24.01.2022 Appellant with counsel present. Mr. Kabirullah Khattak, Addl. AG for respondents present.

Reply/comments on behalf of respondents are still awaited. Learned Additional Advocate General sought time for submission of reply/comments. Another last opportunity is granted to respondent to furnish reply/comments on or before next date, failing which their right to submit reply/comments shall be deemed as struck off by virtue of this order. To come up for arguments before the D.B on 23.05.2022.

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

23rd May, 2022 Appellant alongwith counsel present. Mr. Muhammad Rasheed, DDA for the respondents present.

Appellant submitted an application for withdrawal of the appeal. Application placed on file. Dismissed as withdrawn. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 23rd day of May, 2022.*

(Fareeha Paul)
Member (E)

Khyber Pakhtunkhwa Service Tribunal
Peshawar

(Kalim Arshad Khan)
Chairman

24.05.2021 Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 03.08.2021 for the same as before.

Reader

03.08.2021 Counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Written reply/comments have not been submitted by the respondents. Learned AAG is required to contact the respondents for submission of written reply/comments in office within 10 days, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 14.12.2021 before the D.B.

Chairman

14.12.2021 Appellant alongwith his counsel present. Mr. Noor Zaman Khattak, District Attorney for respondents present.

Learned District Attorney seeks time to submit written reply/comments. Notices be issued to the respondents for submission of written reply/comments. Adjourned but as a last chance. To come up for written reply/comments on 24.01.2022 before S.B.

(MIAN MUHAMMAD)
MEMBER (E)

20.10.2020 Appellant is present in person.

The legal fraternity is observing strike today, therefore, the case is adjourned to 22.12.2020 on which to come up for preliminary hearing before S.B.

(Muhammad Jamal Khan)
Member (Judicial)

22.12.2020 Appellant present through counsel. Preliminary arguments heard. File perused.

Points raised need consideration. Admitted to regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to respondents for written reply/comments. To come up for written reply/comments on 15.03.2021 before S.B.

Appellant Deposited
Security & Process Fee

(Rozina Rehman)
Member (J)

15.03.2021 Due to tour of Camp Court Abbottabad and shortage of Members at Principal Bench Peshawar, the case is adjourned to 24.05.2021 before S.B.

Reader

03.02.2020 Counsel for the appellant present and requested for adjournment. Adjourned to 17.03.2020 for preliminary hearing before S.B.

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

17.03.2020 Appellant in person present and seeks adjournment as lawyer community is on strike on the call of Peshawar Bar Association. Adjourn. To come up for preliminary hearing on 22.04.2020 before S.B.

Member

22.04.2020 Due to public holiday on account of COVID-19, the case to come up for the same on 28.07.2020 before S.B.

Reader

28.07.2020 Mr. Muhammad Sohail, Advocate, junior to Mr. Javed Iqbal Gulbela, Advocate learned counsel for the appellant and appellant himself are present. Stated that his senior counsel is not feeling well today. Formal request for adjournment. Adjourned to 20.10.2020. File to come up for preliminary hearing before S.B.

(MUHAMMAD JAMAL KHAN)
MEMBER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1570/**2019**

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	18/11/2019	The appeal of Mr. Jamil-ur-Rehman resubmitted today by Mr. Javed Iqbal Gulbella Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR
2-	19/11/19	This case is entrusted to S. Bench for preliminary hearing to be put up there on 23/12/19 CHAIRMAN
	23.12.2019	Appellant in person present and seeks adjournment on the ground that his counsel is busy before Hon'ble Peshawar High Court Peshawar. Adjourn. To come up for preliminary hearing on 03.02.2020 before S.B. Member

The appeal of Mr. Jamil-ur-Rehman Process Server District & Session Court Peshawar received today i.e. on 07.11.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Copy of departmental appeal mentioned in the memo of appeal is not attached with the appeal which may be placed on it.

No. 1958 /S.T,

Dt. 8-11-/2019.

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Javed Gulbella Adv. Pesh.

Resubmitted after objections

18/11/2019

BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

In Re S.A 1570 /2019

Jamil-ur-Rehman Munir

VERSUS

Registrar Peshawar High Court & Other

INDEX

S#	*Description of Documents*	*Annex*	*Pages*
1.	Grounds of Appeal with affidavit		1-6
2.	Affidavit.		7
3.	Addresses of Parties.		8
4.	Copy Of Seniority List	"A"	9-10
5.	Copy Of Relevant Rules	"B"	11-12
6.	Cops of departmental appeal and its dismissal order dated 28/01/2017	"C"	13 &13A
7.	Copies of the writ petition No: 3724/17, and No #5959/18	"D & D 1"	14-35
8.	Wakalatnama		36

Dated : 05/11/2019

Appellant

Through

JAVED IQBAL GULBELA
Advocate, High Court,
Peshawar.

Off Add: *9-10A Al-Nimrah Centre, Govt College Chowk Peshawar*

BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

In Re S.A 1570 /2019

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Dated : 05/11/2019

Appellant

Through

JAVED IQBAL GULBELA
Advocate, High Court,
Peshawar.

Off Add: *9-10A Al-Nimrah Centre, Govt College Chowk Peshawar*

BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

In Re S.A 1570 /2019

Jamil-ur-Rehman Munir, process server BPS 5 District and Session Court Peshawar.

----------*(Appellant)*

VERSUS

1. Registrar Peshawar High Court Peshawar.
2. District and Session Judge Peshawar.

----------*(Respondents).*

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT -1974 AGAINST THE IMPUGNED NOTE, APPENDED TO & INSERTED IN THE RULES OF ESTABLISHMENT OF DISTRICT COURT, MINISTERIAL STAFF'S TERMS AND CONDITIONS AT THE TAIL OF RULE 19 WHEREBY THE SENIORITY OF PROCESS SERVERS AND BAILIFFS, FOR THE PURPOSE OF PROMOTION TO THE POST OF JUNIOR CLERK/ NAIB NAZIRS IS TO BE RECKONED FROM THE DATE OF PASSING SECONDARY SCHOOL CERTIFICATE INSTEAD OF DATE OF APPOINTMENT WHICH IS WRONG, DISCRIMINATORY AND VOID, AND DEPARTMENTAL APPEAL AGAINST THE SAME WENT FUTILE.

Respectfully Sheweth;

Filedto-day
Registrar
7/11/19

1. That the Appellant is naturally born bonafide citizen of Pakistan and hails from a respectable family of district Peshawar.

Re-submitted to -day and filed.
Registrar 8/11/19

2. That the Appellant was inducted into service as Processes Service BPS 5 on 12-03-2008 in

District and Session Court Peshawar i.e. District Judiciary Peshawar.

3. That the Appellant is having the qualification of SSC (Secondary School Certificate). Besides this the Appellant has enough length of service and has good record throughout his service career.

4. That it was in this back drop that in 2016 a seniority list was issued for ministerial staff of Session Division Peshawar Process Server BPS(5) in which appellant was mentioned at serial No.28 **(Copy of seniority list is annexed as annexed "A")**

5. That as per the Establishment of District Court Terms And Condition Of Service Rules, at Rule-19 the post of Junior Clerk / Naib Nazar BPS-5 shall be filled by promotion on the basis of seniority–cum-fitness from amongst holders of the post of Bailiffs, who has passed Secondary School Certificate with it least 3 year service or provided that in case non-suitable candidate from amongst holder of the post of Bailiffs is available then upon promotion, on the basis of seniority-cum-fitness from amongst the holders of the post of process service, with 05 years of

experience. **(Copy of relevant rules are annexed has annexure "B")**

6. That an amendment in the Rule No. 19 was carried and a note was given which is reproduced here,

"Note: Seniority of the official in the same BPS shall be reckoned with Reference to the date of their acquiring Secondary School Certificate," which is wrong and unwarranted and is liable to be struck down.

7. That feeling aggrieved the Appellant moved the department appeal which was dismissed on dated 28-1-2017. **(Copy of Order dated 28/01/2017 is annexed as Annexure "C")**

8. That writ petitions No: 3724/17, and No #5959/18 with respect to the same illegal note were moved in the August High Court Peshawar. Which were disposed off with the direction, that "admittedly the petitioners are Civil Servant within the meaning of Civil Servant Act 1973 so this court under the provision of Article 212 of the Constitution lacks jurisdiction to entertain or adjudicate upon the matter which relates to the terms and condition of Civil Servants". **(Copies of the writ petition No: 3724/17, and No**

#5959/18 are annexed as "D & D1" respectively).

