


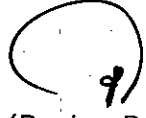
15.09.2022

Appellant present in person.

Kabir Ullah Khattak, learned Additional Advocate General for respondents present.

Reply on behalf of respondents No. 1 & 2 had already been submitted. Today respondents No. 3 to 5 submitted which is placed on file. A copy of the same is handed over to the appellant. Adjourned. To come up for rejoinder, if any, and arguments on 28.11.2022 before D.B.


(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)


28/11/22


Deleted from the list
to come up for the same on 7/2/23

07.02.2023

Junior to counsel for the appellant present. Muhammad Adeel But, Learned Additional Advocate General for the respondents present.

Former made a request for adjournment on the ground that learned counsel for the appellant is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 10.05.2023 before D.B.



(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

SCANNED
KPST
Peshawar

04.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 18.05.2022 for the same as before.


Reader

18.05.2022

Junior of counsel for the appellant present. Mr. Hussain Akbar Assistant alongwith Mr. Muhammad Rasheed, Deputy District Attorney for official respondents No.1 & 2 present. Private respondents No.3 to 5 in person present.

Representative of official respondents No.1 & 2 submitted reply/comments. Copy of the same was handed over to junior of learned counsel for the appellant while private respondents No.3 to 5 requested for time to submit reply/comments; granted with direction to furnish the same within 10 days in office, failing which, their right for submission of comments shall be deemed as struck off. To come up for rejoinder, if any, as well as arguments on 18.07.2022 before the D.B.



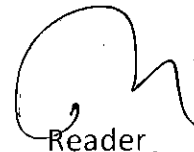
(Rozina Rehman)
Member (J)



(Salah-Ud-Din)
Member (J)

18.07.2022

Due to non-availability of Bench, case is adjourned to 15.09.2022 for the same as before.


Reader

27.10.2021

Counsel for the appellant present. Preliminary arguments have been heard.

02. This appeal has been submitted with an objection of the office as to joinder of the appellants in one appeal with reply of the counsel for the appellant that he will assist the court on the point of objection. As concerned the office objection that it is the requirement of Sub-Rule-(2) of Rule-3 of the Appeal Rules 1986 that every civil servants shall prefer the appeal separately and the appellant were asked to file the appeal separately; there is no second opinion in view of plain reading of Sub-rule-(2) of Rule-3 of the Civil Servants (Appeal Rules 1986), as far as requirement of separate departmental appeal against the order of the competent authority affecting more than one civil servants is concerned. In the present case, the appellants as against the said manner of filing separate appeals have preferred joint departmental appeal to the Commissioner Mardan being the next higher authority and then service appeal has also been preferred jointly by a group of seven appellants. Before drawing any inference against the appellants on non-compliance of Sub-Rule-(2) of Rule-3 in its letter and spirit, the foremost question for determination is whether the requirement of said rules is mandatory or directory. Obviously, there is no dearth of literature on subject of the interpretation of statutes which provides various tests to determine whether a particular provision of statute is "mandatory" or "directory" in nature. There is an interpretation that the statutory provision if specifying that a certain provision is to be carried out in the prescribed manner and no other manner, would be mandatory even if no penalty has been provided. The use of the word "shall" and "negative" or "positive" language of the provision is generally seen as strong and ultimate

indicator of the fact that the intention of the legislature was to make rules mandatory. However, it is a well settled view that no hard and fast rule can be laid down as a final criterion to know whether provision is "directory" or "mandatory" in nature. Non compliance with a mandatory provision is fatal while non compliance of directory provision is not fatal. It is axiomatic that generally, the statutory provisions that do not relate to the essence of the thing to be done, and as to which compliance is a matter of convenience rather than a substance, are directory; while provision which relate to the essence of a thing to be done i.e matter of substance, are mandatory. When we take the provision of Sub-Rule-(2) of Rule-3 on the touch stone of its essence, it is not difficult to find that it relates to a form of departmental appeal while the provisions under Sub-Rule-(1) of Rule-3 in their essence relate to the Substance of the appeal. In the case of the appellants; their grievance relates to the seniority list of Junior Clerks of Deputy Commissioner Office Mardan issued on 28.06.2021 and they are collectively aggrieved from the seniority position allotted to the private respondents without any inter-se clash of interest of the appellants. The departmental appeal has been signed by every appellant individually. Therefore, non-compliance with Sub-Rule (2) of Rule-3 of the appeal rules 1986 is not fatal merely on account of its form.

03. As far as filing of single appeal by the appellants forming a group is concerned, it needs determination in light of provision of the Khyber Pakhtunkhwa Service Tribunal Rule 1974, and on analogy of provisions of Civil Procedure Code. Rule-6 of Service Tribunal Act provides procedure for preferring of appeal including the form of the appeal. Among other requirements in relation to memorandum of appeal provided under Rule-6, it is also required that memorandum of appeal shall be signed by the

appellant. The memorandum of appeal in the present case is signed by all the appellants individually. Therefore, the said requirement of the rules has been fulfilled.

04. This Tribunal, within meaning of Sub Section (2) of the Section-7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 is deemed as a civil court with powers as vested in such court under the code of Civil Procedure, 1908. As envisaged by Rule-1 of Order-I of CPC, all persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly or severally or in alternative, where, if such persons brought separate suits, any common question of law or fact would arise. Taking the case of appellants on analogy of said rules, joinder of the appellants in this single appeal is not bad as far as the impugned transaction (seniority list) is concerned. If the appellants have brought separate appeals, they because of common question of law and fact would have been clubbed for hearing and disposal by a single judgment. Despite filing of appeal jointly by the appellant, the Tribunal having the power of a civil court is competent to exercise jurisdiction under Rule-2 of Order-I of CPC to pass order for separation of appeals or make such other order as may be expedient. The Tribunal has also got inherent powers under Rule-27 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974 to make such orders as may be necessary for the ends of justice or to prevent the abuse of process of the Tribunal.

