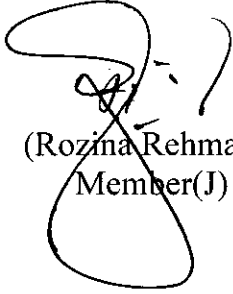



S.No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	01.06.2021	<p><u>Present.</u></p> <p>Mr. Yasir Saleem, ... For appellant Advocate</p> <p>Muhammad Adeel Butt, ... For respondents Additional Advocate General</p> <p>This appeal is accepted of as per detailed judgment of today placed on file in service appeal No. 1589/2019 titled "Awais Khan-vs- The Registrar Peshawar High Court, Peshawar and two others." Parties are left to bear their own costs. File be consigned to the record room.</p> <p><u>Announced</u> 01.06.2021</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;">               (Rozina Rehman)              Member(J)         </div> <div style="text-align: center;">               (Ahmad Sultan Tareen)              Chairman         </div> </div>

**BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA, PESHAWAR**

Service Appeal No \_\_\_\_\_ of 2021

**Qaiser Alam, Chief of Section, P&D Department, Presently Posted  
as Chief Planning Officer Health Department.**

**(Appellant)**

**Versus**

- 1. The Government of Khyber Pakhtunkhwa  
through Chief Secretary, Civil Secretariat, Peshawar.**
- 2. The Additional Chief Secretary,  
P&D Department, Civil Secretariat, Peshawar.**
- 3. The Secretary,  
Govt. of Khyber Pakhtunkhwa, Establishment Department,  
Civil Secretariat, Peshawar**
- 4. The Deputy Secretary,  
Planning & Development Department Peshawar**
- 5. Mr. Sher Gul, Senior Chief P&D Department.**
- 6. Mr. Adil Saeed Safi, Deputy Secretary, Prime Minister Secretariat,  
Islamabad**
- 7. Mr. Javed Khan, Chief Coordination, P&D Department Peshawar.**

**( Respondents)**

**APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974**

**PRAYER IN APPEAL:**

That by accepting this appeal the appellant is prayed for:.

- i. The promotion orders of respondent No.6 to BPS-20 without completing mandatory requirements of undergoing Senior Management Course (SMC) and respondent No. 7 to BPS-19 without undergoing Mid Carrier Management Course (MCMC) under notification issued on 26-9-2017, may be declared as null and void as planning cadre was already established at that time and individual department having no rights to process promotion cases of the**

officers rather it was the mandate of the P&D Department to process cases for promotion. Further in which minutes of PSB, approval of summary for CM and then notification (all on the same day) speaks volume of ill intentions and malafide, hence may be declared as null and void.

- ii. The tentative seniority list dated 20.02.2020 and 31.10.2020 is against the law and facts and may kindly be declared as null and void.
- iii. Upgradation of post of the Chief Planning Officer (Health) to BPS-20 and the post of Deputy Chief Planning Officer BPS-19 may be declared as unlawful and void as the post of Chief Planning Officer in all of the departments of Provincial Government are in BPS-19
- iv. The promotion of respondent No. 8 to BPS-19 without getting regular promotion in BPS-18 in Local Government and Rural Development Department who was personally upgraded and through personal manipulation he secured a permanent position in BPS-18 and then promoted to BPS-19, be declared null and void and he may be reverted back to his original position in BPS-17.
- v. The appeal may be decided on the principal set by the Supreme Court of Pakistan in the Judgment on petition No. 89/2011(2013/SCMR/1752).
- vi. Any other relief as deemed appropriate in the circumstances of case not specifically asked for may also be granted to the appellant.

**Respected Sheweth:**

- A. That the appellant, being the citizen of Pakistan and Employee of Government of Khyber Pakhtunkhwa, having legal and Constitutional rights duly guaranteed under the law and Rules.
- B. That the Planning & Development Govt. of Khyber Pakhtunkhwa ("The P&D Department") has been established way back in the year 1970/71 and is a major Policy Decision Making Stakeholder especially in the field of Development in the Province and plays the most important role in Policy-making. Moreover, with the passage of time, the developmental budget increased manifold due to increase in long, medium and short terms plans/ programme, Donors' assisted Projects etc. The P&D Department in order to cope with the situation & need has been strengthened by increase of its staff.
- C. That in order to streamline and integrate the Planning Cells in all the line Departments, the Provincial Govt. recently created the Provincial Planning Cadre called the Provincial Planning Service ("PPS") by amalgamating the posts/officers in Planning Cells of various Development Departments with the posts/officers of P&D Department and Service Rules were also notified vide Notification dated 22.02.2018. ( Copy of Notification/rules dated 22.02.2018 is Annexure-A)

- officers rather it was the mandate of the P&D Department to process cases for promotion. Further in which minutes of PSB, approval of summary for CM and then notification (all on the same day) speaks volume of ill intentions and malafide, hence may be declared as null and void.
- ii. The tentative seniority list dated 20.02.2020 and 31.10.2020 is against the law and facts and may kindly be declared as null and void.
  - iii. Upgradation of post of the Chief Planning Officer (Health) to BPS-20 and the post of Deputy Chief Planning Officer BPS-19 may be declared as unlawful and void as the post of Chief Planning Officer in all of the departments of Provincial Government are in BPS-19
  - iv. The promotion of respondent No. 8 to BPS-19 without getting regular promotion in BPS-18 in Local Government and Rural Development Department who was personally upgraded and through personal manipulation he secured a permanent position in BPS-18 and then promoted to BPS-19, be declared null and void and he may be reverted back to his original position in BPS-17.
  - v. The appeal may be decided on the principal set by the Supreme Court of Pakistan in the judgment on petition No. 89/2011(2013/SCMR/1752).
  - vi. Any other relief as deemed appropriate in the circumstances of case not specifically asked for may also be granted to the appellant.

**Respected Sheweth:**

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- C. **That** in order to streamline and integrate the Planning Cells in all the line Departments, the Provincial Govt. recently created the Provincial Planning Cadre called the Provincial Planning Service ("**PPS**") by amalgamating the posts/officers in Planning Cells of various Development Departments with the posts/officers of P&D Department and Service Rules were also notified vide Notification dated 22.02.2018. ( **Copy of Notification/rules dated 22.02.2018 is Annexure-A**)

- D. **That** the appellant being governed under KP Civil Servants Act 1973 (KP Act No. XVIII of 1973) but the KP Provincial Planning Service Rules 2018 notified under section 26 of the civil servant Act 1973 are contradictory to the NWFP Civil Servant (appointment, promotion & Transfer) Rules 1989 notified under the same section 26 of the Civil Servant Act 1973. As per principal of justice, rules cannot be contradictory/ different from each other if made under the one and same law. In case of merger, APT rules 1989, section 17(3) which is reproduced below will apply.

*"In event of merger/ restructuring of department, attached department or subordinate offices, the inter se seniority of civil servants affected by the merger/ restructuring as aforesaid shall be determined in accordance with the date of their regular (initial) appointment to a cadre or post"*

**(Copy of NWFP Civil Servant (appointment, promotion & Transfer) Rules 1989 is attached as annexure B)**

- E. That the PPS Rules, 2018 have not taken into account the issue of merger. Thus seniority is determined on the basis of grades from the date of promotion, which is against the spirit of the civil servants Act 1973. Section 8 of the KP PPS Rules 2018 may be declared as void ab initio and seniority of the PPs officers may be determined afresh under section 17(3) of the KP APT Rules 1989.
- F. As per Judgment of the Supreme Court of Pakistan in the **petition No. 89/2011(2013/SCMR/1752)** declared absorption with backdated seniority as illegal because it directly affects the fundamental rights of civil servants and is violation of the Article 4 of the constitution which provides equal protection of law to every citizen to be treated in accordance with law, which is inalienable right of a citizen.
- G. That the P&D Department further intends to re-organize/ Reshuffles the seniority lists with its own logic to oblige staff recently absorbed in the cadre of Provincial Planning Services (PPS). Staff of erstwhile FATA, Capacity Building and M&E projects of P&DD and projects staff in other department were regularized by the Provincial government and later on absorbed in the Provincial Planning cadre. The P&D department is of the view that this staffs are entitled for backdated seniority with the absorption in the cadre of Provincial Planning Services, which is totally illegal and against the regularization act which clearly says that regularization of project staff shall not affect the seniority of the regular staff of the department and shall be placed at the bottom.
- H. That the staff of P&D of erstwhile FATA was hired under project and were given promotion just by upgrading the post in the PC-I of the project. Resultantly, a stenographer utilized his influence and relationships with high-ups and gets himself promoted to the post of Assistant Chief in BPS 18.

- I. That a substantial number of unfit and unmeritorious officers and beneficiaries have been absorbed in the Provincial Planning Services Cadre which will impinge on the self respect and dignity of the civil servants, who will be forced to work under their rapidly and unduly promoted fellow officers, and under those who have been inducted regardless of their (inductees) merit and as a result the genuine/bona fide civil servants will have prospects of their smooth progression and attainment of climax of careers hampered, hence it is violation of Article 14 of the Constitution.
- J. That the Provincial Planning Service (PPS) was notified in 13-7-2015 but the service rules of PPS were kept pending till creation of post of CPO Health (BPS-20) and Deputy Chief Planning Officer Health (BPS-19) for accelerated promotion of two blue eyed although the post of Chief Planning Officer in the rest of departments is still in BPS-19 and there was no post of Deputy CPO in the rest of department which speaks loud of the malafide on the part of Health Department.
- K. That after creation of these post and its reflection in the budget book 2016-17, the Health Department was such in hurry that it issued adjustment orders of respondent No. 6 to BPS-20 on 30-6-2016 when the budget was not effective (budget became effective from 1-7-2016).
- L. That when working paper was submitted by Health Department for promotion of respondent No. 6 to BPS-20 and respondent No. 7 to BPS-19 for consideration of Provincial Selection Board (PSB). The section officer PSB very candidly objected on the working paper as, " **the case was examined in regulation wing of these department and it was observed that since the provincial planning service has been established under administrative control of planning and development department, therefore it would be appropriate to forward the case to planning and development department for obtaining their views**". In spite of these observations, both the blue eyed officers (respondents No. 6 & 7) were promoted to BPS-20 and BPS-19 respectively secure top position in seniority for the upcoming unified cadre. **(copy of working paper/ summary and notification is attached as annexure C,D &E).**
- M. That the Senior Management Course Training was mandatory for promotion to BPS-20, but here again, as example of favoritism, respondent No. 6 was promoted to BPS-20 without undergoing mandatory Senior Management Course.
- N. That as a unique case, may be in the history of KP, meeting of PSB was held on the same day, minutes issued on the same day, summary submitted to Chief Minister on the same day, Chief Minister approved the summary on the same day and notification issued on the same day. This transpires that the whole process was carried out to give benefits to few blue eyes persons which is against the principles of natural justice and is malafide on the part of Government.

- O. That before merger of planning cells of different departments with Planning & Development Department and creation of unified cadre, different departments have different service rules/number of posts/qualification etc hence issues arising out of merger were not considered properly that resulted in loss of seniority for plaintiff. This issue was also raised by KP Public Service Commission and observed that, "There must be reasonable level of consistency in service rules. In order to achieve this objective, the establishment department must now undertake harmonization of these scattered rules and resubmit as early as possible" (**Observation of KP Public Service commission as annexure-F**).
- P. That the original service rules of Health Department were notified on 18-9-1980. The service rules very clearly mentioned qualification as well as 10 years experience in the Planning and development work. As respondent No. 7 joined Health department as Planning Officer in 2004 and since then he spent most of his time outside planning cell (on administrative posts using his personal relation), hence he was not eligible for promotion to the higher grade (Senior Planning Officer BPS-18, requiring 10 years experience in the field of Planning & Development). To remove this hurdle, he used the office of the then secretary Health to amend these service rules and was successful in amendments of service rules and its notification on 31-3-2012. In the amended/revised service rules, the mandatory service experience of 10 years in planning and development was altogether abolished/deleted to pave way for promotion of respondent No. 7. This also indicates the ill intentions and malafide on the part of all concerned.
- Q. That after creation of unified cadre, the notification of seniority list was intentionally delayed by planning and development department. As per rule the seniority list is to be notified in early January of each calendar year but here the seniority list was notified on 20-02-2020 to facilitate early nomination of blue eyed persons to the senior management course (a requirement for promotion to BPS-20) leaving rest of officers in litigation.
- R. That the Seniority lists were notified on 20-02-2020 without taking into consideration the induction/absorption Rules where the incumbents from other departments are to be absorbed in the main Department i.e Planning and Development Department through Provincial Selection Board, but here again this process was not followed and incumbents were adjusted in Planning & Development Department based on their promotion in their respective Departments which speaks volume of nepotism and favoritism. This act has badly affected the career of original officers of Planning and Development Department having more length of service. Hence respondent No. 7 who joined service in Health Department as Planning Officer BPS-17 in 2004 secured a senior position compared to the appellant who joined service in 1989. This all shows how the whole process was manipulated by few blue eyed for their personal benefits. As per rules the tentative seniority list issued on 20-2-20-was to be finalized within

a month time, however instead of finalizing the seniority list, the juggler in the Planning and Development Department issued another tentative seniority list on 23-10-2020 which clearly show ill intentions and malafide on their part. The seniority was contested and Chief Secretary was requested to revise it but so far no action has been taken. This silence and non decision will further push the appellant in deprived condition. **(Copies of seniority lists are attached as annexure G).**

