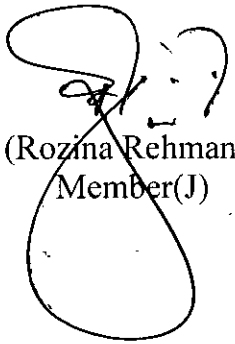




Service Appeal No. 1594/2019

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>

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.

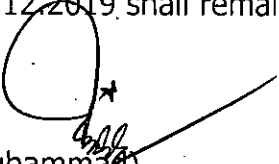
  
(Mian Muhammad)  
Member(E)

  
Chairman

15  
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.

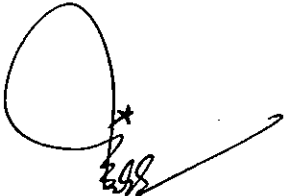
  
(Mian Muhammad)  
Member(E)

  
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

26.03.2020

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. 1596/2019

11.02.2020

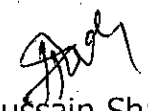
Appellant in person and Mr. Iftikhar Ahmad, Senior Clerk on behalf of respondent No. 1 present. Representative of respondent No. 1 submitted reply on behalf of respondent No. 1. The same is placed on record. Neither written reply on behalf of respondents No. 2 & 3 submitted nor their representatives 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 ~~overruled~~ <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.

Appellant has deposited  
Security and Process Fee

16/12/19

Chairman





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.- 1594/2019


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. Saja Ullah Khan 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. Saja Ullah Khan Ex-Naib Qasid 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. 21040 /S.T,

Dt. 22/11 /2019.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Yousaf Sakin Adv. Pesh.

S:Zv  
Resubmitted after removing  
the objections.

  
26/11/2019

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

Appeal No. 1594/2019

**Saja ullah Khan Ex-Naib Qasid** 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
11.	Vakalatnama		39

Petitioner

Through

**YASIR SALEEM**  
Advocate, Peshawar

&

**JAWAD UR REHMAN**  
Advocate Peshawar

①

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

Khyber Pakhtunkhwa  
Service Tribunal

Appeal No. 1594/2019

Diary No. 1672

Dated 22/11/2019

**Saja ullah Khan Ex-Naib Qasid** 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.

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.

**Filed to-day**

**Registrar**

Respectfully sheweth,

The Appellant humbly submit as under

1. That the Learned Senior Civil Judge Nowshera advertised various posts including the post of **Naib Qasid 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 employees known as Bowl policy vide letter dated 08.11.2017. *(Copy of the letter dated 08.11.2017 is attached as Annexure B)*

Re-submitted to day  
and filed.

Registrar  
22/11/19

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 some more than 2000 candidates applied for the post. Under the bowl policy, 40 candidates were shortlisted. The Appellant 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.
5. Thereafter the Appellant, amongst other short listed candidates, was called for interview in which he duly appeared and remained successful. After the interview, again 15 candidates were short listed wherein the Appellant was also included. Those 15 eligible candidates were again gone through the process of draw/ balloting for the purpose of appointment 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 Naib Qasid 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. 3 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 allegedly on the

ground of non-observance of Bowl policy. It is pertinent to mention here that cancelation was made without serving upon the Appellant 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. That, 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. Hence the instant appeal.
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.3 to cancel appointment orders and Respondent No. 3 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 simply 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. 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.
- K. That the Appellant has never committed any act or omission which could be termed as misconduct, albeit his appointment has been cancelled.
- L. 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.
- M. That the Appellant is young and energetic and wants to service for his department albeit his appointment have been illegally cancelled.
- N. 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.

*Khan Sahib*  
**Petitioner**

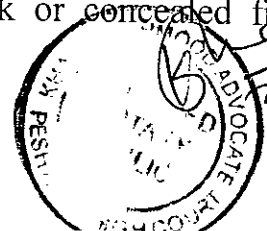
Through

*Yasir Saleem*  
**YASIR SALEEM**  
Advocate, Peshawar

*Jawad ur Rehman*  
**JAWAD UR REHMAN**  
Advocate Peshawar

**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.



*Khan Sahib*  
**Deponent**

16

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

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

**Saja ullah Khan Ex-Naib Qasid** 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 on 17.05.2019.
- 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.

