

**BEFORE THE KHYBER PAKHTUNKHAWA SERVICES TRIBUNAL
PESHAWAR**

Service Appeal No.985/2024

Mst: Nizakat Begum (RT) Professor.....Petitioner.

V/S

Government of KP, through Chif Secretary,
Peshawar& other.6..... Respondents.

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

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25-10-24

Ymmi
Deponent
03469191985
17301-1327637-5

**BEFORE THE KHYBER PAKHTUNKHAWA SERVICES TRIBUNAL
PESHAWAR**

Service Appeal No.985/2024

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 16817

Dated 01-10-24

Mst: Nizakat Begum (RT) Professor.....Appellant.

V/S

Government of KP, through Chief Secretary,
Peshawar & other..... Respondents.

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

Preliminary Objections:-

- 1) That the Appellant has no cause of action.
- 2) That the Appellant has no locus standi to file instant case.
- 3) That the Appeal in hand having no merits is liable to be dismissed.
- 4) That the Appeal of the Appellant is barred by Law/rules.
- 5) That the Appellant has not complied with section 79, 80 CPC.
- 6) That the Appellant is stopped by their own conduct to file the Appeal in hand.

Respectfully Sheweth:-

- 1) Correct.
- 2) Relates to record, however liable to be proved by the Appellant.
- 3) That Respondent No.5 and his all the staff is bound to follow the rules and instructions issued by the Provincial Government of Khyber Pakhtunkhwa from time to time.
And in light of Finance Department (Regulation Wing) letter No. SOS(R-II) FD/2-4/2021 dated: 23.11.2021 read with Khyber Pakhtunkhwa Civil Servants Pension rules, 2021 Notified on 6th September 2021 Chapter-V (Family Pension) section (15) Sub Section (II) (Annex-A & B) clearly shows that :-

“ In case a Pensioner is drawing his own Pension or a family pension, becomes eligible for another Pension, he shall opt for one pension which is more beneficial to him as prescribed at Pension Form-II or Pension Form-III as the case may be. The option once exercised shall be final”.

Hence, on the above after the promulgation of the said rules of Pension the Appellant is bound to make “opt” to receive one Pension which is more beneficial to her and she is not entitled to get double pension against the pension rules.

- 4) Relates to Respondent No. 4 and they are in better position to show the status of the case.
- 5) Correct to the extent that in para 2 of the instant appeal it is clearly mentioned that the Appellant got retired from service on 17.12.2021 after the date of promulgation of pension Rules 2021; hence, she is bound to opt for one Pension which is more beneficial to her.
- 6) As mentioned in Para "3" above to the extent that Respondent No.5 is bound to follow the rules and instructions issued by the Provincial Government of Khyber Pakhtunkhwa from time to time.
- 7) That at the time of hearing on 09.02.2021 the question before the Supreme Court in C.P No.883-L/2020 and C.P No.1791-L/2020 was that whether unmarried daughter of deceased Civil Servant parents can draw the Pension of both his/her parents. But after the promulgation of Notification dated: 06th September 2021, Khyber Pakhtunkhwa Civil Servants Pension Rules 2021 issued by the Government of Khyber Pakhtunkhwa, the Spouse of the Government servant will opt to draw only one pension which is more beneficial to him. Hence, the question of above unmarried daughter or son is solved.
- 8) As mentioned in Para "4" above the Appellant is not entitled for both the Pensions under the rules.
- 9) Relates to Respondent No. "3" hence, no comments.
- 10) That under Para "2" of the instant writ Petition it is clearly mentioned that the Appellant got retired from service on 07.12.2021 and under Para "2" of the Finance Department (Regulation Wing) letter dated: 23.11.2021 read with Pension Rules 2021, it is clearly mentioned that,

"After 06.09.2021 he shall opt for one Pension which is more beneficial to him"

Hence, on the above, the Appellant is not entitled for both the Pensions under the pension rules.
- 11) As mentioned in Para "10" above.
- 12) No Comments.
- 13) That on 07.12.2023 the Appellant by herself 'Opt' for her own pension instead of family pension which, she is regularly receiving on monthly basis through her respective Bank.
- 14) As mentioned in Para "3" above to the extent that action taken by Respondent No.5 is correct and under the rules.