9. That thus the instant service appeal, before this Hon'ble Tribunal upon the following grounds inter-alia:-

Grounds:

A. That the impugned note given in the column No 4 against the serial No 19 is against the principles of seniority and basic law governing the seniority & therefore liable to be struck down.

B. That the impugned note given in the Rule 19 is against the principles of seniority which is to be determined from the date of appointment and not from the date of passing SSC. Thus impugned note given / recorded rules against serial No 19 is void/ illegal there for not sustainable in the eye of law at all.

C. That the Appellant having requisite eligibility, moreover the same rule in some other shape is unanimously appealable to all other departments wherein 33 % of post of the Junior Clerks are to be filled by the way of promotion from amongst Naib-Qasids and others and the condition is same of Secondary

School Certificate and Seniority for the same is reckoned from date of appointment instead of date of Secondary School Certificate, but only the Appellant is discriminated. As per the original rules for promotion to the higher grades the appellant has legitimate expiatory for promotions but due to the impugned note given at the end of the clause the Appellant would suffer a lot because despite having requisite criteria, will not promoted, but rather juniors who have passed SSC prior to the Appellant would be promoted which is void and wrong.

D. That so many times junior were promoted to the higher post and senior were ignored, this fact was so many times brought to the notice of respondent No 2 but paid no heed rather at last turned down the request vide order dated 28-1-2017.

E. That the impugned note given at serial No 19 is also against the spirit of justice, fair play against the spirit of Article 2A,4,8,9. And 25 of the constitution of Islamic Republic of Pakistan.

F. That from every angle the impugned note is liable to be struck down, and the former seniority to be restored.

G. That any other ground not raised here, may graciously be allowed to be raised at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of the instant appeal,

I. **Declare the impugned note in the rules at serial # 19 as illegal, unlawful, discriminatory and against the principle of seniority and ineffective upon the rights of the Appellant and be struck down.**

II. **Direct the Respondents to issue the seniority list of the Appellant and his colleagues as before the impugned note at Rule 19 and the seniority is to be reckoned from the date of appointment instead that of passing Secondary School Certificate**

III. **To promote the Appellant as Junior Clerk/ Naib Nazir strictly as per law and upon the rectified seniority list with all back benefits after striking down the impugned note to Rule 19 in question.**

IV. **Any other relief not specifically asked for, may graciously be extended in the favor of Appellant, in the circumstances of the instant appeal.**

Petitioner

Through

Javed Iqbal Gulbela
&
Saghir Iqbal Gulbela
Advocate, High Court
Peshawar

NOTE:-

No such like appeal for the same appellant upon the same subject matter has earlier been filed by me before this Hon'ble Tribunal.

Advocate.

BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

In Re S.A _____/2019

Jamil-ur-Rehman Munir

VERSUS

Registrar Peshawar High Court & Other

AFFIDAVIT

I, Jamil-ur-Rehman Munir, process server BPS 5 District and Session Court Peshawar, do hereby solemnly affirm and declare that all the contents of the accompanied **appeal** is true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.

DEPONENT
CNIC: 17301-5573378-3
CELL NO: 0342-9072580

Identified By:
Javed Iqbal Gulbela
Advocate High Court
Peshawar.

ATTESTED
SHAFIQ-UR-REHMAN SHABAB
Oath Commissioner
High Court Peshawar

06-11-19.

BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

In Re S.A _____/2019

Jamil-ur-Rehman Munir

VERSUS

Registrar Peshawar High Court & Other

ADDRESSES OF PARTIES

APPELLANT.

Jamil-ur-Rehman Munir, process server BPS 5
District and Session Court Peshawar.

RESPONDENTS:

1. Registrar Peshawar High Court Peshawar.
2. District and Session Judge Peshawar.

Dated : 05/11/2019

Appellant

Through

JAVED IQBAL GULBELA
Advocate, High Court,
Peshawar.

SENIORITY LIST (TENTATIVE) 2016 OF THE MINISTERIAL STAFF OF SESSIONS DIVISION PESHAWAR

PROCESS SERVER (BPS-05)

"A"

"Am-8"

Sr#	NAME OF OFFICIAL	BPS	DATE OF APPOINTMENT * BY INITIAL RECRUITMENT ** BY PROMOTION *** BY TRANSFER	SSC	DATE OF BIRTH	DATE OF RETIREMENT ON AGE OF SUPER-ANNUATION	REMARKS
1.	MR. ASIF KHAN S/O MUHAMMAD KHAN	5	* 03/06/1998	8th	15/06/1978	02/06/2038	Initially appointed as Process Server arrival on 04/06/1998
2.	MR. SAGHEER AHMAD	5	* 28/05/2003	1997(S)	01/05/1980	30/04/2040	Initially appointed as Process Server arrival on 28/05/2003
3.	MR. HAROON-UR-RASHEED	5	* 28/05/2003	1999 (S)	15/04/1981	14/04/2041	Initially appointed as Process Server arrival on 28/05/2003
4.	MR. ATTAB KHAN	5	* 28/05/2003	1999 (S)	10/02/1982	09/02/2042	Initially appointed as Process Server arrival on 28/05/2003
5.	MR. WAQAR AHMAD	5	* 28/05/2003	2000 (A)	15/09/1982	14/09/2042	Initially appointed as Process Server arrival on 28/05/2003
6.	MR. MUHAMMAD ARSHAD	5	* 28/05/2003	2000 (S)	06/02/1982	05/02/2042	Initially appointed as Process Server arrival on 30/05/2003
7.	MR. MUHAMMAD TARIQ S/O ABDULLAH SHER	5	* 28/05/2003	2001 (A)	03/02/1982	03/02/2042	Initially appointed as Process Server arrival on 30/05/2003
8.	MR. ANWAR SHER	5	* 28/05/2003	2001 (A)	03/04/1984	02/04/2044	Initially appointed as Process Server arrival on 31/05/2003
9.	MR. SHAH KHALID	5	* 28/05/2003	2002 (S)	15/04/1984	14/04/2044	Initially appointed as Process Server arrival on 28/05/2003
10.	MR. MISAL KHAN	5	* 06/06/2003	1996 (A)	20/06/1980	19/06/2040	Initially appointed as Process Server arrival on 06/06/2003
11.	MR. MUHAMMAD NISAR	5	* 06/06/2003	1998 (s)	10/04/1982	09/04/2042	Initially appointed as Process Server arrival on 06/06/2003
12.	MR. JEHANZIB KHAN	5	* 06/06/2003	2002 (A)	25/12/1979	24/12/2039	Initially appointed as Process Server arrival on 06/06/2003
13.	MR. RIAQAT KHAN	5	* 25/06/2003	1996 (A)	03/03/1981	02/03/2041	Initially appointed as Process Server arrival on 25/06/2003
14.	MR. MUHAMMAD NAVEED	5	* 25/06/2003	1998 (A)	03/02/1981	02/02/2041	Initially appointed as Process Server arrival on 25/06/2003
15.	MR. MOMIN KHAN	5	* 25/06/2003	2000 (S)	12/11/1981	11/11/2041	Initially appointed as Process Server arrival on 26/06/2003
16.	MR. SYED KHIYAM ALI SHAH	5	* 12/03/2008	1992 (S)	09/06/1976	08/06/2036	Initially appointed as Process Server arrival on 13/03/2008
17.	MR. MUHAMMAD ASIF S/O SAEED MUHAMMAD	5	* 12/03/2008	1995 (s)	31/12/1980	30/12/2040	Initially appointed as Process Server arrival

ATTESTED

JAVED IQBAL Gul Bela
Daudzai Law Chamber
Advocate High Court Peshawar
Mob: 0345-9405501