05. Fortified by the foregoing reasons, the present appeal is held as validly preferred by the appellant together, when the impugned seniority

list and question of law and facts likely to arise in connection therewith are common. The office objection is overruled. This appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 04.02.2022 before the D.B.

Appellant Deposited
Security & Process Fee

02/11/21


Chairman

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 7500 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	05/10/2021 SCANNED KPSTU FOR BENCH	As per direction of the Worthy Chairman this case may be entered in the Institution Register and put to the S. Bench for preliminary hearing and office objection on <u>27/10/21</u> . _____ REGISTRAR


Sir,

The objections of this office
and reply of counsel for the appellant
is sub-itted for appropriate order please.

~~23/09/2021~~
23/09/2021.

Humble Chauhan.

Be fixed before SB for PH
and on office objection,



05/11/2021

Initially the present in complete appeal was filed in respect of only one appellant namely Bashir Ahmad on 10.09.2021, which was returned to the counsel for the appellant for its completion. Today the counsel for appellant resubmitted the appeal with adding six others appellants in the present memo of appeal, that is joint appeal of seven civil servants, which is returned again to the counsel for appellants, so that to remove the following deficiencies/objections and resubmit the same within 15 days.

- ① Addresses of appellants and respondents no. 3 & 4 are incomplete which may be completed according the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 2- Memorandum of appeals may be got signed by the appellants. ✓
- 3- Copies of rejection orders of departmental appeal dated 12.8.2021 in respect of appellant no.1 and 3 to 7 are not attached with the appeal which may be placed on it.
- 4- Copy of seniority list dated 28.6.2021 is illegible which may be replaced by legible/better one.
- ⑤ Sub-rule-2 of rule-3 of the appeal rules 1986 requires that every civil servant shall prefer the appeal separately/individually therefore, the appeal of the seven civil servant be filed separately/individually.
- 6- Three copies/sets of the appeal along with annexures i.e. complete in all respect for Tribunal and one for each respondent in each appeal may also be submitted.

No. 1886 /S.T,

Dt. 22/9/2021.


Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar.

Mr. Ali Azim Afridi Adv. Peshawar.


- ① Insofar objection no. 1 is correct; other objection is not; my objection is -
- ② Signed -
- ③ Annexure on page No. 15
- ④ The Honorable Court will be satisfied.
- ⑤ Rules of 1986 are for the department authority and not applicable for the prep. If being semi appeal before the Honorable Tribunal.
- ⑥ Made Annexure -
I have made the annexure as per the order of the court dated 22.09.2021.

The appeal of Mr. Bashir Ahmad Junior Clerk office of the DC Mardan received today i.e. on 10.09.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Check list is not attached with the appeal.
- 2- Affidavit may be got attested by the Oath Commissioner.
- 3- Certificate be given to the effect that the appellant has not been filed any service appeal earlier on the subject matter before this Tribunal.
- 4- Memorandum of appeal may be got signed by the appellant.
- 5- Approved file cover is not used.
- 6- Sub-rule-4 of rule-6 of the Khyber Pakhtunkhwa Service Tribunal rules 1974 requires that every civil servant to whom the relief claimed may affect, shall also be shown as respondent. Therefore, necessary party may be made in the heading of appeal.
- 7- Copy of impugned seniority list is not attached with the appeal which may be placed on it.
- 8- Copy of departmental appeal and its rejection order are not attached with the appeal which may be placed on it.
- 9- Annexures referred to in the memo of appeal are not attached with the appeal which may be placed on it.
- 10- Three copies/sets of the appeal along with annexures i.e. complete in all respect for Tribunal and one for each respondent may also be submitted with the appeal.

No. 1809 /S.T,

Dt. 10/09 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Ali Azim Afridi Adv. Pesh.

*objection noted on
checked accordingly. It
is placed before the
Tribunal.*

*For removal objection 22/09/2021
10 days time further extended.*

22/9/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7628

Dated 22/9/2021

BEFORE THE SERVICE TRIBUNAL KP, PESHAWARService Appeal No. 7500 2021

Bashir Ahmad

.....Appellant

Versus

Commissioner Mardan & Others

.....Respondent(s)

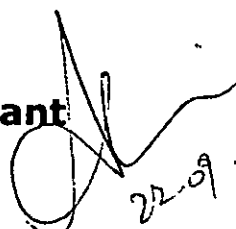
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2.	Memo of Address of Parties	8
3.	Copy of the office order dated 23.02.2020 is annexed as Annexure "A"	9-10
4.	Copy of the order dated 01.03.2021 is annexed as Annexure "B"	11-12
5.	Copy of the departmental appeal along-with relevant documents are annexed as Annexure "C"	13-19
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Appellant**Through**

Ali Azim Afridi

Advocate High Court

Contact # 0333-9555000


22-09-2021

BEFORE THE SERVICE TRIBUNAL KP, PESHAWARService Appeal No. 75001 2021

1. Bashir Ahmad
2. Waheed-ur-Rehman
3. Aftab Badshah
4. Muhammad Islam
5. Zaheer Ahmad
6. Muhammad Javed
7. Muhammad Dawood Junior Clerk(s) Office of the Deputy Commissioner, Mardan

.....Appellant

Versus

1. Commissioner Mardan Division, Mardan
2. Deputy Commissioner, Mardan
3. Khalid Khan
4. Hameed Ullah
5. Muhammad Ayaz Junior Clerk(s) Office of the Deputy Commissioner, Mardan

