

Appeal No. 1108/2012  
Noor Gul vs Edu: Deptt?

21.3.2016

Counsel for the appellant and Mr. Usman Ghani,

Sr. Government Pleader for the respondents present.

2. At the outset, the question of lack of jurisdiction of this Tribunal was raised by the Government Pleader on the ground that the issue involved in this appeal is that of "upgradation" which does not fall in ambit of terms & conditions of service of a civil servant which has been so held by the Larger Bench of the august Supreme Court of Pakistan in its recent latest judgment dated 17.2.2016 in Civil Appeals No. 101 & 102-P/2011, titled "Regional Commissioner Income Tax, Northern Region, Islamabad etc. Versus Syed Manawar Ali and others".

3. It was not disputed on behalf of the appellant that the issue involved is that of upgradation of the appellants. With the assistance of the learned Government Pleader, we would like to reproduce relevant portion from the said judgment:-

"The aforesaid definition of the expression "Upgradation" clearly manifests that it cannot be construed as promotion, but can be granted through a policy. In fact, this Court in the judgment titled as Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456) and an unreported judgment of this Court passed in the case of Chief Commissioner Inland Revenue and another vs. Muhammad Afzal Khan (Civil Appeal No. 992 of 2014) has held that the issue relating to upgradation of civil servants can be decided by a High Court in exercise of its

A

constitutional jurisdiction and bar contained under Article 212 (3) of the Constitution would not be attracted. The policy of upgradation, notified by the Government, in no way, amends the terms and conditions of service of the civil servant or the Civil Servants Act and or the Rules framed there-under. The Service Tribunals have no jurisdiction to entertain any appeal involving the issue of upgradation, as it does not form part of the terms and conditions of service of the civil servants. The question in hand has already been answered by the aforesaid two judgments of this court.”

4. In the light of the foregoing brief discussion, this Tribunal is of the view that since it lacks jurisdiction to adjudicate upon this appeal, therefore, the same is directed to be returned to the appellant, after retaining its copy, for presentation before the competent/proper forum, if so advised.

ANNOUNCED

21.03.2016

  
MEMBER

  
MEMBER

20.11.2014

Junior to counsel for the appellant and Mr. Muhammad Adeel Butt, AAG Mosam Khan, AD for the respondents present. The Tribunal is incomplete. To come up for the same on 16.1.2015.

  
READER

16.1.2015

Clerk for counsel for the appellant present and submitted that due to general strike of legal fraternity, counsel for the appellant is not available. Mr. Muhammad Jan, GP with Mosam Khan, AD for the respondents present. To come up for arguments on 28.4.2015.

  
MEMBER

28.04.2015

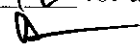
Appellant in person and Mr. Ziaullah, GP for the respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 11.11.2015 before D.B.

  
Member

11.11.2015

Counsel for the appellant and Mr. Usman Ghani, Sr. GP for respondents present. Arguments could not be heard due to shortage of time, therefore, the case is adjourned to

21-3-16 for arguments.

  
Member

  
Member

13.1.2014

Clerk to counsel for the appellant and Mr. Muhammad Jan, GP with Khursheed Khan, SO, Mosam Khan, AD and Muhammad Irshad, Supdt. for the respondents present and needs further time. To come up for written reply postively on 27.2.2014.

MEMBER

27.2.2014

Counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Mosam Khan, AD and Khursheed Khan, SO for respondents present. Written reply received. Copy handed over to counsel for the appellant. To come up for rejoinder on 11.4.2014.

MEMBER

MEMBER

11.4.2014

Counsel for the appellant and Muhammad Jan, GP Khursheed Khan, SO for the respondents present. Rejoinder received and copy handed over to the learned GP. To come up for arguments on 4.8.2014.

MEMBER

MEMBER

04.08.2014


Clerk to counsel for the appellant, AAG with Javed Ahmad, Supdt. for the respondents present. Due to retirement of learned executive Member, the bench is incomplete. To come up for arguments on 20.11.2014.

