

BEFORE THE HONOURABLE SERVICE TRIBUNAL
KHYBERPAKHTUNKHWA PESHAWAR

Service Appeal No. 1173/2023

Muhammad Zakariya, SST (BPS-16), District NowsheraAppellant

VERSUS

Govt; of Khyber Pakhtunkhwa through Secretary E&SE Department & others.....Respondents.

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 10824

Dated 29/1/24

**SCANNED
KPST
Peshawar**

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(Samina Altaf)
DIRECTOR

**E&SE Department Khyber
Pakhtunkhwa, Peshawar.**

①

BEFORE THE HONOURABLE SERVICE TRIBUNAL
KHYBERPAKHTUNKHWA PESHAWAR

Service Appeal No. 1173/2023

SCANNED
K.P.T.
Peshawar

Muhammad Zakariya, SST (BPS-16), District NowsheraAppellant

VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary E&SE Department & others.....Respondents.

JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS No: 1-3.

Respectfully Sheweth :-

The Respondents submit as under: -

PRELIMINARY OBJECTIONS

- 1 That the Appellant has got no cause of action/locus standi to file instant appeal.
- 2 That the appellant is not an aggrieved person within the meaning of Section-4 Khyber Pakhtunkhwa Service Tribunal Act 1974 read with Article-212 of the constitution of Islamic Republic of Pakistan 1973.
- 3 That the appellant has concealed material facts from the ambit of this Honorable Tribunal.
- 4 That the appellant has not come to this Honorable Tribunal with clean hands.
- 5 That the appeal in hand is based on mala fide intentions for gaining illegal service benefits from the Department in violation of the Rules & Policy.
- 6 That the appeal in hand is barred by law and limitation Act, 1974.
- 7 That the appeal in hand is bad for mis-joinder and non-joinder of the necessary parties.
- 8 That the appeal is not maintainable and incompetent in the eyes of Law.
- 9 That the Notification dated 06-01-2022 is legally competent & liable to be maintained in favor of the Department.
- 10 That the lien of the appellant has already been expired.

ON FACTS

- 1) That Para-1 relates to the service record of the appellant against his Ex- SST (BPS-16) post inducted vide order dated 11-11-2011 in the Department.
- 2) That Para-2 relates to the Regional Electric Inspector post in Power & Energy Department regarding his appointment in (BPS-18) as REI vide order dated 13-12-2016, whom the appellant not made as a Respondent in the titled appeal on mala fide. *(Attached as Annex-A)*.
- 3) That Para-3 is correct to the extent of grant of lien to the appellant initially for one calendar year w.e.f 19-12-2016 to 18-12-2017 vide office order dated 11-01-2017 *(attached as Annex-B)* which was further extended vide Notification dated 05-01-2018 *(Annex-C)* w.e.f 19-12-2017 to 18-12-2019 with further extension in the said lien vide Notification dated 17-12-2018 *(Annex-D)* w.e.f 19-12-2018 to 18-12-2019, however, no further extension in the same lien has been given by the Respondent Department in favor of the appellant as per available record on file.
- 4) That Para-4 is correct to the extent of the Notification dated 02-06-2021, whereby, the service of the appellant were regularized against the Deputy Electric Inspector (DEI) in BPS-18 conditionally in compliance of the Judgment dated 24-04-2019 rendered in WP No. 3562-P/2019 Muhammad Zakariya Vs Govt; of the Honorable Peshawar High Court *attached as Annex-E*.
- 5) That Para-5 is correct to the extent of filing of CPLA against the Judgment dated 24-04-2019 in the august Supreme Court of Pakistan by the Energy & Power Department Khyber Pakhtunkhwa which was allowed vide order dated 19-01-2023 & in compliance of the said order of the Apex Court, the service of the appellant were terminated vide order dated 09-03-2023 of being a temporary employee of the energy Department *(Attached as Annex-F)*.
- 6) That Para-6 is correct that as per available record the lien of the appellant was valid up to 18-12-2019 with no further extension in the same by the Department in favor of the appellant, hence, the appellant is falling within the ambit of already relieved employee as evident from the order dated 06-01-2020, which is legal & liable to be maintained & also attached as *Annex-G*.
- 7) That Para-7 is incorrect as the appellant is not an aggrieved person within the meaning of Section-4 of Khyber Pakhtunkhwa Service Tribunal Peshawar Act, 1974 read with Article-212 of the constitution of 1973, furthermore, the appeal filed by the appellant against the Notification dated 06-01-2020 on dated 27-01-2023 is badly time barred, hence, the appeal in hand is liable to be rejected on the following grounds inter alia :-