.....Respondent(s)

**APPEAL UNDER SECTION 4 OF THE KP
SERVICE TRIBUNAL ACT, 1974; AGAINST
THE IMPUGNED ORDER DATED
12.08.2021 GIVEN THE SENIORITY LIST
OF JUNIOR CLERKS DATED 28.06.2021
ISSUED IN PURSUANCE OF ORDER DATED
01.03.2021; AFFECTING INTER-SE
SENIORITY INsofar APPELLANT(S);
DISCOURTENANCED BY RECORD;
CONTRARY TO LAW AND JURISPRUDENCE**

BEFORE THE SERVICE TRIBUNAL KP, PESHAWAR

Service Appeal No. /2021

Bashir Ahmad Junior Clerk, Office of the Deputy
Commissioner, Mardan

.....Appellant

Versus

1. Commissioner Mardan Division, Mardan
2. Deputy Commissioner, Mardan

Khyber Pakhtukhwa
Service TribunalDiary No. 7542
Dated 10/9/2021

.....Respondent(s)

**APPEAL UNDER SECTION 4 OF THE KP
SERVICE TRIBUNAL ACT, 1974
IMPUGNING THEREIN THE ORDER DATED
12.08.2021 IN PURSUANCE OF
SENIORITY LIST ISSUED IN THE ;
WHEREIN ENTRIES MADE INSFOAR
APPELLANT ARE DISCOURTENANCED BY
RECORD; CONTRARY TO THE LAW AND
JURISPRUDENCE**

Respectfully Sheweth,

1. That the Constitution of Islamic Republic of Pakistan aims at protecting civil servants in order to ensure smooth running of affairs of the Government and Institutions so as to benefit the public citizenry.
2. The Constitution of Islamic Republic of Pakistan equally beshields civil servants from being treated otherwise than in accordance with law.

In Sheikh Riaz-ul-Haq's Case¹, it was held that,
"Admittedly, civil servants being citizens of Pakistan have

¹ PLD 2013 SC 501Filed to-day
Registrar
10/9/2021

Respectfully Sheweth,

1. That the Constitution of Islamic Republic of Pakistan aims at protecting civil servants in order to ensure smooth running of affairs of the Government and Institutions so as to benefit the public citizenry.
2. The Constitution of Islamic Republic of Pakistan equally beshields civil servants from being treated otherwise than in accordance with law.

In Sheikh Riaz-ul-Haq's Case¹, it was held that,
"Admittedly, civil servants being citizens of Pakistan have fundamental rights including the right to access to justice as envisaged under Article 9 of the Constitution".

3. That the Constitution of Islamic Republic of Pakistan evenly emphasizes on equality for the citizens; by the citizens; aimed at underpinning rule of law.

ON FACTS

4. That the appellant(s) are serving as Junior Clerk(s) in Deputy Commissioner Office, Mardan on regular basis.
5. That during the course of interregnum; seniority list was issued vide office order No. 320/DC(M)/EA-35 dated 23.02.2020; determining the placement of appellant(s).
(Copy of the office order dated 23.02.2020 is annexed as Annexure "A")
6. That given the said seniority list the respondent No. 3 and 4 were placed at serial No. 9 and 10; floating on the surface of record.
7. That for the sake of brevity and information; the respondent No.3 and 4 questioned the seniority list in shape of appeal; which plea put forth was accepted vide order dated

¹ PLD 2013 SC 501

01.03.2021 (copy of the order dated 01.07.2021 is

annexed as Annexure "B")

8. That departmental appeal was preferred against the
seniority list dated 28.06.2021; which was attacked vide
order dated 12.08.2021; leaving the merits in vacuum.

(Copy of the departmental appeal along with relevant

documents are annexed as Annexure "C")

In the above Case No. 12 of 2016, it was held that

Good governance was not a favour to be bestowed on the

people, it was their right.

9. That the appellant beseechs for intervention of the Hon'ble
Court given the Seniority list issued; inter-alia on the

following grounds:-

GROUND 1

A. That result of revised seniority list; aimed at disturbing
the placement of appellant(s) is uncalled for;
discriminated by record; contrary to law, well-settled

jurisprudence)

B. That the appellant(s) were neither provided the relevant
notification nor on notice for the purposes of advancing
their version; since they were not arrayed as party to the
proceedings.

C. That the competent authority has failed to take into

consideration the relevant law on the subject matter.

D. That the respondent(s) has overlooked the well-settled
principles, while revising the seniority list; which cannot

stand at all.

E. That carte-blanche exercise of power; abdicates the well-entrenched principle of "structured discretion".

F. That the purported omission(s) on the part of respondent(s); itself speaks volumes engraving danger to the notion of good governance, hence requires interference of the Hon'ble Court.

In Qaiser Iqbal's Case³, it was held that, "Rule of Law meant supremacy of law as opposed to arbitrary authority of the Government; said supremacy guaranteed three concepts; first, the absence of arbitrary power; second, equality before law and third the rights of a citizen".

G. That it is cardinal principle of law and justice that what cannot be done directly cannot be done indirectly.⁴

H. That public functionary has to reinforce good governance, observe rules strictly and adhere to rule of law in public service; public functionaries were not obliged to follow illegal orders of higher authorities⁵.

I. That "Expressio Unis Est Exclusio Alterius", commanding that when law requires a thing to be done in particular manner then, it should be done in that manner as anything done in conflict of the command of law shall be unlawful being prohibited.