MEMBER

10.09.2013

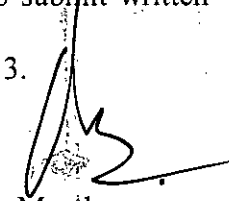
Clerk of counsel for the appellant and Mr. Khurshid Khan, SO for respondents No.1 & 2 with Mr. Muhammad Jan, GP present. No one is present on behalf of respondent No.3 and 4. Representative of respondents No.1 and 2 requested for time. To come up for written reply on 29.10.2013.

  
Member

  
Member

29.10.2013

Appellant with counsel, M/S Khursid Khan, SO, Mosam Khan, AD and Daud Jan, Supdt with Mr. Muhammad Jan, GP for the respondents present and requested for time to submit written reply. To come up for written reply on 29.11.2013.

  
Member

29.11.2013

Counsel for the appellant and Mr. Usman Ghani, Sr.GP with Khursheed Khan, SO and Muhammad Irshad, SO (Litigation) for the respondents present and requested for further time. To come up for written reply by way of last chance on 13.1.2014.

  
MEMBER

  
MEMBER

20.02.2013.

Counsel for the appellant, M/S Khurshid Ali, ISO, Mosam Khan, AD, Daud Jan, Supdt and Muhammad Aqeeb, Assistant with AAG for the respondents present and requested for time To come up for written reply on 17.04.2013.

MEMBER

17.04.2013

Counsel for the appellant, Mosam Khan, AD and Khurshid Ali, So for respondents NO. 1, 2 <sup>& 2</sup> and 4 with Mr Arshad Alam, GP <sup>for resp. #4</sup> present. Written reply has not been received on behalf of the respondents. The representatives <sup>including GP</sup> of the respondents are directed to submit written reply on the next date, positively, on 18.06.2013.

MEMBER

MEMBER

18.6.2013

Clerk to Counsel for the appellant and Mr Muhammad Jan, GP for the respondents. In pursuance of promulgation of Khyber Pakhtunkhwa Service Tribunal (Amendment) Act 2013, the Tribunal is incomplete. To come up for the same on 10.9.2013.

READER


Appeal No. 1107/2012  
Mr. Fazli Deegan

3. 14.12.2012

Counsel for the appellant present and heard. Contended that the appellant has not been treated in accordance with the law. The appellant is entitled to the upgradation (BPS-17) w.e.f. 1.10.2007 as per Notification dated 26.1.2008 of Finance Department w.e.f. 1.10.2007 but the same benefit has been given to the appellant on 20.1.2010 i.e. with immediate effect. The appellant has been discriminated as the same benefit has been extended to his other colleagues w.e.f. 1.10.2007. He further contended that the Tribunal has already accepted similar Appeal No. 152/2010 decided on 2.3.2010 whereby the same benefit has been given to that appellant. The appellant being similarly placed person is also entitled to the same benefit. The appellant preferred a departmental appeal on 7.6.2012 but with no response. Points raised need consideration. The appeal is admitted to regular hearing, subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notice be issued to the respondents. Case adjourned to 20.2.2013 for submission of written reply.

  
Member.

4. 14.12.2012


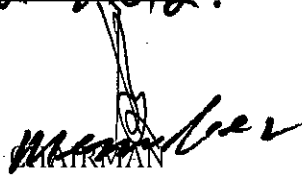
This case be put before the Final Bench  for further proceedings.

  
Chairman.

Form- A  
FORM OF ORDER SHEET

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

Case No. 1108/2012

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	11/10/2012	<p>The appeal of Mr. Noor Gul presented today by Mr.M. Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	17-10-2012	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>14-12-2012</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>



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

Appeal No. 1108 /2012

Mr. Noor Gul

V/S

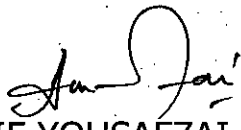
Education Department.

