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

Service Appeal No. 1417 of 2022



Taj Muhammad Khan PST (Primary School Teacher)  
Government Primary School Luchana, District Shangla.

①

...Appellant

**VERSUS**

1. The Secretary Elementary and Secondary Education Department Government of Khyber Pakhtunkhwa, Peshawar.
2. The Director Elementary and Secondary Education Government of Khyber Pakhtunkhwa, Peshawar.
3. The District Education Officer (M) District Shangla.

①

...Respondents

**SERVICE APPEAL UNDER SECTION 4**  
**OF THE KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL ACT, 1974**  
**AGAINST THE SENIORITY POSITION**  
**ALLOTTED TO THE APPELLANT IN**  
**THE SENIORITY LIST OF THE YEAR**  
**2022 AND 2023, WHICH WAS NEVER**  
**COMMUNICATED TO THE**  
**APPELLANT AND THE APPELLANT**  
**GOT BY HIS PERSONAL EFFORTS,**  
**WHEREIN WRONG SENIORITY**  
**POSITION WAS ASSIGNED TO THE**  
**APPELLANT FROM 19-09-2018 AND**  
**REFLECTED AT SERIAL NO. 672**  
**AGAINST WHICH THE APPELLANT**  
**PREFERRED A DEPARTMENTAL**

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Certified to be true copy

27/2/24

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

A. No. 1417/2022  
Taj Muhammed Khan vs





03.01.2024

Appellant alongwith his counsel present. Mian Asif Ali

Shah, ADEO alongwith Mr. Asad Ali Khan, Assistant Advocate General for official respondents present.

At the very outset, learned Assistant Advocate General stated that as the order of striking of defence is an appealable order, therefore, he would not press the application for setting-aside of the same, however he intends to submit written arguments alongwith record on which the respondents are relying. The application for setting-aside of striking of defence of the respondents stands disposed of accordingly. Learned counsel for the appellant would also be at liberty to submit written arguments, if he so desires. Adjourned. To come up for arguments on 06.03.2024 before the D.B at Camp Court Swat. Parcha Peshi given to the parties.

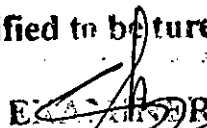
  
(Rashida Bano)  
Member (J)  
Camp Court Swat

  
(Salah-ud-Din)  
Member (J)  
Camp Court Swat

\*Naeem Amin\*

Certified to be true copy

Date of Presentation of Application 27-2-24  
Number of Words Page = 2  
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Urgent 5/-  
Total 15/- 8/10/24  
Name of Counsel Asad Ali Khan  
Date of Copying 27-2-24  
Date of Delivery 27-2-24

  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**SERVICE APPEAL No. 1417/2022**

**Taj Muhammad Khan PST GPS Luchana Tehsil Puran District Shangla.**

**(Appellant)**

**VERSUS**

- 1. The Secretary E&SE Department Khyber Pakhtunkhwa Peshawar.**
- 2. The Director E& SE Department Khyber Pakhtunkhwa Peshawar.**
- 3. The District Education Officer (M) District Shangla.**

**(Respondents)**

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Deponent

**Muzafar Ali Khan S/O Muhammad Pursand  
District Education Officer (M)**

**Shangla  
District Education Officer (M)  
Shangla.**

06-03-2024  
swat  
D. B.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**SERVICE APPEAL No. 1417/2022**

Taj Muhammad Khan PST GPS Luchana Tehsil Puran District Shangla.....

Khyber Pakhtunkhwa  
Service Tribunal  
(Appellant)

**VERSUS**

1. The Secretary E&SE Department Khyber Pakhtunkhwa Peshawar.
2. The Director E& SE Department Khyber Pakhtunkhwa Peshawar.
3. The District Education Officer (M) District Shangla.....