J. That "Ignorantia juris non excusat", commanding that ignorance of the law excuses not.

³ 2018 PLD Lahore 34

⁴ PLD 1993 SC 473 at Page 687

⁵ 2015 SCMR 456; PLD 2013 SC 195

K. That further necessary grounds will be raised during the course of arguments.

PRAYER

It is therefore humbly prayed that on acceptance of this Service Appeal: -

1. The Impugned Order dated 12.08.2021 given the seniority list of junior clerks dated 28.06.2021 issued in pursuance of order dated 01.03.2021; affecting the order of placement insofar appellant(s) may please be set-aside along-with consequential benefits for securing the ends of justice.
2. Any such order be passed which this Hon'ble Tribunal deems fit and appropriate as the circumstances may require for determination of the subject at hand.

Appellant

Through

Ali Azim Afridi

Advocate High Court

Contact # 0333-9555000

BEFORE THE SERVICE TRIBUNAL KP, PESHAWAR
Service Appeal No. /2021

Bashir Ahmad

.....Appellant


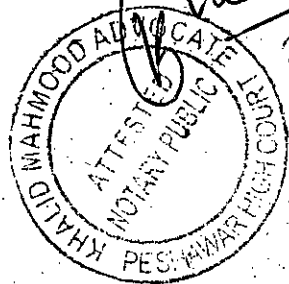
Versus

Commissioner Mardan & Others

.....Respondent(s)

AFFIDAVIT

I, **Bashir Ahmad Junior Clerk, Office of the Deputy Commissioner Mardan**, appellant do hereby on oath affirm and declare that the contents of the Service Appeal are true and correct to the best of my knowledge, belief and nothing has been concealed therefrom the Hon'ble Tribunal.


22-9-21




Deponent

BEFORE THE SERVICE TRIBUNAL KP, PESHAWAR

Service Appeal No. /2021

Bashir Ahmad

.....Appellant

Versus

Commissioner Mardan & Others

.....Respondent(s)

MEMO OF ADDRESS OF PARTIES**Appellant**

1. Bashir Ahmad
2. Waheed-ur-Rehman
3. Aftab Badshah
4. Muhammad Islam
5. Zaheer Ahmad
6. Muhammad Javed
7. Muhammad Dawood Junior Clerk(s) Office of the Deputy Commissioner, Mardan

Respondent(s)

1. Commissioner Mardan Division, Mardan
2. Deputy Commissioner, Mardan
3. Khalid Khan
4. Hameed Ullah Junior Clerk(s) Office of the Deputy Commissioner, Mardan

Appellant**Through**

Ali Azim Afridi

Advocate High Court

Contact # 0333-9555000

9

Annexure A

OFFICE OF THE DEPUTY COMMISSIONER, MARDAN

FINAL SENORITY LIST OF JUNIOR CLERK (BPS-11), WORKING IN DEPUTY COMMISSIONER OFFICE MARDAN STOOD ON 31-12-2020.

S.No	Name of official	Father's Name	Date of Birth	Qualification	Date of entry into govt. service	Date of promotion /appointment against the present post	Method of recruitment	Remarks
1	Waheed-ur-Rehman	Miraj-Ur-Rehman	15-04-1983	FA	08-02-2011	08-02-2011	Initial	
2	Bashir Ahmad	Zarif Gul	08-02-1967	FA	27-11-1990	18-08-2011	By Promotion	
3	Zaheer Ahmad	Zahoor Ahmad	25-03-1964	FA	27-09-2008	26-09-2011	By Promotion	
4	Muhammad Islam	Fazal Karim	13-02-1984	BA	10-06-2009	16-01-2014	Initial	Adjusted as J/C in DC office on 16-01-2014
5	Muhammad Dawood	Sulaiman	23-03-1989	BA	08-08-2016	08-08-2016	Initial	
6	Aftab Badshah	Fazal Badshah	01-04-1994	BS 4	08-08-2016	08-08-2016	Initial	Deceased son quota
7	Muhammad Javed	Itbar Gul	20-10-1970	SSC	01-11-1993	07-09-2016	By Promotion	Deceased son quota
8	Shahzeb	Aurang Zeb	04-07-1985	BA	29-06-2017	29-06-2016	Initial	Deceased son quota
9	Hamid Ullah	Saeed Ullah	04-05-1966	BA	21-03-1993	27-09-2018	Initial	Adjusted as J/C from LG&RDD Depdt: in pursuance of judgment of KPK ST
10	Khalid Khan Sr	Hayat Khan	15-03-1969	SSC	03-11-1991	27-09-2018	By promotion	Adjusted as J/C from Ed Depdt: in pursuance of judgment of KPK ST. Promotion to J/C is 23-04-2001
11	Zubair Ahmad	Anwar Khan	01-01-1987	DAE	27-09-2018	27-09-2018	Initial	
12	Imad	Masood Khan	01-03-1987	SSC	08-04-2006	27-09-2018	By promotion	
13	Muhammad Arshid	Fazal-Ur-Rehman	01-02-1989	MS	03-01-2019	03-01-2019	Initial	
14	Khalid jr	Gul Zada	08-03-1991	MA	03-01-2019	03-01-2019	Initial	
15	Ghareeb Ullah	Khan Badshah	11-02-1992	MA	03-01-2019	03-01-2019	Initial	
16	Abdul Wahab	Mir Nawab	13-02-1992	MBA	03-01-2019	03-01-2019	Initial	

