

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	29.11.2016	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR</u></p> <p style="text-align: center;">Appeal No. 1232/2015</p> <p style="text-align: center;">Naveed Shehzad Versus Government of Khyber Pakhtunkhwa through Secretary Irrigation Department, Peshawar etc.</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-</u></p> <p style="text-align: center;">Counsel for the appellant and Mr. Ziaullah, Government Pleader for respondents present.</p> <p>2. Naveed Shehzad son of Khursheed Anwar hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against order dated 22.10.2015 vide high appellant, a class-IV employee serving as Naib Qasid BPS-1 at Peshawar was transferred to Irrigation Division Kohat and where-against his departmental appeal dated 26.10.2015 was also rejected vide order dated 03.11.2015 and hence the instant service appeal on 05.11.2015.</p> <p>3. Brief facts giving rise to the present appeal are that the appellant was initially appointed as Cooli on contract basis under deceased son quota vide order dated 08.03.2012 and posted at Kohat Irrigation Division, Kohat. That later on the appellant was adjusted as class-IV employee and posted as Naib Qasid (BPS-1) in Peshawar Canal Division, Peshawar vide order dated 18.3.2014. That while serving so he was again transferred from Peshawar Canal</p>

A.C.
29.11.16.

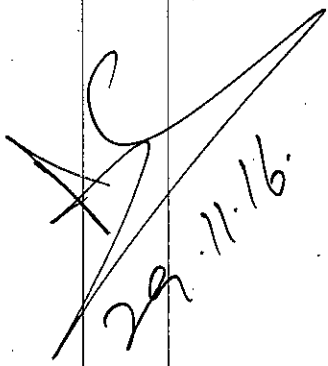
Division Peshawar to Kohat Irrigation Division Kohat for further posting against his original cadre where-against appellant preferred departmental appeal which was rejected and hence the instant service appeal.

4. Learned counsel for the appellant has argued that the impugned order is against posting/transfer policy as the appellant is a civil servant of lower tier and entitled to serve in his home district. That the impugned order is based on malafide as the appellant was transferred with an object to create a post for another person . That the impugned order is therefore liable to be set aside.

5. Learned Government Pleader has argued that the appellant was reverted to his original cadre as he was adjusted at the strength of Kohat Irrigation Division and as such the appellant cannot claim the benefits of policy under which a government servant of lower tier would entitle to serve in his home district.

6. We have heard arguments of learned counsel for the parties and perused the record.

7. It is a well-established that under the policy of the provincial government class-III and class-IV employees are entitled to serve in their home districts except on complaint and in the public interest. The appellant was adjusted at district Peshawar keeping in view the mandate of the said policy and one Muhammad Junaid Naib Qasid BPS-01 serving at Peshawar Canal Division Peshawar was transferred as Cooli BPS-01 to Kohat Irrigation Division, Kohat as the said posting was suitable to the said employee. It is evident from the record that the respondents intended to create a post of Naib

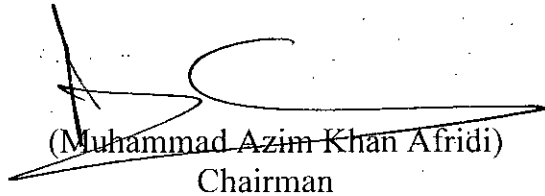
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Qasid for one Saifullah whose father has died while serving as Naib Qasid in Chief Engineer North Office. Since the appellant is entitled to serve in his home district who is also son of a deceased employee as such the impugned transfer order can neither be termed as an order passed in public interest nor is found to have been in consonance with the said policy more particularly when Muhammad Junaid is allowed to serve as Cooli BPS-1 posted on the previous position of the appellant.

8. In view of the above we are constrained to accept the present appeal set aside the impugned orders dated 22.10.2016 and 3.11.2015 and restore office order dated 18.3.2014. Parties are left to bear their own costs. File be consigned to the record room.



(Muhammad Aamir Nazir)
Member



(Muhammad Azim Khan Afridi)
Chairman

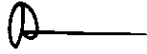
29.11.16

ANNOUNCED
29.11.2016

1232/2015

14.10.2016

Appellant with counsel and Mr. Zakir Khan, Assistant alongwith Mr. Muhammad Jan, GP for official respondents No. 1 to 8 present. Learned counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 29-11-16 before D.B. Status-quo be maintained.



(ABDUL LATIF)
MEMBER



(PIR BAKHS SHAH)
MEMBER

21.06.2016

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Rejoinder submitted, copy whereof handed over to learned GP. It reveals that private respondent No. 9 nor served neither placed ex-parte as such notice be issued to private respondent No. 9. To come up for arguments on 29.7.16. Status-quo be maintained.

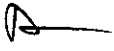

MEMBER


MEMBER

29.07.2016

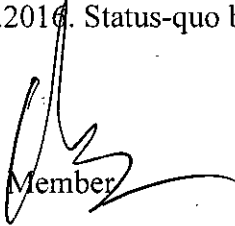
Appellant in person and Mr. Usman Ghani, Sr.GP for respondents present. Appellant requested for adjournment as his counsel was busy before the Peshawar High Court, Peshawar. Adjournment granted. To come up for arguments on 09.09.2016. Status-quo be maintained.


Member


Member

09.09.2016

Counsel for the appellant and Mr. Zakir Khan, Assistant alongwith Muhammad Jan, GP for respondents present. Learned Government Pleader submitted before the court that the appellant is ^a contract employee, hence, this Tribunal has no jurisdiction to entertain the present appeal. Learned counsel for the appellant submitted that as per policy of the Government he is regular employee and not employee on contract basis. Learned counsel for the appellant requested for time to produce the relevant provision of law to clarify this point. Request accepted. To come up for arguments on 14.10.2016. Status-quo be maintained.


Member


Member

13.01.2016

Appellant with counsel and Mr. Jan Ayaz, Assistant alongwith Addl: A.G for respondents present. Since the learned Member (Judicial) is on leave therefore, case is adjourned to 19-2-16 for the same.


