

IN THE COURT OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
AT CAMP COURT SWAT

APPEAL No: 849 of 2024

Said Nowshad

Versus

Superintendent Engineer & Other.

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Secretary
Public Health Engg Department
Khyber Pakhtunkhwa Peshawar
Khayam Hasan Khan

**Secretary to Govt. of
Khyber Pakhtunkhwa,
P.H.E. Department**

**IN THE COURT OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
AT CAMP COURT SWAT**

APPEAL No: 849 of 2024

Said Nowshad S/O Said Bakht Shad BPS 7 Pump Operator Water Supply Scheme Takhtaband
District Buner R/o Takhta Band Tehsil Gagra Buner.

**Khyber Pakhtunkhwa
Service Tribunal**
"Appellant"
Diary No. 17928
Dated 14-11-24

Versus

1. Superintendent Engineer Public Health Engineering Circle Swat.
2. Secretary to Government of Khyber Pakhtunkhwa Civil Secretariate Peshawar.

"Respondents"

Preliminary Objections:

1. That the appellant has no cause of action.
2. That the appellant has no locus standi.
3. That the appellant has not come to this Court with clean hands.
4. That the appeal in hand having no merits, hence liable to be dismissed.
5. That the appeal of the appellant is barred by law/rules.
6. That the appellant has been retired as per Secondary School Certificate.

PARA WISE COMMENTS

Respectfully She with:

On Facts:

1. Correct to the extent that appellant was appointed as Pump Operator in PHE Department.
2. Respondents are not aware of it.
3. The applicant was initially on contract and later regularized.

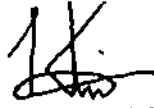
4. Incorrect. The department prepares relevant record of each employee on the available record. In addition, the department has right to rectify any error whenever pointed out at any stage of the service.
5. Denied. In fact, the complainants provided Anti-Corruption Establishment with relevant educational record of the appellant. Each proceeding of the said anti-corruption inquiry was shared with the department and the latter also shared the desired record with the former as per rules. The inquiry audit report revealed that the actual date of birth of the employee is 04.01.1950 as per Secondary School Certificate (**Inquiry Report and SSC as Annex-A & B**). Consequently, the retirement of the appellant was initiated. Accordance with directions of the worthy Chief Engineer (North) PHED Peshawar and Section Officer (Establishment) PHE Department Khyber Pakhtunkhwa, the appellant was retired from the service on 10.12.2021 on the base of Secondary School Certificate (The Ex-Post facto Office Order) w.e.f. 03.01.2010. (**Retirement Order as Annex-C**)
6. Incorrect. The appellant was informed accordingly. In fact, the appellant himself has admitted in para 8 of his previous W.P No. 856-M 2021 in Peshawar High Court (Mingora Bench) that he had submitted his service book himself for retirement on 13.04.2021. (**The Writ petition along with its decision as Annex-D**)
7. The appellant was retired as per rules. Hence, no comments.

On Grounds:

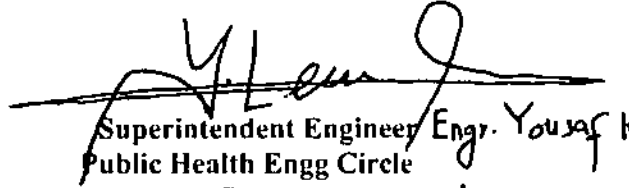
- A. Incorrect. The appellant was aware of each proceeding against him.
- B. Denied. The whole proceedings against the appellant were initiated once the department came into knowledge of Secondary School Certificate.
- C. The said Medical Certificate is not available with the department.
- D. The salary has been drawn by the appellant up to his retirement order dated 10/12/21.
- E. Denied. As the SSC Certificate is preferable over the entry recorded in the service book, the appellant was retired according to attaining the age of superannuation, i.e. 60 years.
- F. Incorrect. The appellant had not provided his educational record at the time of appointment and had willfully it in secrecy. The retirement order is based on correct record which is acceptable in any case of dispute between the parties.
- G. Correct. However, action is taken when the facts were found.

- H. Correct to the extent that the appellant was rendering his duties in the field not in office.
- I. Respondents seek the permission of the honorable Tribunal to raise further supportive points at the time of arguments.

Therefore, it is humbly prayed to dismiss the instant petition with cost.



Secretary Khayam Hasan Khan
Public Health Engg Department
Khyber Pakhtunkhwa Peshawar
Respondent No-2
Secretary to Govt. of
Khyber Pakhtunkhwa,
P.H.E. Department



Superintendent Engineer Eng. Yousof Khan
Public Health Engg Circle
Swat
Respondent No-1
Superintendent Engineer
PHE Circle Swat

IN THE COURT OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
AT CAMP COURT SWAT

APPEAL No: 849 of 2024

Said Nowshad

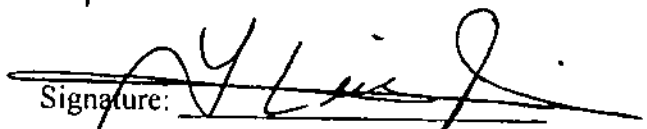
Versus

Superintendent Engineer & Other.

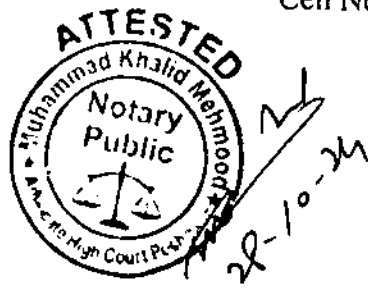
AFFIDAVIT

I, Engr. YOUSAF KHAN, SUPERINTENDING ENGINEER, PHE, SWAT, do hereby solemnly affirm and declare on oath that the contents of the Para wise comments filed by the respondents are true and correct to the best of my knowledge and belief and nothing has been kept concealed from the august court.

