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

Service Appeal No. 7635/2021

Hafiz ur Rehman

..... Appellant

VERSUS

Government of KP through Chief Secretary & others

..... Respondents

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 3746

Dated 23/2/23

**PARAWISE REPLY ON BEHALF OF
RESPONDENT NO. 6 & 7.**

Respectfully Sheweth;

Preliminary Objections;

- 1) That the instant appeal is not maintainable as the seniority of AFC vides dated 26.08.2021 of the answering respondent has been rightly carried out (In pursuance) as per this Hon'ble Tribunal larger bench Judgment/Decision dated 15.07.2021 vides Service Appeal No. 349/2017 and hence the impugned review petition of the appellant to the respondent No. 4/Food authority has rightly been regretted vides letter No. 4150/PF-884 dated 24.09.2021.
- 2) That the mendacious approach of the appellant is also cleared from the fact that purposely double standard/hybridity has been adopted, i.e. (i) as against the detail judgment of this Hon'ble Tribunal in favour of the answering respondents vides dated 15.07.2021, the present appellant has also challenged the same before the apex court in C.P No. 5353/2001, (wherein no stay has been granted) being

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cleared from their comments/reply mentioned in Para No. 6 of Service Appeal No. 907/20 having titled Muhammad Saleem AFC ..Vs.. The Government & others, which is still pending adjudication before this Hon'ble Tribunal & (ii) present appeal which has been preferred against the regretal order of the review petition also hold no water as neither the same is maintainable nor a review petition against the judgment of this Hon'bel Tribunal could be preferred to the Food Authority/Director Food. Hence, the instant appeal is having no locus standi at all and amounts to hit the principal of res-judicata. In such a situation the unjustifiable and baseless appeal may not only be dismissed but a heavy cost may also be imposed against the appellant. **(Copy of comments/reply of the appellant in service appeal No. 907/20 is attached herewith)**

- 3) That the appeal is bad for miss-joinder and non-joinder of parties.

Reply on Facts:

1. Para No. 1 is incorrect, even the process of the recruitment is doubtful, being cleared from the Public Service Commission advertisement.
2. Para No. 2 is correct.
3. Para No. 3 is correct.
4. Para No. 4 is correct.

5. Para No. 5 is incorrect and this astonish stance has been shattered so many times by this Hon'ble Tribunal in different appeal.
6. Para No. 6 needs no reply, having no relevancy with the subject appeal.
7. Para No. 7 is incorrect and this astonish stance has been shattered so many times by this Hon'ble Tribunal in favoring of the answering respondents being cleared from the detailed judgment of this Hon'ble tribunal vides dated 15.07.2021 *(at Page No. 47 to 54 of the instant appeal.)* furthermore, the appellant is trying to mislead this Hon'ble Tribunal.
8. Para No. 8 is incorrect and this astonish stance has been shattered so many times by this Hon'ble Tribunal in favoring of the answering respondents being cleared from the detailed judgment of this Hon'ble tribunal vides dated 15.07.2021 *(at Page No. 47 to 54 of the instant appeal.)*
9. Para No. 9 is wrongly presented, and the actual factum of the matter is rightly mentioned in the detailed judgment of this Hon'ble Tribunal, Larger Bench order vides dated 15.07.2021 *(at Page No. 47 to 54 of the instant appeal.)*
10. Para No. 10 needs no reply.
11. Para No. 11 needs no reply, as the Naveed's appeal No. 831/2015 has been rightly decided in his favour by this

Hon'ble Tribunal dated 15.08.2016 and being junior from the answering respondents. Moreover, this Hon'ble ibid judgment in Naveed case being on the same footing with the answering respondents has gained finality and the same has never been challenged before the apex Supreme Court of Pakistan.