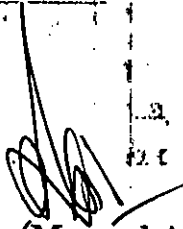
ON GROUNDS

- A. *Incorrect / not admitted.* the order dated 06-01-2020 is within legal parameter & liable to be maintained in favor of the Department ..
- B. *Incorrect and not admitted.* the act of the Department with regard to the Notification dated 06-01-2020 is in accordance with the provision of the Articles 04 & 25 of the constitution of 1973.
- C. *Incorrect / not admitted.* the act of the Department with regard to the order dated 06-01-2020 is legal & liable to be intact..
- D. *Incorrect / not admitted.* The plea of the appellant is in violation of the order dated 06-01-2020 which has already got finality under the Rules against the appellant.
- E. *Incorrect / not admitted.* the stand of the appellant is illegal as his lien has already been expired & resultantly, he has been relieved by the Department under the rules .
- F. *Incorrect / not admitted.* as it is not a matter of qualification as the rule & regulation shall always prevail in the titled case as done by the Department vide order dated 06-01-2020..
- G. *Incorrect / not admitted.* the stance of the appellant in view of Article-24-A General Clauses Act, 1897 is against the fact, Rules & policy
- H. *Incorrect / not admitted* the cited Judgment 1996 SCMR P-2005 & 2005 SCMR P-1212 are not applicable upon the case of the appellant.
- I. *Incorrect / not admitted* as replied above by the Department.
- J. *Incorrect / not admitted* the cited Judgment in the mentioned Service Appeals are different from the titled case in all respect, hence, cannot be applicable upon the case of the appellant under the law & Rules.
- K. *Incorrect / not admitted* the plea of the appellant is illegal as he is no more an employee of the Department against the SST post in view of the order dated 06-01-2020, hence, the benefits of Clause-5 of project Policy 2009 cannot be extended to the appellant.
- L. *Incorrect / not admitted* the appellant has been treated as per law & rules by the Department
- M. *Incorrect / not admitted* the appellant is not an aggrieved person C/S-4 of Khyber Pakhtunkhwa Service tribunal Peshawar Act, 1974 nor has a valid cause of action to approach this Honorable tribunal & the titled matter with further request of seeking lacks to submit additional grounds, case law & record at the time of arguments on the date fixed.

PRAYER.

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

Dated ___ / ___ /2023.



(Masood Ahmad)

SECRETARY

E&SE Department Khyber
Pakhtunkhwa, Peshawar.

(Respondent No: 1).



(Samina Altaf)

DIRECTOR

E&SE Department Khyber
Pakhtunkhwa, Peshawar.

(Respondents No: 2 & 3).

SECRET

Ret.

5

BEFORE THE HONOURABLE SERVICE TRIBUNAL
KHYBERPAKHTUNKHWA PESHAWAR

Service Appeal No. 1173/2023

Muhammad Zakariya, SST (BPS-16), District NowsheraAppellant

VERSUS

Govt; of Khyber Pakhtunkhwa through Secretary E&SE Department & others.....Respondents.

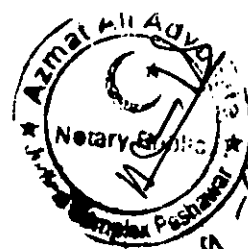
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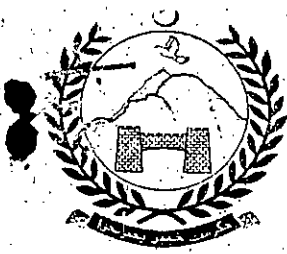
I, Samina Altaf, Director E&SE Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents of the instant para wise Comments are true & correct to the best of my knowledge & belief. It is further stated on oath that in this appeal the answering Respondents, have neither been placed Ex-Parte nor their defense has been struck off/cost.