11 JUL 2017

(Examiner)

							on 13/03/2008
18.	MR. ALI AHMAD	5	* 12/03/2008	1997 (A)	17/01/1981	16/01/2041	Initially appointed as Process Server arrival on 14/03/2008
19.	MR. MUHAMMAD ASHFAQ S/O M. ISLAM	5	* 12/03/2008	1998 (S)	15/07/1982	14/07/2042	Initially appointed as Process Server arrival on 13/03/2008
20.	MR. SAJID ALI	5	* 12/03/2008	2000 (S)	09/04/1982	08/04/2042	Initially appointed as Process Server arrival on 13/03/2008
21.	MR. JAMAL ABDUL NASIR	5	* 12/03/2008	2001 (A)	12/04/1984	11/04/2044	Initially appointed as Process Server arrival on 13/03/2008
22.	MR. IMRAN KHAN	5	* 12/03/2008	2001 (S)	1983	30/06/2043	Initially appointed as Process Server arrival on 13/03/2008
23.	MR. SYED ATTA ULLAH SHAH S/O S. SIKANDAR SHAH	5	* 12/03/2008	2002 (A)	18/04/1985	14/04/2045	Initially appointed as Process Server arrival on 13/03/2008
24.	MR. MALIK TAQWEEM ULLAH JAN	5	* 12/03/2008	2002 (S)	22/03/1986	21/03/2046	Initially appointed as Process Server arrival on 13/03/2008
25.	MR. MARIFAT SHAH	5	* 12/03/2008	2003 (A)	25/03/1987	24/03/2047	Initially appointed as Process Server arrival on 13/03/2008
26.	MR. MUMTAZ KHAN	5	* 12/03/2008	2005 (A)	12/04/1985	11/04/2045	Initially appointed as Process Server arrival on 13/03/2008
27.	MR. RAHAT SHAH	5	* 12/03/2008	2005 (S)	02/05/1987	01/05/2047	Initially appointed as Process Server arrival on 13/03/2008
28.	MR. JAMIL-UR-REHMAN	5	* 12/03/2008	2006 (A)	04/05/1982	04/05/2042	Initially appointed as Process Server arrival on 13/03/2008
29.	MR. MUHAMMAD ABBAS	5	* 12/03/2008	2006 (A)	11/03/1988	10/03/2048	Initially appointed as Process Server arrival on 13/03/2008
30.	MR. IFTIKHAR AHMAD DURRANI	5	*** 22/07/2009	1991 (A)	07/07/1974	06/07/2034	Initially appointed as Process Server arrival on 13/05/2003, transfer to this establishment vide order No. 4879-84 dated 22/07/2009
31.	MR. SHAFEEN-UR-REHMAN	5	* 31/07/2010	1993 (A)	07/08/1973	06/03/2033	Initially appointed as Process Server arrival on 31/07/2010
32.	MR. ATTA ULLAH SHAH S/O S. RAHAT SHAH	5	* 02/02/2013	1998 (A)	12/01/1982	11/01/2042	Initially appointed as Process Server arrival on 06/02/2013
33.	MR. QURBAN ALI	5	* 08/07/2013	2010	01/01/1991	31/12/2051	Initially appointed as Process Server arrival on 08/07/2013
34.	MR. SYED ABDULLAH SHAH	5	* 07/04/2014	2010 (A)	01/08/1994	31/06/2054	Initially appointed as Process Server arrival on 08/04/2014

CERTIFIED TO BE TRUE COPY

11 JUL 2017

(Examiner)
Copying Agency Session Court
Peshawar

JAVED IQBAL Gul Bela
Daudzai Law Chamber
Advocate High Court Peshawar
Mob: 0345-9405501

				at the time of filling up a vacancy, the official next junior to him possessing the requisite experience shall be promoted in preference to the senior official.
17	Junior Clerk/Muharrir/Reader BPS-5	i. Secondary School Certificate Examination or equivalent qualification from a recognized Board; and ii. a speed of 30 words per minute in typing.	18 – 30 years	i. Not less than 70 percent by initial recruitment; and ii. not more than 30 percent by promotion, from amongst the holders of the posts of Daftari and Record Lifter with Matric and three years service as such: and in case no suitable candidate from amongst holders of the posts of Daftari and Record Lifter is available, then from amongst holders of the posts of Chowkidar, Naib Qasid, Sweeper, Chowkidar-cum-Mali, Mali and Water Carrier who have passed Secondary School Certificate Examination and have at least five years service as such. Note. For the purpose of promotion, separate common seniority lists of (i) the holders of the posts of Daftari and Record Lifter; and (ii) the holders of the posts of Chowkidar, Naib Qasid, Sweeper, Chowkidar-cum-Mali, Mali and Water Carrier shall be maintained with reference to the date of their acquiring the Secondary School Certificate: Provided that: a. if two or more officials have acquired the Secondary School Certificate in the same session, the official having longer service shall rank senior to other officials; and b. where a senior official does not possess the requisite experience at the time of filling up a vacancy, the official next junior to him possessing the requisite experience shall be promoted in preference to the senior official.

18	Junior Clerk/Typist BPS-5	i. Secondary School Certificate Examination or equivalent qualification from a recognized Board; and ii. a speed of 30 words per minute in typing.	18 – 30 years	i. Not less than 70 percent by initial recruitment; and ii. not more than 30 percent by promotion, from amongst the holders of the posts of Daftari and Record Lifter with Matric and three years service as such: and in case no suitable candidate from amongst holders of the posts of Daftari and Record Lifter is available, then from amongst holders of the posts of Chowkidar, Naib Qasid, Sweeper, Chowkidar-cum-Mali, Mali and Water Carrier who have passed Secondary School Certificate Examination and have at least five years service as such. Note. For the purpose of promotion, separate common seniority lists of (i) the holders of the posts of Daftari and Record Lifter; and (ii) the holders of the posts of Chowkidar, Naib Qasid, Sweeper, Chowkidar-cum-Mali, Mali and Water Carrier shall be maintained with reference to the date of their acquiring the Secondary School Certificate: Provided that: a. if two or more officials have acquired the Secondary School Certificate in the same session, the official having longer service shall rank senior to other officials; and b. where a senior official does not have the requisite service at the time of filling up a vacancy, the official next junior to him having the requisite service and qualification shall be promoted in preference to the senior official.
19	Junior Clerk/Naib Nazir BPS-5			By promotion, on the basis of seniority-cum-fitness, from amongst holders of the posts of Bailiff, who have passed Secondary School Certificate Examination, with at least three

JAVED IQBAL
Advocate High Court

				years service as such: Provided that in case no suitable candidate from amongst holders of the post of Bailiff is available, then by promotion, on the basis of seniority-cum-fitness, from amongst holders of the post of Process Server who have passed Secondary School Certificate Examination with at least five years service as such. Note. Seniority of the officials in the same BPS shall be reckoned with reference to the date of their acquiring Secondary School Certificate: Provided that: a. if two or more officials have acquired the Secondary School Certificate in the same session, the official having longer service shall rank senior to other officials; and b. where a senior official does not have the requisite service at the time of filling up a vacancy, the official next junior to him having the requisite service and qualification shall be promoted in preference to the senior official.
20	Driver BPS-4	Middle standard and in possession of; i. HTV license or; ii. LTV License in case of light duty vehicle with at least five years experience as such.	30 – 45 years	By initial recruitment.

21	Daftari BPS-2			By promotion, on the basis of seniority-cum-fitness, from amongst holders of the posts of Chowkidar, Naib Qasid, Sweeper, Chowkidar-cum-Mali, Mali and Water Carrier (all BPS-1) with at least two years service as such and having passed Middle Standard examination: Provided that a common seniority list of holders of the posts at serial # 25 to 30 below shall be maintained for the purpose of promotion to the post of Daftari.
22	Record Lifter BPS-2			By promotion, on the basis of seniority-cum-fitness, from amongst holders of the posts of Chowkidar, Naib Qasid, Sweeper, Chowkidar-cum-Mali, Mali and Water Carrier (all BPS-1) with at least two years service as such and having passed Middle Standard examination: Provided that a common seniority list of holders of the posts at serial # 25 to 30 below shall be maintained for the purpose of promotion to the post of Daftari.
23	Bailiff BPS-2			By promotion, on the basis of seniority-cum-fitness, from amongst holders of the post of Process Server;
24	Process Server BPS-1	Matric	18 – 35 years	By initial recruitment.
25	Chowkidar BPS-1	Preferably literate	25 – 40 years	By initial recruitment.
26	Naib Qasid BPS-1	Preferably Literate	18 – 40 years	By initial recruitment.
27	Sweeper BPS-1	Preferably literate	18 – 40 years	By initial recruitment.
28	Chowkidar-cum-Mali BPS-1	Literate	25 – 40 years	By initial recruitment.
29	Mali BPS-1	Preferably literate	18 – 40 years	By initial recruitment.

(13)

"C"

"A"

ORDER-03
28/01/2017

Appellants/officials Tariq Khan, Muhammad Arshad, Rifaqat Khan and Jamil-ur-Rehman, Process Servers present.

