

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 413/2016

Date of Institution ... 18.04.2016

Date of Decision ... 27.12.2018

Aurangzeb (Qasid) son of Ahmad C/O Muhammad Sarwar Qureshi, Amin Colony Chowk, near Government Technology College, Kohat Road, Peshawar. (Appellant)

VERSUS

Section Officer, Administration Department, Civil Secretariat, Peshawar.
... (Respondents)

Present.

MR. ASIF KHAN,
Advocate. ... For appellant

MR. KABIRULLAH KHATTAK,
Addl. Advocate General ... For respondents.

MR. HAMID FAROOQ DURRANI,
MR. AHMAD HASSAN, ... CHAIRMAN
... MEMBER(E)

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

Instant appeal is essentially against the order of respondents refusing to make correction in date of birth of the appellant. The said decision, impugned herein, was made on 18.03.2016 whereby it was declared that the entry of date of birth in the service book of the appellant was final and could not be altered after two years of appointment. Pertinently, the appointment of appellant was made on 23.06.1976 as Peon/Naib Qasid in the office of respondent No.1.

2. Learned counsel for the appellant contended that as per medical fitness certificate issued on 30.06.1976, his age was by appearance about 20 years and

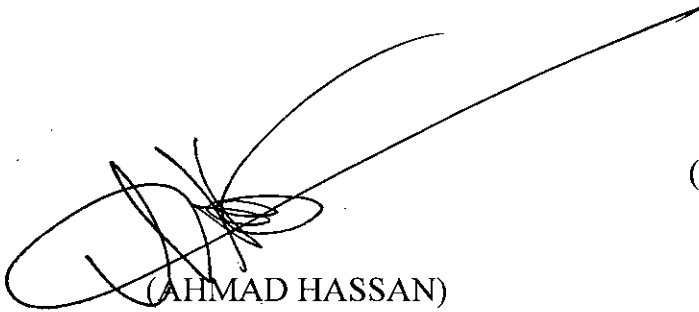
taken from the date of issue of certificate his birth came to the year 1956 which was accordingly recorded in the service book. The said year of birth was, however, altered to 1955 whereby the appellant was constrained to retire on 30.06.2015.

As against that, learned Addl. Advocate General referred to judgments reported as 2014-SCMR-1723 and PLC(C.S)1412 and contended that after two years of assumption of charge the date of birth of a civil servant could not be changed in view of GFR-116. In his view, the appellant submitted an application, as afterthought, on 18.03.2016 i.e. after his superannuation and retirement, in order to draw undue benefits. The learned AAG also referred to a copy of CNIC of appellant as it was available in his service record wherein his year of birth was recorded as 1955.

3. We have considered the available record which includes medical fitness certificate wherein the age of appellant was shown to be 19 years as per his own statement, and by appearance, about 20 years. The said recording of age was tentative and by no means could be extended exactitude due to absence of other medical evidence including ossification test etc. The appellant is admittedly not in possession of matriculation certificate as he has not studied till that level. The School Leaving Certificate, relied upon by him, was issued on 26.01.2014 i.e. after retirement of the appellant. In the circumstances the only authentic document, although withheld from this Tribunal, is the CNIC of appellant issued on 28.02.2015. In the CNIC not only the year of birth of the appellant has been recorded as 1955 but the reference therein to the old NIC suggests that the same year was noted as his birth year according to its Number 137-55-018604.

In view of the above and the judgment of Apex Court cited at the bar, we have no option but to dismiss the appeal in hand being without any merits.

Order accordingly. Parties are left to bear their respective costs. File be consigned to the record room.

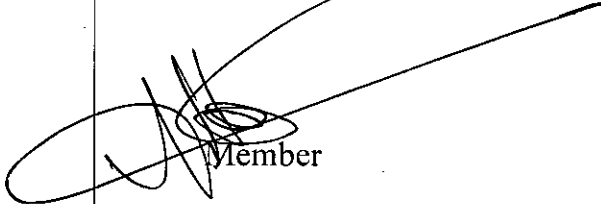



(AHMAD HASSAN)
MEMBER(E)




(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
27.12.2018

S.No.	Date of Order or proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	27.12.2018	<p><u>Present.</u></p> <p>Mr. Asif Khan, Advocate .. For appellant</p> <p>Mr. Kabirullah Khattak, Addl. A.G .. For respondents</p> <p>Vide our detailed judgment of today, we dismiss the appeal in hand being without any merits.</p> <p>Parties are left to bear their respective costs. File be consigned to the record room.</p> <p> Member</p> <p> Chairman</p> <p><u>ANNOUNCED</u> 27.12.2018</p>

18.09.2018 Mr. Muhammad Saddique, junior counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Junior counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is not available today. Adjourned. To come up for arguments on 05.11.2018 before D.B.


(Hussain Shah)
Member



(M. Amin Khan Kundi)
Member


05.11.2018 Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 27.12.2018.


READER

26.03.2018

Clerk to counsel for the appellant and Mr. Kabir Ullah Khattak, learned Additional Advocate General for the respondents present. Clerk to counsel for the appellant seeks adjournment as learned counsel for the appellant is not available. Adjourn. To come up for arguments on 25.05.2018 before D.B


(Muhammad Amin Kundi)
MEMBER


(Muhammad Hamid Mughal)
MEMBER


25.05.2018 Junior counsel for appellant and Addl: AG for the respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 31.07.2018 before D.B.