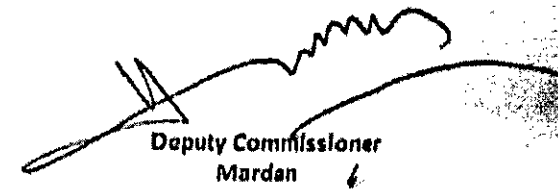
ATTESTED

S.No	Name of official	Father's Name	Date of Birth	Qualification	Date of entry into govt. Service	Date of promotion /appointment against the present post	Method of recruitment	Remarks
17	Atha Ullah	Anwar Khan	10-11-1991	MBA	28-01-2019	28-01-2019	Initial	-
18	Muhammad Ayaz	Muhammad Ayub	01-01-1977	FA	07-05-1995	18-04-2019	Initial	-
19	Naheed Akhtar	Gohar Ali	22-03-1997	FA	14-11-2019	14-11-2019	Initial	-
20	Manour Shah	Rahim Shah	15-11-1963	SSC	26-10-1988	30-04-2020	By Promotion	Office order No.482/EA-04 dated 30-04-2020
21	Muhammad Irfan	Dad Muhammad	07-01-1970	SSC	29-08-1988	30-04-2020	By promotion	-do-
22	Ajmir Khan	Khushmir	15-12-1974	FA	09-05-2007	30-04-2020	By promotion	-do-
23	Iltbar Said	Awal Said	15-04-1976	BA	09-05-2007	02-10-2020	By promotion	Office order No.1146/EA-04 dated 02-10-2020
24	Alamgir Khan	Nisar Muhammad	03-03-1991	DAE (Elec.)	08-08-2016	02-10-2020	By promotion	Office order No1147/FA-04 dated 02-10-2020
25	Jamal Nasir	Ishad Ali	07-04-1988	BA/DIT	06-10-2020	06-10-2020	Initial	Office order No.1165/EA-04 dated 06-10-2020
26	Naweed Khan	Shafiq-Ur-Rehman	12-02-1990	BA	03-12-2020	03-12-2020	Initial	Deceased son quota
27	Asad Zia Khan	Hukam Khan	07-04-1994	FA	03-12-2020	03-12-2020	Initial	Deceased son quota

Endst: No. 520 /DC (M)/EA-35
Copy forwarded to:-

Dated Mardan the 23 /02/2021.

All Junior Clerk Deputy Commissioner office Mardan for information and necessary action.


Deputy Commissioner
Mardan

ATTESTED

(11)

Ammeable U

IN THE COURT OF NAEEM AKHTAR ADDITIONAL COMMISSIONER MARDAN

DIVISION MARDAN.

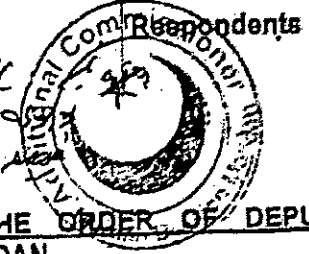
Service Appeal

Hameed Ullah & Khalid

Petitioners

Vs

Deputy Commissioner Mardan



Case No.....
Date of Institution: 14/01/2021
Date of Decision: 01/03/2021

125/9 RCC
14/01/2021
01/03/2021

REVISION PETITION AGAINST THE ORDER OF DEPUTY COMMISSIONER/ COLLECTOR MARDAN.

ORDER:-

Through this single order I shall dispose two identical service appeals submitted by Hameed Ullah and Khalid Junior Clerks office of the Deputy Commissioner Mardan.

Brief facts of the case are that the officials were recruited as junior clerks in the year 1993. Later on they were rendered surplus after the devolution in 2001. Hameed Ullah was adjusted in Excise Department in 2007 and subsequently as secretary Union Council Katlang in 2010, whereas Khalid Khan was adjusted in Education Department on 04.06.2007. Hameed Ullah was readjusted in his parent department i.e DC Mardan office vide order, dated 03.01.2018 and similarly Khalid Khan was adjusted in DC Mardan Office on 27.09.2018 after direction of Hon'ble Khyber Pakhtunkhwa Service Tribunal vide Judgment in appeal No. 1211/2017, dated 27.09.2018.

Both the officials have requested the competent authority/ DC Mardan for granting them seniority as per policy of Government circulated vide a letter dated 08.06.2001. That in the meanwhile the DC Mardan has provided relief of same nature to different officials under provision of the law for the surplus pool employees and specifically Para 6 (A) of the rules. They were not provided the same relief. Feeling aggrieved the appellant challenged the final seniority list of junior clerks of the office of DC Mardan of 03.12.2020.

Conti....P/2

ATTACHED

12

I have heard in detail the learnt counsels of the petitioners and perused relevant record including comments of the DC Mardan (on file). The DC Mardan has himself provided the copy of the surplus rule policy and its Para 6 states (that inter se seniority of the surplus employee after the readjustment in various departments will be determined according to the following principles: Para (A)

- (a) In case a surplus employee could be adjusted in the respective cadre of his parent Department he shall regain his original seniority in that cadre.)

To this court it is quite clear that an official is entitled to regain his seniority when adjusted in the respective cadre in his parent department and parent department is bound to apply this rule to all such employee without discretion of pick and choose. It is the natural Law as well that equality is maintained. Both appellants are entitled by virtue of the rules of surplus pool policy as well in the light of various judgments of courts i.e Hameed Akhtar Niazi Vs Secretary Establishment Division 1996 SCMR 1185 etc.

In view of the above facts, this appeal is accepted. The appellants to be placed at right S.No. of the seniority list of the office of DC Mardan. The DC Mardan is directed for making modifications in the seniority list of the junior clerks accordingly.

Announced.
01/03/2021


 Naam Akhtar
 Additional Commissioner
 Mardan Division Mardan

This order consists of two pages. Each and every page has been read and signed by me.