**INDEX**

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-03
2.	Copy of Order dated 21.01.1983	-A-	04
3.	Copy of B.Ed.	- B -	05
4.	Copy of Up-gradation Order dated 26.01.2008	- C -	06
5.	Copy of Up-gradation Order dated 20.01.2010	- D -	07-11
6.	Copy of Appeal	-E -	12-13
7.	Vakalat Nama	----	14

APPELLANT  
Noor Gul

THROUGH:

  
( M. ASIF YOUSAFZAI )  
ADVOCATE, PESHAWAR.

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

Appeal No. 1108 /2012

**K.W.F. Peshawar**  
**1146**  
**11/10/12**

Mr. Noor Gul, SET,  
Government Middle School,  
Abdul Kor, Mohmand Agency.

**APPELLANT**

VERSUS

1. The Secretary, Education (E&SE) Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Director, Education (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
3. The <sup>Director</sup> Education FATA, KPK, Peshawar.
4. The Secretary, Finance Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

**RESPONDENTS**

.....

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 FOR UP-GRADATION TO BPS-17 W.E.FROM 01.10.2007 AS PER NOTIFICATION DATED 26.01.2006 INSTEAD OF WITH IMMEDIATE EFFECT, AND AGAINST NOT TAKING ACTION ON THE APPEAL OF APPELLANT WITHIN STATUTORY PERIOD OF NINETY DAYS.**

.....

**PRAYER:**

**THAT ON ACCEPTANCE OF THIS APPEAL, THE RESPONDENTS MAY BE DIRECTED TO GRANT UP-GRADATION TO THE APPELLANT BPS-17 (PERSONAL) W.E.FROM 1.10.2007 AS PER NOTIFICATION DATED 26.1.2008 WITH ALL CONSEQUENTIAL BENEFITS, INSTEAD OF WITH IMMEDIATE EFFECT. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.**

**K.W.F. Peshawar**  
**11/10/12**

.....

**RESPECTFULLY SHEWETH:**

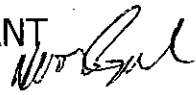
1. That the appellant was appointed as SET teacher vide order dated 2.11.1983 by the Competent Authority and the appellant has more than 29 years service at his credit with good record throughout. Copy of the Appointment Order is attached as Annexure-A.
2. That the appellant passed B.Ed in the year 1992 and since then the appellant has been receiving graded pay being trained SET Teacher. Copy of B.Ed. Degree is attached as Annexure-B.
3. That the Provincial Government through a Notification dated 26.1.2008, by Finance Department has upgraded all SETs to BPS-17 (Personal) w.e.from 1.10.2007, who have at least 10 years service. Copy of the Notification is attached as Annexure-C.
4. That the Department delayed the up-gradation process for unknown reasons, however, the appellant was up-graded to BPS-17 (Personal) on 20.1.2010, but with immediate effect. Copy of Up-gradation Order is attached as Annexure-D.
5. That since the appellant has deprived from the benefits of up-gradation from actual date of up-gradation. Therefore, the appellant filed an appeal and waited for 90 days, but no reply has been received by the appellant so far. Hence, the present appeal on the following grounds amongst the others. Copy of Appeal is attached as Annexure-E.

**GROUND:**

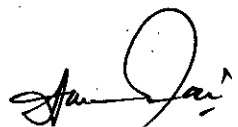
- A) That not granting the up-gradation benefit w.e.from 1.10.2007, and up-gradation with immediate effect is against the norms of justice and principles of fair play.
- B) That all the SETs who have 10 years service at their credit, have been up-graded to BPS-17 (Personal) w.e.from 1.10.2007, Therefore, the appellant could not be deprived from the said benefits from that date.