This single order is meant to dispose of 04 departmental appeals separately filed by the officials named above against the tentative seniority list of Process Servers.

Perusal of record reveals that the appellants/officials have been placed at different serial numbers of the impugned seniority list on the basis of their acquiring Secondary School Certificate (SSC) among their batch-mates, while as per criteria for the seniority of Process Servers, prescribed in august Peshawar High Court, Peshawar Esta Code, Page 239-240, seniority of Process Server is to be reckoned on the basis of acquiring SSC, and if two persons have acquired SSC on the same date, the person of earlier batch i.e. having longer service, shall be deemed senior. Relevant rules are reproduced herein below:

> *"..... on the basis of seniority-cum-fitness, from amongst holders of the post of Process Server who have passed Secondary School Certificate Examination with at least five years service as such.*
>
> *Note: Seniority of the officials in the same BPS shall be reckoned with reference to the date of their acquiring Secondary School Certificate: Provided that:*
>
> *a. if two or more officials have acquired the Secondary School Certificate **in the same session**, the official **having longer service** shall rank senior to other officials;*

Bare perusal of above rules transpires that seniority of Process Servers is based upon the date of acquiring SSC and not by the date of appointment, as in the case of Clerks, Stenos etc... The length of service of Process Server for the purpose of seniority will only be considered if two or more officials have passed SSC examination in the same year/session. Hence, Office is directed to prepare fresh seniority list as per rules ibid. The appeals in hand are disposed of accordingly.

File be consigned to Record Room after completion.

28/01/2017

(ANWAR ALI KHAN)
District & Sessions Judge,
Peshawar.

JAVED IQBAL Gul Bela
Daudzai Law Chamber
Advocate High Court Peshawar
Mob: 0345-9405501

بعدالت جناب ڈسٹرکٹ جج انوار علی خان صاحب پشاور

(4)

بخدمت جناب ڈسٹرکٹ اینڈ سیشن جج صاحب پشاور

مقدمہ 19/OP رجوعہ 28/16 تاریخ پیشی 28-1-17

Am

13 A

بعنوان: درخواست بمقصد درستی اور ریمانڈ جات [illegible] برسنیارٹی

مورخہ 30/6/2016 از دفتر جناب عالی

جناب عالی! مودبانہ گزارش ہے کہ سائل آپ صاحبان کے ادارے میں بحیثیت [illegible] اور

مورخہ 13/3/2008 کو بھرتی ہوا اور مورخہ 13/03/2008 کو اپنی ڈیوٹی پر

حاضر ہوا بوقت بھرتی سائل میٹرک پاس تھا۔ جبکہ موجودہ وقت

میں سائل بی۔اے (B.A) پاس کر چکا ہے۔ سائل جب سے بھرتی ہوا

ہے یعنی 13/3/08 کو اپنی حیثیت پر [illegible] سروس ہے۔

اور سائل کو کوئی ترقی نہیں دی گئی ہے۔ سائل ان کا (Arrivals) [illegible]

جناب عالی کی طرف سے (دفتر سے) جاری شدہ سنیارٹی لسٹ (تکنیکی)

میں [illegible] 25 صفحہ سیریل نمبر 18 [illegible] سنیارٹی کی [illegible]

حقیقت و اوقات ہے۔ بتوسط مذکورہ افراد [illegible] لسٹ نمبر 18 اور 21

ڈیوٹی پر حاضری (Arrival) مورخہ 14/3/08 کو ہوئی تھی۔ جبکہ

سائل کی اپنی حاضری مورخہ 13/3/08 کو ہی تھی۔ [illegible]

سنیارٹی لسٹ (تکنیکی) جاری شدہ از دفتر جناب عالی [illegible] سائل کو

مذکورہ افراد سے (جونیئر) (Junior) ظاہر کیا گیا ہے۔ جو کہ خلاف

قانون و اوقات ہے اور ریکارڈ میں سائل کی حق تلفی ہے۔

لہذا استدعا ہے کہ بمنظوری درخواست ہذا سنیارٹی لسٹ میں درستگی فرمائی

[illegible] ہے۔

العارض

18/5/18

سائل جمیل الرحمن P.C حال [illegible]

بیان حلفی

حلفاً بیان کرتا ہوں کہ [illegible] جو بھی بیان کیا گیا ہے۔ درست ہے

جمیل الرحمن P.C

دستخط

ATTESTED
11 JUL 2018
(Examiner)
Session Court Peshawar

(14) "Annex "D"

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

W.P No:- ____________/2017

1. Muhammad Tariq S/o Abdullah Sher
2. Irshad Khan S/o Sher Afzal
3. Shah Khalid S/o Mursaleen Khan
4. Taqeem Ullah Jan S/o Malik Muhammad Saliheen Khan
5. Momin Khan S/o Khyal Gul
6. Muhammad Abbas S/o Bawar Khan
7. Jamil Ur Rehman S/o Hakeem Khan
8. Jehanzeb S/o Malik Aman, All are working as Process Server, (BPS-05) District Courts Peshawar.

.... Petitioners

Versus

1. Registrar Peshawar High Court, Peshawar.
2. District & Sessions Judge, Peshawar.
3. Secretary Finance, Civil Secretariat, Peshawar.

....Respondents

✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧

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

JAVED IQBAL Gul Bela
Daudzai Law Chamber
Advocate High Court Peshawar
Mob: 0345-9405501

Respectfully Sheweth:-

1. *That the petitioners are serving in Process Serving Agency in Office of District & Sessions Judge, Peshawar.* ***(Copy of office order is attached as annexure "A/1" to "A/2" respectively).***

2. *That according to Judicial Esta Code Page No 239-40 of Peshawar High Court (Subordinate Courts Staff) Recruitment Rules, 2003 Seniority of the Process Service is to be reckoned on the basis of acquiring SSC. Relevant rule are reproduced herein below:-*

"……on the basis of sonority-cum-fitness, from amongst holders of post Process Server who have passed Secondary School Certificate Examination with at least five years service as such.

Note: Seniority of the officials in the same BPS shall be reckoned with reference to the date of their acquiring Secondary School Certificate: Provided that:

a. if Two or more officials have acquiring the Secondary School Certificate **in the same session,** the official **having**

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EXAMINER
Peshawar High Court
13 NOV 2018

JAVED IQBAL Gul Bela
Daudzai Law Chamber
Advocate High Court Peshawar
Mob: 0345-9405501

longer service shall rank senior to other officials:

according to the above mentioned rules promotion criteria is year of Matric only. ***(Copy of to Judicial Esta Code Page No 239-40 of Peshawar High Court (Subordinate Courts Staff) Recruitment Rules, 2003 is attached as "B").***

3. *That petitioners are serving in BPS-01 as a Process Service since 2003 and in near future there is no chance of promotion, if prevailing practice for promotion is remained enforce.*

4. *That so many times juniors were promoted to higher posts and Seniors were ignored, this fact was so many time brought into notice of the respondent No 2, but paid no heed and express is view through order dated 28/01/2017.* ***(Copy of application is attached as annexure "C").***

5. *That so many-time the Seniority List of the Process Servers were also formulated according to the above mentioned rules and most of the seniors were placed junior and juniors were placed senior.*

6. *That 1. Bashir Khan, 2. Fazal Amin & 3. Muhammad Ishfaq, 4. Muslim Khan were junior to*

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Peshawar High Court

JAVED IQBAL Gul Bela 13 NOV 2018
Daudzai Law Chamber
Advocate High Court Peshawar
Mob: 0345-9405691

petitioners No 1 & 2, but promoted and now they are working as Naib Nazir (BPS-11), but petitioners No 1 & 2 are still Process Server (BPS-05). ***(Copies of orders are attached as annexure "D" & "E").***

7. *That the petitioners challenging the vires of the Judicial Esta Code (Note) on the following grounds amongst others and having no other alternate and efficacious remedy to approached this Honourable Court and filing this constitutional petition:-*

Grounds:-

A. *Whether the Judicial Esta Code (Note) is not against fundamental rights guaranteed by the Constitution of Islamic Republic of Pakistan, 1973?*

B. *Whether it is not fundamental rights of the petitioners to be treated according to law?*

C. *Whether the Judicial Esta Code (Note) is not against the interest of the petitioners and against the services rules?*

D. *Whether it is not settled law that employee should be promoted on the basis of seniority-cum-fitness rather then any other criteria?*

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13 NOV 2018

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E. *Whether presence of the Judicial Esta Code (Note) is not severely hit the right of the present petitioners and is any chance in future to be promoted?*

F. *Whether Judicial Esta Code (Note) is not discriminatory in nature and against the fundamental rights guaranteed by the Constitution of Islamic Republic of Pakistan, 1973?*

G. *Whether there is any law in Country, which imposes restrictions on promotion of Civil Servant on the basis of length of service?*

H. *Whether the criteria laid down by the Judicial Estate Code (Note) is according to law and Constitution?*

I. *Whether date of acquiring education (Matric/SSC) is sufficient criteria for promotion of the Civil Servant?*

J. *That any other grounds will be raised at the time of arguments with kind permission.*

For the aforesaid reasons, it is, therefore, humbly prayed that on acceptance of this petition, this Honourable Court may graciously be pleased

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to declare the above mentioned Judicial Esta Code (Note) Page No 239-40 as void, ab-initio, ultra vires and against the fundamental right of the petitioners.