Reader

19.02.2016

Counsel for the appellant and Mr. Ziaullah, GP with Jan Ayaz, Asstt. for the respondents present. Since the court time is over, therefore, case is adjourned to 11-4-16 for arguments.


MEMBER


MEMBER

11.04.2016

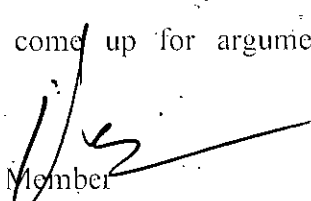
Appellant in person and Mr. Muhammad Jan, GP for respondents present. Rejoinder not submitted. Requested for further time for submission of rejoinder. To come up for rejoinder and arguments on 19-5-16. Status-quo be maintained.


Member


Member

19.5.2016

Appellant in person and Addl. AG for respondents present. Rejoinder not submitted. Requested for further time for submission of rejoinder. To come up for arguments on 21.6.2016. Status-quo be maintained.


Member


Member

10.11.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was initially appointed as Cooly on contract basis and his services were later on regularized as Class-IV employee in BPS-1. That vide impugned order dated 22.10.2015 appellant was transferred from Peshawar Canal Division Peshawar to Kohat Irrigation Division Kohat. That departmental appeal was preferred against the said order which was rejected on 3.11.2015 and hence the instant service appeal on 5.11.2015.

That the appellant was transferred as he refused to perform his duty as Driver unofficially. That the appellant being a Class-IV employee cannot be transferred outside the district.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 23.12.2015 before S.B. Notice of stay application be also issued for the date fixed. Status-quo be maintained.

Appellant Deposited
Security & Process Fee




Chairman

23.12.2015

None present for the appellant and Mr. Jan Ayaz, Assitant alongwith Mr. Adeel But, AAG for respondents present. Comments submitted. The appeal is assigned to D.B for rejoinder and final hearing on 13.1.2016. Status-quo be maintained..


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1232/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	05.11.2015	<p>The appeal of Mr. Naveed Shehzad presented today by Mr. Amanullah Marwat Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p><i>[Signature]</i> REGISTRAR</p>
2		<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>10-11-2015</u></p> <p><i>[Signature]</i> CHAIRMAN</p>

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.

Service Appeal No. 1232 /2013

Naveed Shehzad Appellant

Versus


Govt. of KPK through Secy: Irrigation & others.....Respondents

I N D E X

S.No.	Description of documents.	Pages.
1	Grounds of appeal.	1-4
2	Affidavit.	5
3	Stay application.	6
4	Affidavit.	7
5	Addresses of the parties.	8
4	Copy of appointment letter dt.8.3.2012	9
5	Copy of mutual transfer order dt.8.3.2014	10
6	Copy of impugned order dated 22.10.2015	11
7	Copy of departmental appeal dt. 26.10.2015	12
8	Copy of rejection order of departmental appeal dt.03.11.2015	13
9	Wakalatnama.	


Appellant

through


Amanullah Marwat
Advocate High Court
Off: FR-1, 4th Floor
Falaksair Plaza, Saddar Road,
Peshawar Cantt
Cell: 0334-9054585

Dated: 05.11.2015

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.Service Appeal No. 1232 /2015N.W.F. Province
Service TribunalDiary No. 1321Dated 05-11-2015**Naveed Shehzad** son of Khurshid Anwar
R/O Kakshal Guldara Mohallah Wazir Abad

Tehsil and District Peshawar Appellant

Versus

- 1) Govt. of KPK through Secretary Irrigation Department, Civil Secretariat, Peshawar.
- 2) Chief Engineer (South) Irrigation Warsak Road, Peshawar.
- 3) Superintending Engineer, head quarter South Irrigation Warsak Road, Peshawar.
- 4) Superintending Engineer, Peshawar Irrigation Circle, Peshawar.
- 5) Executive Engineer, Kohat Irrigation Division, Kohat.
- 6) Superintending Engineer, Bannu Irrigation Circle, Bannu.
- 7) Executive Engineer Peshawar Canal Division, Peshawar.
- 8) Chief Engineer, North Irrigation Department, Warsak Road, Peshawar.
- 9) M.Saddique, Naib Qasid BPS-1, SDO Irrigation Civil Canals Sub Division Peshawar Canal Division Officer, Peshawar.

..... Respondents

Appeal u/s 4 of the N.W.F.P Service Tribunal Act, 1974 against representation dated 03.12.2015 whereby departmental representation filed by appellant against

Filed to-day
5/11/15

transfer order dated 22.10.2015 passed by Respondent No.3 was rejected by respondent No.2.

Prayer:

On acceptance of this appeal, the impugned order dated 22.10.2015 and 03.11.2015 passed by respondents No.2 and 3 respectively may kindly be set aside.

Respectfully Sheweth;

Brief facts giving rise to the instant appeal are as under:-

- 1) That the appellant was appointed against the vacant post Colli BPS-1 (under deceased sons' quota) on 08.03.2012 in Kohat Division in pursuance of circular issued by Establishment and Administration Department on the terms and conditions mentioned therein after fulfillment of all the codal formalities by respondent No.5. (Copy of letter of appointment is attached).
- 2) That since then he is performing duties upto the entire satisfaction of his superiors and no complaint of any nature whatsoever has been made against him. The petitioner was mutually transferred from Kohat irrigation Division to Peshawar Canal Division by respondent No.4 vide order dated 18.03.2014 and his nature of service was altered to peon instead of Colli.
- 3) That the appellant was called by respondent No.3 to perform duty in his house as a driver which is situated near Tarnab Farm Ghufra Abad, Peshawar, instead of his office nor he is officially designated as a driver.
- 4) That on refusal by the appellant to work as a driver in his house of respondent No.3, he was transferred by

respondent No.3 from Peshawar to Kohat vide order dated 22.10.2015 malafidely and to draw the salary by manual bill, as a result of mutual transfer so post has already been filled and there is no post on which the appellant was appointed.