- C) That if the department has delayed the process of up-gradation for so many years, then that too could not be based to deprive the appellant from the benefit of up-gradation w.e.from 1.10.2007, because the appellant can not be punished for the lapses of respondent department.
- D) That when a target date has been given in the up-gradation Notification then that could not be changed by the Department, because the same would amounts to an arbitrary act on the part of the respondents.
- E) That the appellant has not been dealt according to the spirit of up-gradation policy.
- F) That the august Tribunal has decided the same issue in favour of appellants of various appeals. Therefore, the appellant also deserve the same benefits under the principle of consistency.
- G) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

APPELLANT  
Noor Gul 

THROUGH:

  
( M. ASIF YOUSAFZAI )  
ADVOCATE, PESHAWAR.

A 4

PROMOTION

The following local candidates are hereby promoted to the post in the schools noted against each @ Rs. 900/- pm fixed or their equivalent P.S. whichever is beneficial to them w.e.f. the date of their taking over charge.

S.No.	Name and qualification and address	Place of posting	Remarks
1.	Moor Gul of Mohmand Agency, BEd (Appeared) CT teacher, GHS Sandu-Khel.	Govt: Middle School Habibzai (Mohmand)	Against vacant post
2.	Jan Wali of Mohmand Agency, BEd (Appeared) CT Teacher, G.H. School Yousaf Khel (Mohmand)	Govt: High School Landi Kot (Khyber)	Vice Haider Khel transferred.
3.	Fazli Rahman of Khyber Agency, BEd, Appeared, CT teacher, GHS Ilamguder (Khyber)	Govt: High School Ilamguder (Khyber)	Vice Gulzaman transferred.

Notes:-

- 1:- Charge reports should be submitted in duplicate to all concerned.
- 2:- No TA/DA etc is allowed.
- 3:- Their promotion is purely on temp. basis and is liable to revocation at any time without any reason and assigning any notice.
- 4:- If they failed to take over charge within 15 days their report should be sent for cancellation of their promotion.
- 5:- Their seniority will be counted on the basis of marks obtained in BEd along with their batch fellows.
- 6:- They will serve in FATA for ever.
- 7:- If they failed in the BEd Exam, they will be reverted to lower posts.