- S. Similarly respondent No. 8 originally recruited in Local Government and Rural Development Department was never promoted to BPS-18 rather he was personally upgraded and through personal manipulation he secured a permanent position in BPS-18 and then promoted to BPS-19, Now he has been placed at an elevated position although the **working paper** submitted by Local Government Department for consideration of PSB was for his personal Upgradation was requested by the appellant to be shared but was denied access, hence through this appeal the **PSB working paper** may also be impugned and respondent No. 8 may be reverted back to his original position in BPS-17.
- T. That the discrimination/malafide intentions/ignorance of law in the process of merger of departmental planning cells with main P&D and the effect on seniority of the appellant, has fully been highlighted in the writ petition No. 2823-P of 2018 wherein the learned court decided that **we would direct the respondent No.2 to apply his mind to the facts of the case and decide the petitioner's representation in accordance with the law and rules within a period of two months.** Accordingly the P&D Department was pressed through respondent No.1 to redress grievances of the appellant. Ultimately, the P&D Department after a lapse of more than 06 months issued a letter denying all out reservations, which paved the way for affecting the fundamental rights of civil servants and violation of article 4 of the constitution as contained in the Judgment of the Supreme Court of Pakistan in the petition No. 89/2011. (2013/SCMR/1752).
- U. That the P&D Department now further reshuffled the seniority lists with its own logic to oblige projects staff/contract/erstwhile FATA absorbed staff, recently regularized through Regularization Act 2018 in the Provincial Planning cadre. The P&D Department was of the view that these employees were entitled of backdated seniority although the **regularization Act 2018 very clearly states that all such officers shall rank junior to the regular officers of the cadre or organization.**
- (copy of KP Employees(Regularization of services) Act, 2018 is attached as annexure H).**
- V. That a substantial number of unfit and unmeritorious officers and beneficiaries have been absorbed in the Provincial Planning Services Cadre without verifying their credentials (degrees, certificates ), has impinged on the self-respect and dignity of other officers, who will be forced to work under their rapidly and unduly promoted fellow



officers, and under those who have been inducted in PPS without merit and as a result the genuine/bona fide civil servants will have prospects of their smooth progression and attainment of climax of careers hampered, hence it is violation of Article 14 of the Constitution.

- W. That the appellant aggrieved from the decision of the respondents filed representation on 01.10.2020 and subsequently on 09.11.2020 whereby the respondents did not reply the same within the stipulated period of time hence filed this appeal on the following amongst grounds.

**(Copies of representations are attached as annexure I).**

**GROUND:**

- A. That a substantial number of unfit and unmeritorious officers and beneficiaries have been absorbed in the Provincial Planning Services Cadre which will impinge on the self respect and dignity of the respondents, who will be forced to work under their rapidly and unduly promoted fellow officers, and under those who have been inducted regardless of their (inductees) merit and as a result the genuine/bona fide civil servants will have prospects of their smooth progression and attainment of climax of careers hampered, hence it is violation of Article 14 of the Constitution.
- B. That the principal and guidelines set in the Judgment of the Supreme Court of Pakistan in the petition No. 89/2011 (2013/SCMR/1752) have not been followed by allowing absorption with backdated seniority which is illegal and directly affects the fundamental rights of civil servants and is violation of the Article 4 of the constitution which provides equal protection of law to every citizen to be treated in accordance with law, which is inalienable right of a citizen.
- C. That manipulating the seniority list without any legal backing reveals the malafide intention on the part of establishment section of the P&D Department which is not tenable under the law.
- D. That the Appellant and other P&D Officers who have been suffered by inducting the unmeritorious and inexperienced employee and the promotional prospects of the respondents have been blocked.
- E. That the Appellant is not being treated according the principles of equity and fair-play and have been kept deprived from promotion in an arbitrary manner which has resulted in serious miscarriage of justice.
- F. That the appellant seek permission to advance other grounds and proof at the time of hearing.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted in the following manner:

- i. Upgradation of post of the Chief Planning Officer (Health) to BPS-20 and the post of Deputy Chief Planning Officer BPS-19 may be declared as unlawful and void as the post of Chief Planning Officer in all of the departments of Provincial Government are in BPS-19.
- ii. The promotion orders of respondent No.6 to BPS-20 without completing mandatory requirements of undergoing Senior Management Course (SMC) and respondent No. 7 to BPS-19 without undergoing Mid Career Management Course (MCMC) notified on 25-9-2017 may be declared as null and void as planning cadre was already established at that time and individual department having no rights to process promotion cases of the officers rather it was the mandate of the P&D Department to process cases for promotion. Further the hurry in which minutes of PSB, approval of summary for CM and then notification (all on the same day) speaks volume of ill intentions and malafide, hence may be declared as null and void.
- iii. The forth coming promotion of respondent No. 6 to BPS-20 may kindly be suspended till finalization of decision on the seniority/discriminatory service rules keeping in view length of service and natural justice process.
- iv. The promotion of respondent No. 8 to BPS-19 without getting regular promotion in BPS-18 in Local Government and Rural Development Department who was personally upgraded and through personal manipulation he secured a permanent position in BPS-18 and then promoted to BPS-19, be declared null and void and he may be reverted back to his original position in BPS-17.
- v. That the P&D Department shall be directed not to manipulate further the seniority list by giving backdated seniority to the employees absorbed in the cadre after notification of the Provincial Planning Service cadre.
- vi. The appeal may be decided on the principal set by the Supreme Court of Pakistan in the Judgment on petition No. 89/2011.
- vii. Any other relief as deemed appropriate in the circumstances of case not specifically asked for may also be granted to the appellant.

Appellant

Through

Muhammad Arif Khan,  
Advocate,

Dated: \_\_\_/\_\_\_/2021

**BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA, PESHAWAR.**

Service Appeal No. \_\_\_\_\_ of 2021

**Qaiser Alam**

Versus

**The Government of Khyber Pakhtunkhwa and others**

**Affidavit**

I, Muhammad Arif Khan, Advocate Peshawar as per instruction of my client/ appellant, that the contents of the accompanying appeal are correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

Deponent

**BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA, PESHAWAR.**

Service Appeal No. \_\_\_\_\_ of 2021

**Qaiser Alam khan**

Versus

**The Government of Khyber Pakhtunkhwa and others.**

**ADDRESSES OF PARTIES**

**Appellant**

**Qaiser Alam, Chief of Section, P&D Department, Presently  
Posted as Chief Planning Officer Health Department**

**Respondents**

- 1. The Government of Khyber Pakhtunkhwa  
through Chief Secretary, Civil Secretariat, Peshawar.**
- 2. The Additional Chief Secretary,  
P&D Department, Civil Secretariat, Peshawar.**
- 3. The Secretary,  
Govt. of Khyber Pakhtunkhwa, Establishment Department,  
Civil Secretariat, Peshawar**
- 4. The Deputy Secretary,  
Planning & Development Department Peshawar**
- 5. Mr. Sher Gul, Senior Chief P&D Department.**
- 6. Mr. Adil Saeed Safi, Deputy Secretary, Prime Minister Secretariat,  
Islamabad**
- 7. Mr. Javed Khan, Chief Coordination, P&D Department Peshawar.**

Appellant

**Through**

Muhammad Arif Khan,  
Advocate,

26.03.2021

Counsel for the appellant and Addl. AG for the respondents present.

The Worthy Chairman is on leave, therefore, case is adjourned to 01.06.2021 for hearing before the D.B.



(Atiq-ur-Rehman Wazir)  
Member(E)

21.10.2020

Junior to counsel for the appellant and Addl. AG alongwith Abdul Mateen, Superintendent for the respondents present.

The Bar is observing general strike today, therefore, the matter is adjourned to 26.11.2020 for hearing before the D.B.

  
(Mian Muhammad)  
Member

  
Chairman

26.11.2020

Counsel for the appellant and Addl. AG alongwith Kifayatullah, Bailiff for the respondents present.

Learned AAG states that some deficient record including minutes of DPC is required to be made part of the brief in order to reach just conclusion in the matter. He, therefore, requests for adjournment. Adjourned to 15.02.2021 for hearing before the D.B.

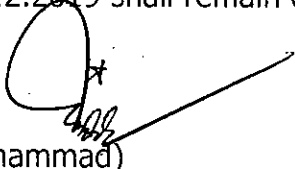
  
(Mian Muhammad)  
Member(E)

  
Chairman

15.02.2021

Counsel for the appellant and Addl. AG alongwith Abdul Mateen, Superintendent for the respondents present.

On the last date, the respondents were required to produce the deficient record, more particularly, the copy of minutes of DPC. The requisite record has not been brought before the Tribunal. The respondents are required to do the needful positively on or before next date of hearing. Adjourned to 26.03.2021 for hearing before the D.B. The restraint order passed on 06.12.2019 shall remain operative till next date.

  
(Mian Muhammad)  
Member(E)

  
Chairman

02.07.2020

Junior to counsel for the appellant and Addl: AG alongwith Mr. Abdul Mateen, Supdt for respondents present. Written reply on behalf of respondents no. 2 and 3 submitted which is placed on file.

Adjourned to 20.07.2020 for rejoinder and arguments before D.B.



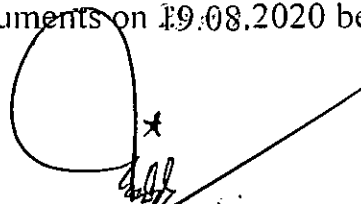
MEMBER

20.07.2020

Counsel for appellant present.

Mr. Riaz Khan Paindakheil learned Assistant Advocate General alongwith Abdul Mateen Superintendent for the respondents present.

Learned counsel for appellant requests for adjournment; granted. To come up for rejoinder, if any, and arguments on 19.08.2020 before D.B.



(Mian Muhammad)  
Member (E)



(Rozina Rehman)  
Member (J)

19.08.2020

Due to summer vacations, the case is adjourned to 21.10.2020 for the same.



Reader

11.03.2020

Junior counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Abdul Matteen, Superintendent on behalf of respondents No. 2 & 3 present. Written reply on behalf of respondent No. 1 has already been submitted while representative of respondents No. 2 & 3 seek further time to furnish written reply/comments. To come up for written reply/comments on 26.03.2020 before S.B.



(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

27.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 18.06.2020 before S.B.



Reader

18.06.2020

Appellant in person and Addl: AG alongwith Mr. Abdul Mateen, Supdt for respondents present. Written reply on behalf of respondents No. 2 and 3 not submitted. Requested for further time to submit the same. Last opportunity granted. To come up for written reply/comments on behalf of respondents No. 2 and 3 on 02.07.2020 before D.B.



MEMBER



Service Appeal No. 1590/2019

11.02.2020


Appellant in person and Mr. Iftikhar Ahmad, Senior Clerk on behalf of respondent No. 1 present. Representative of respondent No. 1 submitted reply on behalf of respondent No. 1. The same is placed on record. Neither written reply on behalf of respondents No. 2 & 3 submitted nor their representatives are present, therefore, notices be issued to them with the direction to direct the representatives to attend the court and submit written reply on the next date positively. Case to come up for written reply/comments on behalf of respondents No. 2 & 3 on 25.02.2020 before D.B.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

25.02.2020

Appellant with counsel present. Mr. Kabirullah Khattak learned Additional AG alongwith Mr. Abdul Mateen Superintendent for the respondent No . 2 & 3 present.

Reply on behalf of respondent No. 1 already submitted. Representative of the respondent No. 2 & 3 seeks time to furnish written reply/comments. Last opportunity is granted. To come up for written reply/comments on 11.03.2020 before S.B.

  
(Hussain Shah)  
Member

19.12.2019

Junior to counsel for the appellant and Addl. AG alongwith Wajid Shah, Junior Clerk and Iftikhar Ahmad, Junior Clerk for the respondents present.


Representatives of respondents seek further time to furnish reply/comments. Adjourned to 02.01.2020 on which date the requisite reply/comments shall positively be submitted. The restraint order passed on 06.12.2019 shall remain operative till next date.

  
Chairman

02.01.2020

Appellant alongwith counsel and Mr. Iftikhar Ahmad, Junior Clerk for respondent No. 1 alongwith Addl. AG for the respondents present.

Yet again a request on behalf of respondents is made for further time to submit reply/comments. It is stated by representative that the respondents wish to submit joint reply, therefore, the delay may be over ~~the~~ <sup>looked</sup>.

 Instant matter is adjourned to 28.01.2020 for submission of reply/comments by the respondents but as last chance. The restraint order passed on 06.12.2019 shall remain operative till next date.