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

Signature: 
Superintendent Engr.
PHE
CNIC: 15602-0452504-5

Cell No: 0346- 83463333



محرمیت جناب ڈائریکٹر اینٹی کورپشن فیئر ٹیکوخواہ میٹری حیاتیہ بازار شہتاد

میں جناب - دھوکہ دہی بنائے تبدیلی تاریخ پیدائش و تبدیلی / اضافہ عمر 9 اسال
سی سید نوشاد ولد سید نخت شاہ ایئر سٹر حکمہ پیٹک ہیلتھ لوئیر
for report

جناب عالی
500
28/11/2021
میں ہے کہ مذکورہ بالا ایئر سٹر حکمہ پیٹک ہیلتھ لوئیر سی سید نوشاد ولد
سید نخت شاہ ساکن نختہ بند ضلع لوئیر نختہ بند میں ایئر سٹر کی ڈیوٹی انجام
دے رہا ہے۔ اور ایسے حکمہ کی انکھوں میں دھول جھونک کر حکمہ ناروا
ریکارڈ میں تبدیلی کی ہے۔ سکول کے لیبی ریکارڈ کے مطابق وہ 3 ماہوں
نختہ بند کے پرائمری سکول میں مورخہ 02-8-1960 بمطابق داخلہ نمبر 3 میں تاریخ
پیدائش چار جنوری ایس سو پچاس (04-01-1950) وجہ درج شدہ ہے۔
لیکن حیران کن بات یہ ہے کہ حکمہ نے ریکارڈ کے مطابق اس کا تاریخ
پیدائش (20-8-1969) ہے۔ نوکیا سید نوشاد اپنی پیدائش سے
نوسال پہلے سکول میں داخل ہوا تھا۔

گذارش ہے کہ سید نوشاد 04-01-2010 کو اپنی نوکری سے ریٹائر ہو چکا
لیکن وہ تاحال حکمہ پیٹک ہیلتھ اور ناروا کی ملی بھگت سے گذشتہ سال
سے سرکاری فرائض سے تنخواہ وصول کر رہا ہے اور مزید 9 سال کیلئے
تنخواہ لینے کیلئے عریضیاں بھیج رہا ہے۔

لہذا گذارش ہے۔ سید نوشاد ولد سید نخت شاہ ایئر سٹر ہیلتھ لوئیر
بونیئر کے خلاف تارسی کارروائی کر کے گذشتہ برس کے وصول شدہ لائفوں روپیہ
ریکوری کیا جائے۔ بخوبی کاغذات و تنخواہ چارل منسٹر ہے۔

ایلیان نختہ بونیئر
سی سید علی شاہ
039997797
0365566358

- 1 سید تاج علی 039222567 - 15101-0333969155
- 2 سید رحمت علی 03339705443715701-4292945
- 3 قیصر علی 03339694171 - 15101-04096421
- 4 بشیر احمد 033397054174 - 15101-0392104
- 5 شہرہ شاہ 03339695244 15101-2153
- 6 سید انیس 0339697268 15101-0372884-5

Section Officer
PHE Department
Peshawar

28/11/2021

PTO

CFC
Government
Public Health Engg Emrol
Distt Swat

درخواست بمراد اجازت اوپن انکوائری

تھانہ ACE

ضلع بونیر

بونیر کیمنٹ نمبر 1975 بر خلاف سید نوشاد وال ایئر میٹر حکم PHE ضلع بونیر
3-2-021

جناب عالی! جو کہ کیمنٹ بالا سروس میں کیمنٹ میں الزام ہے کہ مذکورہ بالا ایئر میٹر حکم PHE نے نادرا کی ریکارڈ میں تبدیلی کی ہے۔ ریکارڈ کے مطابق ایئر میٹر سکول میں مذکورہ کا تاریخ پیدائش 1950ء اور بمطابق شناختی کارڈ سال 1969ء جبکہ سروس بک میں تاریخ پیدائش سال 1969ء ہے۔ مذکورہ صفحات گزرتے کہلے کیمنٹ میں اجازت اوپن انکوائری کے لیے

استدعا ہے کہ کیمنٹ بالا میں اوپن انکوائری کی اجازت کا حکم صادر فرماویں

Attn: CO-ACE-Buner. 15-2-021.

CE No. 08/2021 - PHE

dt. 18/2/2021

Sir, Permission for OE may please be accorded.

A jael. Adc Ace Sectt. 16/02/021.

Attended

Section Officer (Lit) PHE Department Peshawar

acknowledged. [Signature]

Ministry of Anti-Corruption 866 17/2/2021

CTC [Signature]

7



DIRECTORATE OF ANTI-CORRUPTION ESTABLISHMENT, KHYBER PAKHTUNKHWA, PESHAWAR

No. 2548 /ACE, Dated Peshawar the 18.02.2021.

To

The Assistant Director Crimes, Anti-Corruption Establishment, Swat.

ADC, ACE, Swat

No. 3 Dated. 3-3-21

Subject:- OPEN ENQUIRY NO.08/2021-PHE: AGAINST SYED NAUSHAD, OPERATOR PUBLIC HEALTH DEPARTMENT, DISTRICT BUNER, (C.NO.1975, DT:03.02.2021).

Reference your report of dated.16.02.2021, allied documents are returned herewith in original.

Permission for conducting open enquiry against the subject operator etc. is hereby accorded, which should be finalized within one month positively as directed by worthy Director, Anti-Corruption Establishment, Khyber Pakhtunkhwa.

ASSISTANT DIRECTOR (COMPLAINTS)

CO Buner

Attested for enquiry & report within stipulated time period. Section Officer (Lit) PHE Department Peshawar.

Ajad. Adc ACE Swat. 03/03/21.

CTC

CTC Public Health Engrg Dept. Distt Swat

**OPEN ENQUIRY NO: 08/2021-PHE: AGAINST SYED NAUSHAD
OPERATOR PUBLIC HEALTH DEPTT: DISTRICT BUNIR (c.No.1975,
Dt 03.02.2021).**

BACKGROUND:

A complaint submitted by inhabitants of Bunir, was received to this establishment containing allegations of corruption and changing in date of birth (Annex-A).

AUDIT REPORT:

During the process of audit it was observed that Said Nawshad S/o Said Bakht Shah was appointed as "Pump Operator" vide office order No.31219 dated 20th Sep, 1994 (Annexed-B). As per his CNIC his date of Birth was 01.01.1951 and accordingly his age of superannuation would be 2011 (Annexed-C). However, as per statement of Mr.Said Nawshad the Medical officer changed his age in service book through medical certificate, making it 20/06/1969 which would make his superannuation/retirement as 2029 (ANNEXED-D).

Concerned department was asked to provide the medical certificate of said Nawshad. However they couldn't produce medical certificate of the said official (Annexed-E).