(Samina Altaf)
DIRECTOR

E&SE Department Khyber
Pakhtunkhwa, Peshawar.

ATTESTED





GOVERNMENT OF KHYBER PAKHTUNKHWA
ENERGY & POWER DEPARTMENT

PHONE: 091-92223625, FAX: 091-9223624

C
Dated Peshawar the 13-12-2016

Notification No. E&P/SO(Estt)/Electric Inspector/2016 :- Consequent upon the selection of Mr. Muhammad Zakariya s/o Gul Rahman, Regional Electric Inspector (BPS-18), Swat Region in project "Restructuring / Strengthening of Electric Inspectorate of Energy & Power Department, Khyber Pakhtunkhwa" by the Departmental Selection Committee on fixed salary basis, initially for a period of One year (2016-2017) subject to verification of his antecedents. This contract will be extendable subject to satisfactory performance further till completion of the Project on yearly basis. The appointment with immediate effect, on the following terms and conditions:-

Terms & conditions:

- i) **Pay Package:** Rs. 85000/-P.M (Fixed Pay) with annual increment of 5% as per the project policy.
- ii) **Period of Contract:** One year (2016-2017) initially with immediate effect, extendable on yearly basis till project life. The extension will be granted on satisfactory performance of the employee.
- iii) A project employee shall work against that post for which he/she was recruited and shall not be transferred to any other post in the project.
- iv) The contract shall be liable to termination on 15 days notice (if the performance of the employee is found unsatisfactory) or payment of 15 days salary in lieu thereof by either side.
- v) On completion of the project, the services of the project employees shall stand terminated however, they shall be reappointed on need basis, if the project is extended over to any new phase or phases.
- vi) Staff appointed by initial recruitment in a project shall not be entitled to pension or CP fund. They shall not be treated as a "civil servant".
- vii) Project employees will receive medical allowance as per policy of the Provincial Government.
- viii) **Leave:** You will be entitled for leave admissible to the Civil servants under the Khyber Pakhtunkhwa Revised Leave Rules-1986, except maternity leave, extra ordinary leave without pay and study leave.
- ix) **Traveling Allowance:** Traveling Allowance for journey as admissible under the rules.

Attested
[Signature]



GOVERNMENT OF KHYBER PAKHTUNKHWA
ENERGY & POWER DEPARTMENT

PHONE: 091-92223625, FAX: 091-9223624

- x) **Seniority:** Being a temporary post there shall exist no relative seniority in your case in relation to other regular or temporary employees of your category in the Energy & Power Department.
- xi) You will be governed by the Provincial Govt. rules as amended from time to time.
- xii) You will not be required to contribute towards General Provident Fund nor entitled to any benefit of the General Provident Fund.
- xiii) You will not divulge, either directly or indirectly, to any person any knowledge or information of a confidential nature which you may acquire concerning the affairs, property, enterprise and undertaking of the department during the course of your service.

Secretary to Govt: of Khyber Pakhtunkhwa
Energy & power Department

Endst: No & Date Even:

Copy to:-

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, P&D Department, Peshawar.
4. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
5. PD of the Project.
- ✓ 6. Officer concerned
7. P.S to Secretary Energy & Power Department.
8. Personal file.

1
ehan
Section Officer (Estt)

Attested
P. Jinnah

(8)

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION KHYBER
PAKHTUNKHWA, PESHAWAR.

OFFICE ORDER

To be substituted with the same No. and date.

The lien in respect of Muhāmmad Zakariya SST (Science) GCMHS, Akora Khattak District Nowshera appointed as Regional Electric Inspector (BPS-18) in Government of Khyber Pakhtunkhwa, Energy & Power Department vide officer letter No. CPO/RS-EI/E&P/2016 dated 20-09-2016 is hereby retained for one year against the SST post in District Nowshera with effect from 19-12-2016 18-12-2017.