- 5) That appellant filed departmental representation against order dated 22.10.2015 passed by respondent No.3 before respondent No.2 on 26.10.2015, which was dismissed by him vide order dated 03.11.2015.
- 6) That feeling aggrieved from the order dated 22.10.2015 and 03.11.2015 assails the same before this Hon'ble Court, inter alia on the following grounds:

GROUND:

- a) That order dated 22.10.2015 and 03.11.2015 passed by respondents No.3 and 2 respectively are against law, facts and record of the case, hence not tenable.
- b) That petitioner was appointed as a Colli BPS-1 so insistence of respondent NO.3 to perform duty as a driver in his house is against the law, so such orders are liable to be set aside.
- c) That appellant is a poor person having school going children who also need pick and drop to school so under such circumstances appellant cannot be compelled to perform duty in his house as a driver so such orders passed by respondent No.3 are not sustainable in the eyes of law.
- d) That appellant performing his duty as Naib Qasid and is low paid Govt. servant his transfer from Peshawar to Kohat, he cannot accommodate his family in such low income so proprietary demands that he should be allowed to perform his duties in Peshawar. Such action of the

respondent No.3 is illegal, without jurisdiction and without lawful authority.

- e) That order passed by respondents are based on malafide so are illegal, without jurisdiction and lawful authority.
- f) That as per law the class-IV Govt. servant are not generally transferable and the respondent No.3 malafidely appointed another person illegally in his office as peon on 29.10.2015. There is no complaint against the appellant except to work as a private driver with the respondent No.3, there is also illegal and corrupt practice which should be discouraged.
- g) That the order of respondents NO.3 and 2 are void ab-initio, illegal, ultra vires, against the norms of law and justice. Drawing pay through manual bill instead of from the computerized system, means that there is no vacant post at Kohat and the respondents NO.3 and 2 also violates the terms and conditions of service. Such action of respondents amounts to deprive the appellant from his legitimate salary.

Keeping in view, what has been stated above, it is, therefore, humbly requested that the impugned order dated 22.10.2015 and 03.11.2015 passed by respondents No.2 and 3 respectively may kindly be set aside.



Appellant

Dated: 05.11.2015

through


Amanullah Marwat

&


Mumraiz Khan Marwat
Advocates High Court

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.

Service Appeal No. _____/2013

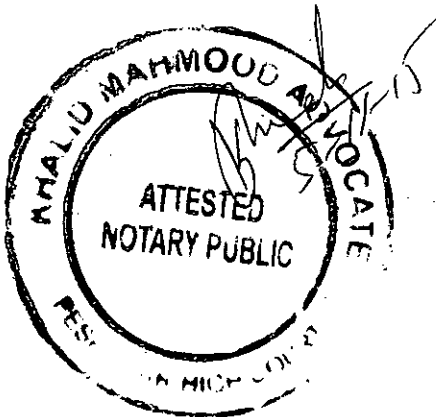
Naveed Shehzad Appellant

Versus

Govt. of KPK through Secy: Irrigation & others.....Respondents

AFFIDAVIT

I, **Naveed Shehzad** son of Khurshid Anwar R/O Kakshal Guldara Mohallah Wazir Abad Tehsil and District Peshawar do hereby affirm and declare on oath that the contents of the **appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.




Deponent

8

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.

Service Appeal No. _____/2013

Naveed Shehzad Appellant

Versus

Govt. of KPK through Secy: Irrigation & others..... Respondents

Application for suspension of operation of
the impugned order dated 22.10.2015 till
the decision of appeal.

Respectfully Sheweth;

- 1) That the above titled appeal is being filed today before this Hon'ble Tribunal.
- 2) That grounds of appeal may be read as part and parcel of this application.
- 3) That prima facie a arguable case exists in favour of petitioner.
- 4) That balance of convenience also lies in favour of petitioner.
- 5) That if the operation of impugned order is not suspended, petitioner will suffer irreparable loss.

It is, therefore, humbly prayed that on acceptance of this application, operation of the impugned order dated 22.10.2015 may kindly be suspended till final decision of appeal.



Appellant/ Petitioner

Dated: 05.11.2015

through



Amanullah Marwat
Advocate High Court

2

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.

Service Appeal No. _____/2013

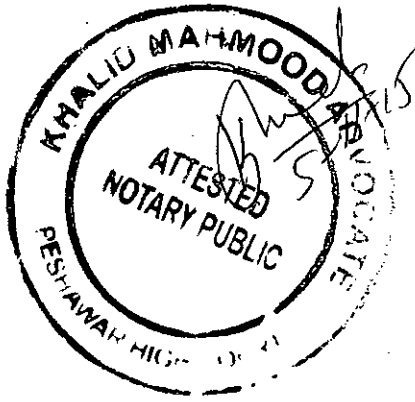
Naveed Shehzad Appellant

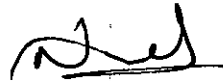
Versus

Govt. of KPK through Secy: Irrigation & others.....Respondents

AFFIDAVIT

I, **Naveed Shehzad** son of Khurshid Anwar R/O Kakshal Guldara Mohallah Wazir Abad Tehsil and District Peshawar do hereby affirm and declare on oath that the contents of the application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.




Deponent

(F)

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.

Service Appeal No. _____/2013

Naveed Shehzad Appellant

Versus

Govt. of KPK through Secy: Irrigation & others.....Respondents

ADDRESSES OF THE PARTIES

APPELLANT:

Naveed Shehzad son of Khurshid Anwar
R/O Kakshal Guldara Mohallah Wazir Abad
Tehsil and District Peshawar

RESPONDENTS:

- 1) Govt. of KPK through Secretary Irrigation Department, Civil Secretariat, Peshawar.
- 2) Chief Engineer (South) Irrigation Warsak Road, Peshawar.
- 3) Superintending Engineer, head quarter South Irrigation Warsak Road, Peshawar.
- 4) Superintending Engineer, Peshawar Irrigation Circle, Peshawar.
- 5) Executive Engineer, Kohat Irrigation Division, Kohat.
- 6) Superintending Engineer, Bannu Irrigation Circle, Bannu.
- 7) Executive Engineer Peshawar Canal Division, Peshawar.
- 8) Chief Engineer, North Irrigation Department, Warsak Road, Peshawar.
- 9) M.Saddique, Naib Qasid BPS-1, Peshawar Canal Division Officer, Peshawar.