(Muhammad Amin Khan Kundi)
Member

31.07.2018

Junior to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment on the ground that learned counsel for the appellant has gone to perform Hajj. Adjourned. To come up for arguments on 18.09.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

28.07.2017

Learned counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjournment granted. To come up arguments on 08.12.2017 before D.B.

(Gul Zeb Khan)
Member

(Muhammad Hamid Mughal)
Member

08.12.2017

Counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Sultan Shah, Supdt for the respondents also present. Both the parties are directed to produce the relevant record mentioned in order sheet dated 12.04.2017. Last opportunity granted. To come up for such record and arguments on 19.01.2018 before D.B.

(Ahmad Hassan)
Member (E)

(Muhammad Amin Khan Kundi)
Member (J)

19.01.2018

Junior to counsel for the appellant and Mr. Kabir Ullah Khattak, Learned Additional Advocate General along with Mr. Zaki Ullah Senior Auditor for the respondents present. Junior to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 26.03.2018 before D.B

(Gul Zeb Khan)
MEMBER

(Muhammad Hamid Mughal)
MEMBER


23.08.2016

Counsel for the appellant and Mr. Sultan Shah, Assistant alongwith Addl. AG for respondents present. Written reply on behalf of respondents No. 1, 2 and 5 submitted. Learned AG submitted that respondents No. 3 and 4 rely on written reply submitted by 1, 2, and 5. The appeal is assigned to D.B for rejoinder and final hearing on 8.12.2016.


Chairman

08.12.2016

Appellant in person, Mr. Sultan Shah, Assistant and Mr. Zakiullah, Senior Auditor alongwith Assistant AG for respondents present. Rejoinder submitted which is placed on file. To come up for arguments on 12.4.17

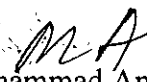

(ASHFAQUE TAJ)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

12.04.2017

Counsel for the appellant present. Mr. Sultan Shah, Assistant alongwith Mr. Kabirullah Khattak, Assistant AG for the respondents also present. The respondents are directed to produce all the relevant record of the appellant including service book, seniority lists issued during the last ten years, pay roll and copies CNIC etc. Appellant is also directed to provide copies of old and new CNIC. To come up for record and arguments on 28.07.2017 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

24.05.2016

Counsel for the appellant present. Learned counsel for appellant argued that correct date of birth of the appellant was 15.07.1956 while the same was shown as 01.07.1955 in the service record wherein correct entries were illegally replaced. That aggrieved from the said entries appellant submitted application to the appellate authority for correction of date of birth but vide impugned order dated 18.03.2016 the appellate authority rejected application of the appellant on 18.03.2016 and hence the instant service appeal on 18.04.2016.

That the correct date of birth of the appellant is 15.07.1956 and that record of the appellant maintained by the respondents is liable to correction.


Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 25.07.2016 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

25.07.2016

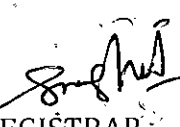


Clerk of counsel for the appellant and Mr. Sultan Shah, Assistant alongwith Addl. AG for the respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 23.08.2016 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 413/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	18.04.2016	<p>The appeal of Mr. Aurangzeb presented today by Mr. Muhammad Asif Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p>
2	25-04-2016	<p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>25-04-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p>
25.4.2016		<p>Appellant present in person. Seeks adjournment. Adjourned for preliminary hearing to 24.5.2016 before S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE CHAIRMAN SERVICES TRIBUNAL KHYBER
PAKHTUNKHWA SERVICES, PESHAWAR

S.A.No. 413 /2016


Aurangzeb Appellant

Versus

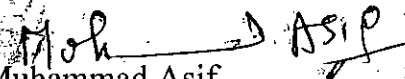
Section Officer, Administration Department & others Respondents

I N D E X

S.No.	Description of documents.	Annexure	Pages.
1	Memo of appeal.		1-5
2	Affidavit.		6
3	Addresses of the parties.		7
4	Copy of appointment letter	A	8
5	Photocopy of the medical fitness certificate	B	9
6	Copy of extract from entry register	C	10
7	Copy of the certificate	D	11
8	Copy of application	E	12
9	Photocopy of the order	F	13
11	Wakalatnama.		14


Appellant

Through


Muhammad Asif
Advocate, Peshawar

Off: 214 Syed Ahmad Ali Building
near Taj Autos, Sunehri Masjid
Road, Peshawar Cantt.
Cell: 0302-8885187

Dated: 16.04.2016

①

BEFORE THE CHAIRMAN SERVICES TRIBUNAL KHYBER
PAKHTUNKHWA SERVICES, PESHAWAR

N.W.F. Province
Service Tribunal
Diary No. 385
Dated 18-4-2016

S.A.No. 413 /2016

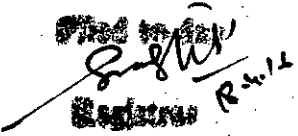
Aurangzeb (Qasid) son of Ahmad
C/O Muhammad Sarwar Qureshi
Amin Colony Chowk, near Technical College,
Kohat Road, Peshawar..... Appellant

Versus

- 1) Section Officer, Administration Department, Civil Secretariat, Peshawar
- 2) Govt. of KPK through Secretary Information, Services and General Administration Department, Civil Secretariat, Peshawar.
- 3) Secretary, Chief Minister Secretariat, Peshawar.
- 4) Accountant General, KPK, Peshawar.
- 5) Chief Secretary, Civil Secretariat, Peshawar.