Diary No. 11493  
Dated 29/2/24  
(Respondents)

**WRITTEN ARGUMENTS ON BEHALF OF RESPONDENT No. 01 to 03**

**RESPECTED SHEWETH:**

**PRELIMINARY OBJECTIONS:-**

1. That the Appellant is not the "aggrieved" person with the meaning of Article 21 of the Constitution of the Islamic republic of Pakistan.
2. That the Appellant has got no cause of action/ locus standi to file the instant service appeal because the appellant did not come on merit.
3. That the Appellant has concealed the material facts from this Honorable Tribunal with clean hands rather than the instant service appeal is mainly based on malafide intentions just to put pressure on the respondent department for placing himself on wrong place in the seniority list.
4. That the Appellant is stopped by his own conduct.
5. That the instant service appeal suffers from laches, hence not maintainable in the present form.
6. That the appeal in hand is badly barred by the relevant provision of Law/Rules/Policy in field.
7. That the appellant has been placed on right place with effect from his date of first appointment in the seniority list.

**FACTS.**

- I. Para No (i) pertains to appellant's personal record, no need to comment.
- II. Para No (ii) of the Facts record, need no comment.
- III. The Para No (iii) of the Facts record, need no comment.
- IV. Para No-IV of the facts is correct and further stated that the appellant filed writ petition No. 3783-P/2010 for appointment as PST in which the office of the respondent No. 3 was not arrayed in the respondent list, however the writ ibid was disposed off with the direction to the official respondents that "the petitioner belongs to district Shangla, therefore, if any post is lying vacant or becomes vacant in the near future and the petitioner fulfills the eligibility criteria then, he has to be appointed against the post of reserved quota of 5% as discussed above".  
Thus the appellant was appointed in compliance of the judgment ibid with immediate as no retrospective effect has been given in the judgment dated 20.06.2013 rendered in writ petition 3783-P-2010.
- V. Correct to the extent of COC in the year of 2018 and in process / finalizing the COC appellant was appointed as PST on dated 19.09.2018, according to prescribed rules and policy as the service of any government servant will be counted from his initial appointment on regular post. In this regard Establishment Code Chapter II Clause 8(3) is very much clear, hence, the seniority of the appellant is rightly counted from the date of his appointment. (Copy is attached as Annexure "A").
- VI. In this Para the malafide intention of the appellant is crystal clear. His appointment is made after the process of COC which was submitted in the year of 2018 and the terms and conditions of the appointment order issued on dated 19.09.2019 are willingly accepted by the appellant. The term No (viii) is very clear and the appellant till yet has failed to raise any objection on the terms and conditions and it is also pointed out in his appointment order in the last Para, reproduced as "on the terms and conditions mentioned below from the date of his taking over charge in the interest of public service." (Order copy is attached as Annexure "B")
- VII. The appellant has wrongly interpreted in the said Judgment; detail is given in Para No (v) above of the facts.
- VIII. Correct to the extent of Judgments but it is worth to mention that the appellant did not dispute the promotions orders issued time by time and his position mentioned in the seniority list is correct in all aspects and is according to law and rules.

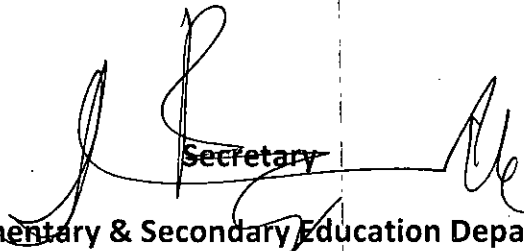
- IX. Incorrect and baseless, hence denied. The terms and conditions of the appellant's appointment order are very much clear and his seniority from the date of his initial appointment order is according to law and policy.
- X. Incorrect and baseless, hence denied. The appellant will be promoted on his seniority position and he is not deprived from his right. The respondent department is bound to act under rules and regulations.
- XI. Correct to the extent of appeal, but was not tenable, so rejected. **(Copy of appeal is attached as Annexure "C")**
- XII. The respondents are working under a prescribed policy and rules and every government servant is treated under prescribed laws and regulations.

**GROUND:**

- a. Incorrect and baseless. The detailed reply exists in Paras above, hence denied.
- b. Incorrect, so denied. The respondents has appointed the appellant under rules and policy and in light of the order issued by the Honorable Court in COC Application.
- c. Incorrect and baseless. Hence denied. Vastly explained in Paras above.
- d. Baseless. The appointment order is issued five years ago with clear cut terms and conditions and the appellant did not raise any objection on it. His seniority is considered from his date of appointment correctly. So this Para is denied.
- e. The respondents treated with appellant according to law and rules, so, the Para is denied.