Appellant

Through


Amanullah Marwat
Advocate High Court

9

OFFICE OF THE EXECUTIVE ENGINEER,
KOHAT IRRIGATION DIVISION KOHAT.

No. 430 /17-E,

Dated. Kohat the 08 / 03 /2012

To,

Naveed Shahzad S/o Khurshid Anwar,
Kakshal Guldara Chowk Moh: Wazir Abad,
Tehsil & District Peshawar.

Subject:

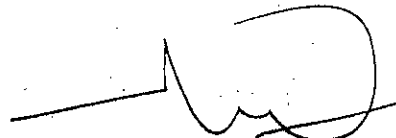
**OFFICE ORDER/APPOINTMENT AGAINST THE VACANT POST OF COOLY
BPS-I (UNDER DECEASED SON QUOTA).**

Consequent upon the finalization of interview & checking of record for appointment under the contract policy 2002, the competent authority is pleased to appoint you on contract basis against the vacant post of **COOLY BPS-I (under Deceased Son Quota)** in pursuance of circular issued by Establishment and Administration Department vide No.SOR-VI9E&AD) 1-3/2003 dated.30.06.2003 on the following terms and conditions.

1. You will be placed in minimum of BPS-I (4800-150-9150) with usual allowances as admissible to Government servants of the same pay scale.
2. Your services will be governed under the Government of Khyber Pakhtunkhwa contract Policy 2002.
3. Either party can terminate the contract on two months notice or two months salary in lieu thereof.
4. You will provide same facilities under Benevolent fund as admissible to Govt: servants at the rates to be prescribed by the Government.
5. You will avail the benefit of contributory provident fund (CPF) through 5% contribution of minimum of your pay and 5% contribution to be made by the Government.
6. You will not contribute to G.P.F and shall not be entitled for pension and gratuity benefits.
7. Any other terms & conditions issued by the Government in this regard will also be binding upon you.

If the order of the Appointment on contract basis is acceptable to you on the above terms and conditions, then you should report your-self for duty on or before 20.03.2012 to the undersigned with the production of the following documents.

- a. Domicile Certificate & Computerized CNIC.
- b. Medical Fitness certificate from the Medical Superintendent District Head Quarter Hospital Kohat.
- c. Qualification Certificate.



Executive Engineer
Ph: No.0922-9260173.

Copy to the:-

1. District Comptroller of Accounts Kohat for information and necessary action please.
2. Sub Divisional officer Irrigation Sub Division Kohat for information and necessary action.

Executive Engineer.

CFC
Done



(10)

**OFFICE OF THE SUPERINTENDING ENGINEER
PESHAWAR IRRIGATION CIRCLE PESHAWAR**

Phone No. 091-9212115

No. 708 / 19.E

Dated Peshawar the 18/03/2014

OFFICE ORDER

The following posting / adjustment amongst the Class-IV employees of the Divisional Offices as noted against each, is hereby ordered with immediate effect in the interest of public / Govt. works.


#	Name of Official	From	To	Remarks
1	Muhammad Junaid	Naib Qasid (BPS-1) Peshawar Canals Divn. Peshawar	As Cooly (BPS-1) Kohat Irrigation Division, Kohat	Vice No.2
2	Mr.Naveed Shehzad	Cooly (BPS-1) Kohat Irrigation Division, Kohat	As Naib Qasid (BPS-1) Peshawar Canals Division, Peshawar	Vice No.1

Superintending Engineer

Copy to:

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Executive Engineer Peshawar Canals Division, Peshawar.
3. Executive Engineer Kohat Irrigation Division, Kohat.
4. District Account Officer Kohat.

For information and necessary action please.


Superintending Engineer





OFFICE OF THE CHIEF ENGINEER (SOUTH)
IRRIGATION DEPARTMENT, KHYBER PAKHTUNKHWA,
PESHAWAR.

Phone No. 091-9212116 Fax No. 091-9212652 Email: chiefoffice@yahoo.com

(c:\computer cell)

No. 7385 /IB/A-3/6-E

Dated 22 /10/2015

OFFICE ORDER

The Competent authority has been pleased to order posting/adjustment amongst the Naib Qasid with immediate effect in the public interest:-

Sl. No.	Name of Naib Qasid	From	To	Remarks
1)	Mr. Naveed Shehzad	Peshawar Canals Division Peshawar.	Kohat Irrigation Division Kohat.	For further posting against his original cadre. His salary may be drawn on manual source.
2)	Mohammad Sadiq	Chief Engineer(North) Office Peshawar	Peshawar Canals Division Peshawar	Vice No.1

S.No.2 should move first.

SUPERINTENDING ENGINEER
HEADQUARTER

Copy to the:-

- 1) Accountant General Khyber Pakhtunkhwa.
- 2) Chief Engineer North Irrigation Department.
- 3) Superintending Engineer Bannu Irrigation Circle Bannu.
- 4) Superintending Engineer Peshawar Irrigation Circle Peshawar.
- 5) Executive Engineer Kohat Irrigation Division Kohat.
- 6) Executive Engineer Peshawar Canals Division Peshawar.
- 7) Distt: Accounts Officer Kohat
- 8) Officials concerned.

21/10/15
ADMINISTRATIVE OFFICER

(c:\computer cell)

بخدمت جناب چیف انجینئر صاحب ساؤتھ ایری گیشن ڈیپارٹمنٹ خیبر پختونخواہ

اپیل بمراد حکم جاری کرنے بابت منسوخی آرڈر

چٹھی نمبر E-3/6-IB/A-7385 جاری شدہ مورخہ 22-10-2015

دعویٰ نمبر 1212/15

جناب عالی!