  
Chairman

28.01.2020

Clerk to counsel for the appellant present. Written reply not submitted. Muhammad Tasfeeq Assistant representative of respondents present and requested for time to furnish written reply/comments. Granted. To come up for written reply/comments on 11.02.2020 before S.B.

  
Member

the matter. In his view the appellant was condemned unheard and his valuable service rights were blatantly jeopardized. Now the respondent No. 3 has advertised different posts including that of appellant for filling up afresh through advertisement appearing in the newspaper.

In view of the above record and arguments of learned counsel, instant appeal is admitted for regular hearing subject to all just exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 19.12.2019 before S.B.

Alongwith the appeal an application for suspension of the advertisement has been submitted. Notice of application be also given to the respondents for the date fixed. Till next date the respondents shall not finalize the process of recruitment undertaken in pursuance to the advertisement wherein last date for submission of applications is shown to be 30.11.2019.

Chairman

Appellant Deposited  
Security Process Fee

16/12/19

06.12.2019

Counsel for the appellant present.

Learned counsel referred to the appointment order of appellant made by respondent No. 2 on 01.03.2019 and contended that his service was to be governed by the Khyber Pakhtunkhwa Civil Servants Act, 1973 and Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. The appellant consequently took charge and started performing his duty when, on 04.05.2019, the respondent No. 3 issued another office order cancelling the appointment of appellant alongwith others. Ostensibly, the appointment was cancelled on the ground that the same was made in violation of instructions issued by respondent No. 1. The appellant preferred Writ Petition No. 2975-P/2019 before the Honourable Peshawar High Court which was dismissed on 20.11.2019 but solely on the ground of jurisdiction. Consequently, the appeal in hand was preferred on 22.11.2019. He also referred to order dated 14.05.2019 made by respondent No. 2 upon the departmental appeal of appellant and contended that the appeal was rejected on no good ground while the order was cursory.




Placing reliance on judgments reported as 2009-SCMR-663, 2006-SCMR-678, 2004-SCMR-303, PLD 2016 Peshawar 164 and 2014 PLC(C.S) 476, learned counsel argued that the appellant was never provided with any opportunity to defend his cause. That, no proper procedure was followed before the passing of impugned order dated 01.03.2019. Similarly, no charge sheet or show cause notice was ever served upon the appellant. Departmental enquiry was also not held in

Form- A

FORM OF ORDER SHEET

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

Case No.- 1595/2019


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/11/2019	<p>The appeal of Mr. Farhad Ali resubmitted today by Mr. Yasir Saleem Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-	28/11/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>29/11/19.</u></p> <p> CHAIRMAN</p>
	29.11.2019	<p>Counsel for the appellant present.</p> <p>Learned counsel request for time to provide order/judgment of Hon'ble Peshawar High Court passed in Writ Petition preferred by the appellant.</p> <p>Adjourned to 06.12.2019 before S.B.</p> <p> Chairman</p>

The appeal of Mr. Farhad Ali Ex-Chowkidar District Court Nowshera received today i.e. on 22.11.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Index of the appeal may be prepared according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 2- Annexures of the appeal may be attested.
- 3- Annexures of the appeal may be flagged.
- 4- Affidavit may be got attested by the Oath Commissioner.
- 5- Annexure-K of the appeal is illegible which may be replaced by legible/better one.
- 6- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may be also be submitted with the appeal.

No. 2044 /S.T,


Dt. 22/11 /2019.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Yasir Salim Adv. Pesh.

Side

Resubmitted after removing  
the objection.

  
26/11/2019

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

Appeal No. 1595/2019

**Farhad ali, Ex- Chowkidar** in the Court of the Senior Civil Judge  
Nowshera..... (appellant)

**VERSUS**

**Registrar Peshawar High Court Peshawar and others**

.....*Respondents*

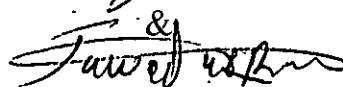
**INDEX**

<b>S. No</b>	<b>Particulars</b>	<b>Annexure</b>	<b>Page No</b>
1	Service Appeal with affidavit		1-5
2	Application for condonation of delay with affidavit		6-7
3	Application for suspension with affidavit		8-9
4	Copy of the advertisement	A	10
	Copy of letter dated 08.11.2017	B	11
5	Copy of appointment order dated 01.03.2019	C	12-13
6	Copies of the arrival report, medical certificate, Pay roll and service book	D, E, F, G	14-19
7	Copies of order dated 29.04.2019 and 04.05.2019	H & I	20-21
8.	Copy of the writ petition No. 2975-P/2019	J	22-29
9.	Copies of departmental appeals dated 11.05.2019 and Dismissal Order dated 14.05.2019	K, L	30-37
10	Copy of the advertisement	M	38
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Through

Petitioner

**YASIR SALEEM**  
Advocate, Peshawar

  
**JAWAD UR REHMAN**  
Advocate Peshawar

1

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

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1669

Dated 22/11/2019

Appeal No. 1595/2019

**Farhad ali, Ex- Chowkidar** in the Court of the Senior Civil Judge  
Nowshera..... (appellant)

**VERSUS**

1. **Registrar** Peshawar High Court Peshawar
2. **District and Sessions judge** Nowshera.
3. **Senior Civil Judge, Nowshera/** Chairman Departmental  
Selection Committee

**(Respondents)**

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the Order dated 04.05.2019, whereby the appointment order dated 01.03.2019 of the appellant has been cancelled, against which his departmental appeal dated 11.05.2019 has been finally rejected vide order dated 14.05.2019 communicated to the appellant on 17.05.2019.

Prayer in Appeal: -

On acceptance of this appeal the impugned orders dated 04.05.2019 and 14.05.2019 may kindly be set aside and the appellant may be re-instated into service with all back benefits and wages of service.

Respectfully sheweth,

The Appellant humbly submit as under

1. That the Learned Senior Civil Judge Nowehera advertised various posts including the post of **Chowkidar** BPS-3 for appointment in the DAILY MASHRIQ in January 2019 and invited applications from the desirous candidates. *(Copy of the advertisement is attached as Annexure A)*

2. That it is pertinent to mention here that Respondent No. 3 issued certain instructions/ policy for filling vacancies of Class-IV

Filed to-day  
Registrar  
22/11/19

Re-submitted to -day  
and filed.

Registrar  
27/11/19



employees known as Bowl policy vide letter dated 08.11.2017.  
*(Copy of the letter dated 08.11.2017 is attached as Annexure B)*

3. That the Appellant having the required qualification at his credit, duly applied for his post so advertised, thereafter he was called to submit documents which he accordingly submitted.
4. That in the initial phase, for the posts of Chowkidar, some more than 1000 candidates applied for the post. Under the bowl policy, 16 candidates were shortlisted. The appellant was also included in the shortlisted candidates. It is pertinent to mention here that the method of draw/ balloting was carried out in the presence of all candidates.
5. That thereafter the Appellant, amongst other short listed candidates, was called for interview in which he duly appeared and remained successful. After the interview, again 6 candidates were short listed wherein again his name also included. Those 6 eligible candidates were again gone through the process of draw/ balloting for ensuring transparency in the presence of all shortlisted candidates. In the final round of balloting/ draw, fortunately again he was successful.
6. That having, again, successful in the final draw, the Appellant was duly recommended for appointment by the Departmental Selection and Scrutiny Committee for appointment, accordingly he was appointed against the post of Chowkidar BPS-3 vide order dated 01.03.2019. *(Copy of the appointment order dated 01.03.2019 is attached as Annexure C)*
7. That the Appellant was also medically examined and when found fit he duly submitted his arrival report and started performing his duties. It is pertinent to mention here that pay roll of all the Appellant has also been prepared for the purpose of pay and his service book was also prepared. *(Copies of the arrival report, medical certificate, Pay Rolls and Service Books are attached as Annexure D, E, F& G)*
8. That ever since his appointment, the Appellant performed his duties with zeal and devotion and there was not a single complaint with regard to their performance.
9. That while serving in the said capacity, the Learned Senior Civil Judge Nowshera/ Respondent No. 2 on the directives of Respondent No. 1 dated 29.04.2019, quite illegally cancelled the appointments of the Appellant vide Office Order dated 04.05.2019. It is pertinent to

mention here that cancelation was made without serving upon the Petitioners any charge sheet or conducting any inquiry or personal hearing (*Copies of order dated 29.04.2019 and 04.05.2019 are attached as Annexure H & I*)

10. The , feeling aggrieved, the appellant along-with other similarly placed employees filed Writ Petition No. 2975-P/2019 before the Honorable High Court Peshawar. (*Copy of the writ petition No. 2975-P/2019 is attached a Annexure J*)
11. That during the pendency of writ petition, the Appellant also filed his departmental appeal to the Honorable District Judge Nowshera on 11.05.2019, however the same was dismissed vide order dated 14.05.2019. the order was never communicated to the Appellant, however he got the copy of the same on 17.05.2019. (*Copies of departmental appeals dated 11.05.2019 and Dismissal Order dated 14.05.2019 are attached as Annexure K & L*)
12. That it is pertinent to mention here that the respondents have now re-advertised all the posts of class-IV through the daily Pakistan. (*Copy of the advertisement is attached a Annexure M*)
13. That the writ petition came up for hearing on 20.11.2019, however the same was dismissed, after hearing arguments, by the Honorable High Court for lack of jurisdiction.
14. That the impugned orders are illegal unlawful, without lawful authority and against the law and facts hence liable to be set aside inter alia on the following grounds.

**GROUND OF SERVICE APPEAL:**

- A. That the Appellant has not been treated in accordance with law, and his rights secured and guaranteed under the Law and Constitution have been violated.
- B. That no proper procedure has been followed before the cancelation of appointments, no charge sheet or show cause notice has been served upon the Appellant nor any inquiry has been conducted or if so conducted he has never been associated with the proceedings, thus the impugned order is liable to be set aside on this score alone.

- C. That the Appellant has not been given opportunity of personal hearing before the issuance of the impugned order hence he has been condemned unheard.
- D. That no charge sheet or show cause notice has been served upon the Appellant before the cancelation of his appointment, thus the impugned order is passed in violation of the principles of natural justice.
- E. That the Appellant duly applied for the post, appeared in interview and remained successful, he duly took over charge of his post and started performing duties, his pay roll was also prepared and he got his salaries, thus the order of appointment had been acted upon and valuable rights had been created in favour of the Appellant. As principle of *LOCUS PONATENTIE* strongly lied in their favor so the services could not be snatched away illegally with one stroke of pen.
- F. That the Appellant was appointed by the competent authority after observing all codal formalities, **including bowl policy**, no illegality or irregularity has been committed in the process of appointment.
- G. That Respondent No. 1 is not competent under the law to issue order to Respondent No.2 to cancel appointment orders and Respondent No. 2 should have applied his own judicious mind before cancellation of appointment orders of the Appellant.
- H. That the impugned order is also violative of Provisions of General Clauses Act as it is not speaking order and is liable to be set-aside on this ground alone.
- I. That the Respondent No. 2 dismissed the departmental appeal of the appellant without solid reasons and on no good grounds. The appellate authority admitted that the appellant was appointed upon the recommendations of duly constituted departmental selection committee and nowhere alleged any illegality on the part of the appellant but quite illegally justified the cancellation order dated 04.05.2019 by saying that since the cancellation of appointment was made upon the directions of the respondent No.3 therefore he termed the order dated 04.05.2019 as legal and thereby dismissed the departmental appeal of the appellant. The said dismissal order of the respondent No. 2 by itself is illegal and

void ab-initio and legally no limitation would run against an illegal order.

J.

K. That if all there were any irregularity or illegality committed in the process of appointment, the same can neither be attributed to appellant nor can he be punished for the faults or lapses committed by others.

L. That the Appellant has never committed any act or omission which could be termed as misconduct, albeit his appointment has been cancelled.

M. That the Appellant has at his credit an unblemished and spotless service career of about 2 months, however without considering it, his appointment has been cancelled.

N. That the Appellant is young and energetic and wants to service for his department albeit his appointment have been illegally cancelled.

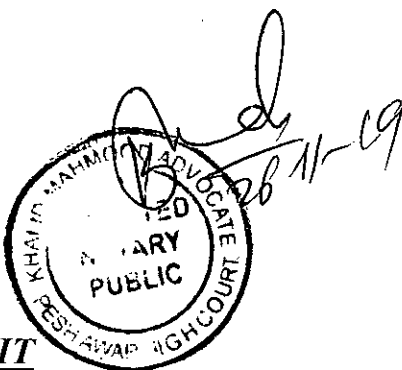

O. That the Appellant is jobless since withdrawal of his appointment order.

15. That the Appellant seeks leave of this Honorable Court to take additional grounds at the time of arguments.

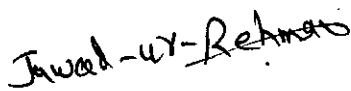


Petitioner

Through

**YASIR SALEEM**  
Advocate, Peshawar  
&



**JAWAD UR REHMAN**  
Advocate Peshawa

**AFFIDAVIT**

It is solemnly affirm and declare on oath that the contents of the above appeal is true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honorable Tribunal.