877 (7)

- 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.*

*Abdullah*  
Applicant

Through


*Y*  
**YASIR SALEEM**  
Advocate, Peshawar  
&

*Jawad Ur Rehman*  
**JAWAD UR REHMAN**  
Advocate Peshawar

**AFFIDAVIT**

It is do hereby 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

*Abdullah*  
Deponent



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

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

**Saja ullah Khan Ex-Naib Qasid** 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 including the post of Naib Qasid 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.***

148 (9)

*Khalid*  
Applicant

Through

*4*  
**YASIR SALEEM**  
Advocate, Peshawar  
&

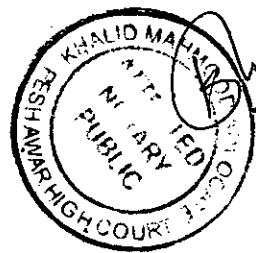
*Jawad Ur Rehman*  
**JAWAD UR REHMAN**  
Advocate Peshawar

**AFFIDAVIT**

It is do hereby 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

*Khalid*  
Deponent

*Khalid*  
26/11/19







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  
phcps@gnail.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,

*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)  
phcps@gnail.com

*g*  
Arrested

Attested  
*Salim Khan*  
A. N. S. (Secretary)  
SECRETARY

Annex "C" 9

**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 Naib Qasids 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. Shakeel	Muhammad Iqbal	Khweshgi Bala, District Nowshera
2	Mr. Saja Ullah	Kifayat Ullah	Khansher Ghari, Pabbi, District Nowshera
3	Mr. Taj Ali	Karim Khan	Khweshgi Payan Mera, District Nowshera
4	Mr. Asad Ali	Qaiser Khan	Khweshgi Payan, District Nowshera
5	Mr. Awais Khan	Saif ur Rehman	Khansher Ghari, Pabbi, District Nowshera

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

- Sumit*
- 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.

**Attested**



13-8

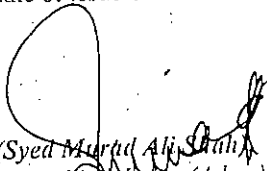
v. They will be eligible for continuance and eventual confirmation in the post on satisfactory completion of their probationary period, subject to availability of permanent posts and the completion of prescribed training, if any.

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 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 be issued by the Competent Authority from time to time.

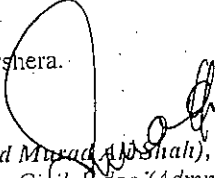
If the above terms and conditions of appointment are acceptable to them, they should report for duty to the undersigned immediately. The offer of appointment shall be deemed to have been cancelled if any one fails to report for duty to the undersigned within one month from the date of issue of this order.


4. They shall join duty at their own expenses.

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

No. 81-87 -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.



The Senior Civil Judge, Admn

Nowshera.

Annex-D


Subject,

CHARGE ASSUMPTION REPORT

Respected Sir,

In compliance with your esteem orders bearing No-77-80-1/2 dated- 05.03.19 I, Mr. Saja Ullah Assume the charge of the post of Naib Qasid of this establishment today on 05.3.2019 fore noon.

Report submitted in your good self please.