Grounds:-

- A. Relates to Respondent No. "3 & 4" and they are in better position to show the status of the case.
- B. Incorrect that after the promulgation of Pension Rules 2021, read with Finance Department (Regulation Wing) Peshawar clarification dated: 23.11.2021, the Appellant by herself 'Opt' on 07.12.2023 for her own pension instead of family pension (Annex-C)
- C. As mentioned in Para "B" above the Appellant was receiving the family pension of her husband regularly.
- D. As mentioned in Para "B" above.
- E. Relates to Respondent No.4; hence, no comments.
- F. Incorrect to the extent as mentioned in Para "B" above.
- G. Relates to Respondent No. 4; hence, no comments.
- H. . Relates to Respondent No. 4; hence, no comments.

Keeping in view the above mentioned facts it is, therefore, humbly prayed that appeal in hand having no merits may kindly be dismissed with cost.


**ACCOUNTANT GENERAL
KHYBER PAKHTUNKHWA**

Nabeed-Din Sarwar.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR**

Service Appeal No.985/2024

Mst: Nizakat Begum (RT) Professor.....Petitioner.

V/S

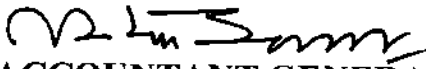
Government of KP, through Chif Secretary,
Peshawar & other..... Respondents.

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

AFFIDAVIT

I, Naseeruddin Sarwar, Accountant General Khyber Pakhtunkhwa Peshawar do hereby solemnly affirms & declare that the reply submitted on behalf of Respondents No.5 is true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Court.

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


**ACCOUNTANT GENERAL
KHYBER PAKHTUNKHWA**

ATTESTED



79/c



**GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)**

NO. SOS(R-II)/FD/2-4/2021.
Dated Peshawar the 23.11.2021

To
The Accountant General,
Khyber Pakhtunkhwa, Peshawar.

(Annex-A)

Subject: - KHYBER PAKHTUNKHWA CIVIL SERVANTS PENSION RULES, 2021

Dear Sir,

I am directed to refer to your letter No.H-24(74)/Pension/Vol-VI/1277 dated 25.10.2021 on the subject noted above and to clarify the queries raised by your good office as under: -

Sr. No.	Observations of Accountant General, KP	Reply of Finance Department
1.	Whether 100% of the gross or net family pensions is also applicable on old family pensioners, who died before 06.09.2021 or otherwise.	According to rule-2(f) of the Khyber Pakhtunkhwa Civil Servant Pension Rules 2021, Family Pension means a compassionate grant paid to the family at the rate of hundred (100%) of the pension, and as such the same is also applicable on old family pensioners, who died before 06.09.2021.
2.	Whether a pensioner who is drawing two or more pensions, before 06.09.2021, only one pension will be allowed or otherwise.	A pensioner who was in receipt of two or more pensions, before 06.09.2021, shall continue to be eligible for the same. However, when a person become eligible for two or more pensions after 06.09.2021 he shall opt for one pension which is more beneficial to him as per rules-15(10 & 11) of the said rules subject to observance of explanations of rule- (11).
3.	In KP Civil Servant Pension Rules, 2021 unmarried sister has excluded from the family but before 06.09.2021 unmarried sister was drawing pension till her marriage or death. Now it may please be clarified that her pension will be stopped or revised the case at 100% or otherwise.	Unmarried sisters of those government servants who died before the promulgation of the subject rules are eligible for family pension at the rate of hundred percent (100%).
4.	Whether minimum pension for family will be increased from Rs.7,500/- to Rs.10,000/- or otherwise.	As per revised Pension Rules 100% of the gross or net family pension is allowed, therefore they are entitled for minimum family pension at the rate of 10,000/-.
5.	As per sub-rule-3 of rule-10 of the subject Rules, family pension shall be hundred percent (100%) of the gross or net pension, as the case may be, of a deceased civil servant or pensioner, in case of death during service whether hundred percent (100%) family pension of gross pension shall be given, whereas 25% commutation is mandatory.	In case of death in service, 75 % family pension as well as 25 % gratuity/commutation are allowed, hence sub-rule (3) of rule-10 of Khyber Pakhtunkhwa Revised Civil Servants Pension Rules, 2021 is not applicable. However, 25% gratuity/commutation will be restored after outliving the period for which gratuity/commutation, as the case may be was availed in light of Government of Khyber Pakhtunkhwa Finance Department letter No.FD (SOS R-II/4-11/2010 dated 13-07-2010).