(Muqarrab Khan)  
Dy. Director of Education  
PATA. NWFP. Peshawar

Andt: No 7640-44

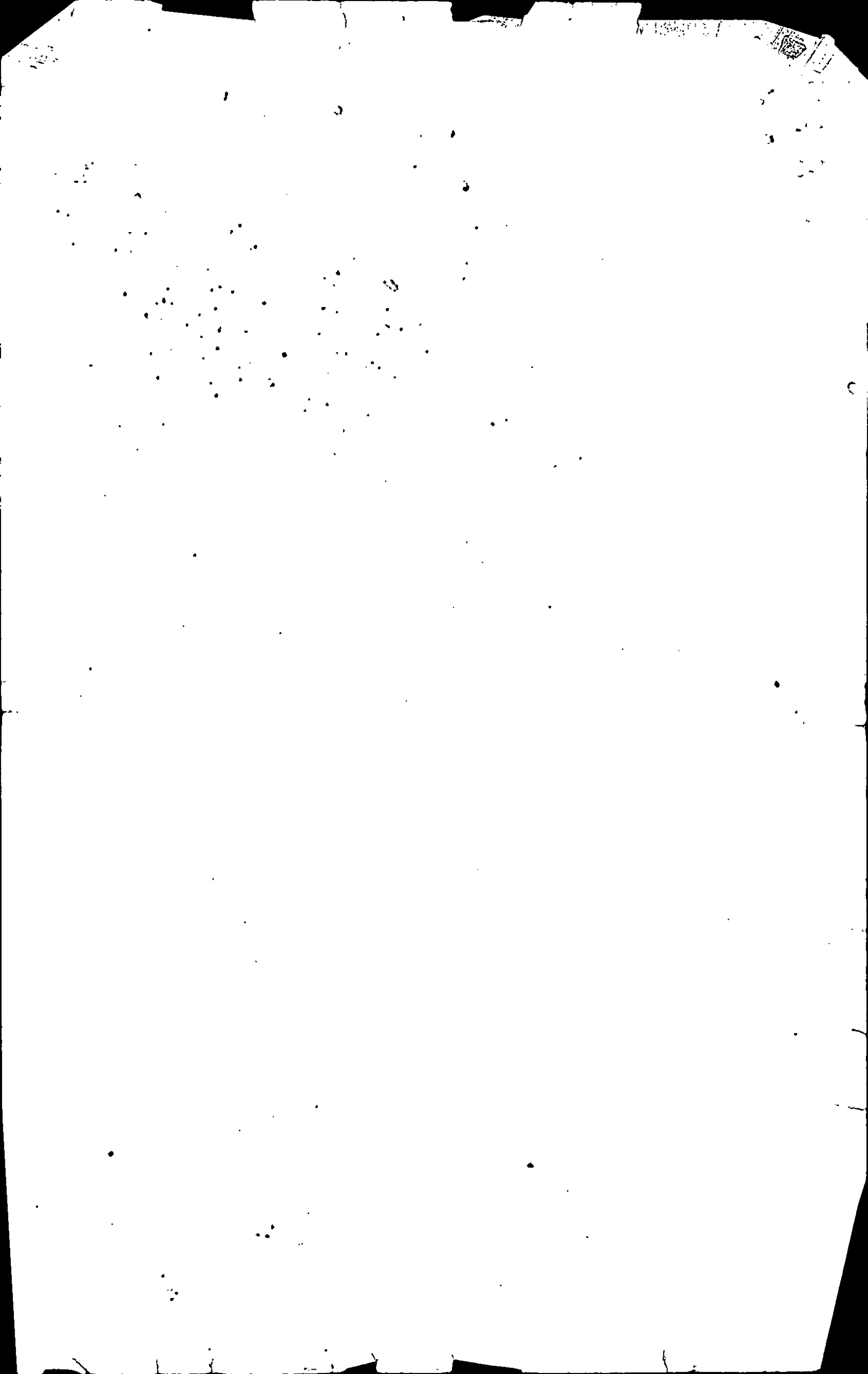
Dated Peshr: the 11 / 83

Copy forwarded for information and necessary action to the:-

- 1:- Agency Inspector of Schools Mohmand Agency at Chalanai.
- 2-4:- Headmasters, Govt: High Schools, Yousaf Khel (Mohmand Agency), Ilamguder and Landi Kot (Khyber Agency).
- 5:- Relevant Files.

For Director of Education  
PATA. NWFP. Peshawar

ATTESTED







GOVERNMENT OF NWFP  
FINANCE DEPARTMENT

(REGULATION WING)

Dated Peshawar, the 26<sup>th</sup> January, 2008.

NOTIFICATION

NO.FD/SO(FR)10-22/2007. In supersession of this Department's letter No.SO(FR)10-22(B)20 dated 01-10-2007 and in pursuance of the decisions of the meeting held under the Chairmanship of Secretary Establishment on 2-1-2008, the Competent Authority is pleased to allow upgradation for the incumbents of the posts as per details given below w.e.f. 1-10-2007:-

S.NO	Existing Designation and Pay Scale	Qualification	Upgraded Scale
1	Primary School Teacher (PST) (BPS-07).	FA/FSc and are trained teachers	BPS-09 (one time only)
2	Primary School Teacher (PST) with requisite experience renamed as Head Teacher/Head Mistress of Primary Schools (BPS 07).	Having 10 years service	BPS-12 (one time only)
3	CT (BPS-09).	BA/BSc and are trained teachers	BPS-15 (one time only)
4	SETs (BPS-15)	With at least ten years service. Upgradation to the post shall be made through DPC as per laid down procedure.	BPS-17
5	Qari/Qari. (BPS-07)	Hafiz Quran with SSC	BPS-12

SECRETARY TO GOVT. OF NWFP  
FINANCE DEPARTMENT

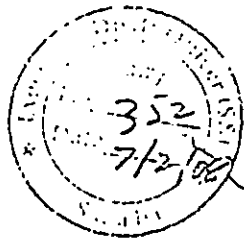
Encl. No. & Date even.