12. Para No. 12 has been wrongly elaborated; the factum is rightly mentioned in preceding Para No. 11.
13. Para No. 13 is also wrongly mentioned, concealed the coherent fact, being rightly mentioned in the detailed judgment of this Hon'ble Tribunal, Larger Bench order vides dated 15.07.2021 *(at Page No. 47 to 54 of the instant appeal).*
14. In Para No. 14 the coherent consequent fact has been concealed from this Hon'ble Tribunal. Moreover in the later Judgment of the larger bench of this Hon'ble tribunal vides judgment dated 15.07.2021; each and every detail has been thoroughly discussed in favour of answering respondents.
15. Para No. 15 is correct to the extent that the Hon'ble Apex Supreme Court of Pakistan has remanded the Noor Khan case back to this Hon'ble Tribunal of having the finding to constitute a Larger Bench. Accordingly after the lengthy argument from both the sides, finally this Hon'ble tribunal via larger bench has been pleased to again decide the matter in favour of the answering respondents vides the expounded judgment dated 15.07.2021.

16. Para No. 16 is correct.

17. Para No. 17 is incorrect and vehemently denied as mentioned in the above preliminary objections of the answering respondent. Which is reproduced below;

- *The instant appeal is not maintainable as the seniority of AFC vides dated 26.08.2021 of the answering respondent has been rightly carried out (in pursuance) as per this Hon'ble Tribunal larger bench Judgment/Decision dated 15.07.2021 vides Service Appeal No. 349/2017 and hence the impugned review petition of the appellant to the respondent No. 4/Food authority has rightly been regretted vides letter No. 4150/PF-884 dated 24.09.2021.*

- *That the mendacious approach of the appellant is also cleared from the fact that purposely double standard/ hybridity has been adopted, i.e. (i) as against the detail judgment of this Hon'ble Tribunal in favour of the answering respondents vides dated 15.07.2021, the present appellant has also challenged the same before the apex court in C.P No. 5353/2001, (wherein no stay has been granted) being cleared from their comments/reply mentioned in Para No. 6 of Service Appeal No. 907/20 having titled Muhammad Saleem AFC ..Vs.. The Government & others, which is still pending adjudication before this Hon'ble Tribunal & (ii) present appeal which has been preferred against the regretal order of the review petition also hold no water as neither the same is maintainable nor a review petition against the judgment of this Hon'bel Tribunal could be preferred to the Food Authority/Director Food. Hence, the instant appeal is having no locus standi at all and amounts to hit the principal of res-judicata. In such a situation the unjustifiable and baseless appeal may not only be dismissed but a heavy cost may also be imposed against the appellant*

18. Para No. 18 is incorrect, the food authority/respondent No.

4 has rightly regretted the unjustifiable review petition of

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the appellant. The detail is rightly mentioned in the above reply of Para No. 17.

Reply on grounds;

- a. Ground "a" incorrect, the detail has rightly been mentioned in the preceding paras' reply.
- b. Ground "b" is incorrect and vehemently denied. in fact, in pursuance of this Hon'ble court judgment, the food authority has rightly processed the seniority in favour of the answering respondents.
- c. Ground "c" is incorrect, redundancy and repetition of the preceding paras.
- d. Ground "d" is incorrect and vehemently denied and tantamount to the violation of this Hon'ble court clear cut detailed judgment 15.07.2021 and the mentioned judgment being previously preferred before this Hon'ble tribunal is having no relevancy of whatsoever with the answering respondents stance.
- e. Ground "e" is incorrect and vehemently denied and tantamount to the violation of this Hon'ble court clear cut detailed judgment 15.07.2021 and the mentioned judgment being previously preferred before this Hon'ble tribunal is having no relevancy

of whatsoever with the answering respondents stance.

f. Ground "f" is incorrect and humbly seeks to dismiss the baseless appeal before its inception as the same is nothing else but "Cock and Bull" sorts of unjustifiable appeal.

That any other ground will be agitated at the time of argument with the kind permission of this hon'ble Tribunal.

PRAYER:

Keeping in view, on the basis of expounded subject/ preliminary objection, facts and reply, it is humbly prayed, that the baseless case of the appellant may kindly be dismissed with heavy cost for the best administration of justice and fair play.

Respondent No. 6 & 7

Through

Taimur Haider Khan
Advocate, Supreme Court
Taimur Law Associates
Office No. 37, 2nd Floor
Malak Tower Pajjagi Road,
Peshawar
Cell No.0346-9192561

AFFIDAVIT:

We Respondent No. 6 & 7, do hereby stated that the content of the above reply is true and correct to the best of my knowledge and nothing concealed herein from this Hon'ble tribunal.