Deponent

6

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

Appeal No. \_\_\_\_/2019

**Farhad ali, Ex- Chowkidar** in the Court of the Senior Civil Judge  
Nowshera

..... (APPELLANT)

**VERSUS**

**Registrar Peshawar High Court Peshawar and others.**

.....(RESPONDENTS)

***APPLICATION FOR CONDONATION OF DELAY,  
IF ANY IN FILING THE TITLED APPEAL***

*Respectfully submitted:*

1. That the appellant has today filed the accompanied appeal before this honorable tribunal in which no date of hearing is fixed so far.
2. That the applicant prays for condonation of delay if any in filing the instant appeal inter alia on the following grounds:-

**GROUND OF APPLICATION**

- A. That the appellant has been diligently pursuing his remedy. Against an illegal order of cancelation of his appointment order, which is corum-non-judice, the applicant in good faith and with hope filed writ petition before the honorable court however the same was dismissed for lack of jurisdiction.
- B. That the delay if any in filing the instant appeal was neither willful nor intentional.
- C. That the faith of his departmental appeal was never communicated to the appellant by the respondent, the appellant himself managed to get the copy of dismissal order dated 14.05.2019.
- D. That the original order dated 04.05.2019 is patently illegal issued under the influence of Respondent No. 1 and the appellate order is also a void order and as per judgments of superior courts no limitation runs against a void order.

- E. That the applicant has a very good case of merits and valuable rights of the appellant are involved in the instant case, hence the delay if any in filing the instant case deserves to be condoned.
- F. That writ petition was dismissed on 20.11.2019 and service appeal was prepared on the following day and on the next day i.e, 22.11.2019 the appeal has been filed.
- G. That it has been the consistent view of the Superior Courts that causes should be decided on merit rather than technicalities including limitation. The same is reported in 2014 PLC (CS) 1014, 2003 PLC (CS) 769.

*It is therefore humbly prayed that on acceptance of this application the delay if any in filing the instant appeal may please be condoned.*

*[Signature]*  
Applicant

Through

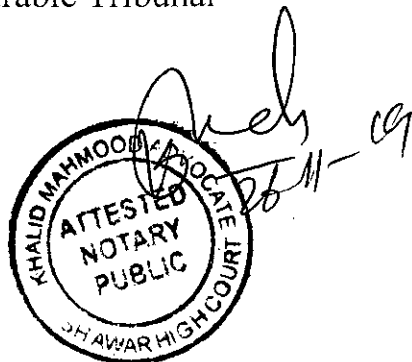
*[Signature]*  
**YASIR SALEEM**  
Advocate, Peshawar  
&

*[Signature]*  
**JAWAD UR REHMAN**  
Advocate Peshawar

**AFFIDAVIT**

It is do hereby is solemnly affirm and declare on oath that the contents of the above implementation petition are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal

*[Signature]*  
Deponent



8

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

Appeal No. \_\_\_\_\_/2019

**Farhad ali, Ex- Chowkidar** in the Court of the Senior Civil Judge  
Nowshera

..... (APPELLANT)

**VERSUS**

**Registrar Peshawar High Court Peshawar and others.**

.....(RESPONDENTS)

**APPLICATION FOR SUSPENSION OF THE OPERATION OF**  
**THE ADVERTISEMENT IN DAILY PAKISTAN WHEREBY**  
**THE POSTS HAVE BEEN RE-ADVERISED TILL THE FINAL**  
**DISPOSAL OF THE INSTANT PETITION.**

Respectfully sheweth,

The applicant humbly submits as under

1. That the captioned service appeal is being filed today before this Honorable Tribunal in which date is yet to be fixed.
2. That all the three ingredients for the grant of status quo strongly lies in favor of the applicant.
3. That the contents of the service appeal may kindly be treated as integral part of the instant application.
4. That the Respondents have re-advertised all the posts of Class-IV for initial recruitment wherein last date for submission of application forms is 30.11.2019.
5. That the applicant has a very strong case of merits and if the post is filled the very purpose of the instant appeal would become infructuous.

It is therefore prayed that on the acceptance of this application the operation of the advertisement may kindly be suspended till the final disposal of the instant appeal.

⑨

*[Signature]*  
Applicant

Through

*[Signature]*  
**YASIR SALEEM**  
Advocate, Peshawar

&

*[Signature]*  
**JAWAD UR REHMAN**  
Advocate Peshawar

**AFFIDAVIT**

It is do hereby is solemnly affirm and declare on oath that the contents of the above implementation petition are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal

*[Signature]*  
Deponent





**آسامیاں خالی شہین**

متحدہ جہل و نامہاداری آسامیاں کیلئے طلبہ کو شہرہ کے سکولز اور کالجوں میں طلبہ کو درجہ اولیٰ اور دوسری کی آخری تاریخ 07/02/2019 تک ہے۔

نمبر	نام آسامی	لیڈر کی سکیل	عمری حد	مطلوبہ تعلیم
1	کیچن ایڈیٹر	BPS-16	30 تا 35 سال	(1) انگریزی، ریاضی، Economics/Statistics/Physics/Mathematics میں سے ایک ضمیمہ اور (2) کم سے کم بیچلر 100% گنتی مع اعزاز اور گنتی مع
2	سینئر ایڈیٹر	BPS-14	30 تا 35 سال	انگریزی، ریاضی، Economics/Statistics/Physics/Mathematics میں سے ایک اور 100% گنتی مع اعزاز اور گنتی مع
3	جونیئر ٹیک ایڈیٹر	BPS-11	30 تا 35 سال	سیکڑری، مکمل بریلنگ (میکرو یا باسادی تعلیم مستور پرو سے اور تا چیک بیچلر 135 الفاظ اسٹڈی کیسز یا پروگریس
4	پراسیسنگ	BPS-5	35 تا 40 سال	ٹیک
5	ڈرائیور	BPS-6	45 تا 55 سال	ٹیک LTV یا HTV لائسنس ہوا 5 سال تجربہ
6	ٹائپسٹ	BPS-3	40 تا 45 سال	غلامہ
7	چیک بک	BPS-3	40 تا 45 سال	غلامہ
8	سٹیپنڈ	BPS-2	40 تا 45 سال	غلامہ

شرائط و ضوابط: تمام درخواست گزاروں کے ساتھ دی جانے والی ہائیڈرو کاپی کی درخواست کی آخری تاریخ تک ضروری ہے، پھر میں رجسٹرڈ ڈائمن کے ساتھ اپنی دی جانے گی، بائبل اور تاریخ سے متعلقہ درخواستوں پر عمل درآمد ہوگا۔ تمام امیدواروں کو نمبر 1، 2 اور 3 کیلئے [www.kpta.org](http://www.kpta.org) سے فارم ڈاؤن لوڈ کر کے kpta دفتر کھیجا جائے۔ درخواست کے ساتھ طلبی اسٹامپ اور تجربہ کے ساتھ شیک کرنا ہوگی۔ باقی نامہ آسامیاں کیلئے کاغذات ذیل کے آڈٹ ٹریک کے ساتھ پیش کی جاسکتی ہیں۔

نوٹ: انگریزی کیلئے کوئی فریڈم نہیں دیا جائے گا۔ سرکاری ملازمت اس کے لئے طلبہ کی درخواست سے درخواستیں ارسال کریں۔ تمام نام کے کوڈ پر عمل درآمد کیا جائے گا۔ سیریل نمبر 8 تا 4 کے لئے انگریزی کیلئے ہڈریں SMS اطلاع دی جائے گی۔ سیریل نمبر 1، 2، 3 کیلئے رجسٹرڈ ایڈریس کے لئے درخواستیں ارسال کرنا ہوں گے۔ ہالان فارم ڈاؤن لوڈ کر کے HBL کے کسی بھی برانچ میں جمع کی جاسکتی ہیں۔

**بحکم سیکرٹری جنرل حج ایڈمنسٹریشن**

**Daily Mashriq**

FESCO Deans Tra  
Plot No.

Attested



The  
**PESHAWAR HIGH COURT**  
Peshawar.

All communications should be addressed to the Registrar Peshawar High Court, Peshawar and not to any official by name.

Exch: 9210149-58  
Off: 9210135  
Fax: 9210170

www.peshawarhighcourt.gov.pk  
info@peshawarhighcourt.gov.pk  
phcpsb@gmail.com

Annex-B (11)

No. 18403-429 /Admn

Dated Peshawar the 8-11-17

All the District & Sessions Judges/Zilla Qazis,  
In Khyber Pakhtunkhwa

ANNEXURE

Sub: - APPOINTMENT OF CLASS-IV

Dear Sir/Madam,

In order to ensure transparency, fairness and with a view to restoring people's trust and confidence in the Judiciary, the following process of appointment against Class-IV vacancy(s) should be followed:-

Step # I

- i. Publicity of vacancy(s)
- ii. Preparation of long list, followed by detail scrutiny.
- iii. Preparation of shortlist (of candidates meeting requisite standards)

Step # II

- i. Interview conducted by a panel which should include individual (s) of requisite skills.
- ii. Preparation of list of eligible candidates (each eligible can be appointed)

Final Step

- i. Draw/balloting in the presence of all eligible candidates.
- ii. Issuance of appointment letters (who wins the draw)

The purpose of conducting balloting at this stage is to minimize discretion and ensure fairness to all eligible candidates. You are requested to follow the above procedure in letter and spirit in future.

This is issued with the approval of Hon'ble the Chief Justice.

Sincerely yours,

*Muhammad Salim Khan*  
(Muhammad Salim Khan)  
PAS

Registrar

Encls: No. & date of even

Copy forwarded to:-

1. The District & Sessions Judge, Mansehra with specific reference to his letter # 7390/D&SJ dated 07.11.2017.
2. The PSO to Hon'ble the Chief Justice for placing the same before HCJ for information.

www.peshawarhighcourt.gov.pk

info@peshawarhighcourt.gov.pk

(Muhammad Salim Khan)  
phcpsb@gmail.com

*Accepted*

Annex C (12)

**OFFICE OF THE SENIOR CIVIL JUDGE (ADMN),  
NOWSHERA**

**ORDER**

Dated 01.03.2019

On the recommendations of the Departmental Selection Committee, the Competent Authority is pleased to order the appointment on temporary basis of the following candidates as Chowkidars in BPS-03 with effect from the date of assumption of charge of the post, subject to medical fitness, verification of their antecedents and character verification from the concerned Police Station:-

SL #	NAME OF CANDIDATE	FATHER'S NAME	Address
1	Mr. Saeed Khan	Dilawar Khan	Khweshgi Payan, District Nowshera
2	Mr. Farhad Ali	Said Rehman Shah	Qazi Abad, Kabul River, District Nowshera

Their appointment to the service shall be subject to the following terms and conditions: -

- Sund*
- i. They will be governed by the NWFP Civil Servants Act, 1973 and NWFP Government Servant (appointment, Promotion & Transfer) Rules, 1989.
  - ii. They will be allowed the minimum pay of BPS-03 plus other allowances as admissible under the rules. Those who are already in Govt. Service and whose pay is more than the minimum of BPS-03 will be allowed to draw pay which they were drawing before their appointment, subject to permission by the Competent Authority. Their pay shall be fixed at proper stage in BPS-03.
  - iii. They shall be governed by such rules and instruction relating to leave, T.A. and medical allowance as may be prescribed from time to time.
  - iv. They shall be on probation initially for a period of one year extendable up to two years.
  - v. They will be eligible for continuance and eventual confirmation in the post on satisfactory completion of their probationary period, subject to availability of permanent posts and the completion of prescribed training, if any.
  - vi. Their service shall be liable to be dispensed with at any time without notice and without assigning any reason before the expiry of the period of their

*A. J. Jester*

13

probation/extended period of probation, if, their work or conduct during this period is not found satisfactory. In the event of termination from service, fourteen days notice or in lieu thereof fourteen days pay will be paid by the Government. In case of resignation, they will give one month notice to the Competent Authority or in lieu thereof one month pay shall be forfeited to the Government. The resignation shall, however, be subject to the acceptances by the Competent Authority.

vii. They will be governed by the NWFP Government Servants (Efficiency and Discipline) Rules, 2011 and the NWFP, Government Servants Conduct Rules, 1987 and any other instructions which may issued by the Competent Authority from time to time.

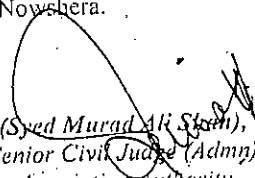
If the above terms and conditions of appointment are acceptable to them, they should report for duty to the undersigned immediately. The offer of appointment shall be deemed to have been cancelled if any one fails to report for duty to the undersigned within one month from the date of issue of this order.

4. They shall join duty at their own expenses.

  
(Syed Murad Ali Shah),  
Senior Civil Judge (Admn)  
Appointing Authority  
Nowshera.

