the date for superannuation of the appellant is 20.03.2020 is correct.
- 4) That the administrative department (Regional Police Officer Malakand) of the appellant has issued office order No.9094-98/E, Dated: 05.09.2022 is correct. Hence overpayment of Pay & Allowances if illegally received by the appellant are liable to be recovered under the rules.
- 5) As mentioned in para "3" above, the administrative department concerned has no Power to change the D.O.B on this belated stage.
- 6) Incorrect that retirement Notification dated: 05.09.2022 was issued by the Respondent No.2 being the administrative department of the appellant. Respondent No.5 is only the representative of AG KP and has no mandate to issue any notification, Hence Respondent No.5 has no concern with case may be deleted from the array of Respondents.
- 7) That Respondent No.4 is also the Sub Ordinate Officer of AG KP and has no mandate to issue or Set aside any notifications/instructions issued by the Government of Khyber Pakhtunkhwa from time to time.

Grounds:-

- A. That Respondent No.4 is bound to follow the rules and instructions issued by the Provincial Government of Khyber Pakhtunkhwa from time to time.
- B. Relates to Respondent No,1 ,2 & 3 and they are in better position to show the status of the case.
- C. Relates to Respondent No,1 ,2 & 3 and they are in better position to show the status of the case
- D. Incorrect as mentioned in Para "5" above.
- E. As mentioned in Para "A" above.
- F. No Comments.
- G. No Comments.
- H. On the above Para's the appeal in hand is not maintainable , liable to be dismissed. And the overpayment of Pay & Allowances if illegally received by the appellatant shall be recovered under the rules.

Keeping in view the above mentioned facts it is, therefore, humbly prayed that the over payment of Pay & Allowances the appellatant illegally received may kindly be ordered to be recovered and appeal in hand having no merits may be dismissed with cost.


Assistant Accpunts Officer.
Pay Roll - V
Accountant General
Khyber Pakhtunkhwa
Khizar Hayat
Respondent No-4


District Accounts Officer
Dir Lower
Respondent No-5
Mohammad Yaqoob

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No.1963/2023

Rahim Ullah.....Appellant.

V/S

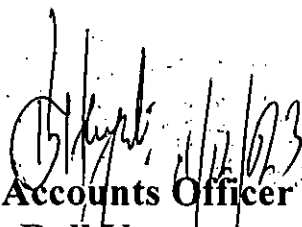
Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar and others.....Respondents.

(Para wise reply on behalf of Respondent No.4 &5)

AFFIDAVIT

I, Khizar Hayat, Assistant Accounts Officer Pay Roll V office of Accountant General Khyber Pakhtunkhwa Peshawar do hereby solemnly affirms & declare that the reply submitted on behalf of Respondents No.4 & 5 is true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Court.

It is further stated on oath that in this appeal the answering respondent has neither been placed Ex-part nor his defense has been struck off./cost


Assistant Accounts Officer
Pay Roll V
Accountant General
Khyber Pakhtunkhwa

Respon No- 4

ATTESTED



19-12-2023

2013 S C M R 759

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali and Ejaz Afzal Khan, JJ

AHMED KHAN DEHPAL---Petitioner

Versus

GOVERNMENT OF BALOCHISTAN and others---Respondents

C.P. No.14-Q of 2013, decided on 23rd January, 2013.

(On appeal against the judgment dated 24-12-2012 passed by the Balochistan Service Tribunal, Quetta in S.A. No.93 of 2012).

Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---

---R. 12A---Constitution of Pakistan, Art.212(3)---Alteration in date of birth recorded at the time of joining service---Scope---Date of birth of civil servant (petitioner) was recorded as 2-2-1953 in his secondary school certificate and the Service Book---After many years in service civil servant claimed that his actual date of birth was 2-2-1958, and consequently instituted a suit for correction of his date of birth, which suit was decreed in his favour---Civil servant approached his department for correction of his date of birth but to no avail---Departmental representation filed by civil servant failed and appeal filed before the Service Tribunal was also dismissed---Validity---According to Rule 12A of Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 date of birth once recorded at the time of joining government service would be final and thereafter no alteration in the date would be permissible---In the present case idea to have the date of birth altered appeared to be an afterthought of the civil servant---Question was as to how the civil servant, who joined the service in 1982, could not know about his actual date of birth despite the passage of more than two decades, especially when at various stages during his studies as well as service he filled many examination forms, pro formas as well as service book---Petition for leave to appeal was dismissed in circumstances.