DEPONENT

23/2/03



Not known (Case No. 07)
CNFC # 17301-2589902-1
Mobile 0332-1999641

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

Service Appeal No. 7635/2021

Hafiz ur Rehman

..... Appellant

VERSUS

Government of KP through Chief Secretary & others

..... Respondents

**PARAWISE REPLY OF SUSPENSION
APPLICATION ON BEHALF OF
RESPONDENT NO. 6 & 7.**

Respectfully Sheweth;

Keeping in view the detailed reply on behalf of the answering respondents in the accompanying appeal may kindly be considered as part and parcel as the reply of the instant application and hence all the paras of the instant application are incorrect, and vehemently denied, keeping in view, as per Article 4 of the Mother law of the land, this Hon'ble Tribunal has been pleased to passed an elaborate and fortiori judgment vides dated 15.07.2021 in favour of the answering respondents.

Under the above discussion, it is humbly prayed, that the baseless application of suspension may kindly be dismissed with heavy cost.

Respondent No. 6 & 7

Through

Taimur Haider Khan
Advocate, Supreme Court



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.907/2022

Muhammad Saleem

vs

Food Department Khyber Pakhtunkhwa

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Private Respondents No.3 to 9

Through

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(ABDUL HAMEED)

Advocate Peshawar

PESHAWAR

01-11-2022

*Tamim Haidar Khan
Advocate Supreme Court*

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**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

Service Appeal No.907/2022

Muhammad Saleem, Assistant Food controller, presently working as
Assistant Director (OPS)

versus

1. Government of Khyber Pakhtunkhwa through Secretary food Department, Civil Secretariat, Peshawar
2. The Director Food Khyber Pakhtunkhwa, Peshawar
3. Mr. Azam Khan, AFC, Directorate of Food, Khyber Pakhtunkhwa, Peshawar
4. Mr. Tausif Iqbal, AFC, Directorate of Food, Khyber Pakhtunkhwa, Peshawar (now DFC Lower Chitral)
5. Mr. Muhammad Shakeel, AFC, Directorate of Food, Khyber Pakhtunkhwa, Peshawar (now DFC Kohistan upper)
6. Miss Uzma Kanwal, AFC, Directorate of Food, Khyber Pakhtunkhwa, Peshawar (now DFC Mansehra)
7. Mr Zafar Alam Riza, AFC, Directorate of Food, Khyber Pakhtunkhwa, Peshawar
8. Mr. Shujaat Hussain Shah, AFC, Directorate of Food, Khyber Pakhtunkhwa, Peshawar
9. Mr. Hafeez ur Rehman, AFC, Directorate of Food, Khyber Pakhtunkhwa, Peshawar

PRELIMINARY OBJECTION

1. That promotion is not a fundamental right of the appellant, hence this appeal is not maintainable seeking promotion.
2. That the appellant has got no cause of action to file this appeal.
3. That the appellant is estopped by his own conduct to file this appeal.
4. That the appeal is badly time barred.
5. That the appellant is neither aggrieved person nor has locus standi to file this appeal.
6. That the appellant has not come to this Hon'ble Tribunal with clean hands. Material facts have been concealed from this Hon'ble Tribunal.

ON FACTS

1. In reply to para-1 of the appeal, it is submitted that on the recommendation of the DSC, the appellant was initially appointed as Food Grain Supervisor (FGS) (B-5) by an office order dated 14.7.1993

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(Annex-A). Then the appellant was promoted to the post of Food Grain Inspector (FGI)(B-9) against 75% quota reserved for promotion through an office order dated 17.06.2005 (Annex-B).