No. 88-92-1/2 Dated Nowshera the 01/03 2019  
Copy forwarded for information and necessary action to the: -

1. District & Sessions Judge, Nowshera.
2. District Account Officer, Nowshera.
3. Senior Civil Judge (Judicial), Nowshera.
4. Clerk of Court, Senior Civil Judge (Admn), Nowshera.
5. Officials concerned by name.

  
(Syed Murad Ali Shah),  
Senior Civil Judge (Admn)  
Appointing Authority  
Nowshera.

  
A. J. ESTER

To:

Annex-D

14

The learned Senior Civil Judge (Admn),  
Nowshera

Subject: - ARRIVAL REPORT.

Respected Sir,

With due respect I have the honour to submit that I have been appointed as Chowkidar vide order bearing Endst: No. 88-92 dated 01.03.2019 of your good self.

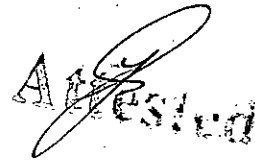
It is, therefore, requested to kindly accept my arrival report as Chowkidar today i.e 05.03.2019 and oblige.

Yours faithfully,



Farhad Ali,  
s/o Said Rehmat Shah  
Chowkidar.

Annex-D  
Said Rehmat Shah  
SCJ Admn  
5/3/19





Annex-E VI  
D.H.Q. Hospital, Nowshera

Medical Certificate



NIC No: 17201-8437651-9

Name of Official ..... Farhad Ali

Caste of race ..... Muslim

Father's Name ..... Syed Rehamat Shah

Residence ..... Qazi abad, Kabul River, Nowshera teatan  
District Nowshera

Date of Birth ..... 22-12-1987

Exact height by measurement ..... 5-4"

Personal mark of identification .....

Signature of Official ..... [Signature]

Signature of head of Officer .....

Head of Office

I do hereby certify that I have examined Mr Farhad Ali a candidate, for  
employment in the Office of the District Court Nowshera  
and can not discover that he had any disease communicable or other constitutional affection or  
bodily infirmity except Nil

I do not consider this as disqualification for employment in the office of the  
As - above His age according to his own statement 31 year  
and by appearance about 31 year.



LEFT HAND THUMB AND FINGER  
IMPRESSIONS

Medical Superintendent  
D.H.Q Hospital  
Nowshera  
Medical Superintendent,  
D H Q Hospital Nowshera  
05-03-2019

Attested

Annex - F (16)

Government of Khyber Pakhtunkhwa  
District Accounts Office Nowshera  
Monthly Salary Statement (April-2019)



Personal Information of Mr FARHAD ALI d/w/s of SAYED REHMAT SHAH

Personnel Number: 00904805 CNIC: 1720184376519 NTN:  
Date of Birth: 22.12.1987 Entry into Govt. Service: 01.03.2019 Length of Service: 00 Years 02 Months 001 Days

Employment Category: Active Permanent  
Designation: CHOWKIDAR 80003620-GOVERNMENT OF KHYBER PAKH  
DDO Code: NR4013-S.CIVIL JUDGE NSR  
Payroll Section: 001 GPF Section: 001 Cash Center:  
GPF A/C No: Interest Applied: Yes GPF Balance: 770.00  
Vendor Number: -  
Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 03 Pay Stage: 0

Wage type		Amount	Wage type		Amount
0001	Basic Pay	9,610.00	1000	House Rent Allowance	1,413.00
1210	Convey Allowance 2005	1,785.00	1300	Medical Allowance	1,500.00
1516	Dress/ Uniform Allowance	150.00	1567	Washing Allowance	150.00
1584	Judicial Allowance	2,800.00	1874	Utility Allowance 2007	2,100.00
2211	Adhoc Relief All 2016 10%	961.00	2224	Adhoc Relief All 2017 10%	961.00
2247	Adhoc Relief All 2018 10%	961.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3003	GPF Subscription - Rs 770	-770.00	3501	Benevolent Fund	-300.00
3534	R. Ben & Death Comp Fresh	-300.00			0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance
------	-------------	------------------	-----------	---------

Deductions - Income Tax

Payable: 0.00 Recovered till April-2019: 0.00 Exempted: 0.00 Recoverable: 0.00

Gross Pay (Rs.): 22,391.00 Deductions: (Rs.): -1,370.00 Net Pay: (Rs.): 21,021.00

Payee Name: FARHAD ALI

Account Number:

Bank Details:

Leaves: Opening Balance: Availed: Earned: Balance:

Permanent Address:

City: NOWSHERA

Temp. Address:

City:

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

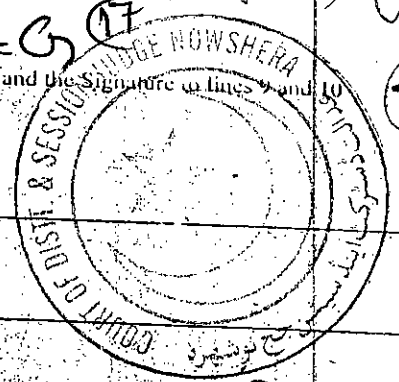
Email:

*Created*

نقل سرور حسن بک فریاد علی سادات نے سید رحمت شاہ صاحب کے ساتھ ایک سید مراد علی صاحب کے ساتھ ایک سید صاحب کو فوسٹر

Annex-3

Note: The entries on this page should be renewed or re-attested at least every five years and the Signature on lines 9 and 10 should be dated.



39

1. Name: FARHAD ALI SHAH

2. Race:

3. Residence: Moh - QAZI ABAD KANUK RIVER NOWSHERA

4. Father's name and residence:

SAID RAHMAT SHAH

5. Date of birth by Christian era as nearly as can be ascertained:

22-12-1987

6. Exact height by measurement:

5.4"

7. Personal marks for identification:

BLACK MOLE ON FOLY HEAD

8. Left hand thumb and Finger impression of (Non-Gazetted) officer:



Little Finger:



Ring Finger:



Middle Finger:



Fore Finger:



Thumb:



9. Signature of Government Servant:

*[Handwritten signature]*

ATTESTED

10. Signature and designation of the Head of the office, or other Attesting Officer.

*[Handwritten signature]*

Examiner Copying Agency  
Branch D.S.J. Nowshera

08 MAY 2010

with power U/S 30 Cr. P.C  
Nowshera

*[Handwritten signature]*

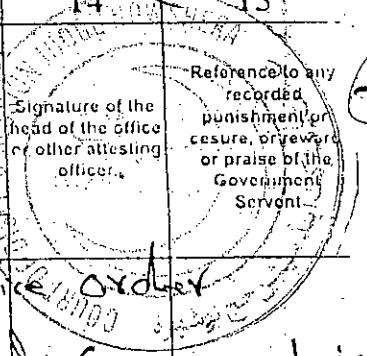




19

46

9	10	11	12	13		14	15
				Nature and duration of leave taken	Allocation of period of leave on average pay upto four months for which leave salary is debitible to another Government		
Name and Designation of the officer or other attesting officer in question of columns 1 to 8	Date of termination or appointment	Reason of termination (such as promotion, transfer, dismissal, etc.)	Signature of the head of the office or other attesting officer	Period	Government to which debitible	Signature of the head of the office or other attesting officer	Reference to any recorded punishment or censure, or reward or praise of the Government Servant
						<p>Office Order</p> <p>The official concerned is appointed as chowkidar B.P.S.-03 vid order # 88-92-1/2 dt 01-3-19 SCJ</p> <p><i>[Signature]</i> Senior Civil Judge/JM with powers u/s 30 Cr. P.C.</p> <p>5/11/19 AS/19</p> <p>Source of Production verified on 4/1/19</p> <p><i>[Signature]</i></p> <p>"OFFICE ORDER"</p> <p>The appointment of the official concerned is cancelled vide order No. 273-77-1/2 SJ Adm at 04-05-2019.</p> <p><i>[Signature]</i> Senior Civil Judge/JM with powers u/s 30 Cr. P.C. Newsletters</p>	



Office Order

The official concerned is appointed as chowkidar B.P.S.-03 vid order # 88-92-1/2 dt 01-3-19 SCJ

*[Signature]*  
Senior Civil Judge/JM with powers u/s 30 Cr. P.C.

5/11/19 AS/19

Source of Production verified on 4/1/19

*[Signature]*

"OFFICE ORDER"

The appointment of the official concerned is cancelled vide order No. 273-77-1/2 SJ Adm at 04-05-2019.

ATTESTED

Examiner of Agency Branch D.S. J. Newsletters

08 MAY 2019

*[Signature]*  
Senior Civil Judge/JM with powers u/s 30 Cr. P.C. Newsletters

*[Signature]*



The **ANNEX-H** (20)  
**PESHAWAR HIGH COURT**  
*Peshawar*

All communications should be addressed to the Registrar Peshawar High Court, Peshawar and not to any official by name.

Exch: 9210149-58  
Off: 9210135  
Fax: 9210170

www.peshawarhighcourt.gov.pk  
info@peshawarhighcourt.gov.pk  
phcphs@gmail.com

No. 9126 /Admn:

Dated Peshawar the 29-4 2019

To:

Syed Murad Ali Shah,  
Senior Civil Judge (Admin)  
Nowshera.

Subject: RECRUITMENT OF NAIB QASID, CHOWKIDAR AND SWEEPER THROUGH DSC ON 28.02.2019.

On a complaint discrete inquiry was conducted, wherein it was found that the subject vacancies have been filled in violation of instructions issued by this Court vide letter No. 18403-429/Admin dated 08.11.2017 for observing bowl policy in filling vacancies of Class-IV employees.

The competent authority has directed that the subject appointments be cancelled and fresh recruitment be made on the subject posts strictly in accordance with bowl policy already conveyed.

(Khwaja Wajih-Ud-Din)  
REGISTRAR



Office of **Annex-I** 21  
**THE SENIOR CIVIL JUDGE (ADMN) NOWSHERA**

Web: [www.districtcourtsnowshera.gov.pk](http://www.districtcourtsnowshera.gov.pk)

Email: [dsjnowshera@yahoo.com](mailto:dsjnowshera@yahoo.com)

Ph: +92923922010

Fax: +92923922020

No. 265-72-1/2 SCJ (Admn), Nowshera

Dated at Nowshera the 04/05/12

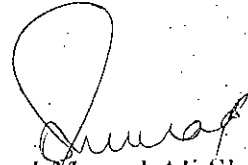
**OFFICE ORDER**

In compliance of the order dated Peshawar the 29.04.2019 bearing No.9126/Admn, the worthy Registrar of Peshawar High Court, Peshawar has cancelled the appointments of Naib Qasid, Chowkidar and Sweeper, conducted through DSC on 28.02.2019.

Therefore, the appointments of the following persons dated: 28.02.2019, stands cancelled.

1. Mr. Shakeel S/o Muhammad Iqbal (Naib Qasid)
2. Mr. Saja Ullah S/o Kifayat Ullah (Naib Qasid)
3. Mr. Taj Ali S/o Karim Khan (Naib Qasid)
4. Mr. Asad Ali S/o Qaiser Khan (Naib Qasid)
5. Mr. Awais Khan S/o Saif ur Rehman (Naib Qasid)
6. Mr. Saeed Khan S/o Dilawar Khan (Chowkidar)
7. Mr. Farhad Ali S/o Said Rehmat Shah (Chowkidar)
8. Mr. Syed Imran Shah S/o Syed Subkhan Shah (Sweeper)

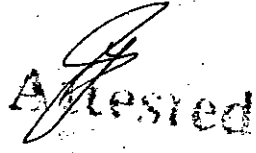
The above mentioned persons are relived from their services with immediate effect.

  
Syed Murad Ali Shah,  
Senior Civil Judge (Admn),  
Nowshera.

No. — SCJ/ Admn.

Copy forwarded for information and further necessary action to the:-

1. Worthy Registrar, Peshawar High Court, Peshawar with reference to letter No. 9126/Admn dated 29.04.2019.
2. Hon'ble District & Sessions Judge, Nowshera.
3. District Account Office, Nowshera.
4. Clerk of Court (COC), Nowshera.
5. Official Concerned by name.
6. Office Copy.

  
Senior Civil Judge (Admn),  
Nowshera.