CONCLUSION:

In view of the aforementioned scenario and available record, the undersigned is of the view that age of Mr.Said Nawshad has been tempered which resulted in loss to government exchequer

LOSS TO GOVERNMENT

Above mentioned act of Mr.Said Nawshad resulted in a loss of Rs.2913960/approximately since 2011 in shape of overpayment (Annexed-F).

RECOMMENDATION:

Enquiry officer need to check accurate salaries from 2011 (date of actual superannuation) against above official in order to ascertain complete losses to government exchequer.

Report submitted please


Senior Auditor II
Anti-Corruption Establishment, KP.

No.329-33 /ACE/Dated 30/03/2021.

Copy forwarded for information to:-

1. Director Anti-Corruption Establishment, Khyber Pakhtunkhwa Peshawar for further necessary action please.
2. Assistant Director Crimes, ACE Swat.
3. Circle Officer District Bunir.
4. Senior Auditor concerned
5. Statistical Assistant


CTC
A. J. J.

CO Benmer

For n/a

A. J. J.

Accepted
Section Officer
PHE Department
Peshawar

CTC


CO Chughta Bamer

After assessing the total loss becomes Rs-3312984/- Approx for which said Naushad is directly responsible. However, CO needs to determine who else is responsible with the connivance of whom, Mr Naushad changed his age in service book ^(DOB) age of Mr Naushad is 1969 pointing toward connivance of department too


Senior Auditor


CO Bamer

For further n/a.

Ajad
Mr ACE Sured
16/08/021.

Attested
Section Officer (Lit)
PHE Department
Peshawar.

CTC
Ajad

CTC

Superintendent
Public Health Engg Empl
Empl Svcat



OFFICE OF THE EXECUTIVE ENGINEER
PUBLIC HEALTH ENGINEERING DIVISION BUNER

Mail xenphebuner@gmail.com

Tele# 0939-510017

10

No 04-05-16-1 /PHE (B)

Dated: 22 /04/2021

To,

The Circle Office,
Anticorruption Buner.

Subject: - OPEN INQUIRY NO. 08/021 AGAINST SAID NOSHAD OPERATOR WSS
SUNIGRAM.

Reference: Your Good Office letter No. 45-5A-B Dated: 09-04-2021


Enclosed please find herewith the requisite information/record in respect of Mr. Said Noshad Operator on WSS Sunigram is submitted for your kind information & further necessary action please.

DA/As above.


EXECUTIVE ENGINEER

Copy of the above is forwarded to: -


- 1) Sub Divisional Officer PHE Sub Division Daggur for information with reference to his letter No. 02/C-1/PHE (D) Dated: 21/04/2021.


EXECUTIVE ENGINEER

CTC
A-jaal.

Attested

Section Officer (Lit)
Department
Beshawar.

17C




OFFICE OF THE SUB DIVISIONAL OFFICER
PHE SUB DIVISION DAGGAR BUNER

No *02* *10-1*

Dated *21/04/2021*

To

Executive Engineer PHE
Division Buner.

Subject: OPEN INQUIRY NO 08/021 AGAINST SAID NOSHAD OPERATOR WSS SUNIGRAME

In reference to the subjected matter the salary drawn by Mr. Soid Noshad operator Water Supply Scheme Sunigrume for a period of 01-02-2011 to 31-03-2021. Calculated as under for onward submission to quarter concerned please.

Year	Amount per month	Month	Amount
2011	11492	11	126412
2012	16443	12	197316
2013	18645	12	223740
2014	20114	12	241368
2015	25158	12	301896
2016	26635	12	319620
2017	29449	12	353388
2018	32664	12	391968
2019	35471	12	425652
2020	36264	12	435168
2021	29449	08	296456

Total 3312984

[Signature]
SUB DIVISIONAL OFFICER
PHE Sub Division Dagggar

[Signature]
Section Officer II,
PHE Department
Peshawar

CTC
A. Jadh

CTC

[Signature]
Superintendent
Public Health Engg. Dept.
District Swat.

فائل رورٹ

آئی اے اے

صنایع بونیر

اوپن انکوائری نمبر 08 لیٹر نمبر 2548 برصغیر سید نوشاد وال ایئرٹیکٹ حکم PHE بونیر
021 18-2-021

جناب عالی! حوالہ اوپن انکوائری بالہ معروض ہیں۔ کہ مسی علی وغیرہ نے ایک تحریری درخواست جناب
DAC صاحب کی خدمت میں دائر کر کے جس کا متن ذیل ہے۔ کہ مسی سید نوشاد حکم PHE بونیر میں ایئرٹیکٹ
کی ڈیوٹی سہرا جام د رہا ہے۔ جس نے نادرا کی ریکارڈ میں تبدیلی کی ہے۔ ایئرٹیکٹ سکول میں صرف 2⁸/₁₉₆₀
بھائی داخلہ نمبر 3 میں تاریخ پیدائش 1/4¹⁹⁵⁰ درج شدہ ہے۔ اور حکمانہ ریکارڈ کے مطابق تاریخ پیدائش
6/20¹⁹⁶⁹ ہے۔ یہ کہ سید نوشاد 1/4 کو نوکری سے ریٹائرڈ ہو چکا ہے۔ لیکن تاحال سرکاری خزانہ سے
تنخواہیں وصول کر رہا ہے۔

شکایت بالہ جناب DAC صاحب نے بغرض حقیقتات کا نہ خدا مارا کہ فرمایا۔ جو حوالہ نمبر 1975 کا نہ خدا
3-2-021

وصول ہو گیا۔
یکمبٹ میں سرکاری حقیقتات کا آغاز کرتے ہوئے درخواست کنندہ گان میں سے مسی سید نوج علی
سید جان علی کے متعلقہ نامی بیان لیکر فائل ہذا ہے۔ اور ساتھ ہی الزام علیہ سید نوشاد
وال ایئرٹیکٹ حکم PHE بونیر کو طلب کر کے بیان لیا جا کر فائل ہذا ہے۔

یکمبٹ میں مزید ریکارڈ و بیانات لینے کی خاطر اوپن انکوائری کی اجازت حاصل کرنے کیلئے تحریری
معاہدہ کر کے جس پر جناب DAC صاحب نے حوالہ نمبر بالہ باقاعدہ اوپن انکوائری کی اجازت
کا حکم صادر فرمایا ہے۔