Muhammad Sharif v. Chief Secretary and another 2011 PLC (C.S.) 35 distinguished.

Khalil Ahmad Siddiqui v. Pakistan through Secretary Interior, Interior Division; Government of Pakistan and 5 others 2003 PLC (C.S.) 696 and Khalil Ahmed Siddiqui v. Pakistan through Secretary Interior, Islamabad and 5 others 2004 PLC (C.S.) 1044 ref.

M. Hadi Shakil Ahmed, Advocate Supreme Court for Petitioner.

Nemo for Respondents.

Date of hearing: 23rd January, 2013.

JUDGMENT

EJAZ AFZAL KHAN, J.---This petition for leave to appeal has arisen out of the judgment dated 24-12-2012 of the learned Service Tribunal, Quetta whereby it dismissed appeal filed by the petitioner.

2. Brief facts giving rise to the instant petition are that the petitioner was appointed as Assistant Engineer in BS-17 in the Irrigation Department, Government of Balochistan on 10-5-1982. He, after

*Date of Birth
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Service Tribunal
Balochistan*

(Annex - A)

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stepping up many rungs in terms of scales, lastly held the post of Chief Engineer. His date of birth in the Secondary School Certificate and the Service Book was recorded as 2-2-1953. Somehow, it dawned upon him that his actual date of birth is not 2-2-1953 but 2-2-1958. He, thus instituted a suit for declaration and correction of his date of birth. The decree asked for was granted. He approached the Secretary Irrigation Department for correction of his date of birth but of no avail. He filed a representation but that too yielded no result. He then filed an appeal before the Service Tribunal but it too met the same fate.

3. Learned counsel appearing on behalf of the petitioner contended that when the relevant record was looked into, it transpired that the actual date of birth of the petitioner was 2-2-1958, therefore, he asked for its correction. It was liable to be corrected, argued the learned counsel, when a decree in this behalf was also passed. The learned counsel to support his contention placed reliance on the case of "Muhammad Sharif v. Chief Secretary and another" (2011 PLC (C.S.) 35).

4. We have gone through the record and the judgment cited by the learned counsel for the petitioner and have also considered the arguments addressed at the bar.

5. Before we discuss the merits of the case and arguments addressed at the bar it is worthwhile to refer to Rule 12A of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 which reads as under:--

[12A. Alteration in the date of birth.---The date of birth once recorded at the time of joining government service shall be final and thereafter no alteration in the date of birth of a civil servants shall be permissible.]

6. The above quoted rule reveals that a date of birth once recorded at the time of joining government service shall be final and thereafter no alteration in the date shall be permissible. This provision was inserted by SRO 521(I) on 31st July, 2000. An alteration before 31st July, 2000 could well be made but not thereafter. Reference to the case of "Muhammad Sharif v. Chief Secretary and another" (supra) will not be of any help to the petitioner as in that case the date of birth recorded in the Secondary School Certificate as well as Service Book was the same whereas it is not the case here. The idea to have the date of birth altered appears to be an off shoot of an afterthought. It, as a matter of fact, has become a common practice with the civil servants to file a civil suit for correction of date of birth when they come to the verge of their retirement just to prolong their tenure for enjoying the perks and privileges for a few more years at the cost of others.

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7. How comes this that the petitioner who joined the service in 1982 could not know about his actual date of birth despite the passage of more than two decades. Especially when at various stages during his studies as well as service he filled many examination forms, other pro formas as well as service book. In the case of "Khalil Ahmad Siddiqui. v. Pakistan through Secretary Interior, Interior Division, Government of Pakistan and 5 others" 2003 PLC (C.S.) 696, one of us while dealing with an identical situation held as under:--