..... Respondents

Appeal u/s 4 of the N.W.F.P. (now KPK) Service Tribunal Act against the order of respondents issued through respondent No.1 dated 18.03.2016 whereby they have refused to correct the date of birth of the appellant in service book and has ordered to prepare pension papers of the official on emergent basis without any further delay.


Registrar R-112

Prayer:

On accepting of this appeal, the decision/ order of respondents dated 18.03.2016 may kindly be set aside and the respondents may kindly be directed to enter correct date of birth i.e. 15.07.1956 by correcting the wrong date of birth i.e. 01.07.1955 in the official record.

Respectfully Sheweth;

Appellant submits as under:

- 1) That appellant was born on 15.07.1956 in village Dhamtoor District Abbottabad.
- 2) That appellant studied in Govt. Primary School Dhamtoor District Abbottabad since 22.04.1963 till 12.04.1967 and after that appellant could not admitted in school due to financial position of the father of the appellant as well as being not available the middle school in the area.
- 3) That in the year 1976 appellant applied for the post of Chowkidar and was selected. However, appellant was directed to produce medical fitness certificate. (Copy of appointment letter is Annexure "A").
- 4) That appellant appeared before the medical officer on 30.06.1976 who after thorough examination the appellant, declared appellant fit for service.
- 5) That in the medical report the said doctor has mentioned the age of petitioner as

"His age is according to his own statement 19 years and by appearance about 20 years".

(Photocopy of the medical fitness certificate is Annexure "B").

- 6) That appellant produced the said medical certificate to the respondents and took the charge as Chowkidar.
- 7) That later on, on the basis of medical certificate entries in service book was also made and date of birth was entered as 01.07.1955. (Copy is Annexure "C").
- 8) That appellant served the department and on 01.07.2014 appellant was proceeded to L.P.R. till 30.06.2015.
- 9) That on the other hand for the release of pension and pensionary benefits documents were forwarded to respondent No.4 who returned the same with the objection that the date of birth of the appellant is not cleared due to fluid on the year.
- 10) That respondent No.3 informed the appellant to produce the correct date of birth and if appellant was admitted in the school then he should bring the school leaving certificate from the school.
- 11) That appellant went to the school and was able to get the school leaving certificate from where appellant came to know that date of birth in the service record has been written as 01.07.1955 while according to school record date of birth of the appellant is 01.07.1956. (Copy of the certificate is Annexure "D").
- 12) That appellant produced the school leaving certificate to the respondents but no action was taken and finally on 18.02.2016 appellant moved an application to respondent No.3 for the correction of date of birth in the service record of appellant. (Copy of application is Annexure "E").
- 13) That the application was sent to respondents No.1 and 2 who on 18.03.2016 refused to correct the date of birth instead ordered the respondents to prepare the pension papers of the official on emergent basis without any delay.

- 14) That on 25.03.2016 the copy of the decision dated 18.03.2016 was provided to the appellant, however, the copy was not provided officially upto now to the appellant. (Photocopy of the order is Annexure "F").
- 15) That aggrieved with, appellant come to this Hon'ble Court for a direction to the respondents to correct the date of birth of the appellant on the following grounds amongst the others:

GROUND:

- a. That the order of respondents issued on 18.03.2016 through which respondent No.3 has written that appellant stood retired on 01.07.2015 has been directed to prepare the pension papers of the official on emergent basis without any delay is against law and facts. Hence untenable in the eyes of law and is liable to be set aside.
- b. That the respondents failed to appreciate the fact that retirement order is illegal in the situation when the correct date of birth of appellant in the Govt. record is 01.07.1956.
- c. That respondents failed to appreciate the fact that the school leaving certificate is solid proof of the date of birth and respondents are bound to correct the date of birth of the appellant.
- d. That by not correcting the date of birth in the official record, respondents are exercising the powers not vested to them under the law.
- e. That by not correcting the date of birth in the official record on the basis of school leaving certificate which too is official record, respondents are violating the service laws and rules.
- f. That under the law respondents are bound to correct the date of birth of the appellant.

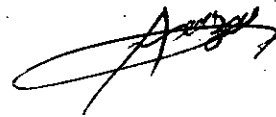
- g. That appellant is uneducated and cannot read and write only can sign in English and thus in case the respondents would have informed appellant earlier at the time of appointment regarding date of birth or at the time of preparing service book, appellant would have produced the school leaving certificate from the school and thus there would have no dispute.
- h. That the decision/ order of respondents dated 18.03.2016 is perversant and against the settled principle of law and justice and as such is liable to be set aside.

It is, therefore, requested that on acceptance of this appeal, respondents may kindly be directed to withdraw the order dated 18.03.2016 and may kindly be directed to correct the date of birth of appellant on the basis of school leaving certificate.

Any other relief which this Hon'ble Tribunal deems appropriate in the circumstances of the case and not specifically asked for may kindly also be granted.

CERTIFICATE:

Certified as per information furnished by my client that no such like appeal has earlier been filed before this Hon'ble Tribunal.