HAD
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Circulated vide # - 24(74) Pension/Vol-VI/1302 dt 20/12/2021

Yours faithfully,

mm
(Muhammad Ilyas Khattak)
SECTION OFFICER (SR.II)

Endst: No & date even

Copy forwarded for information to the: -

1. PS to Secretary, Finance Department, Khyber Pakhtunkhwa.
2. PA to Additional Secretary (Regulations), Finance Department.
3. PA to Deputy Secretary (Regulation-I) Finance Department.
4. All District Accounts Officers in Khyber Pakhtunkhwa.
5. Director (Treasury & Accounts) Khyber Pakhtunkhwa, Peshawar.
6. Master file.

SECTION OFFICER (SR.II)

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EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII

GAZETTE

(Annex-B)

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, MONDAY, 06th SEPTEMBER, 2021.

GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT

NOTIFICATION

Dated Peshawar, the 06th September, 2021

No. SOSR-II/FD/2-4/2021.---In exercise of the powers conferred by section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the Chief Minister of Khyber Pakhtunkhwa is pleased to make the following rules, namely:

KHYBER PAKHTUNKHWA CIVIL SERVANTS PENSION RULES, 2021

Chapter-I Preliminary

1. Short title and commencement--- (1) These rules may be called the Khyber Pakhtunkhwa Civil Servants Pension Rules, 2021.

(2) These rules shall come into force at once.

2. Definitions.---In these rules, unless the context otherwise requires:-

- (a) "Act", means the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973);
- (b) "Accounts Officer", means an officer, who keeps the accounts of Government and includes the Accountant General, Khyber Pakhtunkhwa, District Comptrollers of Accounts and District Accounts Officers and any other officer, who keeps Government accounts;
- (c) "competent authority" means the authority to appoint civil servants in various basic pay scales respectively;
- (d) "commutation", means the advance payment of 35% of gross pension to the pensioner for the specific period as specified under these rules, which shall be restorable when the paid amount is recovered;

Chapter-V
Family Pension

15. Family pension--- (1) In case of death of a civil servant while in service and eligible for pension or in case of death of a pensioner, family pension shall be paid to his family.

(2) Where a civil servant or pensioner has one wife and children, the amount of pension shall be divided equally among wife and children.

Note: In case of a female civil servant or pensioner, the amount of family pension shall be divided equally among her surviving husband and eligible children;

(3) Where a civil servant or pensioner had more than one wife, the amount of pension shall be divided viz; each surviving widow shall get one fourth ($1/4^{\text{th}}$) of the pension and the balance shall be divided equally among the surviving eligible children.

(4) In the case of a female civil servant leaving behind children from former marriage in addition to her husband and children by her surviving husband, the amount of pension shall be divided equally among the husband and all eligible children.

(5) In case the total number of beneficiaries exceeds four, the husband shall be allowed one fourth ($1/4^{\text{th}}$) of the pension and the remaining amount distributed equally among the eligible children.

(6) In case a surviving child on attaining the age of eighteen years demands his share separately, he shall be entitled to receive his share of family pension.

Note: A child means a legitimate child or an "adopted child" if under the personal law of the civil servant concerned, adoption is legally recognized as conferring the status of a natural child. The age of the child at the time of adoption shall be less than fourteen (14) years. The civil servant concerned shall provide the adoption deed executed between the parents or guardian of the child and the civil servant duly registered with the Sub-Registrar. Adoption shall have been at least ten years before the completion of twenty five years' service qualifying for retiring pension and subject to reporting to the head of office or department concerned and recording an entry in the service book or personnel file in this behalf.