67

Date of Application... 01/03/2021

Name of Applicant... [Signature]


Words... 800 Fee... 8

Urgent Fee... [Signature]

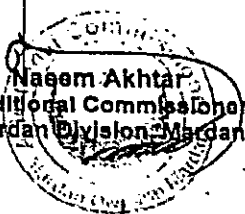
Signature of Applicant... [Signature]

Date of Preparation... [Signature]

ATTESTED

 01/03/2021

Examiner/Reader
 Additional Commissioner's Court
 Mardan Division Mardan


 Naam Akhtar
 Additional Commissioner
 Mardan Division Mardan

ATTESTED

(12)

4/9 RCL

BEFORE THE WORTHU COMMISSIONER MARDAN DIVISION, MARDAN

1. Mr. Waheed-Ur-Rehman J/Clerk.
2. Mr. Bashir Ahmad J/Clerk DC Office, Mardan.
3. Mr. Zaheer Ahmad J/clerk.
4. Mr. Muhamad Islam J/clerk.
5. Mr. Muhammad Dawood J/Clerk.
6. Mr. Abtab Badshah J/Clerk.
7. Mr. Muhammad Javed J/Clerk.

..... Appellants

Versus

1. Deputy Commissioner Mardan.
2. Mr. Hameed Ullah, J/Clerk DC Office Mardan.
3. Mr. Khalid Khan J/Clerk DC Office, Mardan..... Respondents.

Subject:- DEPARTMENTAL APPEAL AGAINST SENIORITY LIST OF JUNIOR CLERKS DC OFFICE MARDAN, ISSUED VIDE NO. 835/DC(M)/EA-35, DATED 08.06.2021.

With due respect, the appellants submit as under:

Facts:

1. That the appellant are regular Junior Clerks in DC Office, Mardan and as per Seniority list issued vide No. 320/DC(M)/EA-35, dated 23.02.2020, their Seniority order was as under:

S.No	Name of J/Clerk
1	Waheed-Ur-Rehman
2	Bashir Ahmad
3	Zaheer Ahmad
4	Muhammad Islam
5	Muhammad Dawood
6	Aftab Badshah
7	Muhammad Javed

ATTESTED



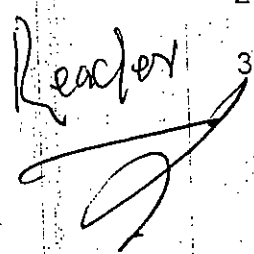
EXTENSION TO
Clerk
Mardan

2. That, in the said Seniority list, the number. of Respondent No. 02 and 03 was 09 & 10 respectively.
3. That the respondent No. 02 & 03 had filed appeal against the said Seniority, which was accepted vide order date 01-03-2021, therefore, the respondent No. 01 vide No. 865/DC (M)/EA-35, dated 28-06-2021 issued revised seniority list, wherein respondent No. 02 & 03 were placed at S#: 01 & 2 respectively, which affected the present appellants by lowering their Seniority to the extent of two numbers.
4. That the revised seniority list date 28-06-2021, is against the facts, laws & rules, as such ineffective upon the appellants on the following grounds:

GROUNDS

A. The respondent No. 02 & 03 were placed on Surplus pool and later on adjusted in Local Govt and Education Department under the Surplus Pool Policy. Later, on in light of judgment by the Khyber Pakhtunkhwa Service Tribunal; they were adjusted in DC Office on 27.09.2018; as such their seniority will be calculated from the same date.

B. That the respondents have completely misconstrues Para 6(a) of the Surplus pool policy, which says:

Reader


(14)

"In case the surplus employee could be adjusted in the respective cadre of his parent department, he shall regain his original seniority and that cadre".

In the said Para the clause "a surplus employee" signifies that whilst the Surplus Pool is active, and an employee is directly adjusted in his parent office from the surplus pool, he shall regain his original seniority; not those employees who have been adjusted in other departments, as per policy; and later on, re-adjusted in his parent department from that other department.

C. That substantive question of law is involved into the matter i.e. regarding regaining of seniority, Para-6(a) of the Surplus Pool policy says "in case the surplus employee could be adjusted in the respective cadre of his parent department; he shall regain his original seniority and the cadre" Question is that whether after adjustment in another department than his parent department under the policy, and spending 02 decades there, then re-adjusting him in his parent department and regaining his seniority is covered by the aforementioned para or otherwise?

The said rules are clear which obviously says that when a person is put on surplus pool; whilst he is waiting for adjustment a vacancy occurs in his parent department; and he is adjusted against the said vacancy directly from surplus pool, he will regain his seniority.

The said para does not mean that after spending 02 decades in other departments and getting seniority in the department wherein they were adjusted, later on they try to overtake the regular employees who opted to join service in the DC office without having any knowledge that there is a chain of ex-employees adjusted in other departments under the rules and they will be re-adjusted one by one and then seniority will be assigned to them.

In view of the abovementioned facts and grounds, the revised Seniority List dated 28-06-2021 is against the laws and rules, therefore, it is requested to be set aside and the original Seniority order dated 23-02-2021 may be restored.

Appellants

- 13-07-2021
- 3
- 23-08-21
- 1200
- 23-08-21
- do-
1. Mr. Waheed-ur-Rehman W. Rehman
 2. Mr. Bashir Ahmad Bashir Ahmad
 3. Zaheer Ahmad Zaheer Ahmad
 4. Muhammad Islam Muhammad Islam
 5. Muhammad Dawood Muhammad Dawood
 6. Mr. Aftab Badshah Aftab Badshah
 7. Mr. Muhammad Javed Muhammad Javed

15
انقل اپیل از قتل منقلہ لبرالت کت نہ صاحب دانا ڈوٹن سہ دانا
مہر قلم 4/9RCC رجوعہ 16/07/21 منقلہ 12/08/21 وحید الرحمن صاحب

IN THE COURT OF COMMISSIONER, MARDAN DIVISION, MARDAN.