APPELLANT

Through



Muhammad Asif
Advocate Supreme Court

(6)

BEFORE THE CHAIRMAN SERVICES TRIBUNAL KHYBER

PAKHTUNKHWA SERVICES, PESHAWAR

S.A.No. _____/2016

Aurangzeb Appellant

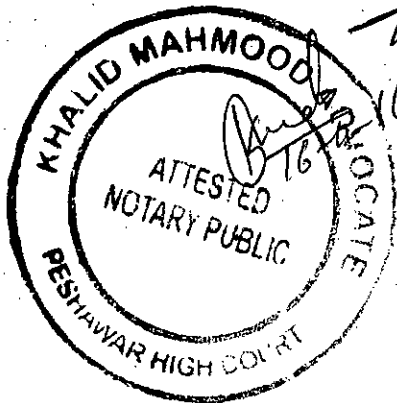
Versus

Section Officer, Administration Department & others Respondents

AFFIDAVIT

I, Aurangzeb (Qasid) son of Ahmad C/O Muhammad Sarwar Qureshi Amin Colony Chowk, near Technical College, Kohat Road, Peshawar (appellant), do hereby affirm and declare on oath that the contents of the accompanying **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this hon'ble Tribunal.

Aurangzeb



Deponent
CNIC No. 17301-1531705-9

(7)

BEFORE THE CHAIRMAN SERVICES TRIBUNAL KHYBER
PAKHTUNKHWA SERVICES, PESHAWAR

S.A.No. _____/2016

Aurangzeb Appellant

Versus

Section Officer, Administration Department & others Respondents

ADDRESSES OF THE PARTIES

APPELLANT:

Aurangzeb (Qasid) son of Ahmad
C/O Muhammad Sarwar Qureshi
Amin Colony Chowk, near Technical College,
Kohat Road, Peshawar

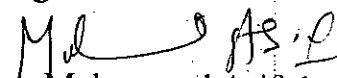
RESPONDENTS:

- 1) Section Officer, Administration Department, Civil Secretariat, Peshawar
- 2) Govt. of KPK through Secretary Information, Services and General Administration Department, Civil Secretariat, Peshawar.
- 3) Secretary, Chief Minister Secretariat, Peshawar.
- 4) Accountant General, KPK, Peshawar.
- 5) Chief Secretary, Civil Secretariat, Peshawar.



Appellant

Through



Muhammad Asif
Advocate, Peshawar

NO.E&A(S&GAD)2(92)/75
GOVERNMENT OF N.W.F.P
INFORMATION SERVICES & GENERAL ADMINISTRATION DEPARTMENT
(GENERAL WING).

Ames
A3
(8)

O R D E R.

The following persons are hereby appointed as Peons in the National Pay Scale No.1 viz N. 100-2-116/3-140 with usual allowances as admissible under the rules with effect from their joining duties:-

1. Mr. Mohammad Aurangzeb, Village Damtour, Tehsil Abbottabad, District Hazara.
2. Mr. Zahid Hussain Shah S/O Noor Pir Shah Village Makran Teh: Haripur, Distt: Hazara.
3. Mr. Shakoer Afroz Sabir of Chitral.
4. Mr. Mir Rehman S/O Mir Ahmad Village & P.O. Badaber Teh: Distt: Peshawar.
5. Mr. Umar Farooq S/O Tajul Malook of Bannu.
6. Mr. Hayatullah Vill: & P.O. Landi Arbab, Distt: Pesh:.

Their appointments in the Civil Secretariat are purely temporary and subject to the following conditions:-

1. Their services are liable to be terminated without assigning any reason on 15 days notice or on payment of 15 days salary in lieu notice period.
2. In case they wish to resign at any time, 15 days advance notice will be necessary in lieu thereof 15 days pay will be surrendered by them.
3. They will be governed by such rules and orders relating to leave, T.A, Medical Attendance, Pay etc. as are applicable to the Government servants of the same category, as may be issued by the Government from time to time.
4. They will produce Medical Fitness Certificate from the Civil Surgeon, Peshawar.

S. ALTAF HUSSAIN
Deputy Secretary-II
IS&GAD.

NO.E&A(S&GAD)2(92)/75 dated Peshawar, the, 23rd June, 1976.

Copy forwarded to:-

1. The Accountant General, N.W.F.P Peshawar.
2. The Superintendent E&A Section, IS&GAD.
3. The Bill Clerk, IS&GAD.
4. Officials concerned.

Mahfooz Jan Durrani
(MAHFOOZ JAN DURRANI)
Section Officer (General-I)
IS&GAD.

MAHFOOZ JAN DURRANI
ATTESTED
TO BE
TRUE COPY

MEDICAL FITNESS CERTIFICATE.

Annex B 3
(9)

Name of Officer/Official. Durangzai

Caste or Race. Awan

Residence. Vid: 4 P. Dam Tor Teh. Abbottabad Distt Hazar

Father's name & residence. Aman Hammad Chaudhary

Date of birth by Christian are as nearly as can be ascertained. Nineteen years (19)

Exact height by measurement. 5-0

Personal marks of or indentification. A black mole on left hand

Signature of Officer/Official. (Signature)

Section Officer (General)
Mahmud
Signature of the Section Officer

I do hereby certify that I have examined Mr. Durangzai a candidate for employment in the Ch. Distt Dep. Teh. Department and cannot discover that he has any disease, constitutional affection, or bodily infirmity, except Nil I do not consider this a disqualification for employment in the office of Ch. Distt Dep. Teh. His age is according to his own statement 19 years and by appearance about 20 years.