(7) Disabled child shall be entitled for family pension under these rules.

Explanation-1: Disability means that the earning capacity of the disabled child impaired due to disability and includes:

- (a). total loss of eye-sight;
- (b). total loss of functions of both the hands;
- (c). total loss of functions of both the legs and feet;

- (c). total loss of hearing of both ears;
- (l). total loss of speech; and
- (g). any other disease impairing the earning capacity.

Explanation-II: The Standing Medical Board shall be the competent forum to issue a disability certificate.

Explanation-III: In case the pension sanctioning authority, did not agree with the contents of the medical certificate issued by the Standing Medical Board, he may for the reasons to be recorded in writing, within one month of the receipt of said medical certificate, may request the concerned authorities of Health Department of Government for constitution of a Special Medical Board regarding invalidation of the concerned child.

Explanation-IV: The disabled child of a deceased civil servant or a pensioner shall have the special CNIC issued by NADRA for disabled persons.

(8) Family pension shall not be admissible to a family member or a relative of the deceased civil servant or pensioner, if he holds a pensionable post, paid from the Provincial Consolidated Fund or is in receipt of any kind of other pension from Provincial Consolidated Fund.

(9) The husband in the case of a female civil servant or pensioner shall only be entitled to receive the family pension, when he has no source of income and was wholly dependent upon his wife.

Explanation: In case of a female civil servant, if the wife intimates in writing to the Accounts Officer or head of the office or department that her husband shall not be included as a member of the family, then he shall no longer be considered a member of the family unless subsequently she cancels in writing her intimation excluding him.

(10) In case a civil servant during his service against a pensionable post, becomes eligible for another pension, he shall opt for the pension which is more beneficial to him, i.e. either to draw his own pension at the time of retirement or the other pension for which he becomes eligible; provided the other pension if opted shall however be admissible when he ceases to be a civil servant. The option once exercised shall be final.

(11) In case a pensioner is drawing his own pension or a family pension, becomes eligible for another pension, he shall opt for one pension which is more beneficial to him as prescribed at Pension Form-II or Pension Form-III, as the case maybe. The option once exercised shall be final.

Explanation-I: For payment of pension under sub-rule (8) and (9), the recipient shall guarantee through affidavit, prescribed at Pension Form -IV and Pension

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Annex-2

Annex

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Manzoor Ahmad Malik
Mr. Justice Syed Mansoor Ali Shah

C.P.883-L/2020 and C.P.1791-L/2020

(Against the judgment of Lahore High Court, Lahore dated 27.01.2020, passed in ICA No.50253/2019 and order dated 07.09.2020 passed in W.P. No.13125/2020)

The Province of Punjab through Secretary, Finance Department, Government of the Punjab, Lahore, etc. (In both cases)

.....Petitioner(s)

Versus

Kanwal Rashid, (In CP 883-L/2020)
Mst. Mizna, etc. (In CP 179-L/2020)

.....Respondent(s)

For the petitioner(s):
(In both cases)

Mr. M. Shan Gull, Addl. A.G. Pb.
Rana Shamshad Khan, Addl. A.G.
Jawad Yaqoob, Addl. A.G.
Abdul Rauf, Deputy Secretary
Nasir Mahmood, Law Officer

For the respondent(s):

Rana Asad Ullah Khan, ASC
(In CP 883-L/2020)
N.R. (In C.P. 1791-L/2020)

Date of hearing

09.02.2021

ORDER

Syed Mansoor Ali Shah, J.

The question of law before us is whether an unmarried daughter of deceased civil servant parents can draw the pension of both her parents simultaneously or instead, entitled to draw the pension of only one of her parents?