2. Vide Khyber Pakhtunkhwa Food Department, (Recruitment and Appointment) Rules 1981, the services of the appellant are governed under the Rules (ibid), wherein under Schedule 42 of the Rules (ibid); the method of recruitment for the post of Assistant Food Controller is laid down as under:

- a) **75%, Seventy Five percent by promotion, on the basis of seniority-cum-fitness from amongst the Food Grain Inspectors and cane Inspectors, with at least five years service as such and**
- b) **25%, Twenty five percent by initial recruitment**

(Copy of Rules 1981 are attached as Annex-C)

Furthermore, it is added that on 17.09.2013, Respondent No.1/Secretary Food KP forwarded a requisition for 10 (Ten) posts of Assistant food Controller in Food Department KP to the Secretary KP Public Service Commission, Peshawar for appointment of 10 (Ten) posts of AFCs by way of initial recruitment against 25% reserved quota. **(Copy of letter dated 17.09.2013 with copy of requisition and relevant documents are attached as Annex -D)**. The KPPSC through an advertisement No.01/2014 dated 27.01.2014, invited applications (vide serial No.28) from eligible candidates for recruitment of Assistant Food Controller (AFC) posts. **(Copy of advertisement no.01/2014 dated 27.01.2014 is attached as Annexure- E)** Thereafter KPPSC through a letter dated 04.06.2015 addressed to Respondent No.1/Secretary Food KP conveyed the names of selectees/recommendees against 10 (Ten) posts of AFC. **(Copy of letter dated 04.06.2015 is attached as Annex-F)** After observing all the codal formalities as required for initial recruitment, Respondent No.2/Director Food KP by an office order dated 07.08.2015, appointed 10 (ten) Assistant Food Controllers (AFCs) (B-14), (now upgraded to B-16) in Food Department on regular basis. **(Copy of office order dated 07.08.2015 is attached as Annex-G)**, whereas the appellant (Muhammad Saleem) was subsequently promoted to the post of AFC on 22.4.2016 on regular basis **(Annex-H)**. Respondent No.2/Director Food KP then issued a seniority list of AFC as it stood on 31.10.2016, wherein the direct recruits (i.e Respondents No. 3 to 9) are appearing at serial No.21 to

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28 while the appellant (Muhammad Saleem) has been shown at serial No.31. This seniority list was circulated by Food Department KP, in time, seeking objections from the concerned aggrieved persons/officials in this regard. The appellant has neither objected to his seniority position by way of departmental appeal nor had challenged his seniority at that time before the learned KP Service Tribunal, Peshawar and thus this seniority list dated 31.10.2016 attained finality (**Copy of seniority list dated 31.10.2016 is attached as Annexure-I**). On 17.1.2018, Respondent No.2/Director Food KP issued another Final seniority list of AFCs (B-16) in the Food Department KP as stood on 17.01.2018 wherein the AFCs (direct recruits, Respondents No.3 to 9) are appearing at serial no.14 to 21 while the appellant (Muhammad Saleem) is appearing at serial No.25. The appellant, however, did not challenge this final seniority list at that time either departmentally or filed an appeal before this Service Tribunal and by this way he admitted his seniority to be correct in all respects and remained silent over seniority position maintained by Food Department. (**Copy of seniority list dated 17.01.2018 is attached as Annexure-J**)

Accepted by the appellant

3. Contents of para-3 of the appeal are incorrect and misconceived. As stated in para-1 above, on 14.7.1993 the appellant was initially appointed as FGS by way of initial recruitment as envisaged in the Rules (ibid). Thereafter against 75% quota reserved for promotion the appellant was promoted to the post of FGI (BPS-9) on 17.06.2005. Since at that time there was no post of AFC available, reserved against 75% quota for promotion, therefore, the appellant was appointed on acting charge basis as stop gap arrangement. Besides this, the 10 (ten) available vacant posts of AFCs, reserved against 25% quota had not yet been filled by way of initial recruitment through KPPSC and because of this reason, appellant was assigned higher duties on acting charge basis purely on temporary basis.

It is settled principle of law as laid down by Apex court of Pakistan that acting charge appointment does not amount to an appointment by promotion on regular basis for any purpose including seniority and also does not confer any vested right for regular promotion to the post held on acting charge basis. Reliance is placed on Supreme court of Pakistan judgment reported as "Bashir Ahmed Badini, D&SJ, Dera Allah yar and others versus Hon'ble Chairman and member of Administration

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Committee and Promotion Committee of Hon'ble High Court of Balochistan and others" (2022 SCMR 448). Relevant citation (a) of the same judgment reads as under:

(a) **Civil Servants (Appointment, Promotion and Transfer) Rules, 1973**

...R. 8-B---Acting charge appointment--- Scope---Acting charge appointment does not amount to an appointment by promotion on regular basis for any purpose including seniority, and also does not confer any vested right for regular promotion to the post held on acting charge basis.