Left hand thumb and fingers impression.

Fourth or small finger.

Third Finger.

Second Finger



First finger.

Thumb.



(Signature)
30/6/76

Taken before
Name of Officer
designation of Officer
on date.

(Signature)
ATTESTED
TO BE
TRUE COPY

Note.—The entries in this page should be renewed or re-attested at least every five years and the signature in lines 9 and 10 should be dated.

1. Name **AURANGZEB KHAN** ✓ **Ammer** (10)

2. Race **AWAN**

3. Residence **VILL: DAM TURE. P.O. DAM DURE**
Teh: ABBOTABAD. Dist: HAZARA.

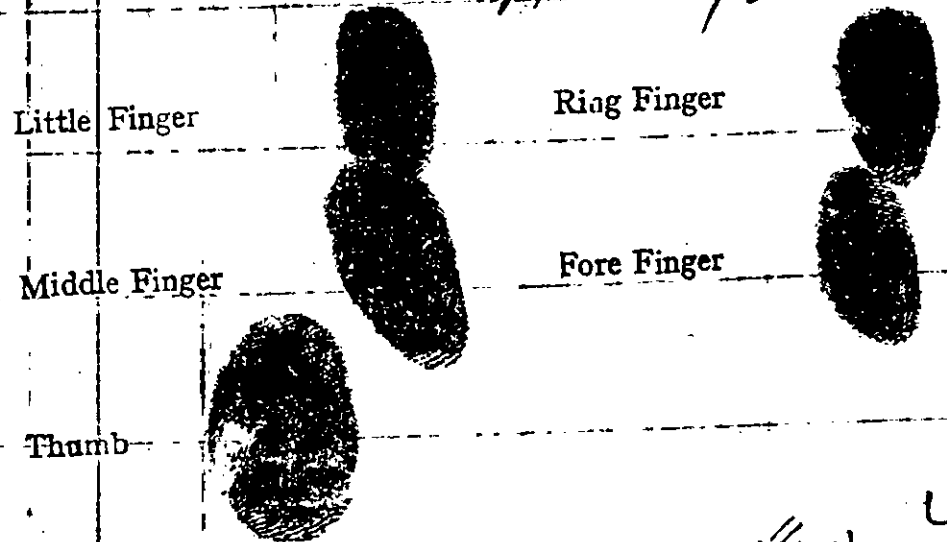
4. Father's name and residence **AMMAD KHAN - D. Alwar**

5. Date of Birth by Christian Era as nearly as can be ascertained **1-7-1955**
22 year Ilt Jashy 1955
cutting attested as (1955)
S.O. - E
SSCAD. N.W.F.P.

6. Exact height by measurement **5' 6"**

7. Personal marks for identification **Black mole on left hand.**

8. Left hand thumb and finger impression of (non-gazetted) officer **A-70/20-15-16**



9. Signature of Government servant **اورنگ زیب خان** ✓

10. Signature and Designation of the Head of the Office, or other Attesting Officer.
Section Officer (General)
Services & General Administration
Department, Govt of NWFP
PESHAWAR.

8 **M. T. ...**

Amman

11

فائل نمبر 54

نمبر شمار 35

مدرسہ چھوڑنے کا سرٹیفکیٹ

سکول کا نام گورنمنٹ پرائمری سکول دھانتور ضلع ایبٹ آباد

نام اورنگزیب ولدیت احمد

تاریخ پیدائش (15-07-1956) پندرہ جولائی سن چھپن داخلہ نمبر 2951

تقدیق کی جاتی ہے کہ مندرجہ بالا طالب علم جو اس مدرسہ میں 12-04-1967 تک

پڑھتا رہا ہے مدرسہ ہذا کی کل رقمیں جو اس کے ذمہ واجب الادا تھیں ادا کر دی ہیں اور اسے تاریخ مندرجہ بالا پر

اپنا نام خارج کرنے کی اجازت دی گئی ہے۔

یہ جماعت چہارم 4th ہے پرائمری میں پڑھتا تھا۔ جس میں یہ پاس اٹل ہوا

اس کا امتحان کے مطابق ترقی دینے کے لئے لیا گیا جو اسے دن

گئی اس کا عدد دیکھا گیا۔ بوجہ تکمیل کورس سرٹیفکیٹ جاری

درجہ داخل ہونے کی تاریخ	درجہ ہذا میں داخل ہونے کی تاریخ	مدت حاضری		ممكن حاضریاں	فی الواقع حاضریاں	رخصت جو دوران سال حاصل کی گئی
		از	تا			
22/04/1963	12/04/1967	/	/	تکلی بخش	/	/

تاریخ اجراء 26-01-2016 انچارج داخل خارج رئیس مدرسہ Head Teacher C.P.S. Dhantour Abbottabad