انکوائری میں حکم PHE بونیر ایئرٹیکٹ سکول تھمہ بند سے جملہ مطلوبہ ریکارڈ حاصل کر کے
بغرض ناخبرگی آڈیٹر صاحب تحریری استدعا ہوئی۔

انکوائری بالہ میں مطابق ریکارڈ سنٹر آڈیٹر کبیر جان صاحب نے آڈٹ کر کے آڈٹ رورٹ
نمبر 33-329 کا نہ خدا وصول ہو کر سنٹر آڈیٹر صاحب نے تحریر فرمایا ہے۔ کہ الزام
30-3-021

علیہ سید نوشاد وال ایئرٹیکٹ حکم PHE بونیر نے تنخواہوں کی حد میں سرکاری خزانہ
کو رقم مبلغ 2913960 روپے نقصان پہنچایا ہے۔ اور مزید تحریر فرمایا ہے۔ کہ
PHE کے 2 نقصان رسائی کی تصدیق کرائے۔

Investigation Officer (Lit)
PHE Department
Peshawar.

CTC
A. J. J. J.
CTC

کہ اند پورہ الزام علیہ سپرنٹنڈنٹ فورس 2/11 سے فورس 3/21 تک تنخواہوں کی مد میں سرکاری خزانہ سے کتنی رقم وصول کی ہے۔

انٹوائزی خد میں XEN صاحب PHE بونیر نے جو الہ بونیر PHE-8/05/05-04 فورس 22/21 کو ایک اکاؤنٹ اسٹیٹمنٹ نمبر 02-02/05-04 جاریہ PHE SDO بونیر ارسال کر کے ملاحظہ فرمایا گیا کہ سپرنٹنڈنٹ فورس 2/11 سے فورس 3/21 تک تنخواہوں کی مد میں سرکاری خزانہ سے رقم مبلغ 3312984 روپے وصول کیے ہیں۔ لیٹرف فائل خد ہے۔

اندرین سلسلہ آڈٹ رپورٹ میں رقم مبلغ 3312984 روپے عطا کی رپورٹ PHE-XEN بونیر درستی اور ساتھ ہی ذمہ داران اہلکاران کو اشتکار کے تعین کرنے کی خاطر تحریری استدعا ہوئی۔ جس پر رپورٹ نمبر آڈٹ نمبر صاحب فورس 8/21 کو فنانس خد وصول ہوئی۔ نمبر آڈٹ نمبر صاحب ذیل تحریر فرماتا ہے۔

Section Officer (Lit)
PHE Department
Peshawar.

CO, Buner.

After assessing the total loss becomes R/s 3312984/-
AProx for which said Naushad is directly responsible,
However CO, needs to determine who else is responsible, with
the connivance of whom, MR, Naushad changed his age, in
service book, DOB, age of MR, Naushad is 1969 pointing toward
connivance of department too.

CTC
A-jad

پس انٹوائزی میں حسب صداقت آڈٹ نمبر صاحب XEN صاحب PHE بونیر کو ذمہ داران افسران اہلکاران کے کوئی ارسال کرنے کیلئے تحریری پروانہ جات جاری کیے۔ جواب میں PHE XEN بونیر نے جو الہ بونیر نمبر 01-03/05-04، نمبر PHE-8/05-04/11-09 ارسال کر کے تحریر فرماتا ہے۔ کہ بوقت بھرتی 31-8-021 سے 8-9-021 مستتر فضل اکبر تھا۔ جو کہ فوت ہو چکا ہے۔ اسی طرح سپرنٹنڈنٹ فورس کا متعلقہ XEN مستتر فضل اکبر تھا۔ اس کا نام صاحب الدولہ تھا۔ وہ اب بوقت تیاری سروس بک جن SDO نے دستخط کیا تھا۔ اس کا نام صاحب الدولہ تھا۔ وہ اب بوقت تیاری سروس بک میں انٹروی کر کے SDO فوت شدہ کو

CTC

Public...
Peshawar

(3)

اسٹیل منگہ SDA کا ٹریٹمنٹ کرنا مشکل ہے۔ ہر دو لٹرز فراریم PHE, XEN نو منٹوں تک
قابل صفا ہے۔

یہی انکوئیری میں ذمہ دار مستفید کنندہ سید نوشاد امیر میٹرنگ حکم PHE بونس کو سرکاری فرانس سے
رقم مبلغ 3312984 روپے عطا ہوا ہے اورٹ غیر قانونی طور پر وصولی کی خاطر تحریری
سردانہ جاری کیا۔ کہ مذکورہ اپنے دفاع میں بفرس نام بندوں بیان حوضہ $24 \frac{8}{21}$ کو تکانہ ہذا
حاضر ہو جائے۔ مذکورہ نے سردانہ وصول کر کے تکانہ ہذا حاضر نہیں آیا۔

انڈین سلسلہ حوضہ $3 \frac{9}{21}$ کو ریمانڈ جاری کر کے جو کہ مذکورہ نے $14 \frac{9}{21}$ کو وصول کر کے نکال لیا ہے
کلم بندوں بیان بخش مذکورہ کا۔ اور غیر قانونی رقم وصولی سرکاری فرانس سے وضاحت کرنے سے قاصر رہا۔

حالات، واقعات، بیانات، دیکھا اور آڈٹ رپورٹ سے پتہ چلا گیا کہ سید نوشاد امیر میٹرنگ PHE بونس

حوضہ $20 \frac{9}{1994}$ کو برقی کاپی سے سروس ایک میں تاریخ مبدائش حوضہ 20-6-69 درج ہے جس کا پتہ کارڈ پر کر کے
ثبوت یعنی مبدائش سرٹیفکیٹ وغیرہ بھی موجود نہیں ہے۔ جبکہ میٹرنگ سرٹیفکیٹ میں تاریخ مبدائش 24.1.50 ہے۔

اور NIC میں تاریخ مبدائش سال 1951 درج ہے۔ مذکورہ امیر میٹرنگ کے پتے آرڈر پر دستخط کنندہ XEN
مقبول اکبر اور سروس ایک میں دستخط کنندہ SDO صاحب الدولہ دونوں فوت ہونا بیان ہوئے ہیں۔ سید سید