سائل حسب ذیل عرض رساں ہے۔

- 1- یہ کہ سائل ضلع پشاور کارہائشی و پیدا آشی باشندہ ہے۔
- 2- یہ کہ سائل محکمہ ایری گیشن ڈیپارٹمنٹ میں بحیثیت نائب قاصد کے اپنی خدمات بہ احسن و بخوبی انجام دے رہا ہے اور اپنی فرائض میں کسی قسم کی کوئی کوتاہی نہیں برت رہا۔
- 3- یہ کہ سائل نے نائب قاصد (جنید) جو کہ ضلع کرک کارہائشی باشندہ ہے، کیساتھ باہمی رضامندی اور مطابق قوانین محکمہ ہذا تبادلہ کیا تھا۔ (نقل ٹرانسفر آڈر لف ہے)
- 4- یہ کہ من سائل کو سپرنٹنڈنگ انجینئر (ہیڈ کوارٹر) نے طلب کر کے اپنے ساتھ اپنے گھر میں بحیثیت ڈرائیور من سائل کو ڈیوٹی انجام دینے کا کہا۔
- 5- یہ کہ من سائل نے اپنی گھریلو مجبوریوں کا بیان کر کے سپرنٹنڈنگ انجینئر (ہیڈ کوارٹر) کے ساتھ ڈیوٹی انجام دینے سے انذار پیش کیا۔
- 6- یہ کہ من سائل کا کسی بھی قسم کا عذر نہ مانتے ہوئے اور انتقامی کارروائی عمل میں لا کر من سائل کو پشاور سے کوہاٹ تبادلہ کرنے کے احکامات صادر کر دیئے گئے۔ جو کہ من سائل کے ساتھ ظلم کے مترادف ہے۔
- 7- یہ کہ قانوناً کا اس 4 کی تعیناتی بوجہ اضافی اخراجات کے اپنے ہی ضلع میں کی جاتی ہے۔
- 8- یہ کہ من سائل کی تبدیلی محض مناد اور انتقامی کارروائی کا نتیجہ ہے۔ جبکہ سائل مذکورہ حکم سے انتہائی پریشانی کا سامنا کر رہا ہے۔
- 9- یہ کہ مذکورہ حکم کو منسوخ کرنے میں کوئی امر قانونی مانع نہ ہے۔ بلکہ ایسا امر کرنا قرین انصاف ہے۔

لہذا بذریعہ درخواست ہذا آپ جناب سے التماس کی جاتی ہے کہ سائل کی گھریلو مجبوریوں کو مد نظر رکھتے ہوئے سائل کی تعیناتی پشاور سے کوہاٹ کو فی الفور منسوخ کرنے کے احکامات صادر فرما کر من سائل کی دادرسی کی جائے۔ نیز دہریہ دادرسی جو قرین انصاف ہوگی مرحمت فرمائی جائے۔

عرضے علی 26-10-2015

نوید شہزاد ولد خورشید انور

نائب قاصد پشاور کینال ڈویژن پشاور

17301-5333532-1

Received

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30.10.15

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Am



(13)

OFFICE OF THE CHIEF ENGINEER (SOUTH)
IRRIGATION DEPARTMENT, KHYBER PAKHTUNKHWA, PESHAWAR.

Phone No. 091-9212116 Fax No. 091-9212652 E.Mail: chiefoffice@yahoo.com

No. 7541 /IB/6-E

Dated Peshawar the 3 /11/2015

To

The Executive Engineer
Peshawar Canals Division
Peshawar.

Subject: **POSTING/TRANSFER OF NAIB QASID**

Reference: This office order No.7385/a-3/6-E,dated 22-10-2015

I am directed to refer to the subject cited above and to request you to please immediately relieve Mr.Naveed Shahzad Naib Qasid for jointing his new assignment in Kohat Irrigation Division Kohat in compliance of this office order referred above under intimation to this office, *pk*.

ADMINISTRATIVE OFFICER
(PHONE.NO.9212118)

CC

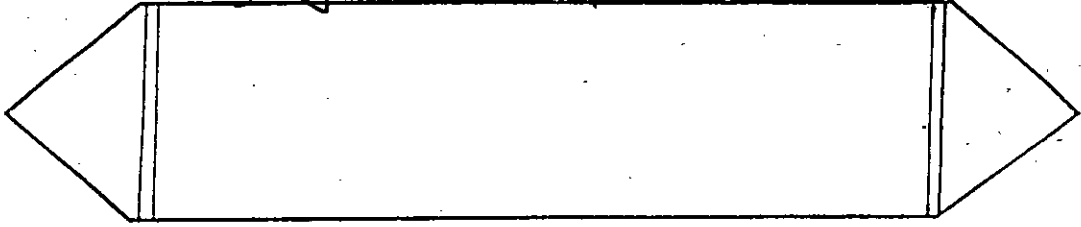
1. Executive Engineer Kohat Irrigation Division Kohat with reference to above for intimation of events of the Naib Qasid by tomorrow through return fax positively.
2. ✓ Mr.Naveed Shahzad Naib Qasid C/O Executive Engineer Peshawar Canal Division Peshawar with reference to his application dated 26-10-2015.He is hereby directed to joined his new assignment in Kohat Irrigation Division Kohat by tomorrow positively failing which strict disciplinary action will be initiated against him.