Any other remedy which deems fit by this Honourable Court may also be granted in favour of petitioner.

Dated:- 12/08/2017

Petitioners

Through:-

Malik Faheem Ullah Jan
Advocate High Court
Peshawar.

Note:-

As per Notification dated 18th March, 2017 issued by the Worthy Office of Registrar Peshawar High Court, Peshawar, the grounds of ***Writ Petition*** *alongwith all appended annexures have been scanned in PDF format, while institution of this* ***Writ Petition*** *to avoid the certain requisitions of Scanning, this case may be treated accordingly.*

Advocate.

ATTESTED
EXAMINER
Peshawar High Court
13 NOV 2018

JAVED IQBAL Gul Bela
Daudzai Law Chamber
Advocate High Court Peshawar
Mob: 0345-9405501

(20)

(7)

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

W.P No:- _____/2017

Muhammad Tariq & others ..... Petitioners

Versus

Registrar Peshawar High Court, Peshawar & others .....Respondents

✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧✧

CERTIFICATE:-

It is certify that no such like Writ Petition has earlier been filed by the Petitioner in this Honourable Court. Further stated that being Writ Petition on the score that since there is no adequate and alternate legal remedy is available or previously avail or approach lower forum, thus this case may be fixed before the Worthy Division Bench (D.B) of this Honourable Court.

Advocate.

List of Books:-

1. *Constitution of Islamic republic of Pakistan 1973.*
2. *Judicial Esta Code*
3. *Civil Servant Act, 1973*
4. *Case laws as per need.*

ATTESTED
EXAMINER
Peshawar High Court
13 NOV 2018

JAVED IQBAL Gul Bela
Daudzai Law Chamber
Advocate High Court Peshawar
Mob: 0345-9405501

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PESHAWAR HIGH COURT, PESHAWAR

ORDER SHEET

Date of order or proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties or counsel where necessary.
2.	3.
07.11.2018	**WP No.3724-P/2017.** Present: Malik Faheem Ullah Jan, Advocate for the petitioners. Mr. Khaled Rehman, Advocate for the respondents. ******* **QAISER RASHID KHAN, J.-** Through the petition in hand, the petitioner has prayed as under:- "It is, therefore, humbly prayed that on acceptance of this petition, this Honourable Court may graciously be pleased to declare the above mentioned Judicial Esta Code (Note) Page No.239-40 as void, ab-initio, ultra vires and against the fundamental right of the petitioners. 2. The learned counsel for the petitioners states that he is satisfied with the comments furnished by the respondents and doesn't press the instant petition anymore. 3. We understand that such matter should not be made the subject matter of a writ petition. This

SEAL OF HIGH COURT PESHAWAR عدالت عالیہ پشاور

Atiaf Hussain, PS

(DB) Honourable Mr. Justice Qaiser Rashid Khan
Honourable Mr. Justice Qalandar Ali Khan

ATTESTED
EXAMINER
Peshawar High Court
13 NOV 2018

JAVED IQBAL Gul Bela
Daudzai Law Chamber
Advocate High Court Peshawar
Mob: 0345-9405501

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Announced.
Dated: 07.11.2018.

SENIOR PUISNE JUDGE

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JUDGE

CERTIFIED TO BE TRUE COPY
EXAMINER
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1984
13 NOV 2018

Altaf Hussain, PS.

(DB) Honourable Mr. Justice Qaiser Rashid Khan
Honourable Mr. Justice Qalandar Ali Khan

No. 12559
Date of Pr...tion of Application 8.11.18
No of Pages 8
Copying Fee
Urgent Fee
Total 32
Date of Preparation of Co... 13.11.18
Date of Delivery of Copy 13.11.18
Received By

JAVED IQBAL Gul Bela
Daudzai Law Chamber
Advocate High Court Peshawar
Mob: 0345-9405501

(23)

"D1"

"Am—Z"

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

SEAL OF HIGH COURT PESHAWAR عدالت عالیہ پشاور

Writ Petition No._____/2018

1. Imran Khan S/o Javed Khan, Process Server (BPS-05) District and Session Court, Peshawar.
2. Atta Ullah Shah S/o Syed Sikandar Shah, Process Server (BPS-05) District and Session Court, Peshawar.
3. Anwar Sher, S/o Shamsher Khan, Process Server (BPS-05) District and Session Court, Peshawar.
4. Jamal Abdul Nasir S/o Saeed Khan, Process Server (BPS-05) District and Session Court, Peshawar.
5. Waqar Ahmad S/o Yahya Khan, Process Server (BPS-05) District and Session Court, Peshawar.
6. Muhammad Asif S/o Salih Muhammad, Process Server (BPS-05) District and Session Court, Peshawar.
7. Rifaqat S/o Hikmat Khan, Process Server (BPS-05) District and Session Court, Peshawar.
8. Ishfaq Khan S/o Muhammad Islam, Process Server (BPS-05) District and Session Court, Peshawar.

PETITIONERS

VERSUS

1. The Registrar Peshawar High Court, Peshawar.
2. The District Session Judge, Peshawar.

RESPONDENTS

.....

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN 1973 AS AMENDED UPTO DATE.

ATTESTED
EXAMINER
Peshawar High Court

JAVED IQBAL Gul Bela
Daudzai Law Chamber
Advocate High Court Peshawar
Mob: 0345-9405501

RESPECTFULLY SHEWETH:

Brief facts giving rise to present petition are as under:-

1. That the petitioners are the citizens of Pakistan and have every legal and Constitutional right duly protected under the Law of the Land.

2. That the petitioners have been working as Process Server BPS-05 from the dates as recorded in the seniority list (Annexure-A) and the petitioners have good record of service throughout their service career. Copy of the seniority list is attached as **Annexure-A.**

3. That the petitioners are also having qualification of Secondary School Certificate (SSC). Besides this the petitioners have enough length of service. Copy of Matriculation Certificates is attached as **Annex-B.**

4. That the petitioner are governed under Peshawar High Court (Subordinate Courts Staff) Recruitment Rules 2003, which were, notified on 26.03.2003 and formulated under sub rules 2 of rules 3 of the Khyber Pakhtunkhwa Civil Servant Appointment, Promotion & Transfer Rules 1989. In these rules the post of Junior Clerk/Naib Nazir (*mentioned at Sr. No. 19*) are to be filled in by promotion on the basis of seniority cum fitness basis from amongst the holder of the post of Bailiff who have passed SSC examination with at least 03 years service. Provided that in case no suitable candidate from amongst holders of the post of Bailiff is available then by promotion on the basis of seniority-cum-fitness, from amongst holders of the post of Process Server who have passed Secondary School Certificate examination with at least five years service as such. It is also worth to be noted a note given at the end that *Seniority of the officials in the same BPS shall be reckoned with reference to the date of their acquiring Secondary School Certificate. Provided that if two or more officials have acquired the Secondary School Certificate in the same session, the official having longer service shall rank senior to the other officials and where a senior official does not have the requisite service at the time of filling up a vacancy, the official next junior to him having the requisite service and qualification shall be promoted in preference to the senior official.* Copy of the rules is attached as **Annexure-C.**

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Daudzai Law Chamber
Advocate High Court Peshawar
Mob: 0345-9405501

5. That the petitioners are having requisite eligibility as per rules for promotion to the higher grade mentioned at Sr. No. 19 of the rules but due to impugned note given at the end of the clause the petitioners would suffer a lot because despite having requisite criteria but will not be promoted in case his junior has passed SSC prior to the Petitioners.