Furthermore he is hereby relieved from his duty w.e.f. 19-12-2016 (AN) on his own request.

• DIRECTOR

Endst: No.4378-80/F.No.111/SST (M) Lien/Apptt; of SST.

Dated Peshawar the 28-12-2016

Copy of the above is to the:-

1. District Education Officer (M) Nowshera w/r to his letter No.2418-19 dated 19-12-2016.
2. District Accounts Officer Nowshera.
3. Principal GCMHS, Akora Khattak Nowshera.
4. SST concerned:
5. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
6. Master File.

11/11/17
Deputy Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa.

Attested
D. Jinnah

(9)

(1)

(2)

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA, PESHAWAR.

NOTIFICATION

To be substituted with the same No. and date.

The lien in respect of Muhammad Zakariya Ex SST GCMHS, Akora Khattak District Nowshera (working as Regional Electric Inspector BS-18 on project basis retained vide Notification No. 4378-80 dated 11-01-2017 is hereby extended for a period of one year w.e.f. 19-12-2017 to 18-12-2018 against the post of SST at District Nowshera.

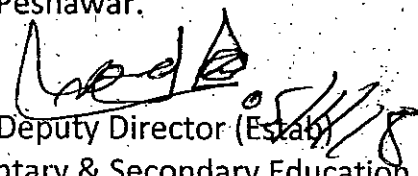
DIRECTOR

Endst: No.4505-07/F.No.111/SST (M) Lien Retention

Dated Peshawar the **23/10/2017**

Copy of the above is to the:-

1. District Education Officer (M) Nowshera.
2. District Accounts Officer Nowshera.
3. Principal GCMHS, Akora Khattak Nowshera.
4. SST concerned.
5. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
6. Master File.


Deputy Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa.


4/11/17

Attested
P. Jinnah

DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA, PESHAWAR.

NOTIFICATION

The lien in respect of Muhammad Zakariya Ex SST GCMHS, Akora Khattak District Nowshera (working as Regional Electric Inspector BS-18 on project basis retained vide Notification No. 4505-07 dated 23-10-2017 is hereby further extended for a period of one year w.e.f. 19-12-2018 to 18-12-2019 against the post of SST at District Nowshera.

Endst: No. 5651-55 / F.No.111/SST (M) Lien Retention

DIRECTOR

Dated Peshawar the 20/12/2018

Copy of the above is to the:-

1. District Education Officer (M) Nowshera.
2. District Accounts Officer Nowshera.
3. Principal GCMHS, Akora Khattak Nowshera.
4. SST concerned.
5. PA to Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
6. Master File.

[Signature] 19/12/18
Deputy Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa

AO

Attached
Z. Jiwani



Energy & Power Department

GOVERNMENT OF KHYBER PAKHTUNKHWA

Energy & Power Department

1st Floor, Block-A, Abdul Wali Khan Multiplex Civil Secretariat Peshawar
Tel. 091-0223626 - Fax 091-0223624

Dated Peshawar, the 02nd June, 2021

NOTIFICATION

No. SOE.IW&PV5-7/2021/Vol-VI In pursuance of the judgment dated 24.04.2019 & 20.11.2019 of the Honourable Peshawar High Court Peshawar judgment in Writ Petition No. 3454-P/2019, 3552-P/2019 & 3472-2019, titled "Mr. Muhammad Zakria Vs Government of Khyber Pakhtunkhwa etc, Mr. Javed Iqbal and others Vs Government of Khyber Pakhtunkhwa etc and Mr. Wasim Jehangir & others Vs Government of Khyber Pakhtunkhwa and others", the Competent Authority is pleased to regularize the services of the following employees on provisional/conditional basis subject to final decision of the Supreme Court of Pakistan:-