1607

3/11/15
ADMINISTRATIVE OFFICER
(PHONE.NO.9212118)

C/E
Am

بعدالت حساب سروا مریٹونل پیو



نمبر ۳ ہزار بنام ^{۲۰۱۶} گورنمنٹ آف پنجاب

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنک

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ
آن مقام میں کیلئے ان اللہ ضرورت + مہر نیرضوان ضرورت اور ابن وکیل
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالت فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک دروپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی براندگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے وہ ہوگا۔
کوئی تارتخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

۲۰۱۶

ماہ نومبر ۲۰

المرقوم

واہ العی

کے لئے منظور ہے۔

نمبر ۳ ہزار

بمقام

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No.1232/2015

Naveed Shehzad

(Appellant)

VERSUS

- (Respondents)**
1. Secretary to Govt of Khyber Pakhtunkhwa, Irrigation Department, Peshawar.
 2. Chief Engineer South Irrigation Department Peshawar
 3. Superintending Engineer (H/Q) South Irrigation Department.
 4. Superintending Engineer Peshawar Irrigation Circle Peshawar.
 5. Executive Engineer Kohat Irrigation Division Kohat.
 6. Superintending Engineer Bannu Irrigation Circle Basnno.
 7. Executive Engineer Peshawar Canals Divn:Peshawar.
 8. Chief Engineer North Irrigation Department Peshawar.

Subject: - **JOINT PARA WISE COMMENTS IN APPEAL NO.1232/2015 FILED BY MR NAVEED SHEHZAD V/S SECRETARY IRRIGATION AND OTHERS ON BEHALF OF RESPONDENTS NO.1-8**

Respectfully Sheweth

Preliminary objections

- 1) That the appeal is time barred.
- 2) That the appellant has got no locus standi.
- 3) That the appellant has not come to the Service Tribunal with clean hand.
- 4) That the appeal is not maintainable in its present form.
- 5) That the appeal is bad for mis joinder of cause of action and non joinder of parties.

FACTS

1. It is correct to the extent that the appellant has been appointed as Cooli BS-1 in Kohat Irrigation Department Kohat under deceased son quota which is his parent Office/cadre.
2. In correct ,Under Section 10 of Civil Servant Act 1973,every Civil Servant shall be liable to serve any where within or outside the province in any post under the Federal Government or Provincial Government or a Corporation or body set up or established by any such Government .The appellant belong to the cadre strength of Kohat Irrigation Division Kohat and the Executive Engineer Kohat is the appointing authority of the appellant, however he has accupied the post of Naib Qasid in Peshawar Canals Division Peshawar which is a separate cadre and the appellant has no right to claim his lien on the posts belong to the cadre of Peshawar Canals Division Peshawar.
3. In correct mis conceived and denied in to to.
4. Not correct miss conceived ,the appellant was repatriated to his parent Division to vacate posts for appointment of another deserving candidates namely Mr.Saifullah whose father is recently died due to heart attack while serving as Naib Qasid in Chief Engineer North office and his son waiting for appointment as per his application at (Annexure-I) under deceased son quota,therefore repatriation of the appellant was considered to facilitate the bereaved family by appointing son of the deceased Naib Qasid.
5. That the appellant was repatriated to his parent office to which he belong therefore his appeal was not considered being no legal footing.

6. That the appeal of the appellant is not worth consideration on the following grounds:-

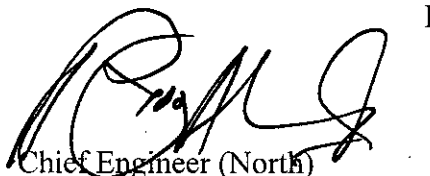
GROUND

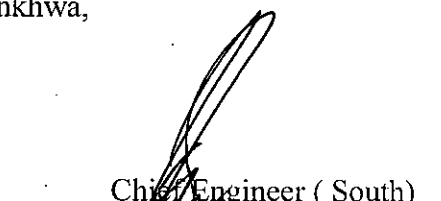
- a) In correct the order of the respondents is legally correct as the appellant belong to the cadre strength Kohat Irrigation Division Kohat and he has no right over the cadre post of Peshawar Canals Division Peshawar .
- b) In correct, the appellant has no other grounds to defend his case and leveled unnecessary allegations against his superiors which show his negative attitude to ward duty. The respondent No.3 has already been provided official designated Driver therefore the allegation of the appellant is baseless un lawful and without any proof.
- c) In correct the official was repatriated to his parent office/cadre in order to provide relief to the deserving candidates for appointment under deceased son quota which according to the policy of the Provincial Government .
- d) In correct the appellant has been repatriated to his parent office/cadre where his appointment was made and he accepted the same without any objection in serving Kohat at that time .
- e.) In correct the appellant has been repatriated to his parent office and not transferred ,therefore no violation of rules/law has been done.
- f) In correct the repatriation of the appellant was considered to provide relief to Mr.Saifullah S/O Dil Badshah Naib for his appointment under deceased son quota and no other aspect is involved in his repatriation. .
- g) In correct the order of the respondents is legally correct and no violation of rules has been made.

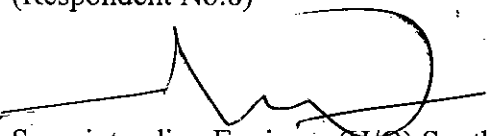
It is very humbly prayed to dismiss the appeal with cost and vacate the stay in the public interest please.

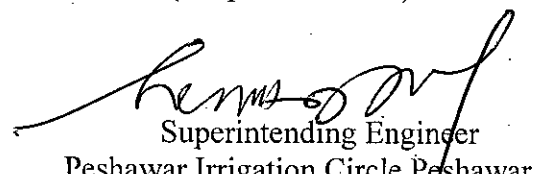


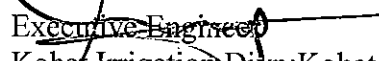
Secretary to Govt of Khyber Pakhtunkhwa,
Irrigation Department Peshawar
(Respondent No.1)

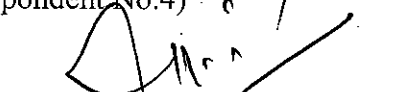

Chief Engineer (North)
Irrigation Department Peshawar
(Respondent No.8)



Chief Engineer (South)
Irrigation Department Peshawar.
(Respondent No.2)


Superintending Engineer (H/Q) South
Irrigation Department.
(Respondent No.3)