نوشاد کو عطا ہونے والی میٹرنگ سرٹیفکیٹ حوضہ $1 \frac{1}{10}$ کو ریمانڈ ہونا چاہیے تھا۔ معاملہ میں میٹرنگ اورٹ کے
تکانہ مذکورہ امیر میٹرنگ حکومتی سردانہ کو مبلغ 3312984 روپے اضافی سٹوکیوں کی مدد میں نقصان رسائی ظاہر

کہ ہے۔ جس کے ذمہ داران اس وقت کے XEN، SDO فوت شدہ ہیں جبکہ سید نوشاد امیر میٹرنگ
PHE مستفید کنندہ سرکاری فرانس سے مبلغ 3312984 روپے عطا ہوا ہے اورٹ غیر قانونی طور پر سٹوکیوں

کی مدد میں وصولی کے ذمہ دار سید نوشاد امیر میٹرنگ PHE کے خلاف بعد والے پراسیکیوٹر صاحب مقدمہ درج
رہے۔ ممبر کی سفارش کی جاتی ہے۔ فائنل رپورٹ مرتب ہو کر گزارش ہے۔

Attn.
CO. ACE. Bumer.
20-4-021

Attn

Additional
Officer (L1)
PHE Department
Deshwar.

A. Jael CTC

Handwritten signature



DIRECTORATE OF
ANTI-CORRUPTION ESTABLISHMENT
KHYBER PAKHTUNKHWA
PESHAWAR


No. 10061-62 /DACE/Peshawar, Dated: 12/10/2021

To ✓
The Assistant Director Crimes,
Anti-Corruption Establishment,
Swat.

Subject:- OPEN ENQUIRY NO. 08/2021-PHE: AGAINST SYED NAUSHAD
OPERATOR PUBLIC HEALTH DEPARTMENT DISTRICT
BUNER.

Reference your report dated 27.09.2021. allied documents are returned
herewith in original.

Permission for registration of case and arrest of accused as mentioned in
the final report of Circle Officer, ACE, Buner duly recommended by Prosecutor-IV, ACE,
Mardan is hereby accorded.


Director
Anti-Corruption Establishment,
Khyber Pakhtunkhwa,
Peshawar.

ENDST OF EVEN NO. & DATE

Copy forwarded to Statistical Assistant, ACE, Peshawar for information.


Director
Anti-Corruption Establishment,
Khyber Pakhtunkhwa,
Peshawar.

Amended
Section Officer (PHE) Buner
PHE Department
Peshawar.

n/a as directed.

A jaal.
Ade Ace Swat.
13/10/021.

CTC
A jaal.

Supervisor of
Public Health, District Swat
CTC


انتظار گیشن رپورٹ

مقدمہ ملنے پر صرف 10/21 پر 14 پر 420-468-471 PPC کا کہ ACE پوسٹر
5, 2, 1, 0, Act

بنیاد: سید قیوم شاہ دولت شاہ سنگھ کھٹہ سندھ پوسٹر سوال ایئر سٹر حکم PHE پوسٹر

سوال نمبر 1: آپ کی عمر کتنی ہوگی؟

جواب: میری عمر 70 سال ہے۔

سوال نمبر 2: آپ کے لکھے نیچے ہیں؟

جواب: میرا ایک بیٹا اور تین بیٹیاں ہیں جن میں ایک بیٹی کی شادی کی ہے جبکہ دو بیٹیاں گھر پر ہے اور بیٹا ایسے تاروں میں بگڑ چکا ہے۔

سوال نمبر 3: بوقت بھرتی حکم PHE میں آپ کی عمر کتنی تھی؟

جواب: بھرتی کے وقت میری عمر 43 سال تھی۔

سوال نمبر 4: بوقت بھرتی آپ نے شناختی کارڈ پیش کیا تھا یا نہیں؟

جواب: جی ہاں میں نے بھرتی کے وقت PHE آفیسر سے شناختی کارڈ پیش کیا تھا۔

سوال نمبر 5: شناختی کارڈ کی موجودگی میں آپ کے سروں تک میں غلط تاریخ پیدائش کیوں درج کیا گیا ہے؟

جواب: میری عمر میں تفسیر کنڈل ڈاکٹر صاحب نے میڈیکل سرٹیفکیٹ میں کیا تھا۔

سوال نمبر 6: کیا آپ میڈیکل سرٹیفکیٹ پیش کر سکتے ہیں؟

جواب: میرے پاس میڈیکل سرٹیفکیٹ نہیں ہے۔

سوال نمبر 7: اگر میں یہ کہوں کہ آپ غیر قانونی over age ہوئی ہو چکے ہیں؟

جواب: اس بارے میں میں کچھ نہیں کہہ سکتا کیونکہ ریکارڈ سے واضح ہے۔

سوال نمبر 8: اپنے سوال نمبر 2 کے جواب میں لکھا ہے کہ میری عمر 70 سال ہے۔ تو کیا

اپنے عطا ہونے والے رپورٹ سرکاری خزانہ سے رقم مبلغ 3312986/- روپے

عمر قانونی طور پر نہیں وصول کیے ہیں؟ اور ڈیپوٹی کی تنخواہ وصول کی ہے؟

جواب: میں نے تو ڈیپوٹی کی ہے اور ڈیپوٹی کی تنخواہ وصول کی ہے۔

Section Officer (Lit)
PHE Department
Peshawar.

Superintendent
Public Health
Distt Swat

سوال نمبر 9 :- عام طور پر سرکاری ملازم 60 سال عمر پر توڑی سے ریٹائرڈ ہو تا ہے

وہ توڑی کر سکتا ہے لیکن وہ پھر کبوں ریٹائرڈ ہو تا ہے ؟

جواب :- جے حکم نے ریٹائرڈ فنڈ کے بارے میں کوئی اطلاع نہیں دی ہے

سوال نمبر 10 :- آپ نے مذکورہ 10 سال کی جتنی ہی سٹو اپس یعنی بمطابق آرڈر آف وارنٹ

رقم مبلغ 33129841 روپے اضافی لیے ہیں ، یہ آپ کے ذمہ واجب الادا ہیں

یا نہیں ؟

جواب :- جی ہاں بالکل میری ذمہ واجب الادا ہیں لیکن یہ رقم بہت زیادہ ہے

اور میں یہ رقم یکدمت جمع نہیں کر سکتا

انٹارنیشنل وارنٹ مدتب ہو کر کٹا رہا ہے

@Hani

CO-ACE-Buner


15-10-021

CTC

Ajad

Atleesheel

Section Officer
P.W.E. Department
Peshawar.