*Saja Ullah*

(Saja Ullah)

(Naib Qasid)

*Seen*  
*SJA Admn*  
*5/3/19*

  
Attested

Annex E  
D.H.Q. Hospital, Nowshera  
Medical Certificate

NIC No: 17202-0376138-9



15

Name of Official Saja ULLAH

Caste of race

Father's Name Kifayat ULLAH

Residence Khan sheh garbi Pabbi  
Distt Nowshera

Date of Birth 07-02-1997

Exact height by measurement 5' 4.8

Personal mark of identification

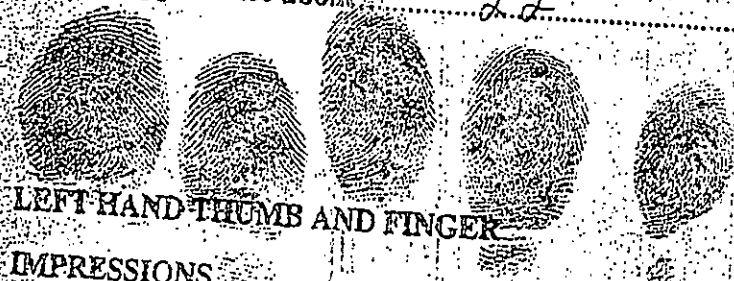
Signature of Official Saja Ullah

Signature of head of Officer

Head of Office

I do hereby certify that I have examined Mr Saja ULLAH a candidate for  
employment in the Office of the Civil Judge Nowshera  
and can not discover that he had any disease communicable or other constitutional affection or  
bodily infirmity except fit

I do not consider this as disqualification for employment in the office of the  
Civil Judge Nowshera His age according to his own statement 22 year  
and by appearance about 22 year.




LEFT HAND THUMB AND FINGER  
IMPRESSIONS

Saja Ullah

Medical Superintendent  
D.H.Q Hospital  
Nowshera  
Medical Superintendent,  
D H Q Hospital Nowshera

4/3/15

Approved  
16



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

Personal Information of Mr SAJA ULLAH d/w/s of KIFAYAT ULLAH

Personnel Number: 00904797

CNIC: 1720203761369

NTN:

Date of Birth: 07.02.1997

Entry into Govt. Service: 01.03.2019

Length of Service: 00 Years 02 Months 001 Days

Employment Category: Active Temporary

Designation: BAILIFF

30003620-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
1584	Judicial Allowance	2,800.00	1833	Integrated Allowance (2005)	450.00
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

**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.): 22,541.00 Deductions: (Rs.): -1,370.00 Net Pay: (Rs.): 21,171.00

Payee Name: SAJA ULLAH

Account Number:

Bank Details: , ,

Leaves: Opening Balance: Aailed: Earned: Balance:

Permanent Address:

City: NOWSHERA

Domicile: NW - Khyber Pakhtunkhwa

Housing Status: No Official

Temp. Address:

City:

Email:

*Accepted*









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

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.

*Registered*

(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 04/05/19

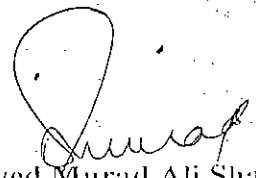
**OFFICE ORDER**

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)

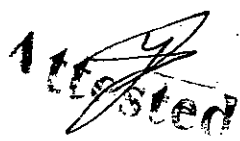
The above mentioned persons are relived from their services with immediate effect.

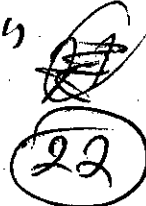
  
Syed Murad Ali Shah,  
Senior Civil Judge (Admn),  
Nowshera.

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" **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

*Attested*

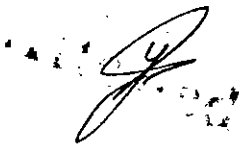
issued by the Respondent No. 2 dated 04.05.2019 whereby the appointment notifications of the petitioners have been cancelled and thereby terminating their services as illegal, in violation of law and ineffective upon the rights of the petitioners, both the Orders may kindly be set-aside and the Petitioners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



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,*

Attached

\* 25

*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*

28

- 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.

Attorney

- 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.