Sr. No.	W.P No.	Name of Employees	Designation with BPS	Region
1	3454-P/2019	Mr.Muhammad Zakanya	Deputy Electric Inspector (BS-18)	Swat
2	3552-P/2019	Mr.Javed Iqbal	Assistant Electric Inspector (BS-17)	Swat
3	-do-	Mr.Tariq Saif Ullah	Electric Sub Inspector (BS-12)	Bannu
4	-do-	Mr.Umar Khan	Chowkidar (BS-03)	Bannu
5	-do-	Mr.Farid Khan	Naib Qasid (BS-03)	Bannu
6	-do-	Mr.Zahoor Ahmad	Naib Qasid (BS-03)	Bannu
7	3472-P/2019	Mr.Waseem Jehangir	Electric Sub Inspector (BS-12)	Abbottabad
8	-do-	Mr.Sohail Ahmad	Electric Sub Inspector (BS-12)	Abbottabad
9	-do-	Mr.Zakir Khan	Electric Sub Inspector (BS-12)	Abbottabad
10	-do-	Mr.Faiz Muhammad	Electric Sub Inspector (BS-12)	Swat
11	-do-	Mr.Abdul Khaliq	Computer Operator (BS-16)	Abbottabad
12	-do-	Mr.Muhammad Shahid	Chowkidar (BS-03)	Abbottabad
13	-do-	Mr.Imad ud Din	Naib Qasid (BS-03)	Swat
14	-do-	Mr.Mubeen Akhtar	Naib Qasid (BS-03)	Abbottabad
15	-do-	Mr.Sudheer Ahmad	Naib Qasid (BS-03)	Abbottabad

TERMS AND CONDITIONS

1. Consequent upon regularization, the above officers/officials shall remain employees of Electric Inspectorate Provincial, Energy and Power Department.
2. The above officers/officials shall submit their arrival to Energy and Power Department, Government of Khyber Pakhtunkhwa.
3. On arrival the incumbents shall produce medical fitness certificate/attested copies of their academics/credentials and clearance certificate from Project "Restructuring/Strengthening of Electric Inspectorate Energy and Power Department".
4. Any error occurred will be rectified.

Rizwan

-sd-
Secretary
Energy & Power Department

Endst: No. & Date Even:

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

1. Registrar, Peshawar High Court Peshawar
2. Accountant General, Khyber Pakhtunkhwa Peshawar.
3. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
4. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department.

(Cont'....P/2).

Attested
Rizwan

(12)

PA/Add. Secy E&P Deptt-II



GOVERNMENT OF KHYBER PAKHTUNKHWA
Energy & Power Department
1st Floor, Block-A, Abdul Wali Khan Multiplex Civil Secretariat Peshawar
Tel. 091-9223626 - Fax 091-9223624

-: 2 :-

5. Secretary to Government of Khyber Pakhtunkhwa, Finance Department.
6. Secretary to Government of Khyber Pakhtunkhwa, Law Department
7. Project Director, Restructuring/Strengthening of Electric Inspectorate / Additional Secretary (Power), Govt. of Khyber Pakhtunkhwa, Energy & Power Department.
8. Electric Inspector Provincial, Khyber Pakhtunkhwa Peshawar,
9. PS to Secretary Energy & Power Department.
10. PS to Special Secretary, Energy & Power Department.
11. Section Officer (LI/AB), Energy & Power Department, Peshawar w/r to above.
12. Budget Officer-II, Finance Department, with the request that the remaining three (03) number posts of Driver (BPS-08) may kindly be created/sanctioned immediately vide this Department letter No. SO(E.I)E&P/5-7/2021/30-01 dated 26-05-2021.
13. PS to Special Assistant to Chief Minister for Energy and Power, Khyber Pakhtunkhwa.
14. PA to Additional Secretary (Admn), Energy & Power Department.
15. PA to DS (Power), Energy & Power Department.
16. Officers/Officials Concerned.
17. Master file.

Rahmani
(Rahmani) 26/5/21
Section Officer (E.I)

Attested.
[Signature]



GOVERNMENT OF KHYBER PAKHTUNKHWA
Energy & Power Department

13
13

Dated Peshawar, the 09th March, 2023

NOTIFICATION

No. SO(E-I)E&P/2-1/Restructuring of E-I/2022/ : In pursuance of the order dated 19.01.2023 of the Honorable Supreme Court of Pakistan in CMA No. 5326/2020, CP. No. 295-P/2020, CP-296-P/2020 and CP No. 297-P/2020, the competent authority is pleased to withdraw this department's notifications No. SO (E-I)E&P/5-7/2021/Vol-VI dated 02-06-2021 and No.SO(E-I)E&P/5-7/2021/Vol-VI/560-20 dated 01-09-2021 regarding conditional regularization of the following officers/officials of Electric Inspectorate Provincial with immediate effect.