Annex J

(22)

IN THE PESHAWAR HIGH COURT PESHAWAR

W. P No. \_\_\_\_/2019

1. **Farhad ali, Ex- Chowkidar** in the Court of the Senior Civil Judge Nowshera
2. **Saeed Khan Ex-chowkidar** in the Court of the Senior Civil Judge Nowshera
3. **Shakeel, Ex-Naib Qasid** in the Court of the Senior Civil Judge Nowshera
4. **Saja ullah Khan Ex-Naib Qasid** in the Court of the Senior Civil Judge Nowshera
5. **Taj Ali Khan Ex-Naib Qasid** in the Court of the Senior Civil Judge Nowshera
6. **Asad Khan Ex-Naib Qasid** in the Court the Senior Civil Judge Nowshera
7. **Awais Khan Ex-Naib Qasid** in the Court of the Senior Civil Judge Nowshera
8. **Syed Imran Shah, Ex-sweeper** in the Court of the Senior Civil Judge Nowshera

(Petitioners)

VERSUS

1. **Registrar Peshawar High Court Peshawar**
2. **Senior Civil Judge, Nowshera/ Chairman Departmental Selection Committee**

(Respondents)

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

PRAYER IN WRIT PETITION

On acceptance of this writ Petition an appropriate order may please be issued,

1. **Declaring the petitioners to have been validly appointed after adopting the due process and in accordance with law vide three separate notifications dated 01.03.2019 against their respective posts,**
2. **Declaring the order dated 29.04.2019 issued by the Respondent No. 1 and the subsequent Office Order**

*(Signature)*  
 Accepted

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issued by the Respondent No. 2 dated 04.05.2019 whereby the appointment notifications of the petitioners have been cancelled and thereby terminating their services as illegal, in violation of law and ineffective upon the rights of the petitioners, both the Orders may kindly be set-aside and the Petitioners may kindly be reinstated in service with all back and consequential benefits,

Any other relief which this honorable court may deem and just in the circumstances of the case may also be allowed.

Respectfully sheweth,

The petitioners humbly submit as under

1. That the Learned Senior Civil Judge Nowehera advertised various posts including 2 posts of **Chowkidar** BPS-3, 5 posts of **Naib Qasid** BPS-3 and 1 post of **Sweeper** BPS-1 for appointment on temporary basis in the DAILY MASHRIQ in January 2019 and invited applications from the desirous candidates. *(Copy of the advertisement is attached as Annexure A)*
2. That the Petitioners having the required qualification at their credit, duly applied for their respective posts so advertised, thereafter they were called to submit their documents which they accordingly submitted.
3. That in the initial phase, for the posts of Chowkidar, some more than 1000 candidates applied for the post. Under the bowl policy, 16 candidates were shortlisted. The Petitioners No. 1 and 2 were included in the shortlisted candidates. It is pertinent to mention here that the method of draw/ balloting was carried out in the presence of all candidates.
4. That thereafter Petitioners No. 1 and 2, amongst other short listed candidates, were called for interview which they duly appeared and remained successful. After the interview, again 6 candidates were short listed wherein they were also included. Those 6 eligible candidates were again gone through the process of draw/ balloting for ensuring transparency in the presence of all shortlisted candidates. In the final round of balloting/ draw they again were successful.

Attested

24

5. That for appointment to the post of Naib Qasid, some more than 2000 candidates applied for the post. Under the bowl policy, 40 candidates were shortlisted. Petitioners No. 3 to 7 were included in the shortlisted candidates. It is pertinent to mention here that the method of draw/ ~~Balloting~~ was carried out in the presence of all candidates for ensuring transparency.
6. That thereafter they, amongst other short listed candidates, were called for interview which they duly appeared and remained successful. After the interview, again 15 candidates were short listed wherein Petitioner No. 3 to 7 were also included. Those 15 eligible candidates were again gone through the process of draw/ balloting for the purpose of transparency in the presence of all shortlisted candidates and in the final draw they remained successful.
7. That for appointment to 1 post of Sweeper, some more than 800 candidates applied for the post. Under the bowl policy, candidates were shortlisted. Petitioners No. 8 was included in the shortlisted candidates. It is pertinent to mention here that the method of draw/ balloting was carried out in the presence of all candidates.
8. That thereafter he, amongst other short listed candidates, were called for interview which they duly appeared and remained successful. After the interview, again candidates were short listed wherein Petitioner No.8 was also included. Those eligible candidates were again gone through the process of draw/ balloting for the purpose of appointment in the presence of all shortlisted candidates and in the final draw he remained successful.
9. That having, again, successful in the final draw, the Petitioners were duly recommended for appointment by the Departmental Selection and Scrutiny Committee for appointment, accordingly they were appointed against their respective posts vide three separate orders dated 01.03.2019. *(Copies of the three separate orders dated 01.03.2019 are attached as Annexure B, C & D)*
10. That the Petitioners were also medically examined and when found fit they duly submitted their arrival report and started performing their duties. It is pertinent to mention here that pay roll of all the Petitioners have also been prepared for the purpose of pay and their service books were also prepared. *(Copies of the arrival report,*

Attested

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*medical certificates, Pay rolls and service books are attached as Annexure E, F, G & H)*

11. That ever since their appointment, all the Petitioners performed their duties with zeal and devotion and there was not a single complaint with regard to their performance.
12. That while serving in the said capacity, the Learned Senior Civil judge Nowshera/ Respondent No. 2 on the directives of Respondent No. 1 through order dated 29.04.2019, quite illegally cancelled the appointments of the Petitioners vide single Office Order dated 04.05.2019. It is pertinent to mention here that cancelation was made without serving upon the Petitioners any charge sheet or conducting any inquiry or personal hearing *(Copies of order dated 29.04.2019 and 04.05.2019 are attached as Annexure I & J)*
13. That the Petitioner also filed their respective appeals to the Honorable District Judge Nowshera vide their appeals dated 11.05.2019, however the same is not responded, although the Petitioners were verbally told that since the order was issued on the directives of Respondent No.1 therefore he cannot even entertain their appeals. *(Copies of departmental appeals dated 11.05.2019 are attached as Annexure K)*
14. That now the Petitioners have got no other efficacious and adequate remedy available in law are constrained to approach this Honorable Court for the issuance of an appropriate writ inter alia on the following grounds.

**GROUND OF PETITION:**

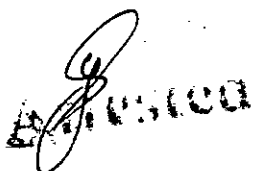
- A. That the Petitioners have not been treated in accordance with law, and their rights secured and guaranteed under the Law and Constitution have been violated.
- B. That no proper procedure has been followed before the cancelation of appointments, no charge sheet or show cause notice has been served upon the Petitioners nor any inquiry has been conducted or if so conducted they have never been associated with the proceedings, thus the impugned order is liable to be set aside on this score alone.

*Attested*



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- C. That the Petitioners have not been given opportunity of personal hearing before the issuance of the impugned order hence they have been condemned unheard.
- D. That no charge sheet or show cause notice has been served upon them before the cancelation of their appointments, thus the impugned order is passed in violation of the principles of natural justice.
- E. That the Petitioners duly applied for the post, appeared in interview and remained successful, they duly took over charge of their respective posts and started performing duties, their pay roll was also prepared and they got their salaries, thus the order of appointment had been acted upon and valuable rights had been created in favour of the Petitioners. As principle of *LOCUS PONATENTIE* strongly lied in their favor so the services could not be snatched away illegally with one stroke of pen.
- F. That the Petitioners were appointed by the competent authority after observing all codal formalities, **including bowl policy**, no illegality or irregularity has been committed in the process of appointment.
- G. That Respondent No. 1 is not competent under the law to issue order to Respondent No.2 to cancel appointment orders and Respondent No. 2 should have applied his own judicious mind before cancellation of appointment orders of the Petitioners.
- H. That the impugned order is also violative of Provisions of General Clauses Act as it is not speaking order and is liable to be set-aside on this ground alone.
- I. That if all there were any irregularity or illegality committed in the process of appointment, the same can neither be attributed to the Petitioners nor can they be punished for the faults or lapses committed by others.
- J. That they have never committed any act or omission which could be termed as misconduct, albeit their appointments have been cancelled.

A handwritten signature in black ink is written over a rectangular stamp. The stamp contains the word "APPROVED" in a bold, sans-serif font.

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- K. That they have at their credit an unblemished and spotless service career of about 2 months, however without considering it, their service career my appointment has been cancelled.
- L. That the petitioners are young and energetic and wants to service for their department albeit their appointment have been illegally cancelled.
- M. That they are jobless since withdrawal of their appointment order.
15. That the Petitioner seeks leave of this Honorable Court to take additional grounds at the time of arguments.


*It is therefore prayed that on acceptance of this Writ Petition an appropriate Writ as prayed for may please be issued in favour of the Petitioners and against the Respondents.*

**INTERIM RELIEF:**

By way of interim relief, the Respondents may kindly be restrained to fill the posts of Class IV till the final disposal of the petition.

Petitioner

Through

  
**YASIR SALEEM**  
 Advocate High Court  
 Peshawar

**List of Books:**

1. Constitution of Islamic republic of Pakistan, 1973.

**Certificate:**

Certified that no writ petition on the same subject and between the same parties has been filed previously or concurrently.

Petitione

  
 Arrested

8-7

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**IN THE PESHAWAR HIGH COURT, PESHAWAR**

W.P No. \_\_\_\_\_/2018

Syed Farhad S/o Rehmat Shah R/o Kabal Road, Nowshera. Ex  
Chowkidar, in the office of senior civil judge, Nowshera

.....Petitioner

**VERSUS**

- 1. Registrar Peshawar High court, Peshawar
- 2. Senior Civil Judge, Nowshera

.....Respondents

**AFFIDAVIT**

I, Syed Farhad S/o Rehmat Shah R/o Kabal Road, Nowshera Ex  
Chowkidar, in the office of senior civil judge, Nowshera, do hereby  
solemnly affirm and declare on oath that the contents of  
the **Writ Petition** are true and correct to the best of my  
knowledge and belief and nothing has been concealed from  
this Hon'ble Court.

Identified by

**Yasir Saleem**  
Advocate, Peshawar

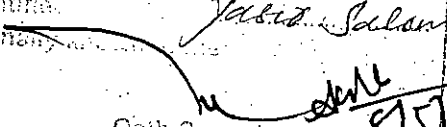
*[Signature]*

DEPONENT

CNIC:

17201-8437651-3

Mobile :- 0333-9332132

No:.....	28277
Certified that the above was verified on solemnly	
affirmation before me in the presence of.....	
day of.....	May 2018
s/o.....	Syed Farhad
who was identified.....	Nowshera
Who is personally.....	Yasir Saleem
 Oath Commissioner Peshawar High Court, Peshawar	

8/5/2019

*[Signature]*  
Attested

7/A

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**IN THE PESHAWAR HIGH COURT PESHAWAR**

W. P No. \_\_\_\_\_/2019

**Farhad ali, Ex- Chowkidar** in the Court of the Senior Civil Judge  
Nowshera and others

.....Petitioners

**VERSUS**

**Registrar Peshawar High Court Peshawar** and another

.....Respondents

**ADDRESSES OF PARTIES**

**PETITIONERS**


1. **Farhad ali, Ex- Chowkidar** in the Court of the Senior Civil Judge Nowshera
2. **Saeed Khan Ex-chowkidar** in the Court of the Senior Civil Judge Nowshera
3. **Shakeel, Ex-Naib Qasid** in the Court of the Senior Civil Judge Nowshera
4. **Saja ullah Khan Ex-Naib Qasid** in the Court of the Senior Civil Judge Nowshera
5. **Taj Ali Khan Ex-Naib Qasid** in the Court of the Senior Civil Judge Nowshera
6. **Asad Khan Ex-Naib Qasid** in the Court the Senior Civil Judge Nowshera
7. **Awais Khan Ex-Naib Qasid** in the Court of the Senior Civil Judge Nowshera
8. **Syed Imran Shah, Ex-sweeper** in the Court of the Senior Civil Judge Nowshera

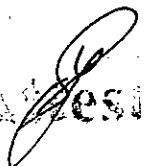
**RESPONDENTS:**

1. **Registrar Peshawar High Court Peshawar**
2. **Senior Civil Judge, Nowshera/ Chairman Departmental Selection Committee**

**Petitioner**

Through

  
**YASIR SALEEM**  
Advocate High Court  
Peshawar

  
Attested

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1

Admitted, R  
65

To

The Honorable  
District and Sessions Judge  
Nowshera

Subject: Departmental appeal against the order dated 04.05.2019, whereby the appointment of the undersigned against the post of Chowkidar BPS-03, has been cancelled.

Prayer in departmental appeal

On acceptance of this appeal the order dated 04.05.2019, may please be set aside and I may kindly be reinstated into service with all back benefits.

Respected Sir,

The applicant very humbly submits the following few lines for your kind and sympathetic consideration:

1. That the Learned Senior Civil Judge Nowshera advertised various posts including the post of <sup>Chowkidar</sup> in the DAILY MASHRIQ in January 2019 invited applications from the desirous candidates.
2. That the undersigned having the required qualification at his credit, duly applied for the post so advertised, thereafter I was called to submit my document which I accordingly submitted. In the initial phase some more than 1000 candidates applied for the post. Under the bowl policy, 16 candidates were shortlisted. The undersigned was included in the shortlisted candidates. It is pertinent to mention here that the method of draw/ balloting was carried out in the presence of all candidates.
3. Thereafter I, amongst other short listed candidates, was called for interview which I duly appeared and remained successful. After the interview, again 6 candidates were short listed wherein the undersigned was also included. Those 6 eligible candidates were again gone through the process of draw/ balloting for the purpose of appointment in the presence of all shortlisted candidates.
4. That having, again, successful in draw, I was duly recommended for appointment by the Departmental Selection and Scrutiny Committee

Accepted

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for appointment, accordingly I was appointment against the post of Chowkidar BPS-03, vide order dated 01.03.2019.