(Copy of reported judgment 2022 SCMR 448 is attached as Annexure-K)

4. Contents of para-4 of the appeal are incorrect, misleading and misconceived, hence denied. In this para the appellant has referred to the case of one "Muhammad Naveed", ex-AFC (now retired), which has no nexus with the facts of the instant appeal. The appellant is trying to mislead this tribunal by furnishing twisting and irrelevant facts/case which are quite distinguishable to the facts of this appeal. Mr. Naveed having been initially inducted in Food Department as food Grain Inspector FGI (BPS-6) from surplus pool, who was on his option, placed in bottom of seniority list of FGI and Naveed thereafter challenged his seniority viz-a-viz FGI already working in Food Department and in this appeal, Naveed had made the official respondents as parties only, while the private Respondents No. 3 to 9 (direct recruits/selectees of KPPSC) of this appeal were not made parties. Thus this judgment of Naveed's case if passed by this tribunal in his favour shall be the judgment in personam and not in rem and because of this legal position, the Naveed's judgment as referred to by the appellant in this appeal is not binding and applicable on the facts of this appeal pertaining to Respondents No.3 to 9 (direct recruits) mainly on this ground that Naveed ex-AFC was promoted to the post of AFC BPS-16 on 24.4.2016 against his promotion quota, whereas the direct recruits/selectees AFCs (BPS-16) after due process, had joined Food Department KP as AFC on 07.08.2015 i.e prior to promotes AFCs.

At this juncture, attention of the Tribunal is invited to an identical nature judgment dated 24.11.2017 of this Tribunal, passed in Service Appeal No. 7&8 of 2017, filed by "Muhammad Akbar (AFC) vs Govt", and "Muhammad Saleem (AFC) vs Govt" whereby these two appellants who were promoted from the post of FGI (BPS-9) to the post of AFC (BPS-16)

w.e.f 24.04.2016 on regular basis, against 75% reserved quota for promotion had challenged the revised seniority list of AFC as stood on 31.10.2016 wherein the appellants had prayed that they be placed in the top three of the revised seniority list of AFC as stood on 31.10.2016.

perusal of the judgment dated 24.11.2017 of this Tribunal passed in Service Appeal No.7 & 8 of 2017 reveals that the appellants had sought seniority and prayed to be placed on top three (3) of the revised seniority list of AFC as stood on 31.10.2016, taking the plea of an identical nature Service Appeal No.831/2015, filed by Muhammad Naveed who was also adjusted as FGI as a result of surplus pool policy, in these appeals the appellant referred to the judgment passed in Service Appeal No.831/2015 filed by Naveed ex-AFC (now retired). This issue was thoroughly discussed by the Tribunal and after hearing arguments of the parties, the Tribunal reached to this conclusion and observed that since the appellants of Service Appeal no.7 & 8 of 2017 have been promoted from the post of FGI (BPS-9) to the post of AFC (BPS-16) on 22.04.2016 on regular basis against 75% reserved promotion quota, while the direct recruits/selectees AFC, appointed as such by initial recruitment prior to the promotion of the appellants from the post of FGI to the post of AFC, therefore the appellants shall still stand junior to all those person/AFCs who have been inducted in Food Department as AFC (BPS -16) by initial recruitment prior to the promotion of appellants as AFC on regular basis and thus seniority of the direct recruits vis-à-vis appellants (promotes) in the impugned seniority list dated 31.10.2016 shall not be disturbed. **(Copy of judgment dated 24.11.2017 in appeals No.7 & 8 of 2017 is attached as annexure-L)**

- 5. Contents of para-5 of the appeal are incorrect, misleading, hence denied. In the instant appeal the controversial point involved is with regard to seniority between the Direct recruits vis-a-vis promotees. In this behalf the principle of seniority as laid down in KP Civil servants (Appointment, Promotion and Transfer) Rules, 1989 is to be followed that seniority is to be determined from the date of regular appointment of direct selectees/recruits and also from the date of regular promotion of the promotees. In this appeal Respondent No. 3 to 9 are direct recruits through KPPSC, and after due process were appointed by Food Department and joined the post of AFC (BPS-16) on regular basis with effect from 7.8.2015, while the appellant was promoted from the post of FGI (BPS-9) to the post of AFC (BPS-16) against 75% reserved quota for promotion on 22.4.2016.