CTC


s. No 113610

Roll No. 15644

Board of Intermediate & Secondary Education
PESHAWAR (PAKISTAN)



SECONDARY SCHOOL CERTIFICATE EXAMINATION
SESSION 1971
ANNUAL

This is to certify that Said Nawshad
son/daughter of Said Bakhshad
and a student of Government High School, Gagra (Swat)
passed the Secondary School Certificate Examination of the Board of
Intermediate and Secondary Education, Peshawar held in April, 1971
in the Third Division.

The candidate passed in the following subjects:—

- | | | |
|--------------|------------------------|-----------|
| 1. English | 4. Social Studies | 7. Pashto |
| 2. Urdu | 5. General Science | 8. Civics |
| 3. Islamiyat | 6. General Mathematics | |

Date of Birth Fourth January One thousand
nine hundred and Fifty only (4.1.1950)

31st July, 1971

A.A.

Section Officer (Lit.)
PHE Department
Peshawar

SECRETARY

6



OFFICE OF THE
SUPERINTENDING ENGINEER
PUBLIC HEALTH ENGINEERING CIRCLE SWAT
E mail: sepbeswat@gmail.com
Tele # 0946-9240048

No. BR-1/E-9/ 01

Dated: 10/12/2021

OFFICE ORDER

As per the Executive Engineer, Public Health Engineering Division Buner vide his office letter No. 10-11/E-4/PHE(B) dated: 09/09/2021, accordance with the direction of worthy Chief Engineer (North), PHED Peshawar letter No.02/E-10/PHE (N) dated 09/11/2021 & Section Officer (Estt:), PHE Department Khyber Pakhtunkhwa Peshawar vide his letter No.SO(Estt:)/PHED/1-36/2020-21 dated 09/12/2021. On attaining the age of Superannuation (i.e 60 Years) Mr. Said Nowshad S/o Said Bakht Shah Pump Operator (BPS-05) Water Supply Scheme Takhtaband, attached to the office of The Executive Engineer, Public Health Engineering Division Buner, for retirement as the date of birth of the official as per Service Book is 20-06-1969, while it is 1951 in the CNIC and Secondary School Certificate is 04-01-1950. According to the Secondary School Certificate (The Ex-Post facto Office Order) is hereby stands retired from service w.e.f 03/01/2010 (A.N)

In terms of rule-18 (A)(2) of the Civil Servants Revised Leave Rules 1981, Sanction is hereby accorded to the encashment of 180-days' pay, in lieu of LPR as admissible under the rule.

SUPERINTENDING ENGINEER

Endrs: No. E-9/01 Dated Saidu Sharif Swat: 10/12/2021

Copy to:

- i) The Section Officer (Estt:), Public Health Engineering Department Khyber Pakhtunkhwa Peshawar for information with reference to his letter quoted above please.
- ii) The Chief Engineer (North), Public Health Engineering Department Khyber Pakhtunkhwa Peshawar with reference to his letter quoted above please.
- iii) The District Account Officer Buner for information & necessary action please.
- iv) The Executive Engineer, Public Health Engineering Division Buner for information and necessary action with reference to his No.10-11/E-4/PHE(B) dated 09-09-2021.

Attested

Section Officer (Lit)
PHE Department
Peshawar.

SUPERINTENDING ENGINEER

BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH
DARULQAZA SWAT

W. P. NO. 856-2021

Said Nowshad S/o Said Bakhatshad R/o Tahtaband
Tehsil Gagra District Buner.....(Petitioner)

VERSUS

Govt. Of Kpk Through Secretary public health at Peshawar..
& others(Respondents)

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Att-lead

Section Officer (Lit)
PHE Department
Peshawar.

Noted for
MAG

Sign: _____
Date: 20-9-21

FILED TODAY

20 SEP 2021

Re-Filed Today

21 SEP 2021

Petitioner

Through council

Abdul Marood Khan
Advocate High Court

Superintendent
Public Health Engg Dept
Peshawar

(21)

(1)

BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH
DARULOAZA SWAT

W. P. NO. 856m 2021

Said Nozwhad S/o Said Bakhatsha R/o Tahtaband
Tehsil Gagra District Buner.....(Petitioner)

VERSUS

1. Govt. Of Kpk Through Secretary Public Health At Peshawar.
2. EXN Public Health At District Courts Daggar Buner
3. SDO Public Health At District Courts Daggar Buner
4. AC Public Health Malakand Division At Saidu Sharif Swat.
5. CO /Incharge anti corruption P.S ACE Buner At Swarai
.....(Respondents)

**WRIT PETITION UNDER ARTICLE 199 OF
THE CONSTITUTION OF ISLAMIC REPUBLIC
OF PAKISTAN 1973.**

Respectfully Sheweth :-

1. That the petitioner is the noble citizen of Pakistan and is the permanent Resident of Village Tahataband Tehsil Gagra District Buner.(Copy of certificates are attached as annexure A)
2. That on 20-09-1994, the petitioner was appointed in public health department as pump operator on water supply scheme Tahtaband District Buner through appointment letter no.31219 in the revised basic pay scale no.(4) on the basis of medical certificate.
(Copy of the appointment letter and other documents are attached as annexure B).
3. That in the service record, date of birth of petitioner has been written 20-06-1969 on the basis of medical certificate which has been demanded by the department as a requirement at the time of appointment. While the date of birth of petitioner in the school record is 04-01-1950 and in CNIC is 1951.

Attended

Section Officer
PH&D
Peshawar.

FILED TODAY

20 SEP 2021

Additional Registrar

That the petitioner from the date of his appointment and taking of charge up till now performed his duty honestly and not a single complaint / objection is there from the public or department against the petitioner.

C7C

(Signature)

5. That the petitioner during his service transferred in different offices / places for duty which the petitioner also performed funetually .
(Copy of the relevant document attached as annexure C).

6. That the petitioner throughout his service has got the salary and other benefits from the government /department concerned regularly through his valid account at Habib Bank Swari Branch Buner and conducted all his matters through his CNIC attached already .
(Copy of Bank record is attached annexure D).