Superintending Engineer
Peshawar Irrigation Circle Peshawar
(Respondent No.4)


Executive Engineer
Kohat Irrigation Divn:Kohat
(Respondent No.5)


Superintending Engineer
Bannu Irrigation Circle Bannu
(Respondent No.6)


Executive Engineer
Peshawar Canal Divn:Peshawar

BEFORE THE PESHAWAR SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

Service Appeal No.1232/2015

Naveed Shehzad

(Appellant)


VERSUS

1. Secretary to Govt of Khyber Pakhtunkhwa,
Irrigation Department, Peshawar.
2. Chief Engineer South Irrigation Department
Peshawar
9. Superintending Engineer (H/Q) South
Irrigation Department.
10. Superintending Engineer
Peshawar Irrigation Circle Peshawar.
11. Executive Engineer
Kohat Irrigation Division Kohat.
12. Superintending Engineer
Bannu Irrigation Circle Basnnu.
13. Executive Engineer
Peshawar Canals Divn:Peshawar.
14. Chief Engineer North
Irrigation Department Peshawar.

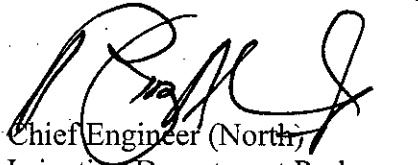
(Respondents)

COUNTER AFFIDAVIT

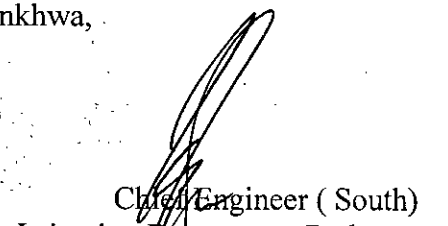
We do hereby solemnly affirm and declare that contents of the para wise comments given in Appeal No.1232/2015 filled by Mr.Naveed Shehzad Versus Government of Khyber Pakhtunkhwa are correct to the best of our knowledge and nothing has been concealed from August Service Tribunal.



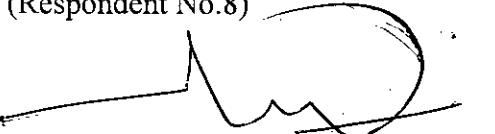
Secretary to Govt of Khyber Pakhtunkhwa,
Irrigation Department Peshawar
(Respondent No.1)



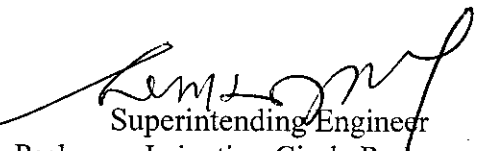
Chief Engineer (North)
Irrigation Department Peshawar
(Respondent No.8)



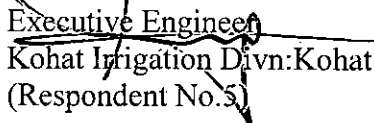
Chief Engineer (South)
Irrigation Department Peshawar.
(Respondent No.2)



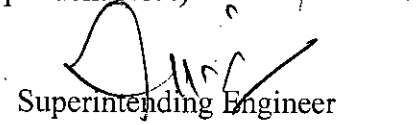
Superintending Engineer (H/Q) South
Irrigation Department.
(Respondent No.3)




Superintending Engineer
Peshawar Irrigation Circle Peshawar
(Respondent No.4)



Executive Engineer
Kohat Irrigation Divn:Kohat
(Respondent No.5)



Superintending Engineer
Bannu Irrigation Circle Bannu
(Respondent No.6)



Executive Engineer
Peshawar Canal Divn:Peshawar
(Respondent No.7)

خدمت مناب چپ انجنیر (نارتھ) اگريشن ڈیپارٹمنٹ پشاور

عنوان : درخواست برائے موٹوئی شدہ اشخاص کے کوڈ پڑھائی

مناب عالی!

گزارش کی جاتی ہے کہ فدوی کے مناب دل بادشاہ (روم) آپ

کے زیر نصاب بطور نائب خاصہ ڈیپارٹمنٹ کے سرانجام دے رہا تھا۔

جو کہ 13 اکتوبر 2015 کو عارضہ مناب کی وجہ سے لفظاً الستی

وفات پا چکے ہیں۔

لہذا آپ صاحبان سے گزارش کی جاتی ہے کہ فدوی (جو میٹرک کرلیٹ ہے)

کو موٹوئی شدہ اشخاص کے کوڈ پڑھائی کے امکانات مقرر فرمائیں

مشکوٰۃ فرمائیں۔

مزید براہ فدوی کے والدہ کی آپشن کاپی بھی ساتھ منسلک ہے۔

عین توازن ہوگی۔

العارض

Safullah Shah

سب (دلت) شاہ

حوریت - 27/10/2015

ولد دل بادشاہ (روم) مناب نائب خاصہ

چپ انجنیر (نارتھ) اگريشن ڈیپارٹمنٹ پشاور

(Office of The Chief Engineer (North) Irrigation Dept. Peshawar.

Main Diary No.....6557.....	
Date.....27/10/2015.....	
S.E. H/Q	SW-I
D.D.P.	S II
A.O.	S.R.
A.A.O.	CH.D.