6. That as the above mentioned impugned note at Sr. No. 19 of the rules is basically in violation and offensive to the law and rules of seniority, therefore, the petitioners have no other remedy and are constrained file the instant writ petition on the following grounds amongst the others.

GROUNDS:

A) That the note given in 4th Column against Sr. No. 19 of the rules is against the principles of seniority and basic law governing the seniority therefore liable to be modified/omitted.

B) That the impugned note given at Sr. No. 19 of the rules is against the principles of seniority which is to be determined from the date of appointment and not date of passing SSC or qualification. Thus the impugned note given/recorded in the rules against Sr. No.19 is offensive to Section-8 of Civil Servant Act and rule 17 of APT rules 1989 therefore not sustainable.

C) That the proviso-B recorded in the impugned rules at Sr. No. 19 is also offensive to the principles and against the spirit of Rules-9 of Appointment Promotion & Transfer Rules 1989 which provides if a senior official has no requisite length of service then will be promoted on acting on current charge basis but cannot be refused promotion and as well junior cannot be promoted in preference to senior officials.

D) That the impugned note given at Sr. No. 19 is also against the spirit of justice, fair play, against the spirits of Article 2A, 4, 9, 8, 25 and 38 of the Constitution. Therefore such condition as mentioned in the impugned note in the rules at Sr. No. 19 is not legally sustainable.

E) That the impugned note at Sr. No. 19 of the main rules is disadvantages to the service interest of the petitioners which are not only arbitrary but also amounts to keep the petitioner deprive from the rights of petitioner under the garb of such rules which are basically violative to the spirit of law and rules governing the issue of seniority and promotion.

ATTESTED
EXAMINER
Peshawar High Court

JAVED IQBAL Gul Bela
Daudzai Law Chamber
Advocate High Court Peshawar
Mob: 0345-9405501

F) That in the judgment reported as 2015 SCMR 269 the Honorable Supreme Court of Pakistan has held that the Service Tribunal has no jurisdiction to issue the directions to the authorities for amending the rules.

G) That the Honorable Supreme Court of Pakistan has also held in a case reported 2004 PLC 1022 and others judgment reported as 2006 SCMR 1630 wherein it is held that Service Tribunal is not empowered under the law to issue writ of mandamus.

H) That impugned note mentioned in the rules at SR. No. 19 is against the principles of legitimate expectancy which secured by the petitioner.

I) That the petitioner seeks permission to advance other grounds and proofs at the time hearing.

It is, therefore, most humbly prayed that on acceptance of this writ petition the Honorable Court may be pleased to:-

(1) **Declare** the impugned note in the rules (Annexure-C) at Sr. No. 19 as illegal, unlawful, discriminatory, against the principles/law of seniority, legitimate expectancy and fair play. Therefore ineffective upon the rights of petitioners.

(2) **Direct** the respondents to amend/modify the impugned note by omitting the fixation of seniority from the date of passing SSC with proviso and to consider the petitioners for promotion on the principles of simple seniority and SSC qualification.

(3) Any other remedy which this august court deems appropriate may also be awarded in favour of petitioners.

INTERIM RELIEF.

As the issue involves the violation of principle of seniority and if any promotion is made during the pendency of this writ petition the main writ petition will become infructuous and will also give rise to the multiple litigations. Therefore it is prayed that the respondents may be restrained from making promotion against the posts of junior clerk/naib nazir till the disposal of main writ petition or at least status quo be maintained for the time being.

ATTESTED
EXAMINER
Peshawar High Court

JAVED IQBAL Gul Bela
Daudzai Law Chamber
Advocate High Court Peshawar
Mob: 0345-9405501

(27)

PETITIONER

Imran Khan and others.

THROUGH:

(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
OF PAKISTAN.

VERIFICATION:

It is verified that no other Writ Petition earlier has been filed between the present parties, except the present one.

DEPONENT

LIT OF BOOKS:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. Any other case law as per need.

NOTE: Prior Notice along with the copies of the Writ Petition has already been given to the respondents as per amended High Court's Rules dated. 23.02.2016

(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
OF PAKISTAN.

ATTESTED
EXAMINER
Peshawar High Court

JAVED IQBAL Gul Bela
Daudzai Law Chamber
Advocate High Court Peshawar
Mob: 0345-9405501

(28)

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

Writ Petition No._____/2018

Imran Khan etc V/S Registrar, PHC etc.

.....

ADDRESSES OF PARTIES

1. Imran Khan S/o Javed Khan, Process Server (BPS-05)
   District and Session Court, Peshawar.
2. Atta Ullah Shah S/o Syed Sikandar Shah, Process Server (BPS-05)
   District and Session Court, Peshawar.
3. Anwar Sher, S/o Shamsher Khan, Process Server (BPS-05)
   District and Session Court, Peshawar.
4. Jamal Abdul Nasir S/o Saeed Khan, Process Server (BPS-05)
   District and Session Court, Peshawar.
5. Waqar Ahmad S/o Yahya Khan, Process Server (BPS-05)
   District and Session Court, Peshawar.
6. Muhammad Asif S/o Salih Muhammad, Process Server (BPS-05)
   District and Session Court, Peshawar.
7. Rifaqat S/o Hikmat Khan, Process Server (BPS-05)
   District and Session Court, Peshawar.
8. Ishfaq Khan S/o Muhammad Islam, Process Server (BPS-05)
   District and Session Court, Peshawar.

RESPONDENTS

1. The Registrar Peshawar High Court, Peshawar.
2. The District Session Judge, Peshawar.

PETITIONER

Muhammad Imran etc.

THROUGH:

(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
OF PAKISTAN.

ATTESTED
EXAMINER
Peshawar High Court

JAVED IQBAL Gul Bela
Daudzai Law Chamber
Advocate High Court Peshawar
Mob: 0345-9405501

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.

Writ Petition No.______________/2018

Imran Khan etc V/S Registrar, PHC etc.

....

AFFIDAVIT

I, Mr. Imran Khan S/O Javed Khan, R/O Mohallah Muhammad Abad, Tehakal Bala Tehsil & District Peshawar (Petitioner) for self and on behalf of others do hereby affirm that the contents of this writ petitions are true and correct and nothing has been concealed from this august Court.

DEPONENT

Imran Khan

17301-1285761-1

03439111990

IDENTIFY BY:

M.ASIF YOUSAFZAI
ADVOCATE SUPREME COURT,

No. 13260

Certified that the ... verified on solemnly ... 1st day of Dec 18 ... Imran Khan s/o Javed Khan ... Peshawar ... M. Asif Yousafzai ... 1/12/18 ... Commissioner ... Peshawar

ATTESTED
EXAMINER
Peshawar High Court

JAVED IQBAL Gul Bela
Daudzai Law Chamber
Advocate High Court Peshawar
Mob: 0345-9405501

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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR
(Judicial Department)

W.P.No.5959-P of 2018

SEAL OF HIGH COURT PESHAWAR عدالت عالیہ پشاور

Date of hearing: 24.09.2019.

Mr.Muhammad Asif Yousafzai, advocate for petitioners.

Mr.Khaled Rehman, advocate for respondent No.1.

JUDGMENT

MUHAMMAD NAEEM ANWAR, J.- Petitioners, through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, have prayed to:-

(1) "Declare the impugned note in the rules (Annex-C) at Sr.No.19 as illegal, unlawful, discriminatory, against the principles/law of seniority, legitimate expectancy and fair play, therefore, ineffective upon the rights of petitioners.

(2) Direct the respondents to amend/modify the impugned note by omitting the fixation of seniority from the date of passing SSC with proviso and to consider the petitioners for promotion on the principles of simple seniority and SSC qualification."