5. That I was also medically examined and when found fit I duly submitted my arrival report and started performing my duties. It is pertinent to mention here that my pay roll was also prepared for the purpose of pay and I service book was also prepared.
6. That ever since my appointment, I performed my duties with zeal and devotion and there was not a single complaint with regard to my performance.
7. That while serving in the said capacity, without serving upon me any charge sheet or conducting any inquiry notice quite illegally my appointment notification have been cancelled by the Learned Senior Civil judge Nowshera vide Office Order dated 04.05.2019.
8. That the impugned order is illegal unlawful against the law and facts hence liable to be set aside inter alia on the following grounds:

GROUPS OF DEPARTMENTAL APPEAL

- A. That I have not been treated in accordance with law hence my rights secured and guaranteed under the law and constitution is badly violated.
- B. That no proper procedure has been followed before the cancellation of my appointment, no charge sheet or show cause notice has been served upon me nor any inquiry has been conducted or if so conducted I have never been associated with the proceedings, thus the impugned order is liable to be set aside on this score alone.
- C. That I have not been given opportunity of personal hearing before the issuance of the impugned order hence I have been condemned unheard.
- D. That no charge sheet or show cause notice has been served upon me before the cancellation of my appointment, thus the impugned order is passed in violation of the principles of natural justice.
- E. That I duly applied for the post, appeared in interview and remained successful, I duly took over charge of my post and

  
Attested

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3

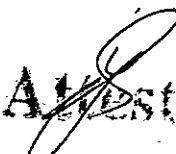
started performing my duties my pay roll was also prepared and I got my salaries, thus the order of my appointment had acted upon and valuable rights had been created in my favour. As principle of *LOCUS PONATENTIE* strongly lies in my favor so my service could not be snatched away illegally with one stroke of pen.

- F. That I was appointed by the competent authority after observing all codal formalities, including bowl policy, no illegality or irregularity has been committed in the process of appointment.
- G. That if all there was any irregularity or illegality committed in the process of appointment, the same can neither be attributed to the undersigned nor can he be punished for the faults or lapses committed by others.
- H. That I have never committed any act or omission which could be termed as misconduct, albeit my appointment has been cancelled.
- I. That I have at my credit an unblemished and spotless service career of about 2 months, however without considering my service career my appointment has been cancelled.
- J. That the appellant is young and energetic and wants to service for his department albeit my appointment has been illegally cancelled.
- K. That I am jobless since withdrawal of my appointment order.

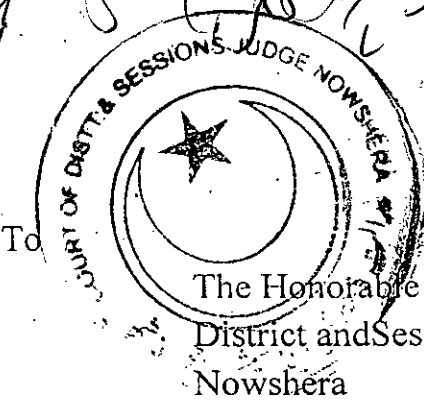
*It is therefore, humbly prayed that on acceptance of this departmental appeal the impugned order dated 04.05.2019, may please be set aside and I may be reinstated into service with all back benefits.*

Yours Obediently,

  
FARHAD ALI  
S/O Said Rehman Shah,  
Ex- Chowkidar BPS-03  
Qaziabad-Kabul River  
Nowshera

  
Attested

Dated // 08/05/2019



D.S.J. - *[Handwritten signature]*  
33  
Annex D.S.C. *[Handwritten signature]*  
14/5/19 *[Handwritten signature]* 30/13 *[Handwritten signature]*  
16/5/19 *[Handwritten signature]* 14/5/19 *[Handwritten signature]*

To: The Honourable District and Sessions Judge Nowshera

Subject: Departmental appeal against the order dated 04.05.2019, whereby the appointment of the undersigned against the post of Chowkidar BPS-03, has been cancelled.

502  
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**Prayer in departmental appeal**

On acceptance of this appeal the order dated 04.05.2019, may please be set aside and I may kindly be reinstated into service with all back benefits.

Respected Sir,

The applicant very humbly submits the following few lines for your kind and sympathetic consideration:

1. That the Learned Senior Civil Judge Nowshera advertised various posts including the post of <sup>Chowkidar</sup> in the DAILY MASHRIQ in January 2019 invited applications from the desirous candidates.
2. That the undersigned having the required qualification at his credit, duly applied for the post so advertised, thereafter I was called to submit my document which I accordingly submitted. In the initial phase some more than 1000 candidates applied for the post. Under the bowl policy, 16 candidates were shortlisted. The undersigned was included in the shortlisted candidates. It is pertinent to mention here that the method of darw/ balloting was carried out in the presence of all candidates.
3. Thereafter I, amongst other short listed candidates, was called for interview which I duly appeared and remained successful. After the interview, again 6 candidates were short listed wherein the undersigned was also included. Those 6 eligible candidates were again gone through the process of draw/ balloting for the purpose of appointment in the presence of all shortlisted candidates.
4. That having, again, successful in draw, I was duly recommended for appointment by the Departmental Selection and Scrutiny Committee

*[Handwritten signature]*

Gohar Rehman  
District & Session Judge  
Nowshera

14/5/19

**ATTESTED**

Examiner/Copying Agency  
Branch D.S.J. Nowshera

17 MAY. 2019



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for appointment, accordingly I was appointment against the post of Chowkidar BPS-03, vide order dated 01.03.2019.

5. That I was also medically examined and when found fit I duly submitted my arrival report and started performing my duties. It is pertinent to mention here that my pay roll was also prepared for the purpose of pay and I service book was also prepared.
6. That ever since my appointment, I performed my duties with zeal and devotion and there was not a single complaint with regard to my performance.
7. That while serving in the said capacity, without serving upon me any charge sheet or conducting any inquiry notice quite illegally my appointment notification have been cancelled by the Learned Senior Civil judge Nowshera vide Office Order dated 04.05.2019.
8. That the impugned order is illegal unlawful against the law and facts hence liable to be set aside inter alia on the following grounds:

**GROUND OF DEPARTMENTAL APPEAL**

- A. That I have not been treated in accordance with law hence my rights secured and guaranteed under the law and constitution is badly violated.
- B. That no proper procedure has been followed before the cancelation of my appointment, no charge sheet or show cause notice has been served upon me nor any inquiry has been conducted or if so conducted I have never been associated with the proceedings, thus the impugned order is liable to be set aside on this score alone.
- C. That I have not been given opportunity of personal hearing before the issuance of the impugned order hence I have been condemned unheard.
- D. That no charge sheet or show cause notice has been served upon me before the cancelation of my appointment, thus the impugned order is passed in violation of the principles of natural justice.
- E. That I duly applied for the post, appeared in interview and remained successful, I duly took over charge of my post and

**ATTESTED**

Examiner Copying Agency  
Branch D.S.J. Nowshera

17 MAY 2019

5

35

started performing my duties my pay roll was also prepared and I got my salaries, thus the order of my appointment had acted upon and valuable rights had been created in my favour. As principle of *LOCUS PONATENTIE* strongly lies in my favor so my service could not be snatched away illegally with one stroke of pen.

F. That I was appointed by the competent authority after observing all codal formalities, including bowl policy, no illegality or irregularity has been committed in the process of appointment.

G. That if all there was any irregularity or illegality committed in the process of appointment, the same can neither be attributed to the undersigned nor can he be punished for the faults or lapses committed by others.

H. That I have never committed any act or omission which could be termed as misconduct, albeit my appointment has been cancelled.

I. That I have at my credit an unblemished and spotless service career of about 2 months, however without considering my service career my appointment has been cancelled.

J. That the appellant is young and energetic and wants to service for his department albeit my appointment has been illegally cancelled.

K. That I am jobless since withdrawal of my appointment order.

*It is, therefore, humbly prayed that on acceptance of this departmental appeal the impugned order dated 04.05.2019, may please be set aside and I may be reinstated into service with all back benefits.*

**ATTESTED**

Examiner Copying Agency  
Branch D.S.J. Nowshera

17 MAY 2019

Dated 11 /05/2019

Yours Obediently,



**FARHAD ALI**

S/O Said Rehman Shah,  
Ex- Chowkidar BPS-03  
Qaziabad Kabul River  
Nowshera

6

17 MAY 2019

Examiner Copying Agency  
Branch D.S.J. Nowshera

ATTESTED

14/5/19

Gohar Rehman  
District & Sessions Judge  
Nowshera

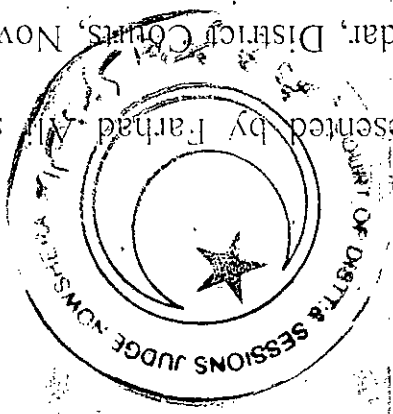
order to be disturbed as the same followed the order of Worthy  
and personal hearing etc. There is nothing in the impugned  
been cancelled, then in situation there is no need of show cause  
No.9126/Admn: dated 29.4.2019. When the whole process has  
Registrar, Honble Peshawar High Court, Peshawar bearing  
Peshawar High Court, Peshawar vide order of Worthy  
Selections dated 28.2.2019, was cancelled by the Honble  
- It is also an admitted fact that whole procedure of  
Selection Committee dated 28.2.2019.

Chowkidar (RPS-3) by the recommendations of Departmental  
Three is no denial that appellant was appointed as  
Arguments heard and record perused.

service.  
dated 04.5.2019, vide which the appellant was relieved from his  
Nowshera bearing No.265-72-1/2 SCJ (Admn), Nowshera  
requisitioned the order of learned Senior Civil Judge (Admn),  
Mr. Farhad Ali, appellant, through this appeal has  
Appellant Farhad Ali present in person.

entered into relevant register.  
Rehman Shah Ex-Chowkidar, District Courts, Nowshera. It be  
Petition in hand presented by Farhad Ali son of Said.

ORDER-01  
14.5.2019



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BT

Registrar, Peshawar High Court, Peshawar, bearing

No.9126/Admn: dated 29.4.2019.

Keeping in view the above facts, the appeal in hand has

no legal forum, hence dismissed. File be consigned to record

room after its necessary completion and compilation.

Announced,  
14.5.2019.

Gohar Rehman,  
District & Session Judge,  
Nowshera.

**ATTESTED**

Examiner Copying Agency  
Branch D.S.J. Nowshera

17 MAY 2019

No \_\_\_\_\_  
Date of Application \_\_\_\_\_  
Name of Applicant \_\_\_\_\_  
Words \_\_\_\_\_  
Fee \_\_\_\_\_  
Urgent \_\_\_\_\_  
Sign of \_\_\_\_\_  
Date of \_\_\_\_\_  
S. No of the Order \_\_\_\_\_  
District \_\_\_\_\_



POWER OF ATTORNEY

39

In the Court of Service Tribunal Peshawar

Fazhaal Ali

} For  
} Plaintiff  
} Appellant  
} Petitioner  
} Complainant

VERSUS

Registrar High Court Peshawar and others

} Defendant  
} Respondent  
} Accused

Appeal/Revision/Suit/Application/Petition/Case No. 1595 of 2019  
Fixed for \_\_\_\_\_

I/We, the undersigned, do hereby nominate and appoint

**YASIR SALEEM,**

**JAWAD UR REHMAN &**

**PIRZADA MUHAMMAD TAYAB AMIN Advocates Peshawar**

my true and lawful attorney, for me in my same and on my behalf to appear at \_\_\_\_\_ to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc. and to apply for and issue summons and other writs or sub-poena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so. any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at \_\_\_\_\_ the \_\_\_\_\_ day to \_\_\_\_\_ the year \_\_\_\_\_

Executant/Executants \_\_\_\_\_

Accepted subject to the terms regarding fee \_\_\_\_\_

Jawad ur Rehman  
JAWAD UR REHMAN  
Advocate High Court

YASIR SALEEM  
YASIR SALEEM  
Advocate High Court, Peshawar

M. Tayyab  
PIRZADA MUHAMMAD TAYAB AMIN  
Advocate Peshawar

Asif Saab  
ASIF SAAB  
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1595/2019

Farhad Ali ..... Appellant

Versus

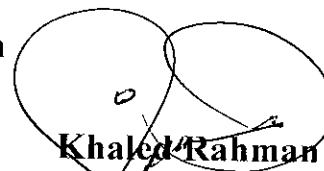
Registrar, PHC & others.....Respondents

INDEX

S.#	Description of Documents	Date	Annexure	Pages
1.	Misc: Application with Affidavit			1-4
2.	Letter circulating Bowl Policy	08.11.2017	Reply/1	
3.	Notification of modification in Policy	04.04.2019	Reply/2	
4.	Judgment in W.P. No.2975-P/2019	20.11.2019	Reply/3	

Respondents

Through



**Khaled Rahman**  
Advocate,  
Supreme Court of Pakistan

4-B, Haroon Mansion  
Khyber Bazar, Peshawar  
Off: Tel: 091-2592458  
Cell # 0345-9337312

Dated: 11 /02/2020

Service Appeal No.1595/2019

Farhad Ali ..... Appellant

Versus

Registrar, PHC & others ..... Respondents

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**REPLY ON BEHALF OF RESPONDENTS.**

---

Respectfully Sheweth,

**Preliminary Objections:**

- I. That as per Section-4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 read with Rule-3 of the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules-1986 *“any civil servant aggrieved by any final order, whether original or appellate made by the departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him shall prefer an appeal to the Service Tribunal”* whereas the Departmental Appeal of the appellant was dismissed on 14.05.2019 and he has directed the instant Service Appeal against the same on 26.11.2019 which is beyond the mandatory period of 30 days thus barred by time. It is settled principle of law that when the service appeal is barred by time then there is no need to discuss merit of the case.
- II. That appellant has neither cause of action nor for that matter locus standi to file the instant Service Appeal.
- III. That the appellant is estopped/ precluded by his own conduct to file the instant Service Appeal, hence equity precludes and/or bars the relief prayed for.