**PRAYER:**

In the view of the above comments/grounds, it is very humbly prayed that the instant appeal may be rejected with heavy cost.

  
Secretary

Elementary & Secondary Education Department,  
Khyber Pakhtunkhwa, Peshawar.

(Respondent No. 01)

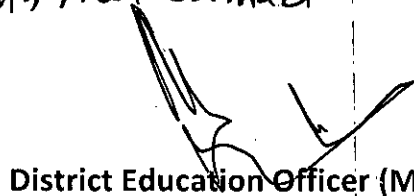
Mr. Abud Akram

  
Director

Elementary & Secondary Education,  
Khyber Pakhtunkhwa, Peshawar.

(Respondent No. 02)

Mr. Abdusamad

  
District Education Officer (M)

District Shangla.

(Respondent No. 03)

Mr. Muzafar Ali Khan.

District Education Officer (M & F)  
Shangla.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**SERVICE APPEAL No. 1417/2022**

**Taj Muhammad Khan PST GPS Luchana Tehsil Puran District Shangla.**

**(Appellant)**

**VERSUS**

- 1. The Secretary E&SE Department Khyber Pakhtunkhwa Peshawar.**
- 2. The Director E& SE Department Khyber Pakhtunkhwa Peshawar.**
- 3. The District Education Officer (M) District Shangla.**

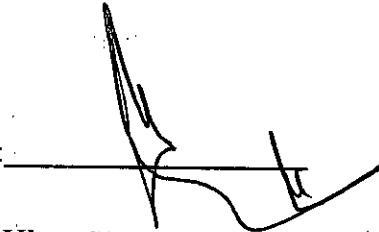
**(Respondents)**

**AFFIDAVIT**

I Muzafar Ali Khan District Education Officer (M) District Shangla do hereby solemnly affirm and declare on oath that the contents of these written arguments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal/ Court.

It is further stated on oath that in these arguments, the answering respondents have neither been placed ex-parte nor their defense has been struck off/ cost.

Deponent



**Muzafar Ali Khan S/O Muhammad Pursand  
District Education Officer (M)**

**Shangla**

**CELL NO. 03435752773**

**CNIC NO. 15501-2234809-7**

**District Education Officer (M),  
Shangla.**

Dated: 28/02/2024





# ESTA CODE

ESTABLISHMENT CODE KHYBER PAKHTUNKHWA  
(REVISED EDITION) 2011

PDFBOOKSFREE.PK

A COMPENDIUM OF LAWS, RULES AND INSTRUCTIONS  
RELATING TO THE TERMS AND CONDITIONS  
OF PROVINCIAL CIVIL SERVANTS

COMPILED BY;  
(D&M) SECTION  
ESTABLISHMENT & ADMINISTRATION DEPARTMENT

*Mst. Ad*  
*Surf*

5

- (d) "Initial appointment" means appointment made otherwise than by promotion or transfer;
- (e) "Pay" means the amount drawn monthly by a civil servant as pay, and includes special pay, personal pay and any other emoluments declared by the prescribed authority to be paid ;
- (f) "Permanent post" means a post sanctioned without limit of times;
- (g) "Prescribed" means prescribed by rules;
- (h) "Province "means the North West Frontier Province;
- (i) "rules" means rules made or deemed to have been made under this Act ;
- (j) "Selection authority" means the North-West Frontier Province Public Service Commission, a departmental selection board, departmental selection committee or other authority or body on the recommendations of, or in consultation with which any appointment or promotion, as may be prescribed, is made;
- (k) "temporary post" means a post other than a permanent post.
- (2) For the purpose of this Act, an appointment, whether by promotion or otherwise, shall be deemed to have been made on regular basis if it is made in the prescribed manner.