Copy of the above is forwarded for information and necessary action to the:-

- 1) All the Secretaries in NWFP, Peshawar.
- 2) All the DCOs/EDOs Schools & Literacy Department, NWFP.
- 3) Accountant General, NWFP, Peshawar.
- 4) Director Schools & Literacy NWFP, Peshawar.
- 5) Director of Education FATA NWFP, Peshawar.
- 6) PSO to Chief Minister, NWFP.
- 7) PSO to Chief Secretary, NWFP.
- 8) PS to Secretary Finance Department, NWFP.
- 9) All District/Agency Accounts Officers in NWFP.

**TESTED**

(NAIB KHAN)  
SECTION OFFICER (RR)





To,

The Director of education FATA. Peshawar.

Subject: appeal for the award of up gradation from BPs.16 to Bps.17 with retrospective effects.

Respected Sir,

With great honour to say that I want to draw your kind attention to the following facts.

- 1) I have been worked SET teacher w.e.t 11/11/1986.
- 2) I have passed may B.ed examination and become trained teacher w.e.t 06/06/1996.
- 3) The govt of Khyber pakhtoonkhawa vide its notification No. so(PE) 2-6/DPC up gradation of SET BPs-16 to BPs 17 dated 20/01/2010 has ordered to award the said up gradation w.e.t 01/10/2007(its launching) instead of immediate effect i.e 27/09/2008.
- 4) I have been promoted to BPS 17 on 20/01/2010 in the light of the above mention facts.

Kindly issue order for my fixation from 01/10/2007 instead of 20/01/2010

I shall be thankful to this act of kindness

Your most obedient  
servant  
Gul SE

G. M. S. Abdul  
Hore  
W/ Agency.

No 2707 Date 27/6/2012

ATTESTED  


**BEFORE THE KHYBER PAKHATUNKHWA SERVICE TRIBUNAL  
PESHAWAR.**

SERVICE APPEAL NO: 1108/2012

**Noor Gul SET GMS Abdul Kor (Mohmand Agency) FATA.**

.....Appellant.

**VERSUS**

Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa & others.

.....Respondent

**PARAWISE COMMENTS ON BEHALF OF RESPONDING No; 1 to 3**

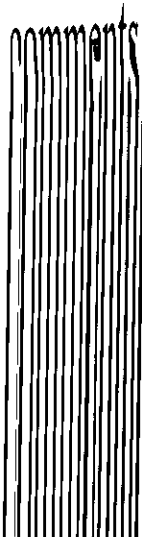
Respectfully Sheweth :-Respondent submitted as under:-

**PRELIMINARY OBJECTIONS.**

- 1 That the appeal is badly barred by time.
- 2 That the appellant has not come to this Hon! able court with clean hands.
- 3 That the appeal is not maintainable in its present form.
- 4 That the appellant has suppressed/concealed important material facts from this Hon! able court.
- 5 That the appellant has filed this appeal with malafide intentions.
- 6 That the instant appeal has been filed to pressurize the respondents to Succumb to the illegal demands of the appellant.
- 7 That the appellant has been estopped by his own conduct to file the instant appeal.
- 8 That the appeal is not entertain able & maintainable.
- 9 That the appeal is bad for non joinder of necessary party who is Principal respondent and mis-joinder of unnecessary parties.
- 10 That the appellant has no cause of action against the answering respondents.

**ON FACTS**

- 1 This Para is related to service record of the appellant However, it is pertinent to mention here that the appellant was appointed on fixed pay on temporary basis as untr~~ow~~ed SET
- 2 This Para also pertain to academic and service record of the appellant, hence no



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**ON FACTS**

- 1 This Para is related to service record of the appellant However, it is pertinent to mention here that the appellant was appointed on fixed pay on temporary basis as untr~~ained~~ SET
- 2 This Para also pertain to academic and service record of the appellant, hence no comments.
- 3 Pertains to record.
- 4 Incorrect & not admitted. The department did not delay the up gradation process. However, according to rules & laws on the subject the promotion/upgradation always accorded with immediate effect (Annexure" A").