7. That throughout petitioner service, the concerned department has not raised any objection on the date of birth of petitioner at any stage as mentioned in his service record as well as in CNIC or school documents.

8. That on 13-04-2021 the petitioner submitted his service book to the deoportment for further necessary process of his retirement but up till now the process has not been completed and the petitioner is still rendering his services against his post and the deoportment / government is paying to the petitioner.
(Copy of Submission of service book is attached as annexure E).

9. That the respondent No.5 without any legal justification and jurisdiction started a baseless inquiry No.08 /21 against the petitioner without concerning / approval of deoportment on the illwill of other villagers of petitioner.

That now the respondent No.5 have issued notices of recovery No.70-5 AB dated 03-09-2021 and 86-5 AB dated 23-08-2021 to the petitioner on the bases of baseless inquiry of huge amount mentioned in the notices which the petitioner have received in rendering his services in the deoportment during his service.(Copy of notices is annexure F)

That being aggrieved from the aforesaid impugned notices /orders / proceedings, actions and inactions of the respondent No.5 while having no other adequate remedy except to invoke the constitutional jurisdiction of this August court on the following among others grounds inter alia.

GROUND.

A. That the inquiry/proceedings conducted and notices issue by respondent No.5 against the petitioner are wrong unjust void

Allosted
Section Officer (Lit.)
PHE Department
Peshawar.

FILED TODAY

20 SEP 2021

Additional Registrar

etc
Superintendent
Public Health Engineering
District Peshawar

ab-initio, arbitrary, whimsical, ultra vires," against the law, sharia and principle of natural justice, therefore the same are liable to be set aside.

B. That petitioner has regularly performed his official duty with the best of his efficiency and entire satisfaction of his superiors up till now.

C. That during the period from 20-09-1994 till august 2021, the petitioner has performed his duty in compliance of orders issued from time to time by the superiors, therefore the salary has drawn by the petitioner during the above period can not be legally recovered from him on the strength of impugned notices /orders / proceedings.

D. That under the law and sharia, the petitioner also deserve for receiving his salary with all back benefit for the period of his service as during the said period he had regular performed his duty which fact is crystal clear from his service record and also entitled for the onward till the date of his actual retirement and pensissionery and other financial benefits.

E. That the impugned inquiry/ orders /notices regarding the recovery of huge amount i.e Rs. 33,12,984/- in the last breath of his service would be equivalent to violation of his fundamental rights as guaranteed by the constitution of Pakistan 1973.

F. That the petitioner being a low paid government servant as operator and this would be highly injustice to recover the amount mentioned in the impugned notices from the petitioner as he has regularly performed his duty to the satisfaction of his superiors and there is no single compliant by his officers during the whole period of his service .

G. That the law does not allow to any person or authority to get forceful work/service from the citizens without remuneration, therefore the impugned order /notices of recovery are in violation of the fundamental rights of the petitioner as envisaged by the constitution of Islamic republic of Pakistan 1973 and also against the law, shariah, and natural justices, therefore the same are liable to be set aside.

H. That this was the sole responsibility and duty of department to initialize the requisite rectification made in the service book of the netitioner at the relevant time but the concerned officers

Accepted
Section Officer (Lit)
PHE-Department
Peshawar.

FILED TODAY
20 SEP 2021
Additional Registrar

Handwritten initials/signature

20

BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH
DARULOAZA SWAT

W. P. NO. 856 2021

Said Nowshad S/o Said Bakhatshad R/o Tahtaband
Tehsil Gagra District Buner.....(Petitioner)

VERSUS

Govt. Of Kpk Through Secretary public health at Peshawar
& others(Respondents)

AFFIDAVIT

I, Mr, Said No'shad S/o Said Bakhatshad R/o Tahtaband Tehsil Gagra District Buner as do hereby affirm and declare on oath that the contents of the accompanying WRIT PETITION are true and correct according to the best of my knowledge and belief and nothing has been concealed from this Honorable court.

Deponent _____

[Signature]

Sayed Noshad S/o Syed Bakhatshad

0 333 9698 967

15101-7875108-5

Accepted

Section Officer (Liti)
PHE Department
Peshawar.

3340

S.No. _____
Certified that the above was verified on Solemn
affirmation before me on this 20th day
of Sept 2021 by Said Nowshad
S/o Said Bakhatshad R/o Buner who
was identified by Said

Who is personally known to me

ADDL REGISTRAR
Peshawar High Court
Mingora Bench/Dar-ul-Qaza, Swat

FILED TODAY

20 SEP 2021

Additional Registrar

CPC
[Signature]

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

W.P No. 856-M/2021

Said Nowshad.....(Petitioner)

vs

Government of Khyber Pakhtunkhwa through
Secretary, Public Health, Peshawar and
others.....(Respondents)

Present: Mr. Abdul Marood Khan, Advocate for
the petitioner.

Khwaja Salahuddin, A.A.G for the
respondents.

Date of hearing: 05.12.2023

JUDGMENT

SHAHID KHAN, J.:- Through the subject petition
under Article 199, Constitution of Islamic Republic of
Pakistan, 1973, the petitioner seeks the issuance of
appropriate writ with the following prayer:

"It is, therefore, most humbly prayed that on
acceptance of this writ petition while looking
into the above agonies of the petitioner, the
impugned proceedings/orders and recovery
notices may kindly be declared null and void.
Consequently, the respondents may kindly be
issued writs and direct them to complete the
retirement process of petitioner with all
pensionary and other financial benefits
admissible under the law/rules to the
petitioner without any deduction.

Any other relief which is just, appropriate
and efficacious may also be granted though
has not been mentioned in the petition but if
the interest of justice demands so."

2. The petitioner contended in the subject
petition that he was appointed in Public Health

Attested
Section Officer (L-1)
Public Health Department
Peshawar

CFK
Supervisor
Public Health Engg Eloc
Distt. S. Swat

Engineering Department as Pump Operator on Water Supply Scheme, Takhtaband, District Buner, purely on contract & temporary basis for a period of one year, vide appointment order, dated 20.09.1994. He also contended that his such appointment was made by the respondents-department on the basis of his Medical Certificate and as such, in the service record, his date of birth was written as 20.06.1969. However, as per the school record, his date of birth is 04.01.1950, while in his CNIC, it has been mentioned as 1951. During his entire service, the respondent-department has raised no objection over it. On 13.04.2021, the petitioner submitted his Service Book to the respondents-department for initiating the process for his retirement but it has not been completed and he is still rendering his services and receiving his salaries. In the meanwhile, the respondent No. 5 initiated an inquiry against the petitioner without approval of the respondents-department and also issued notice to him with respect to certain recoveries, vide notice bearing No. 70-5AB, dated 23.08.2021, followed by reminder, dated 13.09.2021.