## CHAPTER-II

### TERMS AND CONDITIONS OF SERVICE OF CIVIL SERVANTS

3. **Terms and Conditions:-** The terms and conditions of service of a civil servant shall be as provided in this Act and the rules.
4. **Tenure of office of civil servants:-** Every civil servant shall hold office during the pleasure of the Governor.
5. **Appointment:-** Appointment to a civil service of the Province or to a civil post in connection with the affairs of the Province shall be made in the prescribed manner by the Governor or by a person authorized by the Governor in that behalf.
6. **Probation:-** (1) An initial appointment to a service or post referred to in section 5, not being an ad hoc appointment, shall be on probation as may be prescribed.
- (2) Any appointment of a civil servant by promotion or transfer to a service or post may also be made on probation as may be prescribed.
- (3) Where, in respect of any service or post, the satisfactory completion of probation includes the passing of a prescribed examination, test or course or successful completion of any training, a person appointed on probation to such service or post who,

*Attested*

*[Signature]*  
Assistant District Magistrate Officer  
Litigation Office  
E.S.E. Distt: Shant



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before the expiry of the original or extended period of his probation, has failed to pass such examination or test or to successfully complete course or the training shall, except as may be prescribed otherwise-

- (a) if he was appointed to such service or post by initial recruitment, be discharged; or
- (b) if he was appointed to such service or post by promotion or transfer, be reverted to the service or post from which he was promoted or transferred and against which he holds a lien or, if there be no such service or post, be discharged:

Provided that in the case of initial appointment to a service or post, a civil servant shall not be deemed to have completed his period of probation satisfactorily until his character and antecedents have been verified as satisfactory in the opinion of the appointing authority.

7. **Confirmation :-** (1) A person appointed on probation shall, on satisfactory completion of his probation, be eligible for confirmation in a service or, as the case may be, a post as may be prescribed.

(2) A civil servant promoted to a post <sup>2</sup>[ ] on regular basis shall be eligible for confirmation after rendering satisfactory service for the period prescribed for confirmation therein.

(3) There shall be no confirmation against any temporary post.

(4) A civil servant who, during the period of his service, was eligible to be confirmed in any service or against any post retires from service before being confirmed shall not, merely by reason of such retirement, be refused confirmation in such service or post or any benefits accruing there-from.

(5) Confirmation of a civil servant in a service or post shall take effect from the date of occurrence of permanent vacancy in that service or post or from the date of continuous officiation, in such service or post, whichever is later.

**8. Seniority:-** (1) For proper administration of a service, cadre or <sup>3</sup>[post], the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or <sup>4</sup>[post] to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or <sup>5</sup>[post] as the case may be.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or <sup>6</sup>[cadre] whether serving the same department or office or not, as may be prescribed.

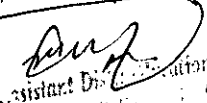
<sup>2</sup> The words "or grade" omitted by NWFP Ordinance No. IV of 1985.

<sup>3</sup> The word "grade" substituted by NWFP Ordinance No. IV of 1985.

<sup>4</sup> The word "grade" substituted by NWFP Ordinance No. IV of 1985.

<sup>5</sup> The word "grade" substituted by NWFP Ordinance No. IV of 1985.

<sup>6</sup> The word "grade" substituted by NWFP Ordinance No. IV of 1985.

Attested  
  
 Assistant District Magistrate  
 (Litigation) District Office, F.O. (M)  
 E.S.E. District Office

⑦

(3) Seniority on initial appointment to a service, <sup>7</sup>[cadre] or post shall be determined as may be prescribed.

<sup>8</sup>(4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post;

Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se-seniority as in the lower post.

<sup>9</sup>(5) The seniority lists prepared under sub-section(1), shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January.

**9. Promotion:-**(1) A civil servant possessing such minimum qualifications as may be prescribed, shall be eligible for promotion to a <sup>10</sup>[higher] post for the time being reserved under the rule for departmental promotion in <sup>11</sup>[ ] the service or cadre to which he belongs.

(2) A post referred to in sub-section (1) may either be a selection post or a non selection post to which promotion shall be made as may be prescribed-

(a) in the case of a selection post, on the basis of selection on merit; and

(b) in the case of non-selection post, on the basis of seniority-cum-fitness.

**10. Posting and Transfer:-** Every civil servant shall be liable to serve anywhere within or outside the province, in any post under the Federal Government, or any Provincial Government or Local authority, or a corporation or body set up or established by any such Government:

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:

Provided further that, where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

**11. Termination of service:-** (1) The service of a civil servant may be terminated without notice-

(i) During the initial or extended period of his probation:

Provided that, where such civil servant is appointed by promotion on probation or, as the case may be, is transferred from one [service], cadre or post to another [service], cadre or post, his service shall not be so terminated so long as he

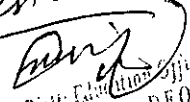
<sup>7</sup> The word "grade" substituted by NWFP Ordinance No. IV of 1985.