صرف سکا لرشپ پانے والوں کی صورت میں

قسم سکا لرشپ سکا لرشپ کی مقدار کس سال عطا ہوا

کس تاریخ تک ادا کیا گیا کون دیتا ہے رخصت جو ہر ایک مدرسہ میں لے چکا ہے

1 2 3 4

تقدیق کیا جاتا ہے ولد طالب علم جماعت

سکول ضلع سے مدرسہ چھوڑنے کا سرٹیفکیٹ نمبر

مدرسہ لے کر چلا گیا سکول ضلع کی جماعت میں داخل ہو گیا ہے

اسکی تاریخ پیدائش رئیس مدرسہ

Attested on the basis of original
S.O (Admn):
Chief Minister Secretariat
Khyber Pakhtunkhwa

Attested to be TRUE COPY

7249810-فون: اوربازار اوربٹور-فون: 8-اڈوبازار اوربٹور

حضرت جناب کیرٹری مہب چیف سٹراٹجی اور

Ammen

E

(12)

درستی تاریخ پیدائش دروس بک

جناب عالی۔ سائل حسب ذیل مرض رسالہ۔

① یہ کہ من سائل بحیثیت قاصد ملازم ہوں۔

② یہ کہ من سائل کی تاریخ پیدائش 15/7/1956 ہے

رفوٹوٹیٹ سکول سرٹیفکیٹ لف ہے

③ یہ کہ بوقت ملازمت من سائل نے میڈیکل سرٹیفکیٹ پیش

کیا تھا جس میں من سائل کی عمر ڈاکٹر کے مطابق 2 سال تھی

جو کہ سرٹیفکیٹ 1976ء کو جاری کیا گیا ہے۔

④ یہ کہ من سائل کی سروس بک میں یکم جولائی 1956ء درج تھی

جو کہ کھاٹ کر 1955ء کی گئی ہے۔

⑤ یہ کہ من سائل کے متنازعہ کارڈ میں بھی غلطی سے 1955

تاریخ پیدائش تحریر ہے جسکی درستی کیلئے درخواست

دی ہے۔

جناب عالی۔ من سائل کی درست تاریخ پیدائش 15/7/1956

سکول ریکارڈس مطابق ہے جو کہ سروس بک میں قابل

درستی ہے۔

سیدنا

استدعا ہے کہ سروس بک میں من سائل کی

تاریخ پیدائش درست کرنے کا حکم صادر فرمایا جاوے

اور گنتی سب اولاد (قاصد) سندھ ریاست

18/2/1976

Ammen

Ammen
to Ammen Dept.
AE

18/2/76

Ammen
18/2/76

Attested
TO BE
TRUE COPY



GOVERNMENT OF KHYBER PAKHTUNKHWA
ADMINISTRATION DEPARTMENT

Amman F3

13

No. E&A(AD)04(46)75
Dated Peshawar the 18-03-2016

To,

The Section Officer (Admn)
Chief Minister's Secretariat.

Subject:

APPLICATION OF CORRECTION OF DATE OF BIRTH.

I am directed to refer to your letter No.SO(Admn) CMS /KPK/ Misc/2016 DATED 19-02-2016 on the subject noted above and to convey that entry of date of birth in the service-book is final and cannot be altered after two years of appointment. As per advice of Regulation Wing Establishment Department, 01-07-1955 / 1955 may be treated as valid date of birth in the Service Book of Mr.Aurangzeb , Qasid. As such, in principle he stood retired from service on 01-07-2015(F/N). They have observed that Chief Minister's Secretariat was required to have prepared his pension-case one year prior to his retirement as per rules. It has been advised that Pension Papers of the official be prepared on emergent basis without any further delay.

o/c
SECTION OFFICER (ADMN)

Endst of even No & date

Copy forwarded to PA to Deputy Secretary (Admn)
Administration Dept.

SECTION OFFICER (ADMN)

Handwritten notes and signatures in the bottom left corner.

ATTESTED
TO BE
TRUE COPY

وکالت نامہ

بعدالت جناب حیرمن صاحب سروسز سٹیوٹن (P.K. کارپوریشن)

اور تذریب بنام سکین افسر

منجانب اورنگزیب (ایسٹریٹ) دعویٰ یا جرم

باعث تحریر آنکہ ایف آئی آر تاریخ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی بمقام کے لئے محمد آصف ایڈووکیٹ
 سیم کورٹ آف پاکستان کو بدیں شرط وکیل مقرر کیا ہے میں ہر پیشی پر خود یا
 بذریعہ مختار خالص اور بروعدالت حاضر ہوتا رہوں گا اور بروقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر
 حاضر عدالت کرونگا۔ اگر پیشی پر من مظہر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے برخلاف ہو گیا تو
 صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے کسی اور جگہ یا
 پکھری کے مقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے۔ اگر مقدمہ علاوہ مقام
 پکھری کے کسی اور جگہ یا پکھری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے
 پر من مظہر کو کوئی نقصان پہنچے تو اس کی ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نامہ واپس کرنے کے بھی
 صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پرداختہ صاحب موصوف مثل کردہ ذات خود منظور و قبول ہوگا اور
 صاحب موصوف کو عرضی دعوے و جواب دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر
 دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور
 داخل کرنے اور ہر قسم کے بیان دینے اور سپرنٹنڈنٹ اور راضی نامہ کو فیصلہ برخلاف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا
 اور بصورت اپیل و براہ عدلی مقدمہ یا منسوخی ڈگری یا کطرفہ درخواست حکم امتناعی یا قرتی یا گرفتاری قبل از اجراء ڈگری
 موصوف کو بشرط ادا ہونے کی صلحہ محتانہ پیروی کا اختیار ہوگا اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ
 مذکورہ یا اس کے کسی جزو کی کارروائی کے واسطے یا بصورت اپیل اپیل کے واسطے کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا
 اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کو ہر امر میں وہی اور ویسے ہی اختیارات حاصل ہوں گے جیسے کہ صاحب موصوف
 کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا وہ صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی
 نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ بھی صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا یہ مختار نامہ لکھ دیا تاکہ سند
 رہے۔

Handwritten signature/initials on the left margin, possibly reading 'محمد آصف'.