"A perusal of the record would reveal that the date of birth of the petitioner was recorded as 19-12-1941 in the Secondary School Certificate as well as the service record. It may be true that the petitioner moved an application for the correction of his service record in the year 1966 before his High-Ups but it is equally true that the said application was not pursued to its logical end. It is also true that another application was moved in this behalf in the year 1982 but again it was left the halfway and never perused whole heartedly to the desired culmination. Why did the petitioner sit and sleep over it for decades and decades together has not been plausibly explained anywhere either in the writ petition or in rejoinder or during the course of arguments addressed at the bar. Why did the petitioner make no effort to get corrected the very basic document of Secondary School Certificate from the Board concerned is another circumstance which violently militates against the genuineness of the stand adopted by him as to the date of birth. If at all the petitioner was in know of some document showing is actual date of birth lying somewhere in Bijnoor, he could well have gone to India to fetch it in mid or late sixties. Why did he postpone his purposeful visit to India till 1998 and why did he not use the good offices of his relatives

to have the same is yet another question whose answer cannot be found either from the record or the counsel representing the petitioner. It, is a matter of fact, has become a common phenomenon and usual practice that the Government Servants if and when they come at the verge of their retirement, they question their dates of birth just to prolong their tenure and enjoy the perks and privileges of their service for a few more years at the cost of others. This idea never creeps across their mind earlier and in case it does, it is never taken seriously and pursued to the desired end. It is clearly and squarely a case of estoppel of conduct which will certainly bar and barricade the petitioner from seeking the correction asked for at least at such a belated stage".

8. In the case of "Khalil Ahmed Siddiqui v. Pakistan, through Secretary Interior, Islamabad and 5 others" (2004 PLC (C.S) 1044), this Court while dismissing the petition against the aforesaid judgment held as under:-

"There is no cavil to the proposition that the above rule having no retrospective effect, would not apply to the cases in which the date of birth of the Government servant was corrected before its promulgation but the request of the petitioner in this behalf was turned down by the department having been found without any foundation and consequently the operation of the rule in question in the case of petitioner would not be excluded. Learned counsel for the petitioner while placing reliance on Government of Balochistan through Secretary S&GAD, Quetta v. Marjan Khan (2003 PLC (C.S.) 245 and Tarb Arif Fatimi v. President of Pakistan (PLD 1994 SC 562) has contended that the matter was not properly considered by the High Court in the light of law laid down by the superior Courts on the subject. We, in the above factual background of the case, do not feel it necessary to further dilate upon the question of applicability of rule 12-A *ibid*, or the claim of petitioner on the ratio of above referred judgments. The petitioner without producing any proof in support of his claim, sought correction of his date of birth only on the basis of oral assertion that his date of birth given in the Secondary School Certificate was not correct. We are afraid, the controversial question of fact cannot be adjudicated by the High Court in its Constitutional jurisdiction. The matter relating to the correctness or otherwise of the date of birth in the service record being purely question of fact, cannot be determined without recording of evidence and detailed scrutiny of facts and such exercise cannot be undertaken in writ jurisdiction. Further the learned counsel has not been able to convince us that the jurisdiction of the High Court in the matters connected with the terms and conditions of the service of a civil servant is not ousted under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. This petition having no substance is accordingly, dismissed. Leave is refused".

When viewed against this backdrop, we don't find any merit in this petition.

9. For the reasons discussed above, this petition being without merit is dismissed and the leave asked for is refused.

MWA/A-5/SC

Petition dismissed.

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(Annex - C)

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In the Court of
ARBAB AZIZ AHMAD, ADDL: DISTRICT JUDGE-IV
DERA ISMAIL KHAN

Civil Appeal No.71 of 2017

Mushtaq Ahmad son of Muhammad Bakhsh caste Majhota resident of Gara Essa Khan, Tehsil Daraban District D.I.Khan... (Appellant/plaintiff)

V E R S U S

The Accountant General & another..... (Respondent/defendant)

Date of Institution	21.11.2017
Date of Decision	31.01.2018

JUDGMENT

This appeal is directed against the judgment and decree dated 08.11.2017, passed by learned Civil Judge-VI, D.I.Khan, whereby suit filed by the appellant/plaintiff was dismissed.

Facts in background are that, plaintiff brought a suit for permanent injunction against defendants wherein he prayed for incorporating his correct date of birth i.e 05.01.1963 in their record as per decree dated 13.11.2015 passed by learned Civil Judge-III, D.I.Khan in his favour. It is further alleged in the plaint that as per judgment and decree of the learned Civil Judge-III, D.I.Khan, his service book has already been rectified by the headmaster of his school whereas defendants are reluctant to rectify their record, hence the suit.