Waheed-ur-Rehman, J/Clerk etc

Appellants

VERSUS

Deputy Commissioner, Mardan etc

Respondents

Case No.4/9RCC

Date of Institution 16-07-2021

Date of decision 12-08-2021

**DEPARTMENTAL APPEAL AGAINST SENIORITY LIST OF JUNIOR
CLERKS DC OFFICE MARDAN ISSUED VIDE NO.835/DC(M)/EA-35
DATED 08-06-2021.**

ORDER.

Through this appeal the appellants have challenged the seniority list of Junior Clerks DC Office Mardan issued vide No.835/DC(M)/EA-35 dated 08-06-2021.

Parties present. Respondents submitted their written reply which is placed on file. The respective parties personally argued the case. Arguments heard and case file as well as written reply of the respondents thoroughly perused.

From perusal of record of the case and arguments advanced by the respective parties, it reveals that the subject seniority list has been issued by the DC, Mardan in pursuance of order/judgment dated 01-03-2021 passed by the learned Additional Commissioner, Mardan whereby appeals of the present respondents were accepted. The said order of the learned Additional Commissioner, Mardan is still intact. If the present appellants were aggrieved with the said order, they should have challenged the same before the upper forum but they have failed to do so.

In view of the above, the appeal in hand is not maintainable which is hereby dismissed. No order as to cost.

**Announced
12-08-2021.**

Commissioner,
Mardan Division
Mardan Division Mardan



(16)



OFFICE OF THE DEPUTY COMMISSIONER, MARDAN

REVISED TENTATIVE SENIORITY LIST OF JUNIOR CLERKS (BPS-11) DEPUTY COMMISSIONER OFFICE MARDAN, AS STOOD ON 31-12-2020, UNDER SECTION 8 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS ACT, 1973 READ WITH RULE 17 OF KHYBER PAKHTUNKHWA APPOINTMENT, PROMOTION & TRANSFER RULES, 1989.

Sr	Name of Official with academic qualification	Father's name	Date of Birth	Date of Entry into Government Service	Recruitment by Initial/Promotion	Date of Appointment /Adjustment /Promotion to the present post (BPS-11)	Qualification	Remarks.
1	Hamza Gulish	Saeed Ullah	04.05.1966	21.03.1993	Initial appointment	27.09.2018	B.A	Adjusted as J/Clerk from Local Govt Deptt, in pursuance of judgment by KPK Service Tribunals. Seniority adjusted, pursuant to decision by Additional Commissioner, Mardan in service appeal No. 125/9.RCC decided dated 01-03-2021.
2	Khalid Khan Sr	Hayat Khan	15.03.1969	03.11.1991	By promotion	27.09.2018	SSC	In pursuance of judgment by KPK Service Tribunals, he has been adjusted in DC office from Education Deptt on 27.09.2018. His date of promotion as as J/Clerk is 23.04.2001. Seniority adjusted, pursuant to decision by Additional Commissioner, Mardan in service appeal No. 125/9.RCC decided dated 01-03-2021.
3	Waheed-Ur-Rahman	Miaj Ur Rehman	15-04-1983	08.02.2011	Initial	08.02.2011	FA	
4	Bashir Ahmad	Zarif Gul	08.02.1967	27.11.1990	By Promotion	18.08.2011	FA	---
5	Zameer Ahmad	Zahoor Ahmad	25.05.1964	27.09.2008	By Promotion	26.09.2011	FA	---
6	Muhammad Islam	Fazal Karim	13.02.1984	10.06.2009	Initial	16.01.2014	BA	Adjusted as J/Clerk in DC office on 16.01.2014
7	Muhammad Dawood	Sulaimn	25.03.1989	08.08.2016	Initial	08.08.2016	BA	---
8	Aftab Badshah	Fazal Badshah	01.04.1994	08.08.2016	Initial	08.08.2016	BS 4	---
9	Muhammad Javed	Iftab Gul	20.10.1970	01.11.1993	By Promotion	07.09.2016	SSC	---
10	Shah Zeb	Aurang Zeb	04.07.1985	29.06.2017	Initial	29.06.2017	BA	---
11	Zahid Ahmad	Anwar Khan	01.01.1987	27.09.2018	Initial appointment	27.09.2018	DAE	
12	Amir	Masood Khan	01.03.1987	27.09.2018	By promotion	27.09.2018	SSC	
13	Muhammad Anshad	Fazal Ur Rehman	01.02.1989	03.01.2019	Initial appointment	03.01.2019	MS	On the basis of merit order

AFFECTED

(17)