مورخہ 16/2/16 مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

Attested
&
Accepted

Handwritten signature of the attorney.

(دستخط اورنگزیب)

فس 214 سید احمد علی بلڈنگ
 نزد تاج آٹوز سنہری مسجد روڈ پشاور صدر
 PH: 091 5279292

24

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

SERVICE APPEAL NO; 413/2016

Mr. Aurangzeb , Qasid (Appellant)

Versus

1. Section Officer (Admn) Administration
Department, Peshawar
2. Secretary to Government of Khyber
Pakhtunkhwa, Administration Department,
Peshawar
3. Secretary to Government of Khyber
Pakhtunkhwa, Chief Minister's Secretariat
4. Accountant General, Khyber Pakhtunkhwa,
5. Government of Khyber Pakhtunkhwa through
Chief Secretary Civil Secretariat , Peshawar

..... (Respondents)

JOINT PARAWISE COMMENTS
FOR / ON BEHALF OF THE RESPONDENT NO.1,2 &5

Respectfully Sheweth;

PRELIMINARY OBJECTIONS.

- 1) The appellant has got no cause of action and locus staudi.
- 2) The appeal is not maintainable in the present form. As such this Honorable Tribunal has no jurisdiction to entertain the instant appeal.
- 3) The appeal is not based on facts.
- 4) The appellant has not come to the Tribunal with clean hands.
- 5) The appeal is bad for non-joinder of necessary parties.
- 6) The appellant has concealed material facts from this Honorable Tribunal
- 7) That the appellant is estopped by his own conduct.

25

RESPECTFULLY SUBMITTED:

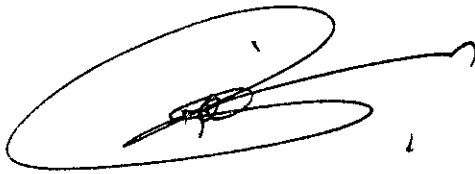
1. **Incorrect as laid.** As per official record his valid date of birth is 01-07-1955(1955).
2. No comments..
- 3-8. Pertain to record. Needs no comments
9. **Incorrect as laid.** Chief Minister's Secretariat, where the appellant was serving as Qasid, forwarded an application of the appellant for necessary action whereby the appellant had requested for correction of his date of birth as per school certificate. As per standing instructions of the provincial government, entry of date of birth in the service book could not be altered after two years of service. The case was referred to Establishment Department for advice. It termed the existing entry of date of birth in the service book as valid for the intent and purpose. In the light of existing instructions and advice of Establishment Department, Chief Minister's Secretariat was accordingly informed vide impugned letter bearing No. E&A(AD)04(46)75 dated 18-03-2016 (Annex-A).
10. **No comments.** Pertains to Chief Minister's Secretariat.
11. **No comments.**
12. **No comments.** Pertains to Chief Minister's Secretariat.
13. As in para-9 above.
14. **No comments.** Pertains to Chief Minister's Secretariat.
15. **No comments.**

GROUND OF DEPARTMENTAL APPEAL:

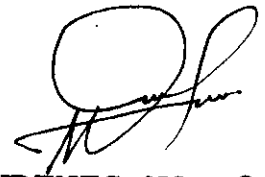
- a:- **Incorrect as laid.** The impugned letter of Administration Department bearing No. E&A(AD)04(46)75 dated 18-03-2016 is according to the law and facts and based on standing instructions of the provincial government.
- b-c:- **Incorrect as laid.** As per official record valid date of birth of the appellant is 01-07-1955(1955). Establishment Department had termed the existing entry of date of birth in the service book of the appellant as valid for the intent and purpose. Therefore the retirement order is legal and lawful.
- d:- **Incorrect as laid.** As in B & C above. Respondents have no powers to order alteration of date of birth in the service books of employees after two years of their entry into service.
- e:- **Incorrect as laid.** On induction into service, a civil servant is required to declare his date of birth supported by authenticated documents. The Department concerned is similarly required to enter the same in the service book of the civil servant. In the case of the appellant date of birth in service book was recorded on the basis of medical certificate as he did not produce any other document.

- f:- As in B & C above. Respondents have no powers to order alteration of date of birth in the service books of employees after two years of their entry into service.
- g:- As in Para-E above. There is no such legal requirement.
- h:- **Incorrect as laid.** The impugned letter of Administration Department bearing No. E&A(AD)04(46)75 dated 18-03-2016 is valid, according to law and facts and based on standing instructions of the provincial government.

It is humbly prayed that appeal being devoid of merit may kindly be dismissed with cost.