The defendants were summoned who appeared before the Court but thereafter remained absent, therefore, they were placed ex-parte and plaintiff was directed to produce his ex-parte evidence.

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Plaintiff in support of his case recorded his own statement as PW-1 and closed his ex-parte evidence. Thereafter, ex-parte arguments of appellant/plaintiff were heard.

The learned trial Court after hearing ex-parte arguments dismissed the suit of the appellant/plaintiff, hence the instant appeal.

Arguments heard and record perused.

Learned counsel for the appellant/plaintiff argued that judgment & decree of the learned trial court is against law, facts & evidence on record hence untenable. He further argued that the correct date of birth of appellant/plaintiff is 05.01.1963 but the defendants are reluctant to correct their record. He added that the Judgment delivered by the learned trial Court has resulted in gross miscarriage of justice and thus requested that the same be set aside.

The representative/Junior Auditor of DAO, respondents/defendants fully supported the case of respondents/defendants and prayed for dismissal of the instant appeal.

Perusal of record reveals that the appellant/plaintiff filed the suit in the instant case wherein he sought correction of his date of birth in the record of respondents/defendants on the basis of judgment/decree dated 13.11.2015, passed by learned Civil Judge-III, D.I.Khan, in a suit titled, "Mushtaq Ahmad Vs NADRA" filed by the appellant/plaintiff on 18.06.2015 for declaration-cum-permanent injunction. It is apparent from the record that the respondents/defendants were not impleaded as a party to that suit, therefore, they had not been provided an opportunity to refute the stand taken in the suit of appellant/plaintiff, therein, furthermore the

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appellant/plaintiff had not made any prayer for correction of his age in the record of respondents/defendants in the said suit. Besides, in the said suit, the appellant/plaintiff had not even disclosed the fact that he is a Government servant. As per record the judgment dated 13.11.2015 (Ex.PW-1/1) was not passed against the present respondents/defendants, therefore, the appellant/plaintiff cannot claim execution of such a relief which was neither claimed nor the Court granted against them. Almost similar question came before the august Supreme Court of Pakistan in the case of "Ahmad Khan Dipal Vs Government of Baluchistan" reported in 2013-SCMR 759 wherein it is observed that:

"The idea to have the date of birth altered appears to be an offshoot of an after-though. It is a matter of fact, has become common practice with the civil servant to file a civil suit for correction of date of birth when they come to the verge of their retirement just to prolong their tenure for enjoying the perks and privileges for a few more years at the cost of others.

In the present case also the plea of the appellant/plaintiff at this belated stage is apparently aimed at to only prolong his tenure for enjoying his perks and privileges for a few more years. Furthermore, date of birth of an employee once recorded at the time of joining Government service shall be final and thereafter no alteration in the same shall be permissible.

Hence in light of what has been discussed above, I have not found any illegality or infirmity in the impugned judgment and decree of the learned trial court, which requires interference by this court through

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instant appeal, thus the appeal in hand being devoid of merits is

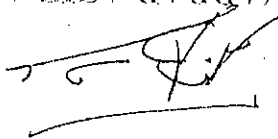
dismissed, accordingly. No order as to costs.

Record of learned trial court be returned forthwith and file of

this court be consigned to Record Room after completion.

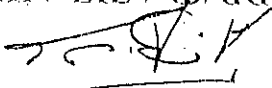
ANNOUNCED
31.01.2018

(ARBAB AZIZ AHMAD)
Additional District Judge-IV
Dera Ismail Khan



Certified that this judgment of mine consisting of 04 pages, each of which has been read, signed and corrected by me wherever necessary.

(ARBAB AZIZ AHMAD)
Additional District Judge-IV,
Dera Ismail Khan



(ARBAB AZIZ AHMAD)
Addl. Distt. & Session Judge-IV
Dera Ismail Khan



Arbab Aziz Ahmad

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Annex-C

GOVERNMENT OF N.W.F.P.
Services & General Administration Department
(Regulation Wing)

No.SOR-II(S&GAD)5(40)/87,
Dated Peshawar the 15th February, 1989.