<sup>8</sup> Sub section (4) of Sec-8 substituted by NWFP Ordinance No. IV of 1985.

<sup>9</sup> Sub section (5) of Sec-8 added by NWFP Act No. I of 1989

<sup>10</sup> The word "higher" inserted by NWFP Ordinance No. IV of 1985.

<sup>11</sup> The words "the higher grade of" omitted by NWFP Ordinance No. IV of 1985.

*Attested*  
  
 Assistant Distt. Education Officer  
 (Litigation Cell) of the D.E.O (M)  
 L&SE Distt. Shant



Annexure "B"

(8)

~~19/9/2018~~

OFFICE OF THE  
DISTRICT EDUCATION OFFICER (M) DISTRICT SHANGLA  
AT LILOWNAI ROAD DISTRICT COMPLEX.

Contact # 0996-850939.Fax # 0996851108.  
Email deomshangla@gmail.com

**OFFICE ORDER/APPOINTMENT:-**

Consequent upon the Judgment of Peshawar High Court in writ P.No.3783/2010 Dated 20/06/2013 in respect of Mr. Taj Muhammad Khan s/o Koka t/o Dunkacha Makhuzai Puran District Shangla received application vide Dairy No. 2155 dated 23/8/2018 by the applicant concerned. Which is reproduced as below:-

- (i) The applications of the petitioners shall be considered in the first available vacancies accruing in their respective District.
- (ii) The applications of the petitioner shall be deemed to be pending since the date of the filing the same, least the eligibility criteria regarding age may affect their prospects of appointment.

On 23/7/2018 another application received through Director Elementary & Secondary Education Khyber Pakhunhwa Peshawar to do the needful in the light of Court judgment and to avoid COC No. 25/79/2018 Dated 17/2/2018.

This office constituted committee to submit recommendation in light of the court judgment for his appointment as PST vide this office order bearing Endost:-No. 1774 dated 2/8/2018 the committee submitted a detail report and recommended him for appointment if fulfilling criteria.

Keeping in view of the above mentioned facts/ground **Mr. Taj Muhammad Khan is hereby appointed as PST BPS-12 (Rs. 13320-960-42120) at GPS Luchana** against vacant post on regular basis in pursuance of Notification No.SO (S)/F E&SED/3-2/2018/SITT/Contract Dated Peshawar the February 16<sup>th</sup>, 2018 on the terms and conditions mentioned below from the date of his taking over charge in the interest of public service.

**TERMS & CONDITIONS:-**

- i. His service shall be governed by the Khyber Pakhtunkhawa, Civil Servant Act, 1973, the Khyber Pakhtunkhawa (Appointment, Deputation & Transfer of Teachers, Lecturers, and Instructors & Doctors) Regulatory Act, 2011, and such rules & regulations as may be issued from time to time by government.
- ii. His pay will be released subject to verification of academic documents/ testimonials from the concerned Board/ University by the District Education Officer concerned.
- iii. His pay will not be drawn unless and until he obtains upper age relaxation from the competent authority.
- iv. His services will be considered regular and he will be eligible for pension/ deduction of GP Fund in terms of the Khyber Pakhtunkhawa, Civil Servants Act, 1973 as amended in 2013.
- v. His services are liable to termination one month prior notice from either side. In case of resignation without notice, one month pay/ allowances shall be forfeited to the Government.
- vi. He will possess the same qualification and experience required for a regular post.
- vii. He will have not resigned from this service or terminated from services on account of misconduct, inefficiency or any other ground before the commencement of this Act.
- viii. He will rank junior to all other employees belonging to the same cadre who are in service on regular basis on the commencement of this Act and shall also rank junior to such other persons if any, who, in pursuance of the recommendation of the Khyber Pakhtunkhawa Public Service Commission made before the commencement of this Act are to be appointed to the cadre, irrespective of their actual date of appointment.

19.9.2018  
by hand  
Taj

2960-68

(MUHAMMAD AMIN)  
DISTRICT EDUCATION OFFICER (M)  
SHANGLA.

Date 19/9/2018.