RESPONDENT NO. 1



RESPONDENTS NO. 2 & 5



GOVERNMENT OF KHYBER PAKHTUNKHWA
ADMINISTRATION DEPARTMENT

Amman
Feb 18
13

No. E&A(AD)04(46)75
Dated Peshawar the 18-03-2016

To,

The Section Officer (Admn)
Chief Minister's Secretariat.

Subject:

APPLICATION OF CORRECTION OF DATE OF BIRTH.

I am directed to refer to your letter No.SO(Admn) CMS /KPK/ Misc/2016 DATED 19-02-2016 on the subject noted above and to convey that entry of date of birth in the service-book is final and cannot be altered after two years of appointment. As per advice of Regulation Wing Establishment Department, 01-07-1955 / 1955 may be treated as valid date of birth in the Service Book of Mr. Aurangzeb, Qasid. As such, in principle he stood retired from service on 01-07-2015(F/N). They have observed that Chief Minister's Secretariat was required to have prepared his pension-case one year prior to his retirement as per rules. It has been advised that Pension Papers of the official be prepared on emergent basis without any further delay.

Endst of even No. & date

Administration Dept.

Copy forwarded to PA to Deputy Secretary (Admn)

SECTION OFFICER (ADMN)

SECTION OFFICER (ADMN)

MAILED
ATTESTED
TO BE
TRUE COPY

①

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

S.A.No.413/2016

Aurangzeb

Versus

Section Officer Administration etc

REJOINDER ON BEHALF OF APPELLANT

Respectfully Sheweth

Rejoinder on behalf of appellant is as under:-

PRELIMINARY OBJECTIONS

- 1) The appellant has got cause of action and locus standi to file the appeal.
- 2) The Appeal is maintainable in the present form, and the Hon'ble Tribunal has the jurisdiction to decide the appeal.
- 3) The appeal is based on Law and facts. Moreover, documentary proof has been provided to the respondents.
- 4) The appellant has come to this Tribunal with clean hands.
- 5) The appeal is not bad for non-joinder of all the necessary parties, because all the necessary parties have been impleaded in the array of respondents.

- 6) The appellant has not concealed material facts from this Hon'ble Tribunal.
- 7) The appellant is not estopped by his own conduct.

ON FACTS:

- 1. Reply to Para-1 is incorrect, while that of appeal is correct. Year of Birth from 1956 to 1955 has been changed with malafide intention. However, when it was changed, the concerned officer has not mentioned the reasons, which clearly shows that with malafide intention year of birth of the appellant was changed, so, that retirement order of the appellant be issued and in place of appellant to accommodate the blue eyed.
- 2. Para-2 of the appeal has been admitted correct. Hence has written "No Comments".
- 3-8 Paras 3-8 have been admitted correct.
- 9. In reply to Para-9, it is submitted that, it is very much clear from service book that year of birth has been changed/ altered from 1956 to 1955, but before changing/ altering the same, appellant was not informed to produce School leaving certificate, but after the objection of respondent No.4 was advised to produce school leaving certificate, which is a documentary proof and the respondents are bound to correct the year of birth in the record. Moreover, paras 9-8 of the writ petition are correct.

10-15 Paras 10-15 have been admitted correct, hence have written "No Comments"

GROUND

A. Ground "A" of the reply is incorrect, while Ground "A" of the appeal is correct. In service book the year of birth was changed with malafide intention and the appellant was not informed regarding the change of year of birth in the service book and as soon as appellant was informed. Appellant produced School leaving certificate and thus in the presence of documentary proof, respondents are bound to enter correct year of birth in service book.

B-C That reply to these paras are incorrect, while that of writ petition are correct. In fact inquiry should be conducted why & who and when the year of birth in the service book was changed without informing the appellant. As the year of birth was altered with malafide intention, therefore, on producing the documentary proof, respondents are bound to enter correct year of birth in the service book of the appellant and thus retirement order is illegal and liable to be set-aside.

D. Ground "D" of the reply is incorrect, while that of appeal is correct. According to the reply of

respondents, they have not power to correct the year of birth in the service book, then inquiry should have been conducted why in the service book, which is in possession of respondents the year of birth of the appellant was changed by whom.

- E. Ground "E" of the reply is correct. Alongwith Medical Certificate, at the time of entry in the service book, appellant has mentioned his correct year of birth with day, month and year i.e. 01.07.1956, but it is very strange that, someone has tempered the year with malafide intention. Date, month and year told by the appellant at the time of entry in service book is the same which is mentioned in school leaving certificate obtained on 26.01.2016 under the direction of respondents.
- F. Ground "F" of the reply is incorrect, while that of appeal is correct. Detail reply has been given in above paras.
- G. Ground "H" of the reply is in correct, while that of appeal is correct. The letter dated 18.03.2016 is against law and facts and is based on illegal advise is liable to be set-aside.

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It is, therefore, requested that on acceptance of this rejoinder, the appeal may kindly be accepted with cost throughout.

Appellant

Through



Muhammad Asif

Advocate, Supreme Court

Off: Sayed Ahmad Ali Buildings

Near Taj Autos, Sonehri

Muasjid Road Peshawar


Cantt.

Cell: 0302-8885187

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the accompanying Rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.


Deponent


Oath Commissioner
Eid Muhammad Khattak (ASC)
License No. 961/14-4-2014
Peshawar High Court Peshawar
CNIC: 17391-7401834-5