- IV. That the Service Appeal is incompetent due to non-joinder of necessary parties.
- V. That as per Section 6 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, the instant appeal is not maintainable on the ground that as per condition-iv of the appointment order appellant was appointed subject to the completion of the probation period of two years which is extendable for three years which even appellant has not yet completed.
- VI. That the appellant has concealed material facts from the Hon'ble Tribunal and has not approached the Hon'ble Tribunal with clean hands, therefore, the instant appeal merits outright dismissal.

**Comments to Facts:**

- 1-8. Para No. 1-8 of the Service Appeal are correct to the extent of advertisement and appointment of Appellant against their respective posts, however, subsequently the entire selection record were scrutinized in detail in the light of the Bowl Policy circulated vide letter dated 08.11.2017 (*Annex:-PC/1*) and it was found that the Policy was not followed in letter and spirit and it was suggested that there was no mention of short listing of the candidates through interview after draw, while the same violation has been made in the Selection Process. It was further observed that the Step No.2 of the Policy *ibid* was to be revisited to do away with any confusion therefore through suitable amendments. Accordingly, the competent authority was approached for the needful who approved the Policy and was thus notified vide Notification dated 04.04.2019 (*Annex:-PC/2*). Consequently it was also recommended that in the interest of justice and to provide fair chance to all the deserving candidates the process was cancelled and hence the appointment orders were withdrawn/cancelled vide impugned orders dated 29.04.2019 & 04.05.2019.
- 9&10. Incorrect hence vehemently denied. Appellant alongwith others being aggrieved of the office order dated 14.05.2019 had filed Writ Petition No.2975-P/2019 before the Hon'ble Peshawar High Court, Peshawar which was dismissed on 20.11.2019 (*Annex:-Reply/3*) of the ground of maintainability. It is pertinent to mention here that after that he has directed

the instant Service Appeal against the order dated 14.05.2019 by filing the instant Service Appeal on 26.11.2019 which is clearly barred by time. Furthermore, it is legal principle of Superior Court that availing wrong forum, legally cannot overrule the question of limitation.

11. Para No. 11 of the Service Appeal need no reply.

12-13. Incorrect. The detailed reply has already been given in the preceding paras.

**Reply to Grounds:-**

A-E. Grounds-A-E of the Service Appeal are incorrect hence denied. The appellant has completely failed to point out any violation of Rules and Constitutional provisions of law being violated. The Department conducted the selection process but the policy was not complied with in letter and spirit, therefore, the appointment orders of the appellant was cancelled with the direction to the authority to reinitiate fresh process of recruitment against the said posts strictly in accordance with the "Bowl policy". Furthermore, appellant may apply in the fresh recruitment process. Appellant received salaries for the period they served. Furthermore, this is not the requirement of law to issue Charge Sheet and Statement of Allegations when the selection process is against the policy

F-K. Incorrect hence vehemently denied. Detailed comments have already been submitted hereinabove. Furthermore, it is settled legal principle of law that if the selection process is against the prescribed policy then Department has a right to cancel the same in order to comply with the policy. Moreover, appellant was on probation and had not yet been confirmed hence no vested rights of Appellant had accrued. It is worth mentioning that Respondent No.1 being the custodian of the Bowl policy has right to order/direct the Selection Committee to conduct transparent process of selection as per the Policy.

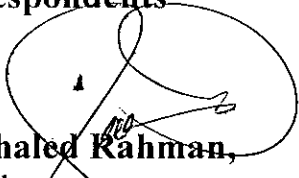
L&M. Grounds L&M of the Service Appeal need no comments.

N. Needs no reply.

It is, therefore, humbly prayed that on acceptance of this reply, the appeal of appellant may graciously be dismissed with costs.

**Respondents**

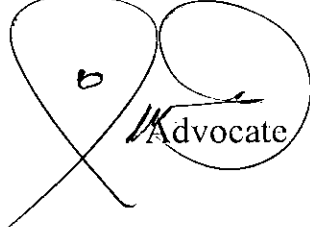
**Through**

  
**Khaled Rahman,**  
Advocate,  
Supreme Court of Pakistan

Dated: 4 /02/2020

**Verification**

Verified as per instruction that the contents of this Reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

  
Advocate



The  
**PESHAWAR HIGH COURT**  
Peshawar

All communications should be addressed to the Registrar Peshawar High Court, Peshawar and not to any official by name.



Exch: 9210149-58

Off: 9210135

Fax: 9210170

www.peshawarhighcourt.gov.pk

info@peshawarhighcourt.gov.pk

phcph@gmail.com

No. 7453-7554 ADMN:

Dated Pesh the 04/04/2019

To:

1. All the District & Sessions Judges/Zilla Qazis
2. All the Judges of Anti-Terrorism Courts
3. All the Additional Registrars of PHC Benches
4. All the Senior Civil Judges/A'ala Illaqa Qazis

**in the Khyber  
Pakhtunkhwa.**

Subject: **APPOINTMENT OF CLASS-IV.**

Sir,

I am directed to refer to the subject noted above and to say that it has been noticed that during the recruitment process against the posts of Class-IV, some of the Appointing Authorities initially ballot for short listing followed by interview for further short listing and again holding balloting.

The Competent Authority has, therefore, been pleased to modify Para (i) of Step No.2 of this Court's letter No.18403-429/Admn: dated 08.11.2017 (copy enclosed) and replace the same with the following:

**"Interview conducted by a panel to see the physical and mental fitness of the candidates."**

The Competent Authority has further been pleased to direct that the purpose of interview should not be for short listing of the candidates, rather it should be for checking physical and mental fitness of the candidates and the candidates who fail to fulfill the eligibility criteria i.e. age, domicile etc be omitted from the list and balloting be carried out once, between all the eligible candidates.

Sincerely yours,

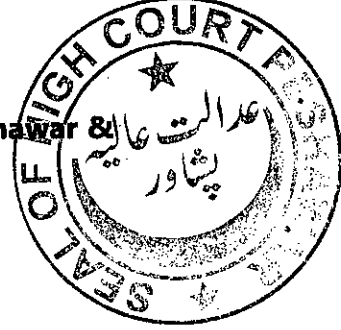
  
(KHAWAJA WAJIH-UD-DIN)  
**REGISTRAR**

3.4

**JUDGMENT SHEET  
PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENT**

**Writ Petition No.2975-P of 2019**

**"Farhad Ali etc  
Versus  
Registrar, Peshawar High Court, Peshawar &  
another"**



**JUDGMENT**

Date of hearing **20.11.2019**

Petitioner by: Mr. Yasir Saleem, Advocate.

Respondent(s) by: Mr. Khalid Rehman, Advocate.

**AHMAD ALI, J.-** Through the instant Writ Petition, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioners have prayed for the following relief: -

**"On acceptance of this writ petition an appropriate order may please be issued:**

1. **Declaring the petitioners to have been validly appointed after adopting the due process and in accordance with law vide three separate notifications dated 01.03.2019 against their respective posts.**
2. **Declaring the order dated 29.04.2019 issued by the respondent No.1 and the subsequent office order issued by the respondent No.2 dated 04.05.2019 whereby the appointment notifications of the petitioners have been cancelled and thereby terminating their services as illegal, in violation of law and ineffective upon the rights of the petitioners, both the orders may kindly be set-aside and the petitioners may kindly be reinstated in service with all back and consequential benefits.**

**Any other relief which this honorable Court may deem and just in the**

SCANNED

**ATTESTED**

**EXAMINER  
Peshawar High Court**

circumstances of the case may also be allowed".

02. In essence, petitioners were appointed by the respondents on the posts of Chowkidar(s), Naib Qasid(s) & Sweeper vide three separate orders dated 01.03.2019. After issuance of said orders, petitioners submitted their arrival reports and started their duties with zeal and devotion with no any complaint with regard to their performance but respondent No.2 (Senior Civil Judge, Nowshera) vide office order dated 04.05.2019, on the directions of respondent No.1 (Registrar, Peshawar High Court, Peshawar), issued vide order dated 29.04.2019, cancelled the appointments orders without serving upon the petitioners any charge sheet or conducting any inquiry or personal hearing. Petitioners filed their respective appeals to the learned District & Sessions Judge, Nowshera but the same were not responded although they were verbally told that since the order was issued on the directives of respondent No.1 therefore, he cannot entertain the appeals of the petitioners. Petitioners having no other efficacious and adequate remedy have approached this Court through the instant Writ Petition.

03. We have heard arguments of the learned counsel for the parties and gone through the available record.

**ATTESTED**

**EXAMINER**  
Peshawar High Court

04. Without dilating upon the merit of the case, suffice it to say that the petitioners are civil servants and their grievance relates to the terms and conditions of service, so, the appropriate remedy for seeking their redressal would surely be the Khyber Pakhtunkhwa Service Tribunal.

05. This Court is barred under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 to take cognizance in the matter relating to the terms and conditions of service of a civil servant. The Apex Court in case of Ali Azhar Khan Baloch, reported in **2015 SCMR 456** has laid down that the issue relating to the terms and conditions of service cannot be entertained by a High Court either in its constitutional jurisdiction or in its original civil jurisdiction being barred under Article 212 of the Constitution.

06. Similarly, the Apex Court in case titled "*I.A Sherwani & others Vs. Government of Pakistan through Secretary Finance & others*, reported in **1991 SCMR 1041**, has held that: -

"From the above-cited cases, it is evident that it has been consistently held inter alia by this court that a civil servant if is aggrieved by a final order, whether original or appellate, passed by a departmental authority in respect of his terms and conditions, his remedy, if any, is by way of an appeal before the Service Tribunal even where the case involves vires of a particular Service Rule or a notification or the question, whether an accused civil servant can claim the right to be represented by a counsel

**ATTESTED**

**EXAMINER**  
Peshawar High Court

before the enquiry Officer. We are inclined to hold that if a statutory rule or a notification adversely affects the terms and conditions of a civil servant, the same can be treated as an order in terms of subsection (1) of section 4 of the Act in order to file an appeal before the Service Tribunal. However, in the present case, the petitioners' case is founded solely on the ground of discriminatory treatment in violation of Article 125 of the Constitution and not because of any breach of any provision of the Civil Servants Act or any service rule. Further, the question involved is of public importance as it affects all the present and future pensioners and, therefore, falls within the compass of clause (3) of Article 184 of the Constitution. However, we may clarify that a civil servant cannot bypass the jurisdiction of the Service Tribunal by adding a ground of violation of the fundamental Rights. The Service Tribunal will have jurisdiction in a case which is founded on terms and conditions of the service even if it involves the question of violation of the Fundamental Rights".

07. In view of the above, this writ petition, being not maintainable, is hereby dismissed. It is pertinent to mention here that only CM No.2665-P/2019 for grant of status quo was fixed for today, but the main case was taken up for hearing, therefore, in light of dismissal of main petition, this CM has become infructuous, which is also dismissed.

*Qpin*  
JUDGE

*[Signature]*  
JUDGE

**Announced.  
20.11.2019.**

DB  
Hon'ble Mr. Justice Lal Jan Khattak  
Hon'ble Mr. Justice Ahmad Ali  
Himayat, PS

**CERTIFIED TO BE TRUE COPY**  
EXAMINER  
Peshawar High Court, Peshawar  
Authorised Under Article 87 of  
The Qanun-e-Shahadat Order 1984

**07 FEB 2020**