2. Brief facts of the case are that both the parents of the respondent were civil servants and entitled to pension under the law. On their passing away, pension of both the parents, formed part of the family pension and passed on to the respondent under the law. Being unmarried, the respondent was continuously drawing the family pension after the passing away of her parents till she was informed vide letter dated 10.08.2016 issued by the Accountant General, Punjab, that she could not draw the pension of

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both the parents simultaneously and could only draw the pension of one parent. Thereafter vide notice dated 11.11.2016, the respondent was asked to deposit a sum of Rs.1,941,631/- into the Government treasury on account of the pension unduly received by her of one of her parent. The background and the basis for the issuance of the aforesaid letter and notice to the respondent was the clarification issued by the Finance Department, Government of the Punjab dated 11.09.2015 whereby Punjab Civil Services Pension Rules, 1963¹ ("Rules") were clarified.

3 We have heard the learned counsel for the parties and have examined the record, the law on the subject and the unpugned judgments of both the benches of the High Court in detail. The right to pension of a civil servant is recognized under section 18 of the Punjab Civil Servants Act, 1974 ("Act") which provides as follows:

18. Pension and gratuity. - (1) On retirement from service, a civil servant shall be entitled to receive such pension or gratuity as may be prescribed.

(2) In the event of death of a civil servant, whether before or after retirement, his family shall be entitled to receive such pension, or gratuity, or both, as may be prescribed.

A civil servant after retirement and after his or her death, the family is entitled to receive his or her pension, as prescribed in the rules.² Under section 23, the Governor or any person authorized in this behalf shall make rules for carrying out the purposes of the Act. Rule 4.10 of the Punjab Civil Services Pension Rules, 1963 ("Rules")³ deals with "Family Pension" and provides that family pension in case of widow's death will be admissible to the dependent sons until they attain the age of 24 years or till they are gainfully employed.

¹ As amended till 22.07.1989

² Section 2(g)

³ As amended on 22.07.1989

(37)

C.P. 883-L of 2020, etc.

which ever is earlier and to unmarried daughters till their marriage or they acquiring regular source of income which ever is earlier. Therefore, as per the Rule, an unmarried daughter is disentitled from drawing family pension after marriage or on acquiring a regular source of income. The entitlement under consideration is of Family Pension, which may comprise of pension from one parent or both the parents. The distinction between pension from one parent or both is not recognized under the Act or the Rules and is collectively referred to as Family Pension under the Rules. The son or the daughter of the deceased civil servants have a right to draw Family Pension unless they are disentitled due to the disqualification mentioned in the Rules. The disentitlement is based on the independent acts of the children or their age. Pension itself, however, cannot amount to be a disentitlement, as discussed and explained hereunder.

4. The Finance Department, Government of the Punjab interpreting the Rules issued a clarification dated 11.09.2015 to the effect if in case of two pensions (of both the parents) drawn by the unmarried daughter, one pension constitutes her regular income hence it disentitles her from drawing the other pension. As a result she is only entitled to one pension. The clarification issued by the Finance Department is as follows:

No. FD-SR-III-4-471/2014
GOVERNMENT OF THE PUNJAB
FINANCE DEPARTMENT
Dated Lahore the 11th September, 2015

Subject: LIBERALIZATION OF PENSION RULES.
CLARIFICATION.

I am directed to refer to Para-1 of this Department's letter No. FD-SR-III-4-11/89 Dated 22nd July, 1989 and to state that a question has arisen as to whether an un-married daughter can draw family pension of her father and mother simultaneously. The matter has been examined and it is observed that a monthly family pension being received by a person is construed as regular

source of income. Therefore, such person is not entitled to receive another family pension.

Sd/
(M. NAWAZ KHALID ARBI)
DEPUTY SECRETARY (SR)

5. The above clarification suffers from multiple constitutional and legal defects as discussed hereunder:

- (i) The Finance Department has no authority under the law to clarify, interpret, abridge or extend the right of pension provided under Section 18(2) of the Punjab Civil Servants Act, 1974 and further regulated by the Punjab Civil Services Pension Rules, 1963 promulgated by the Governor. The impugned clarification issued by the Finance Department dated 11.09.2015 has usurped the rule making power of the Governor by interpreting, clarifying and modifying Rule 4.10. Finance Department has also encroached upon the legislative power under section 18 of the Act which entitles the family of the deceased civil servant to pension in the manner prescribed.
- (ii) Without prejudice to the above, impugned clarification in the year 2015 cannot operate retrospectively and adversely affect the right to family pension that had accrued to the respondent on the death of her mother in the year 2006 and the family pension she has regularly drawn since then.
- (iii) We have noticed that in case of a son, he can draw the family pension (comprising of both the parents) till he attains the age of 24 or is gainfully employed. Before the son attains the age of 24 he is entitled to draw the family pension (comprising of both the parents) as one of the pension does not amount to being