- 5 Incorrect, the appeal/representation dated 27/6/2012 against the notification dated 20/01/2010 is time barred one. Hence the present appeal on the following grounds amongst the others is liable to be dismissed.

**ON GROUNDS**

- A Incorrect & not admitted. That the up gradation/promotion always granted with immediate effect according to law, rules on the subject, hence denied.
- B Incorrect. In fact the department issued all notifications regarding the up gradation with immediate effect.
- C Incorrect & not admitted. As replied in foregoing paras.
- D Incorrect. The department is bound to issue up gradation notification according to direction contained in (annexure" A").
- E Incorrect & not admitted. The appellants has been dealt according to the spirit of Up gradation policy.
- F This para pertains to court record, hence no comments.
- G That the respondents also seek permission of this Hon! able Tribunal to adduce more grounds and proofs at the time of hearing.

**In view of the above made submissions, it is requested that this Hon! able Tribunal may very graciously be pleased to dismiss the instant appeal with cost in favor of the respondents Department.**

  
**Director**

Elementary & Secondary Education  
Khyber Pakhtunkhwa, Peshawar.

  
**Secretary**

Elementary & Secondary Education  
Department KPK Peshawar.

  
**Secretary**

Govt: of Khyber Pakhtunkhwa,  
Finance Department Peshawar.

Government of N.W.F. Province  
Services & General Admn. Deptt.

(Regulation Wing)

No. SCRI(S&GAD)1-29/75(Vol.I)

Dated Pesh the 31st March, 1990.

4  
30  
Annex-A  
27

To

1. All Administrative Secretaries to Govt 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 N.W.F.P.
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, Pesh.
11. The Director, Anti-corruption Establishment, Pesh.
12. The Registrar, NWFP Service Tribunal, Peshawar.

Subject: - PROMOTION POLICY OF THE PROVINCIAL GOVERNMENT.

Sir,

I am directed to say that as a general principle, appointment by promotions takes effect from the date of approval by the competent authority or assumption of charge whichever is later. The Provincial Government have, however, been allowing promotion to higher Basic Scale with retrospective effect on specific recommendations of the Departmental Promotion Committee/ Selection Board in cases of grant of selection grade where promotions do not involve assumption of charge of the post with higher responsibilities and where change in duties is not involved. It has, however, been noticed with concern that some of the departments have notified promotions with retrospective effect in violation of the aforesaid Government policy.

2. It is hereby clarified that appointments by promotions against posts may invariably be made with immediate effect in the prescribed manner in accordance with the provisions of Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, and instructions issued from time to time by the Government.

3. I am to request that the above instructions may kindly be brought to the notice of all concerned.

Your Obedient Servant,

(MOHAMMAD SHOAB) Deputy Secretary (Regulation)

count'd page-2

(Haji Ghulam Sabir)  
Section Officer (Regulation-I)

- 7. Supdt. Incharge Benvolunt Fund Cell, SSCAD.
- 6. Librarian, SSCAD.
- 5. Private Secretary to Secretary, SSCAD.
- 4. All Section Officers/Deputy Officers in SSCAD.
- 3. Private Secretary to Joint Secretary, NWFP.
- 2. All Deputy Secretaries in SSCAD.
- 1. All other staff members in SSCAD.

Copy forwarded to :-

Order No. SORI (SSCAD) 1-29/75 (Vol. I) Dated Pesh. the 31.3.1990

(Haji Ghulam Sabir)  
Section Officer (Regulation-I)

- 1. Accountant General, NWFP, Peshawar.
- 2. All Districts/Agencies Accounts Officers in NWFP.