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After regular promotion the appellant took over charge of AFC post on regular basis on 22.4.2016 and thus Respondent No.3 to 9 (direct recruits) are senior to the appellant as maintained in the seniority list.

6. Incorrect. The private Respondents No.3 to 9 (Direct Recruits) have already challenged the judgment dated 15.7.2021 passed in Service Appeal No.349/2017 titled **"Noor Khan vs Govt"** before the Supreme Court of Pakistan by filling CPLA No.5353/2021. This CPLA is "subjudice" before the Apex court of Pakistan.

(Copy of CPLA No.5353/2021 is attached as Annexure-M)

Moreover, as envisaged in KP Civil Servants (Appointment, Promotion and Transfer) Rules 1989, Acting charge appointment will not confer upon the appellant any vested right for fixing of seniority, therefore the seniority of the appellant was fixed from the date of his regular promotion to the next higher scale (AFC cadre i.e 22.4.2016) as reflected in the seniority lists as stood on 31.10.2016 and the seniority list as stood on 17.01.2018. **(copy of seniority list dated 31.10.2016 and 17.01.2018 are already attached as Annexure-I&J)**

7. Contents of para-7 of the instant appeal are incorrect and misleading, hence denied. As explained in para-6 above, the seniority list of Assistant Food Controller (AFC) as stood on 07.2.2022 issued by Food Department is correct and valid in all respect, having been issued strictly in accordance with law/rules. The Section-8(4) of Khyber Pakhtunkhwa Civil Servants Act, 1973 is quite clear in the instant appeal which stipulates that Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post.

8. In reply to para-8 of the appeal, it is submitted that on the basis of law laid down in Section 8(4) of KP Civil Servant Act, 1973, the appeal/representation filed by the appellant was examined in consultation with Govt of KP, Establishment department and thereafter, his appeal was rejected by Food Department on merit.

9. Contents of para-9 are incorrect, misleading, hence denied. Promotion is not a fundamental right in the eyes of law. However, the department has promoted the appellant against 75% quota reserved for promotion, on seniority cum fitness basis, strictly in accordance with law/rules and after his regular promotion to the post of AFC on 22.4.2016, the appellant has been properly placed in the seniority list of AFC dated 7.2.2022. The claim

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Fazimul Haque
NSC

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of the appellant seeking seniority over the direct selectees/recruits on acting charge basis bereft of merit, being baseless and unfounded.

10. As explained in preceding paras above. The appellant has been properly placed in the seniority list dated 7.2.2022 issued by Food Department in this behalf.

11. No comments.

It is, therefore, most humbly prayed that on acceptance of the parawise comments filed by Respondents No.3 & 9 (direct recruits/selectees), the instant appeal being meritless and frivolous may graciously be dismissed with cost, please.

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Private Respondents No.3-9
Through *Handwritten signature*
(ABDUL HAMEED)
Advocate Peshawar

PESHAWAR
01.11.2022

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BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.
Service Appeal No.907/2022

Muhammad Saleem Vs Food Department KP, etc.

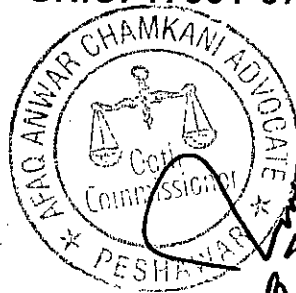
Muhammad Saleem

AFFIDAVIT

I, Hafeez ur Rehman, Assistant Food Controller, (AFC) Food Department, KP, Peshawar, Respondent No.9 do hereby declare and solemnly affirm that the parawise comments on behalf of Respondents No.3 to 9 are true and correct as per record, to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Haf
Deponent

CNIC: 17301-0744903-9



ATTESTED
01-11-2022

[Signature]

Muhammad Saleem
Advocate Supreme Court