Handwritten signature

Altaf
 Section Officer (Lit)
 PHE Department
 Peshawar.

Handwritten initials/signature

3. It obliged the petitioner to approach this Court through the subject petition.

4. Per direction of the Court, the respondents No. 2, 3 & 5 furnished their para-wise comments, wherein, opposed the issuance of the desired writ on multiple legal and factual grounds.

5. Arguments of learned counsel for the petitioner and the learned A.A.G have been heard and the record gone through with their valuable assistance.

6. The record made available before this Court would transpire that in the year 1994, the petitioner was appointed in the respondents-department as Pump Operator, however, as per his contention, his such appointment was made on the basis of his Medical Certificate. The respondent No. 5, Circle Officer, Anti-Corruption Establishment, Khyber Pakhtunkhwa, Buner, controverted this contention of the petitioner, in his comments, stated that no such Medical Certificate has been produced by him, which is abundantly clear from the interrogation report, available at page 17 of his comments. During interrogation, the petitioner himself admitted that he is 70 years old, but despite of it, he is still serving the respondents-department, as reflected from para-8 of the subject petition. Moreso, in para-3 of the subject

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Attested
Section Officer
P.A.E. Department
Peshawar

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[Signature]

Supervisor
Peshawar

petition, petitioner also admitted variation in his date of birth by stating that:

"That in the service record, date of birth of petitioner has been written as 20.06.1969, on the basis of medical certificate, which has been demanded by the department as a requirement at the time of appointment. While the date of birth of petitioner in the school record is 04.01.1950 and in CNIC is 1951."

Said para has been replied by the respondents No. 2 & 3, in the following manner:

"Correct. At that time, medical certificate was preferred than manual CNIC through which the actual age and fitness of an applicant would be considered to be actual. Medical Superintendent would opine the age after the applicant own statement and physical examination. Therefore, the date of birth of the petitioner employee is written 20.06.1969 in the service book on the basis of provided medical certificate by the petitioner. Since, the appointment criteria for Class-IV does not require educational qualification and the same was appointed on merit-cum-fitness, therefore, the date of birth in school and CNIC record did not come into knowledge."

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However, the aforesaid contention of the respondents No. 2 & 3 has been controverted by the respondent No. 5, in his comments, stated that the concerned officers were also involved and the same has been done by them with mutual consensus. For the sake of ready reference, para-7 of his comments is reproduced as under:

"To the extent, it is submitted that the concerned officers were also involved and the same has been done by them with mutual

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Section Officer (L)
PHE Department
Peshawar.

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consensus because how it is possible that in the presence of SSC certificate and CNIC, date of birth in service book has been written as 20.06.1969. The so-called medical report on the basis of which the petitioner claims his date of birth as 20.6.1969 is not available in record received from department. It is pertinent to mention that the petitioner admitted in his interrogation report that he is 70 years old."

7. In view of the above peculiar facts & circumstances, the Court reached to the conclusion that the subject controversy is purely factual in nature and this Court in exercise of its writ jurisdiction cannot resolve it as to which one is correct date of birth, as for adjudicating upon such an issue, recording of evidence would be required, which is not the domain of this Court. The Hon'ble Apex Court in a good number of cases has held that determination of factual controversy is the job of the civil Court and such an exercise could not be carried on in a writ jurisdiction of a High Court. Reliance is placed on the case of Ahmad Developers v. Muhammad Saleh reported as 2010 SCMR 1057, wherein it was held:

"Contest on factual controversy could only have been determined through a civil suit and not in constitutional jurisdiction before High Court. Such plea of private respondent was repelled in circumstances. Leave to appeal was declined."

Similarly, in the case of Government of Khyber Pakhtunkhwa through Chief Secretary,

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Section Officer (I)
PHE Department
Peshawar.

Handwritten initials CFC and a circular stamp: Supreme Court of Pakistan, Public Health Engineering, Peshawar.

Peshawar and others v. Intizar Ali and others

reported as 2022 SCMR 472, it was observed:

“So far as the argument of Hafiz S.A. Rehman, learned Sr. ASC that as factual controversy is involved, these appeals are liable to be dismissed is concerned, even on this point alone the impugned judgments are liable to be set aside because it is settled law that superior Courts could not engage in factual controversies as the matters pertaining to factual controversy can only be resolved after thorough inquiry and recording of evidence in a civil court. Reliance is placed on *Fateh Yarn Pvt Ltd. v. Commissioner Inland Revenue* (2021 SCMR 1133).”

8. When confronted, learned counsel for the petitioner was unable to wriggle-out of this legal impediment, as such, he could not make out a case for interference of this Court in exercise of its constitutional jurisdiction.

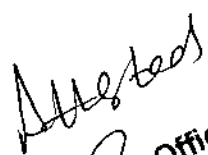
9. For the reasons stated hereinabove, the subject petition is devoid of any merit, as such, it is hereby dismissed.

Announced
Dt: 05.12.2023


JUDGE


JUDGE




Section Officer (Lit)
PHE Department
Peshawar.

Office
13/12/2023

GOVT. OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGINEERING DEPARTMENT

AUTHORITY LETTER.

No.SO(LIT)PHED/ST/40-116/S.Noshad/Buner: Mr. Aamir Sohail, Assistant Social Organizer PHE Division, Buner is hereby authorized to attend and submit the Joint Para-wise comments in Service Tribunal Peshawar in Service Appeal No.849/2024 titled "Said Noshad Versus Secretary to Govt. of Khyber Pakhtunkhwa PHE Department Peshawar & others" on behalf of the Secretary Public Health Engineering Department Peshawar.



SECRETARY
PHE DEPARTMENT
KHYBER PAKHTUNKHWA

Iqbal Hussain Khan
Secretary to Govt: of
Khyber Pakhtunkhwa,
P.H.E. Department