Endorsement No. /P/File Taj Muhammad.

Copy of the above is forwarded to:-

- 1 The Registrar Peshawar High Court Peshawar with reference to w/p mentioned above.
- 2 The Director Elementary & Secondary Education Khyber Pakhunhwa Peshawar.
- 3 The District Accounts Officer Shangla.
- 4 The District Monitoring Officer Shangla.
- 5 The SDEO (M) Puran Shangla.
- 6 The Litigation Branch of DEO (M) Shangla.
- 7 The Circle Officer concerned.
- 8 PA to DEO (M) Shangla.
- 9 The Head Teacher concerned.
- 10 The DEMIS local office.
- 11 Teacher concerned.

o/c  
DEPUTY DISTRICT EDUCATION OFFICER (M)  
SHANGLA.

19/9/2018  
19/9/2018  
MEDM

Annexure "2" (9)

BEFORE THE DIRECTOR ELEMENTARY AND SECONDARY EDUCATION  
GOVERNMENT OF KHYBER PAKHTUNKHWA, PESHAWAR.

55

- Taj Muhammad Khan S/o Koka PST BPS-12 GPS Luchana, District Shangla.  
.....Appellant

VERSUS

The District Education Officer (M) District Shangla. .... Respondent

Subject: Giving seniority from submitting the application for appointment.

Respected Sir,

The Appellant submits as under:-

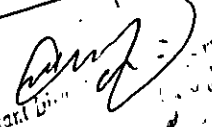
That the Appellant submitted an application in year 2012 for appointment as PST in the Earthquake affected area quota.

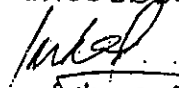
That the application of the Appellant was kept pending and the Appellant waited for acceptance of his application.

That when no result was given the Appellant filed a writ petition which was decided in favour of Appellant.

That still the DEO (M) was not appointing the Appellant so he filed a COC.

That from fear of COC the DEO (M) appointed the Appellant on 19-09-2018.

Attested  
  
Assistant District Officer  
(M)

Attested  
  
Advocate

10  
That the Appellant got the seniority list of 2022/23 a few days back after very hard struggle.

That the Appellant joined the duty and was shocked to know that his seniority was not considered from the date of the writ petition at least.

That the Appellant has the right of seniority from the date of the writ petition if not from the date of submitting the application.

That very valuable rights of the Appellant has not given to him.

It is thus very humbly requested that on acceptance of this departmental appeal the Appellant is given is correct seniority.

*Taj* Appellant

Taj Muhammad Khan

16-6-2022

*Attested*  
*[Signature]*

Attested

*[Signature]*  
Advocate

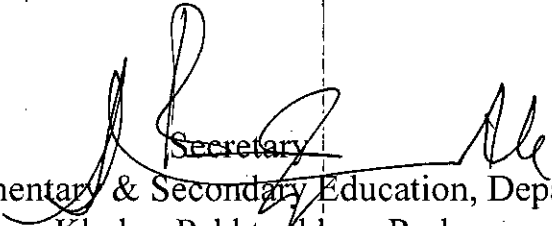


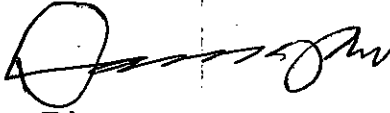
OFFICE OF THE DISTRICT EDUCATION OFFICER (M) SHANGLA.  
LILOWNAI ROAD DISTRICT COMPLEX


CONTACT NO. (0996) 850639. 851108- Fax # 851108

**AUTHORITY LETTER.**

Mr. Mian Asif Ali Shah ADEO (M) BPS-17, Office of the DEO (M) Shangla is hereby authorized to file Joint Parawise Comments in the Honorable Court of KP Service Tribunal Peshawar in Service Appeal No. 1417/2022 title Taj Muhammad Khan VS DEO (M) Shangla & others on behalf of the respondents.

  
Secretary  
Elementary & Secondary Education, Department  
Khyber Pakhtunkhwa Peshawar.  
(Respondent No.01)

  
Director  
Elementary & Secondary Education  
Khyber Pakhtunkhwa Peshawar.  
(Respondent No.02)

  
District Education Officer (M)  
District Shangla.  
( Respondent No.03)