*Attested*

Petitioner

877 08

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

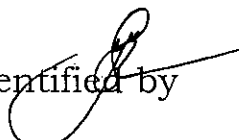
**VERSUS**


- 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

  
**DEPONENT**  
 CNIC:  
 17201-8437651-9  
 Mobile:- 0333-9032132

*Attested*

No: 28277  
 Certified that the above was verified on solemnly affirmation before me in office of this .....  
 day of May 2018 at Nowshera  
 s/o Rehmat Shah who was identified by Yasir Saleem  
 Who is personally .....  
 Oath Commissioner  
 Peshawar High Court, Peshawar  
 8/5/2019



(P/A) 08

**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**

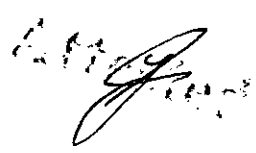
**PETITIONERS**

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

Annex "K"

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 Naib Qasid 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 Naib Qasid BPS-3 for appointment on temporary basis 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 2000 candidates applied for the post. Under the bowl policy, 40 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 15 candidates were short listed wherein the undersigned was also included. Those 15 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

Attested

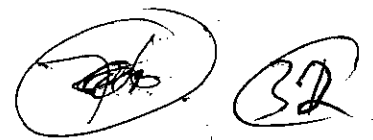
for appointment, accordingly I was appointment against the post of Naib Qasid BPS-03, vide order dated 01.03.2019.

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**

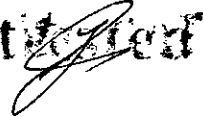


started performing my duties my pay roll was also prepared and I got my salaries, thus the order of my appointment had been acted upon and valuable rights had been created in my favour. As principle of *LOCUS PONATENTIE* strongly lied in my favor so my service could not be snatched away illegally with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

**Attorney**

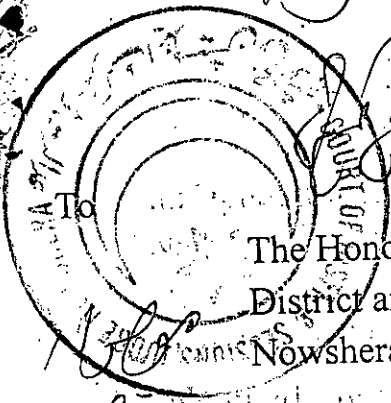


Yours Obediently,



Saja Ullah  
S/O Kifayat ullah,  
Ex- Naib Qasid BPS-03  
Khan Sher Ghari Pabbi  
Nowshera

Dated 11/05/2019



The Honorable  
District and Sessions Judge  
Nowshera

انرجھتے ہو  
Annex-L  
38

Subject: Departmental appeal against the order dated 04.05.2019, whereby the appointment of the undersigned against the post of Naib Qasid 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 Nowehera advertised various posts including the post of Naib Qasid BPS-3 for appointment on temporary basis 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 2000 candidates applied for the post. Under the bowl policy, 40 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 15 candidates were short listed wherein the undersigned was also included. Those 15 eligible candidates were again gone through the process of draw/ balloting for the purpose of appointment in the presence of all shortlisted candidates.

Gohar Rehman  
District & Session Judge  
Nowshera

14/5/19

ATTESTED

Miner Copying Agency  
Inch D.S.J. Nowshera

17 MAY 2019

That having, again, successful in draw, I was duly recommended for appointment by the Departmental Selection and Scrutiny Committee

34

for appointment, accordingly I was appointment against the post of Naib Qasid 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

ATTTESTED

Examiner Copying Agency  
Branch D.S.J. Nowshera

17 MAY 2019

5

39


started performing my duties my pay roll was also prepared and I got my salaries, thus the order of my appointment had been acted upon and valuable rights had been created in my favour. As principle of *LOCUS PONATENTIE* strongly lied 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 were 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.*

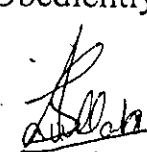
Yours Obediently,

**ATTESTED**

  
Examiner Copying Agency  
Branch D.S.J. Nowshera

17 MAY 2019

Dated 11/05/2019

  
Saja Ullah  
S/O Kifayat ullah,  
Ex- Naib Qasid BPS-03  
Khan Sher Ghari Pabbi  
Nowshera

6

36-

ORDER-01  
14.5.2019

Petition in hand presented by Saja Ullah son of Kifayatullah Ex-Naib Qasid, District Courts, Nowshera. It be entered into relevant register.