M. N. Arbi

"gainfully employed" in order to disentitle him of the second pension. So while the son can draw family pension of both the parents, the unmarried daughter is treated differently as one of the two pensions in her case is considered to be her regular source of income, disentitling her of the second pension. This is discriminatory and offensive to Article 25 of the Constitution and a gender insensitive act of the Finance Department.

(v) "Acquiring a regular source of income" under the Rules means that the unmarried daughter on her own, irrespective of the source of pension, has acquired a regular source of income. The word "acquire" under the "Black's Law Dictionary", supplied by the learned AAG means: "to gain by any means, usually by one's own exertions, to obtain by search, endeavor, practice or purchase." Acquire signifies gain by one's own effort. Entitlement to family pension by virtue of the death of the parents does not constitute acquisition of a regular source of income. It is also not "regular" as the unmarried daughter is disentitled to receive family pension the minute she is married. Both these conditions must be met by her own self irrespective of the pension. She must acquire a regular income of her own expertise and efforts. The disqualification mentioned in the amendment brought about in the Rules, must be independent of the family pension and pension itself cannot constitute a ground for disqualification.

(vi) The right to pension has a constitutional significance. It draws its strength from the right to life or the right to livelihood under Article 9 of

⁴ revised 4th edition: p.41

the Constitution. It is important to appreciate that both the parents of the respondent(s) gave the best years of their lives to government service with the expectation to receive pension upon retirement and to leave a family pension for their children upon their death, subject to the lawful disentitlements under the Rules. Depriving the children of civil servants of their family pension on the basis of an unauthorized and unlawful clarification by the Finance Department, offends the right to dignity of the deceased civil servants who were assured under the law that they and their children will enjoy the security of pension upon retirement.

Reference to the Income Tax Ordinance, 2000 ("Ordinance") by the learned AAG is of little significance. Even if pension is considered to be an income under the Ordinance it is neither an income "acquired" by the respondent nor is it "regular" income as envisaged under the Rules.

6. In this background we see no reason to interfere in the well reasoned concurrent findings of the High Court. The pension of the respondent shall continue strictly in accordance with the Act and the Rules, while the impugned clarification dated 11.09.2015 is struck down as being illegal and unconstitutional. The respondent will, however, be disentitled from drawing pension when she is married or acquires a regular source of income on her own, regardless of the family pension received by her.

7. Leave is therefore, declined and these petitions are dismissed.

Lahore,
9th February, 2021
Approved for reporting
Iqbal

Judge

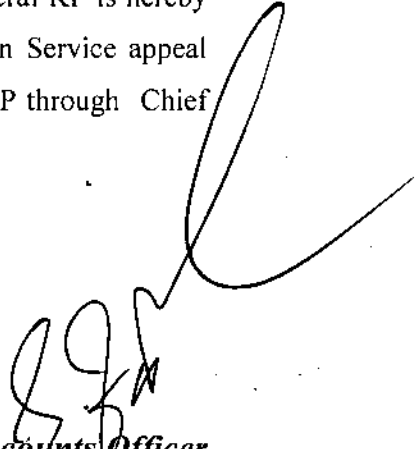
Judge



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

AUTHORITY LETTER

Mr. Syed Tariq Shah, Senior Auditor (B-17) office of the Accountant General KP is hereby authorized to attend court and submit reply on the behalf of this office in Service appeal No.985/2024 titled Mst Nizakat Begum (Rtd) Professor Versus Govt. of KP through Chief Secretary, Peshawar & Other.


Accounts Officer
(Litigation)