JAVED IQBAL Gul Bela
Daudzai Law Chamber
Advocate High Court Peshawar
Mob: 0345-9405504

ATTESTED
EXAMINER
Peshawar High Court

2. As per writ petition, the petitioners are working as Process Servers (BPS-05) from the dates as recorded in the seniority list having good service record throughout and possessing the qualification of SSC. It is asserted that the petitioners' services are governed under Peshawar High Court (Subordinate Courts Staff) Recruitment Rules 2003, which were notified on 26.03.2003 having been formulated under sub-rule 2 of rule 3 of the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer) Rules, 1989. It is stated that in these rules the posts of Junior Clerk/Naib Nazir (mentioned at Sr.No.19) are to be filled in by promotion on the basis of seniority-cum-fitness from amongst the holders of the post of Bailiff, who have passed SSC examination with least 03 years service. However, in case no suitable candidate from amongst holders of the post of Bailiff is available, then by promotion on the basis of seniority-cum-fitness, from amongst holders of the post of Process Server, who have passed Secondary School Certificate examination with at least five years service as such. A note has been

given at the end to the effect that seniority of the officials in the same BPS shall be reckoned with reference to the date of their acquiring Secondary School Certificate. It was further provided that if two or more officials have acquired the Secondary School Certificate in the same session, the official having longer service shall rank senior to the other officials and where a senior official does not have the requisite service at the time of filling up a vacancy, the official next junior to him having the requisite service and qualification shall be promoted in preference to the senior official. According to petitioners, they have requisite eligibility as per rules for promotion to the higher grade mentioned at Sr.No.19 of the rules but due to impugned note given at the end of the clause, they are suffering despite having requisite criteria but will not be promoted in case their juniors have passed SSC prior to them. It is alleged that the impugned note at Sr.No.19 of the rules is violative and offensive to the law and rules of seniority, therefore, the petitioners have no other remedy but to file instant petition.

JAVED IQBAL
Daudzai Law Chamber
Advocate High Court Peshawar
Mob: 0345-9405501

3. Comments were called from respondent No.1, which have been received, wherein, issuance of the writ is opposed.

4. Arguments heard and record gone through.

5. Record reveals that with the similar prayer a writ petition No.3724-P/2017 was filed before this court, whereby Judicial Estacode Note at page No.239-40 was sought to be declared void ab initio, ultra vires and against the fundamental rights of the then petitioners, which writ petition was dismissed by this court on 07.11.2018, wherein, it was held that;

> "We understand that such should not be made the subject matter of writ petition. This writ petition being without any merit stands dismissed".

6. It is pertinent to mention here that the findings of this court in aforementioned writ petition have not been assailed before Hon'ble Supreme Court, as such attained finality.

7. Admittedly, the petitioners are civil servants, within the meaning of Civil Servant Act, 1973, so this court under the provision of Article 212 of Constitution, lacks the

jurisdiction to entertain and adjudicate upon the matter, which relates to the terms and conditions of civil servants, even if the petitioners seek the declaration regarding subject Note, as ultra vires, against the fundamental right and discriminatory. The apex court in case titled **I.A. Sherwani & others Vs. Government of Pakistan through Secretary Finance & others (1991 SCMR 1041)** has held as under:-

> "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 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

ATTESTED
EXAMINER
Peshawar High Court

JAVED IQBAL Gul Bela
Daudzai Law Chamber
Advocate High Court Peshawar
Mob: 0345-9405501

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 bye-pass 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".

8. Thus, for the reasons stated above, this petition being not maintainable is hereby dismissed with no order as to cost.

CHIEF JUSTICE

JUDGE

Announced.

24.09.2019.

Sadiq Shah PS (DB) Hon'ble Mr.Justice Waqar Ahmad Seth, CJ & Hon'ble Mr.Justice Muhammad Naeem Anwar.

CERTIFIED TO BE TRUE COPY

Peshawar High Court
Authorised Under Article 87
the Qanun-e-Shahadat Order 1984

11 OCT 2019

JAVED IQBAL Gul Bela
Daudzai Law Chamber
Advocate High Court Peshawar
Mob: 0345-9405501

وکالت نامہ

بعدالت: ــــــــــــــــ

ــــــــــــــــ بنام ــــــــــــــــ

منجانب ــــــــــــــــ دعویٰ ــــــــــــــــ

تاریخ ــــــــــــــــ

باعث تحریر آنکہ مقدمہ مندرجہ بالا عنوان اپنی طرف سے واسطے پیروی و جوابدہی بمقام ۔۔۔۔۔۔ کیلئے **جاوید اقبال گل بیلہ** ایڈووکیٹ ہائی کورٹ کو بدیں شرط وکیل مقرر کیا ہے۔ کہ میں ہر پیشی کا خود یا بزریعہ مختار خاص رو برو عدالت حاضر ہوتا رہونگا۔ اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کرونگا، اگر پیشی پر من مظہر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہونگے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کی کسی اور جگہ یا کچہری کے مقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہونگے۔ اگر مقدمہ علاوہ صدر مقام کچہری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر من مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختارانہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہونگے۔ مجھے کو کل ساختہ پرداختہ صاحب موصوف مثل کردہ ذات خود منظور و قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجرائے ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کے روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد ثالثی و راضی نامہ فیصلہ برخلاف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا قرقی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادائیگی علیحدہ مختارانہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزو کی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کے ہر امر دہی اور ویسے ہی اختیارات حاصل ہونگے جیسے کے صاحب موصوف کو حاصل ہیں۔ اور دوران مقدمہ میں جو کچھ ہرجانہ التواء پڑے گا۔ اور صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کرونگا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہٰذا مختارنامہ لکھ دیا کہ سند رہے۔

مورخہ ۔۔۔۔۔۔ مضمون مختارنامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal. No. 1572/2019

Muhammad Arshad..... ..... Petitioners

VERSUS

The Registrar, PHC and another .....Respondents

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Respondent No. 1 & 2.

Registrar,
Peshawar High Court,
Peshawar.

District & Sessions Judge,
Peshawar.

Dated: 26.02.2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal. No. 1572/2019

Muhammad Arshad .... Petitioners

VERSUS

The Registrar, PHC and another .....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.1.

Respectfully Sheweth

Preliminary Objections:

I. That as per Section 22(2) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 3 of Khyber Pakhtunkhwa Appeal Rules,1986 contemplate right of departmental appeal/Representation to a civil servant. Page-14 of the Service Appeal transpires that appellant being aggrieved from the tentative Seniority List filed departmental appeal/Representation on 18.05.2016 which was decided vide impugned appellate order 28.01.2017, while appellant has approached this Hon'ble Tribunal in the instant Service Appeal on 05.11.2019, therefore, the instant appeal is clearly bared by time. Section-4 of the Hon'ble Tribunal is reproduced for ready reference:-

> ***"Any Civil Servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within 30days of the communication of such order to him or within six months of the establishment of the appropriate tribunal, whichever is later, prefer an appeal having jurisdiction in the matter."***

Therefore, it is candidly clear from the above provisions that appellant has failed to file the Service Appeal within 30 days therefore, it is well

principle of law that where service appeal is barred by time then there is no need to discuss merit of the case. It is further elucidated that no application for condonation of delay has been preferred alongside service appeal.

II. That Page-14 of the Service appeal shows that appellant preferred his Departmental appeal against the provincial Seniority List on 18.05.2016 which was replied vide impugned appellate order dated 28.01.2017. Therefore, it has been held in Service Appeal No.06/2021 by the Hon'ble Subordinate Judiciary Service Tribunal that no departmental appeal/ Representation would be maintainable against the tentative Seniority List. Reliance is further placed **PLD 1981 Supreme Court 612.**

III. That the instant service appeal is liable to be dismissed on this score too that prayer as sought out in the departmental appeal is totally different from that of service appeal.

IV. That appellant has also approached the Hon'ble Peshawar High Court, Peshawar in Writ Petition No.3724-P/2017 on the same cause of action which was dismissed on 07.11.2018 which was never further challenged by the appellant.

V. That as per the proviso to Section 22(2) of the Khyber Pakhtunkhwa Civil Servants Act, 1973, the instant appeal is liable to be dismissed on the ground that ***No representation shall lie on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to higher post or grade***.

VI. That it is settled principle of law that seniority shall be determined on the basis of date of acquiring of Secondary School Certificate and if two or more officials have acquired the Secondary School Certificate in the same session, the official having longer service shall rank senior to the officials, therefore, appellant has rightly been placed at his due position in the common Seniority List of Class-IV employees.

VII. That the appellant is estopped by his own conduct to file the instant appeal. As it has been held by the Respondents that the question of seniority of Class-IV employees is supposed to be determined according to the date of acquiring of SSC qualification and not from the date of appointment, therefore, the instant appeal is liable to be dismissed on this score alone.

VIII. That the appeal is bad for mis-joinder and non-joinder of necessary parties.

IX. That the appellant has not referred to and/or pointed out the violation of any statutory provision by the answering Respondents.