Appellant Saja Ullah present in person.

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

Arguments heard and record perused.

There is no denial that appellant was appointed as Naib Qasid (BPS-3) by the recommendations of Departmental Selection Committee dated 28.2.2019.

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

  
**Gohar Rehman**  
District & Session Judge,  
Nowshera

14/5/19

**ATTESTED**

Examiner Copying Agency  
Branch D.S.J. Nowshera

17 MAY 2019

2



7 37

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.

No. 7586

Date of Application 17 MAY 2019

Name of Applicant [Signature]

Words \_\_\_\_\_

Fee \_\_\_\_\_

Urgent Fee \_\_\_\_\_

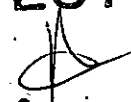
Sign of Copyist [Signature]

Date of Preparation 17 MAY 2019

Sign of Examiner [Signature]

Date of Delivery 17 MAY 2019

**ATTESTED**

  
Examiner Copying Agency  
Branch D.S.J. Nowshera

17 MAY 2019

3



POWER OF ATTORNEY

In the Court of Service Tribunal Peshawar

SATA ULLAH

} For  
} Plaintiff  
} Appellant  
} Petitioner  
} Complainant

39

VERSUS

Registered Peshawar High Court undertaker

} Defendant  
} Respondent  
} Accused

Appeal/Revision/Suit/Application/Petition/Case No. 1596 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 Peshawar  
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 Saeb  
ASIF SAEB  
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1594/2019

Sajaulah Khan ..... 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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1594/2019

Sajaullah Khan ..... Appellant

Versus

Registrar, PHC & others ..... Respondents

---

**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**

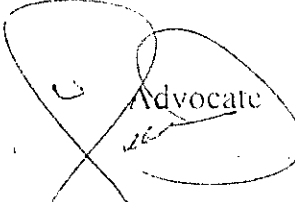
**Through**

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

Dated:      /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  
phcpsh@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 WAQIH-UD-DIN)  
**REGISTRAR**

**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 "*IA 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.

*Epain*  
JUDGE

*[Signature]*  
JUDGE

**Announced.  
20.11.2019.**

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

CERTIFIED TO BE TRUE COPY

EXAMINER  
Peshawar High Court, Peshawar  
Authorised Under Article 8.7 of  
The Qanun-e-Mahadal Order 1984

07 FEB 2020

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

**SERVICE APPEAL No. 594 -P/2019**

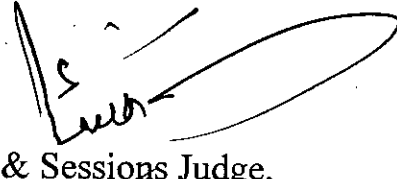
(Saja ullah Khan Ex. M. Qadir) in the court of Senior Civil Judge  
Nowshera..... (Appellant).

Vs

Registrar, Peshawar High Court Peshawar and  
others..... (Respondents).

**INDEX**

S #	Particulars	Annexure	Page #
1.	Reply of service appeal		1 to 3
2.	Copies of Order dated 20.11.2019 of W.P # 2975-P/2019	A	4 to 7
3.	Copies of Departmental appeal dated 11.05.2019	B	8 to 9

  
District & Sessions Judge,  
Nowshera

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

**SERVICE APPEAL No. 1594-P/2019**

**PARAWISE COMMENTS ON BEHALF OF**  
**RESPONDENT # 2**

(Saja ullah Khan, Ex. Naib Qasid in the court of Senior Civil  
Judge Nowshera..... (Appellant).