Handwritten signature and initials (AO)

Handwritten signature and initials (Pass as to copy)

Serial No. 3

GS&PD KP K.66/11---DHS---10(1) Nos.---14.10.13---(1 JHS LRH Death Certificate)

Book No. 25

GOVERNMENT OF LADY READING HOSPITAL,
PESHAWAR, PAKISTAN.
DEATH CERTIFICATE



Name of Deceased: DIL BIDSHTAH

Spouse, D/o, W/o: HAZRAT AUN

Age: 55 YEARS

Place of Death: CASUALTY

Cause of Death: Cardiopulmonary Arrest

Date of Death: 13/10/2015

Date of Admission: 13/10/2015 Admission No. 11185311015 11:00 PM

[Signature]
Record Keeper 21/10/2015

[Signature]
Lecturer
G.D.C Mathra
Peshawar

[Signature]
Resident Medical Officer
Govt. Lady Reading Hospital,
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

Service Appeal No.1232/2015

Naveed Shahzad.....Petitioner

Versus

Govt. Of Khyber Pakhtunkhwa & others.....Respondents

REJOINDER ON BEHALF OF APPELLANT

Respectfully Sheweth:-

Preliminary Object:-

1. That appeal is well within time.
2. That appellant being Class-IV employee, has been transferred vide impugned order with malafide intention and on personal grudges, in violation of law so, he has got the locus standi to file appeal in hand.
3. That nothing has been cancelled from this Honourable Court by appellant, so, he has come to the court with clean hands. Rather the respondents have concealed the material facts on ground, reality and desire to pave way for their blue eyes persons.
4. That appeal is maintainable.
5. That appeal has been prayed against proper and necessary parties, so, not bad for misjoinder and non-joinder.

6. All the preliminary objections, are general in nature not compatible in eye of law, having no cogent reasons to raise such objections but an attempt to defend their illegal act and deprive the appellant from his legal rights.

Facts:-

1. Para No.1 needs to be elaborated that after appointment, the appellant was appointed by mutual transfer to Peshawar Canals Division Peshawar, Canal Naib Tehsildar Staff and has been absorbed by competent authority. In law there is no parent office / cadre.
2. Para No.2 is incorrect, hence denied. The appellant being Class-IV employee is resident of Peshawar was mutually adjusted / posted with on Muhammad Junaid against regular vacant post by the competent authority on 18-03-2014 in Peshawar Canals Division his post has already been occupied by Muhammad Junaid Peon at Kohat Irrigation Division Kohat. Now there is no vacant post against which appellant is to be appointed / adjusted, moreover malafide of the respondent is so evident that he has been directed in the impugned order to draw his salary on manual source but admittedly all government employees / officials draw their salaries through computer from Accountant General Office and from all District treasury office. To draw salary by manual source amounts

to non existence of post. Such an impugned order is illegal and liable to be set aside. It is also further aided that proviso to the Section 10 of Civil Servant Act 1973 Bar the transfer of Class-IV employees out of his owned district unless and until some gross violation has not been done by the Civil Servant as mentioned in law. The treasury rules also does not permit transfer of law paid government officials (Class-IV) out of his home district.

3. Para No.3 needs no reply.
4. Para No.4 is incorrect hence denied. The respondent has stated in their comments to adjust one namely Saif Ullah in his place but he has already been adjusted / appointed such action of the respondents is based on malafide and are trying to appoint some favourite person on the appellant post for ulterior motives. Why the appellant shall specifically be transferred from his own district there is no law to create posts by transferring an innocent person without a single mistake committed by the civil servant. This proves the malafide of the respondents, for their blue eyed chaps, appointments.
5. Para No.5 is incorrect hence denied. Detail reply is given in Para No.3 & 4. Repatriation is made between different departments not in same department.
6. Into Para No.6 the appeal of the appellant may please be allowed.

Grounds:-

- A. That ground A is incorrect hence denied. The appellant being Class-IV employee is resident of Peshawar was mutually adjusted / posted with one Muhammad Junaid against regular vacant post of Naib Qasid (Canal Naib Tehsildar) by the competent authority on 18-03-2014 in Peshawar Canal Division his post has already been occupied by Muhammad Junaid so in Kohat; there is no vacant post, against which appellant is to be appointed / posted moreover malafied of the respondent is so evident that he has been directed in the impugned order to draw his salary by manual source but admittedly all government employees official draw their salaries through computer system from Account General Office as well as from District Treasury Offices. To draw salary by manual source amounts to non existence of post but to wait for vacation without remuneration. Such an impugned order is illegal and liable to be set aside having no legal effect and a prejudice over the terms and conditions of the appellant service.
- B. Ground B is incorrect hence denied. The appellant has performing his duty to the entire satisfaction of his higher ups and no complaint whatsoever has been made by any one against the appellant so allegation levelled by respondents is based on assumption and presumption and is not sustainable is eye of law.

- C. Ground C is incorrect hence denied. Under the rules and policy Class-IV employee cannot be transferred from his home District. The respondents have changed the nature of post of the appellant by the impugned order, which is against the all norms of service structure. On demise of an official, the post on which the official was working is vacated, why deceased sons are not appointed on his deceased parent's post in the same department.
- D. Ground D is incorrect hence denied. The appellant has been mutually transferred with Muhammad Junaid against his post by the competent authority on 18-03-2014 and till date no one has raised any objection over such mutual adjustment / appointments by transfer against such post. So for all intents and purposes he is the employee of Peshawar Canals Division Peshawar and law is very much clear on the point, that Class-IV employees cannot be transferred usually. Law of repatriation is applicable between different departments on completion of deputation period and not in the same department.
- E. Ground E is incorrect hence denied. Detail reply is given in ground D.
- F. Ground F is incorrect hence denied. Saif Ullah has already been appointed and performing his duty in the Irrigation Department Hydrology Irrigation Division Peshawar so the respondent has

concealed true facts from this Honourable tribunal which amounts to fraud, which is liable to be proceeded criminally.

G. Ground G is incorrect hence denied. The respondent have blatantly violated the law and rules.

It is, therefore, prayed that on acceptance of this rejoinder, the contents of the comments of respondents, being devoid of force, and the appeal may please be allowed as prayed for.

Appellant

Through


Amanullah Marwat

Dated 19/01/2016

Advocate High Court

AFFIDAVIT

I, Naveed Shahzad, do hereby solemnly affirm and declare on oath that the contents of the **rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this hon'ble Tribunal.




DEPONENT

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 2039 /ST

Dated 5 / 12 / 2016


To

The Superintending Engineer Headquarters South Irrigation Warsak Road,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: - **JUDGMENT**

I am directed to forward herewith a certified copy of Judgement dated
29.11.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

10/12/16

10/12/16

10/12/16