X. That no vested rights of the appellant have been infringed so far.

XI. That the appellant has not come to this Hon'ble Tribunal with clean hands. Apart from other infirmities, the appeal suffers from gross concealment and mis-statements of facts. Appellant is, therefore, not entitled to any relief.

Reply to Facts:

1-4. Need no reply.

5&6. Regarding Para No.5&6 it is submitted that placement of the appellant in the common Seniority List of Class-IV employees is in accordance with law and prevailing rules and he is rightly placed at his due position in the said Seniority List. Seniority of the Class-IV officials is based upon the date of their acquiring SSC qualification and not from the date of appointment. The Peshawar High Court (Subordinate Courts Staff) Recruitment Rules, 2003 provide as under:

> ***"..... For the purpose of promotion, separate common seniority lists of (i) the holder of the posts of Daftari and Record Lifter and (ii) the holders of the posts of Chowkidar-cum-Mali , Mali and Water Carrier shall be maintained with reference to the date of their acquiring the secondary School Certificate:***
>
> ***a. If two or more officials have acquired the Secondary School Certificate in the same session, the official having longer service shall rank senior to others officials: and***

b. ***Where a senior official does not possess the requisite experience at the time of filling up a vacancy, the official next junior to him possessing the requisite experience shall be promoted in preference to the senior official."***

7. Detailed reply has already been averred hereinabove.

8. Incorrect hence not admitted as already advanced in the preceding para. Writ Petition of the appellant was dismissed on merit as well but appellant did not bother to challenge the same before appropriate forum therefore, the judgment is still in field.

9. Incorrect, detailed reply has already been given above.

Grounds:

A&B. Incorrect. Appellant has been treated in accordance with law, rules and policy on subject. The rules in question have been framed by the competent bodies/authorities thus no question of negation of law and rules arises.

C. Incorrect. As explained hereinabove that the Rules in question have been framed by the competent body.

D. Incorrect, misleading hence vehemently denied.

E&F. Incorrect. The detailed reply has already been given in the preceding paras.

G. Respondent would also take additional grounds after adverting the stance of the appellant during the course of arguments.

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

Respondent No. 1.

Registrar.
Peshawar High Court,
Peshawar.

Respondent No. 2.

District & Sessions Judge,
Peshawar.

Dated: 26 **.02.2022.**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal. No. 1572/2019

Muhammad Arshad..... ..... Petitioners

VERSUS

The Registrar, PHC and another .....Respondents

Affidavit

I, Ashfaq ue Taj, District & Sessions Judge, Peshawar, do hereby affirm and declare on oath that the contents of this Written Statement/comments are true and correct to the best of my knowledge and nothing has been concealed from this Hon'ble Court.

Deponent.

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
phcpsh@gmail.com

Most Immediate.

No...../Admn. Dated ...../...../2022

To

The Worthy Advocate General,
Khyber Pakhtunkhwa,
Peshawar.

Subject: **Service Appeals No. 1570 to 1572/2019 and 8645/2020.**
Jamil-ur-Rehman ...VS... Registrar, PHC.
Muhammad Tariq Vs Registrar, PHC.
Muhammad Arshad Vs Registrar, PHC.
Saeed ur-Rehman Vs Registrar, PHC.

Sir.

I am directed to forward herewith copy of the subject service appeals along with draft comments with enclosures (in original) received from DSJ, Peshawar for vetting and preparation of joint comments on behalf of respondent No. 1 & 2 for submission within fortnight before the Hon'ble Khyber Pakhtunkhwa Service Tribunal.

You are requested to do the needful at earliest, please.

Yours Sincerely

Pleased as fix.
26/1/22

ADDITIONAL REGISTRAR (ADMN)
FOR REGISTRAR.

No.1099-1100/Admn. Dated 25/01/2022.

Copy forwarded for information to:-

1. District & Sessions Judge, Peshawar with reference to his letter No. 382 dated Peshawar 18.01.2022.
2. Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

ADDITIONAL REGISTRAR (ADMN)
FOR REGISTRAR.
24.1.22

The
PESHAWAR HIGH COURT
Peshawar

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phcpsh@gmail.com

REMINDER.

Most Immediate

No ...../Admn Dated...../...../2022

To,

The District & Sessions Judge,
Peshawar.

Subject: **Service Appeals No. 1570 to 1572/2019 and 8645/2020.**

Jamil-ur-Rehman ...VS... Registrar, PHC.
Muhammad Tariq Vs Registrar, PHC.
Muhammad Arshad Vs Registrar, PHC.
Saeed ur-Rehman Vs Registrar, PHC.

Sir,

I am directed to refer to this office letter Endst: No. 1379/Admin dated 27.01.2021 on the subject and to enclose herewith copies of the notices received from Registrar, Khyber Pakhtunkhwa Service Tribunal and to say that comments/reply in the subject cases is still awaited.

Therefore, you are requested to submit draft joint para-wise comments to this office at the earliest for vetting and submission through Advocate General, Khyber Pakhtunkhwa before next date of hearing i.e 24.01.2022.

The needful be done at the earliest, please.

Yours Sincerely,

Put up to the court with relevant appeal.

17/1/2022.

ADDITIONAL REGISTRAR (ADMN)
FOR REGISTRAR.

Endst: No 326 /Admin Dated Pesh the 14/01/2022.

Copy forwarded for information to the Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

ADDITIONAL REGISTRAR (ADMN)
FOR REGISTRAR.

13.1.22

SB 15/3/21

The PESHAWAR HIGH COURT
Peshawar

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

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Fax: 9210170

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info@peshawarhighcourt.gov.pk
phcpsh@gmail.com

No ...../Admn Dated...../...../2021

To,

The District & Sessions Judge,
Peshawar.

Subject: **Service Appeals No. 1570 to 1572/2019 and 8645/2020.**

Jamil-ur-Rehman ...VS... Registrar, PHC.
Muhammad Tariq Vs Registrar, PHC.
Muhammad Arshad Vs Registrar, PHC.
Saeed ur-Rehman Vs Registrar, PHC.

Sir,

I am directed to refer to the enclosures and to say that subject Service Appeal is pending adjudication before Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar and is fixed for hearing on 15.03.2021, wherein no written reply/comments have been submitted so far.

I am further directed to ask you to follow instructions contained in this office circulars No. 18707-51/Admin dated 07.09.2019, No. 3205-70/Admin dated 19.02.2020, in letter and spirit and to depute a person well versed with the facts of the case to pursue/appear before the learned Tribunal, under intimation to this office.

Put up to the court alongwith relevant appeal.
27/1/2021.

Yours Sincerely,

Encls: Nemo.

i. Copy of the Notice.
ii. Copy of circulars.

ADDITIONAL REGISTRAR (ADMN)
FOR REGISTRAR.

Endst: No 1380 /Admin Dated. Pesh the 27/01/2021.

Copy forwarded for information to the Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

ADDITIONAL REGISTRAR (ADMN)
FOR REGISTRAR.
26.1.2021

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

CM No._____/2022

In

Service Appeal No: 1570/2019

Jamil Ur Rehman

VERSUS

District & Session Judge Peshawar & Other

Application for withdrawal of service appeal No. 1570/2019.

Respectfully Sheweth,

1. That the above titled service appeal is pending before this Hon'ble Tribunal and fixed for hearing for today i.e 23.05.2022.

2. That the applicant wants to withdraw his own service appeal.

3. That there is no legal bar on the withdrawal of the above service appeal.

It is, therefore, most humbly prayed that on acceptance of the instant application the above titled service appeal No.1570/2019 may kindly be withdrawn in the best interest of justice.

Dated : 23/05/2022

Appellant

Through

Javed Iqbal Gulbela
ASC
SaghirIqbalGulbela
&
Afshan Shabbir
Advocates, High Court,
Peshawar

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

CM No._____/2022

In

Service Appeal No: 1570/2019

Jamil Ur Rehman

VERSUS

District & Session Judge Peshawar & Other

AFFIDAVIT

I, **Jamil Ur Rehman (Applicant),** do hereby solemnly affirm & declare on oath that all contents of the instant Application are true & correct to the best of my knowledge and belief & nothing has been concealed from this Hon'ble Tribunal.

DEPONENT

ATTESTED

NOTARY PUBLIC

Identified By:

Javed Iqbal Gulbela
Advocate, Supreme Court,
of Pakistan.