To

1. All Administrative Secretaries to Government of NWFP.
2. Secretary to Governor, NWFP.
3. All Commissioners in NWFP.
4. All Heads of Attached Departments in NWFP.
5. All Heads of Autonomous/Semi-Autonomous Bodies in NWFP.
6. All Deputy Commissioners/Political Agents in NWFP.
7. All District and Sessions Judges in NWFP.
8. The Registrar, Peshawar High Court, Peshawar.
9. The Secretary, Board of Revenue, NWFP, Peshawar.
10. The Secretary, NWFP Public Service Commission, Peshawar.
11. The Registrar, NWFP Service Tribunal, Peshawar.

SUBJECT: CHANGE IN THE RECORDED DATE OF BIRTH OF THE CIVIL SERVANTS.

Sir,

I am directed to say that under the existing rules, immediately after his induction into service, every civil servant is required to declare the date of his birth by the christian era with as far as possible alongwith confirmatory/conclusive evidence such as matriculation certificate, municipal birth certificate and so on. This is supplemented by the opinion of the Civil Surgeon/Standing Medical Board. The department after full satisfaction with age and on the basis of medical examination of the new entrant in the department, enter the same in an authentic document, i.e. Service Book/History of Service etc. The said document is maintained by the Department/Audit and is always checked periodically.

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2. The date of birth of a civil servant as recorded in his service documents remains constantly in his knowledge. This is reiterated in his ACRs and the Seniority Lists issued by the department from time to time. The preparation of service record of an officer is an official act and according to Law, it is presumed to be correct. GFR-116 also provides that the date of birth once recorded cannot be altered except in the case of clerical error, without the previous orders of the Local Administration. Despite this, certain Government Servants are complacent with the state of affairs and sleep over their rights for decades knowing fully about their dates of birth entered in their Service Books etc. It would therefore be too much to accept such a belated claim from a Civil Servant that he was born on a date other than the one entered in his service documents and that the delay in representation was due to ignorance of the alleged erroneous entry. After all, there is always attached a finality to decisions taken by competent authorities.

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3. I am, accordingly, directed to request that all concerned may please be informed in clear terms that in future a request for an alteration in the recorded date of birth of a Government servant may only be entertained by the Appointing Authority in the case of officers in B-17 and above and by the Administrative Department in the case of civil servants in B-16 and below, after special enquiry and only if the Government servant applies for it within two years from the date of his entry into Government service.

4. Kindly acknowledge receipt.

Your Obedient Servant,

Z. Khattak

(ZARIN DAD KHATTAK)
Additional Secretary(Regulation)

Endst:No.SORII(S&GAD)5(40)/87, Dated Peshawar the 15th February,1989.

Peshawar. Copy forwarded to Secretary to Chief Minister, NWFP.

Z. Khattak

(ZARIN DAD KHATTAK)
Additional Secretary(Regulation)

Endst:No.SORII(S&GAD)5(40)/87, Dated Peshawar the 15th February,1989.

Copy forwarded to:-

1. All Additional Secretaries in Services and General Administration Department.
2. All Deputy Secretaries in Services and General Administration Department.
3. Private Secretary to Chief Secretary, NWFP.
4. All Section Officers/Estate Officer in Services and General Administration Department.
5. Private Secretary to Secretary, Services and General Administration Department.
6. Librarian, Services and General Administration Department.

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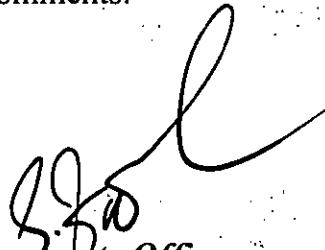
(GHULAM JILANI)
Section Officer(Reg-II)



Office of the
Accountant General
Fort Road, Khyber Pakhtunkhwa
Peshawar Pakistan
Phone: 091 9211250-54

AUTHORITY LETTER

Mr. Syed Tariq Shah Senior Auditor (BPS-17) Office of the Accountant General Khyber Pakhtunkhwa, Peshawar is hereby authorized to attend the court in Service Appeal No.1963/2023 titled Rahim Ullah V/S Inspector General of Police Khyber Pakhtunkhwa Peshawar and others on behalf of this office and file the comments.


Accounts Officer
(Litigation)