S.No	Name of officers/officials	Designation with BPS
1	Muhammad Zakareia	Deputy Electric inspector (BPS18)
2	Javid Iqbal	Assistant Electric Inspector (BPS-17)
3	Tariq Saif Ullah	Electric Sub Inspector (BPS-12)
4	Umar Khan	Chowkidar (BPS-03)
5	Farid Khan	Naib Qasid BPS-03)
6	Zahoor Ahmad	Naib Qasid (BPS-03)
7	Hameed Ullah	Driver (BPS-06)
8	Waseem Jahangir	Electric Sub Inspector (BPS-12)
9	Sohail Ahmad	Electric Sub Inspector (BPS12)
10	Zakir Khan	Electric Sub Inspector (BPS-12)
11	Faiz Muhammad Khan	Electric Sub Inspector (BPS-12)
12	Abdul Khaliq	Computer Operator (BPS16)
13	Muhammad Shahid	Chowkidar (BPS-03)
14	Amad Ud Din	Naib Qasid (BPS-03)
15	Mobeen Akhtar	Naib Qasid (BPS-03)
16	Sudeer Ahmad	Naib Qasid (BPS-03)
17	Muhammad Riaz	Driver (BPS-06)
18	Waqar Ahmad	Driver (BPS-06)

Sd/-
SECRETARY
ENERGY & POWER DEPARTMENT

Endst: No. & Date Even:

Copy is forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. PS to Secretary Finance Department, Khyber Pakhtunkhwa.
3. PS to Secretary Energy & Power Department.
4. PS to Special Secretary, Energy & Power Department.
5. PA to Add: Secretary (Power) Energy & Power Department.
6. PA to Deputy Secretary (Power) Energy & Power Department.
7. The Chief Manager, State Bank of Pakistan, Field Office Peshawar.
8. Electric Inspector Provincial, Khyber Pakhtunkhwa Peshawar.
9. Deputy Electric Inspector, concerned.
10. District Account Officer, concerned.
11. Officers/Officials concerned.

Section Officer (E-I)

Attended



**DIRECTORATE OF ELEMENTARY & SECONDARY
EDUCATION KHYBER PAKHTUNKHWA PESHAWAR**

NOTIFICATION

Consequent upon the approval of the Competent Authority, Mr. Muhammad Zakariya SST (BPS-16) at GCMHS Akora Khattak District Nowshera is hereby relieved of this Department due to expiry of his Lien w.e.f. 19-12-2016 to 18-12-2019 in the interest of public service.

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa

Endst: No. 432 F.NO.111/SST(M)/Lien Cases

Dated the Peshawar 06-1-2019-2020

Copy forwarded to the:

1. District Education Officer (Male) Nowshera.
2. District Accounts Officer Nowshera
3. Officer Concerned.
4. Master Copy

Deputy Director (Estab)
Elementary & Secondary Education
Khyber Pakhtunkhwa

6/01/2020

Attested
[Signature]



**DIRECTORATE ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA, PESHAWAR.**

(17)

AUTHORITY LETTER

I, Dr. Samina Altaf, Director (E&SE) Khyber Pakhtunkhwa Peshawar do hereby authorized Mr. Behramand Khan, Assistant Director Litigation-II of this Directorate for submission of Joint Parawise Comments in Service Appeal No. 1173/2023 case titled **Muhammad Zakariya, SST (BPS-16) Nowshera Vs Government of Khyber Pakhtunkhwa & others** fixed for hearing on 20-12-2023, hence, an authority letter is hereby issued in favor of the above-named officer.


(Samina Altaf)

DIRECTOR

E&SE Department Khyber
Pakhtunkhwa, Peshawar.

1.12.23

submission of

Muhammad Zakariya

vs