Copy forwarded to :-

Order No. SORI (SSCAD) 1-29/75 (Vol. I) Dated Pesh. the 31.3.1990

(Mohammad Shoaib)  
Deputy Secretary (Regulation)

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

Order No. SORI (SSCAD) 1-29/75 (Vol. I) Dated Pesh the 31st March

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

SERVICE APPEAL NO: 1108/2012

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- 1 That the appeal is badly barred by time.
- 2 That the appellant has not come to this Hon! able court with clean hands.
- 3 That the appeal is not maintainable in its present form.
- 4 That the appellant has suppressed/concealed important material facts from this Hon! able court.
- 5 That the appellant has filed this appeal with malafide intentions.
- 6 That the instant appeal has been filed to pressurize the respondents to Succumb to the illegal demands of the appellant.
- 7 That the appellant has been estopped by his own conduct to file the instant appeal.
- 8 That the appeal is not entertain able & maintainable.
- 9 That the appeal is bad for non joinder of necessary party who is Principal respondent and mis-joinder of unnecessary parties.
- 10 That the appellant has no cause of action against the answering respondents.

**ON FACTS**

- 1 This Para is related to service record of the appellant However, it is pertinent to mention here that the appellant was appointed on fixed pay on temporary basis as untrained SET
- 2 This Para also pertain to academic and service record of the appellant, hence no comments.
- 3 Pertains to record.
- 4 Incorrect & not admitted. The department did not delay the up gradation process. However, according to rules & laws on the subject the promotion/upgradation always accorded with immediate effect (Annexure" A").

- 5 Incorrect, the appeal/representation dated 27/6/2012 against the notification dated 20/01/2010 is time barred one. Hence the present appeal on the following grounds amongst the others is liable to be dismissed.

**ON GROUNDS**

- A Incorrect & not admitted. That the up gradation/promotion always granted with immediate effect according to law, rules on the subject, hence denied.
- B Incorrect. In fact the department issued all notifications regarding the up gradation with immediate effect.
- C Incorrect & not admitted. As replied in foregoing paras.
- D Incorrect. The department is bound to issue up gradation notification according to direction contained in (annexure "A").
- E Incorrect & not admitted. The appellant has been dealt according to the spirit of Up gradation policy.
- F This para pertains to court record, hence no comments.
- G That the respondents also seek permission of this Hon! able Tribunal to adduce more grounds and proofs at the time of hearing.

**In view of the above made submissions, it is requested that this Hon! able Tribunal may very graciously be pleased to dismiss the instant appeal with cost in favor of the respondents Department.**

**Director**

Elementary & Secondary Education  
Khyber Pakhtunkhwa, Peshawar.

**Secretary**

Elementary & Secondary Education  
Department KPK Peshawar.

**Secretary**

Govt: of Khyber Pakhtunkhwa,  
Finance Department Peshawar.



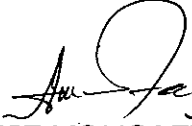


- B) Incorrect, while Para-B of Appeal is correct. Moreover, all orders of up-gradation have been issued by the department with effect from 1.10.2007.
- C) Incorrect, while Para-C of appeal is correct.
- D) Incorrect, while Para-D of Appeal is correct.
- E) Incorrect, while Para-E of Appeal is correct.
- F) Admitted correct by the respondents, so no comments.
- G) Legal.

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

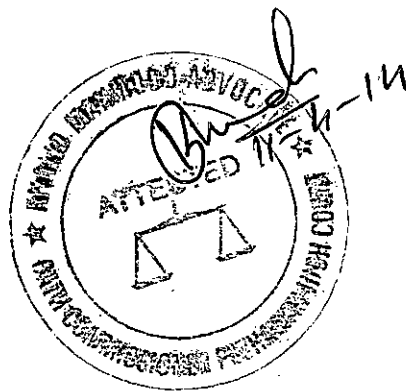
APPELLANT  
Noor Gul

Through:

  
( M. ASIF YOUSAFZAI )  
ADVOCATE, PESHAWAR.

**AFFIDAVIT**

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



  
DEPONENT