Vs

Registrar, Peshawar High Court Peshawar and  
others..... (Respondents).

Respectfully Sheweth: -

**PRELIMINARY OBJECTIONS:**

1. That the petitioner has got neither cause of action nor any locus standi to file the instant appeal.
2. That the petitioner is stopped to sue.
3. That the petitioner is barred by law of limitation.
4. That the instant service appeal is against the terms and condition of the appointment letter, as the service of the appellant was not regularized and he was on probation.
5. That the appeal in hand is not maintainable in its present form.
6. That the appellant has not approached this Hon'ble Court with clean hands.

**FACTUAL OBJECTIONS:**

1. Para No. 01 needs no comments, pertain to record
2. Para No. 02 needs no comments, pertains to record.
3. Para No. 03 needs no comments, pertains to record.
4. Para No. 04 needs no comments, pertains to record.
5. Para No. 05 needs no comments, pertains to record.
6. Para No. 06 needs no comments, pertains to record.

7. Para No. 07 needs no comments, pertains to record.
8. Para No. 08 needs no comments, pertains to record.
9. Para No. 09 Admittedly the Senior Civil Judge (Admn), Nowshera upon the directions of the Hon'ble Peshawar High Court, Peshawar dated 29.04.2019; vide office order dated 04.05.2019 cancelled the appointment of appellant being illegal for non-observance of the Bowl Policy, as balloting was twice conducted, which was against the policy issued by august Peshawar High Court, Peshawar vide letter No. 18403-429 dated 08.11.2017.
10. Para No. 10 needs no comments, pertains to record. (Copy of order W.P No. 2975-P/2019 attached)
11. Para No. 11 as the Appellant was removed upon the directions of the Competent Authority, therefore, the departmental appeal was dismissed according to law, and the order was communicated to the appellant. (copy of order dated 14.05.2019 attached)
12. Para No. 12 needs no comments, pertains to record.
13. Para No. 13 needs no comments, pertains to record.
14. Para No. 14 needs no comments, pertains to record.

**REPLY OF GROUNDS:**

- A. Incorrect, appellant was treated in accordance with law and right secured and guaranteed to him, have not been violated.
- B. Incorrect, proper procedure has been followed before issuing the impugn order.
- C. Incorrect, opportunity of defence and personal hearing was extended to the appellant.
- D. Incorrect, all the codal formalities were fulfilled and the principle of natural justice have been complied.



- E. Incorrect, irregular and illegal act cannot be perpetuated. Moreover, codal formalities were not fulfilled in the process.
- F. As replied above.
- G. Incorrect, the orders have been passed by Competent Authority by applying there judicious mind.
- H. Incorrect, the impugn order is well reasoned and speaking.
- I. Incorrect, the respondent No. 2 dismissed the departmental appeal after going through the entire material available on record.
- J. Incorrect, as replied in the above paras illegality cannot be perpetuated and wrong will not be made bases to create a right.
- K. As replied in para above.
- L. As replied in para above.
- M. As replied in para above.
- N. As replied in para above.

That the respondent seek leave of this Hon'ble Tribunal to raise additional grounds at the time of arguments.



**SHAHNAZ HAMEED KHATTAK,**  
District & Sessions Judge,  
Nowshera

**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"**

*Annex - A*

**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.

**SCANNED**

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

**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.

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**

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.

  
 JUDGE  
  
 JUDGE

**Announced.**  
**20.11.2019.**

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

ORDER-01  
14.5.2019

Annex - B

Petition in hand presented by Awais Khan son of Saif ur Rehman Ex-Naib Qasid, District Courts, Nowshera. It be entered into relevant register.

Appellant Awais Khan present in person.

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

Arguments heard and record perused.

There is no denial that appellant was appointed as Naib Qasid (BPS-3) by the recommendations of Departmental Selection Committee dated 28.2.2019.

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

  
Gohar Rehman  
District & Session Judge  
Nowshera

14/5/19

2

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.

3