OFFICE OF THE DEPUTY COMMISSIONER, MARDAN

2	Ehsan Khan J	Gul Zada	08.03.1991	03.01.2019	-do-	03.01.2019	MA	-do-
3	Ghazeeh Ullah	Khan Badshah	11.02.1992	03.01.2019	-do-	03.01.2019	MA	-do-
4	Abdul Wahab	Mir Nawab	13.02.1992	03.01.2019	-do-	03.01.2019	MBA	-do-
5	Azka Ullah	Anwar Khan	10.11.1991	28.01.2019	-do-	28.01.2019	MBA	-do-
6	Muhammad Ayaz	Muhammad Ayub	1977	07.05.1995	-do-	18.04.2019	FA	Adjusted in DC office in pursuance of judgment by Service Tribunal.
8	Mahood Akhtar	Gohar ALI	22.05.1997	14.11.2019	-do-	14.11.2019	FA	
10	Manour Shah	Rahim Shah	15-11-1963	26-10-1988	By Promotion	30-04-2020	SSC	Office Order No. 482/EA-04 dated 30-04-2020
21	Muhammad Jilani	Dad Muhammad	07-01-1970	29-08-1988	By Promotion	30-04-2020	SSC	-do-
22	Ajmir Khan	Khushmir	15-12-1974	09-05-2007	By Promotion	30-04-2020	FA	-do-
23	Iqbal Said	Awal said	15-04-1976	09-05-2007	By Promotion	02-10-2020	BA	Office Order No. 1146/EA-04 dated 02-10-2020
24	Alamgir	Nisar Muhammad	03-03-1991	08-08-2016	By Promotion	02-10-2020	DAE (Elec)	Office Order No. 1147/EA-04 dated 02-10-2020
25	Jamal Nasar	Irshad Ali	07-04-1988	06-10-2020	Initial	06-10-2020	BA/DIT	Office Order No. 1165/EA-04 dated 06-10-2020
26	Naveed Khan	Shafiq-ur-Rehman	12-02-1990	03-12-2020	Initial	03-12-2020	BA	Deceased Son Quota
27	Asad Zia Khan	Hukam Khan	07-04-1994	03-12-2020	Initial	03-12-2020	FA	Deceased Son Quota

Deputy Commissioner
Mardan

Endst No. 865 /DCM/EA-35, Dated Mardan the 28/06/2021


Copy forwarded to:

All the Junior Clerks DC Office Mardan

ATTESTED

(10)

نقل رسیل از قتل منقله عبدالرحمان خان کسند هاد مردان در وقت مردان
 مقدمه 3/9RCC راجوعه 28-04-21 منقله 07-01-21 ان عنوان محمد آریض د. ح. مردان



IN THE COURT OF COMMISSIONER MARDAN DIVISION, MARDAN.

Muhammad Ayaz, Junior Clerk
 DC Office, Mardan.

Appellant

VERSUS

Deputy Commissioner, Mardan

Respondent

ATTESTED

[Signature]

Examiner / Reader to
 Commissioner Court
 Mardan Division Mardan

Case No... 3/9RCC
 Date of Institution 28-4-2021
 Date of decision 01-07-2021

APPEAL AGAINST THE ORDER NO.635/DC(M)DK-EA-04 DATED 15-04-2021 OF THE DEPUTY COMMISSIONER, MARDAN.

ORDER.

Through this appeal the appellant has challenged the order No.635/DC(M)/DK-EA-04 dated 15-04-2021 of the Deputy Commissioner Mardan through which an application of the appellant for granting seniority was regretted.

Brief facts of the case are that the appellant was appointed as Junior Clerk in DC Office Mardan on 07-05-1995. After devolution of DC Office in 2001, the appellant was rendered surplus and thereafter adjusted as Secretary Union Council Kati Garhi. On revival of DC Office Mardan in the year 2013, the appellant submitted an application for his re-adjustment in his respective cadre in DC Office Mardan which was regretted. Feeling aggrieved thereby, the appellant filed departmental appeal before this court which was also dismissed. Thereafter, the appellant filed appeal before the Hon'ble Service Tribunal Khyber Pakhtunkhwa Peshawar which was accepted vide order dated 20-12-2018 and on the basis of that order coupled with the order dated 15-02-2019 passed by this court, the appellant was adjusted as Junior Clerk (BPS-11) in his parent department i.e DC Office Mardan vide order No.693/DC(M)/EA-23 dated 18-04-2019. Thereafter, vide Endst No. 198/DC(M)/EA-35 dated 01-02-2021, the office of Deputy Commissioner Mardan issued tentative seniority list of Junior Clerks wherein the name of the appellant was placed at S.No.18. Feeling aggrieved thereby, the appellant filed an application to the Deputy Commissioner, Mardan for correction of his seniority which was regretted by the Deputy Commissioner Mardan vide impugned order dated 15-04-2021. Hence, the appellant has filed the appeal in hand.

Appellant alongwith his counsel present. Counsel for the appellant argued the case. Representative of DC Office Mardan also present and submitted parawise comments. Arguments, of the learned counsel for the appellant heard and case file as well as parawise comments of DC Mardan thoroughly perused.

(19)

From perusal of record of the case and arguments advanced at the bar, it reveals that the appellant was appointed as Junior Clerk in DC Office Mardan vide office order No.3100/G.EA dated 07-05-1995. After devolution in 2001 the appellant was rendered surplus and then adjusted as Secretary Union Council Kati Garhi. However, after revival of Deputy Commissioner Office, Additional Charge of the post of Reader to AAC-VI, Mardan was given to him, vide letter No.3070-80/DC(M)/PS/EA-4 dated 25-03-2013 and since then the appellant is performing duty as Reader to AAC-VI, Mardan. In the meanwhile, on the basis of order dated 20-12-2018 of the Hon'ble Service Tribunal Peshawar passed in appeal No.627/2018 filed by the appellant coupled with the order dated 5-2-2019 passed by this court, the appellant was re-adjusted as Junior Clerk in DC Office Mardan and performing his duty as Junior Clerk/Reader therein which is his parent department, meaning thereby that thereafter, the appellant neither remained official of the Local Government Department nor gained seniority therein and while adjusting him in his parent department i.e DC Office Mardan, the name of the appellant was placed at the bottom of seniority list of Junior Clerks which is against the natural justice, equity and para 6 (A) of the surplus policy regarding the subject matter. The judgment of Appex Supreme Court of Pakistan i.e 1996 SCMR 1185 also fully support the contention of the appellant. Moreover, the learned Additional Commissioner, Mardan has also accepted two same nature appeals titled Hameedullah and Khalid Vs Deputy Commissioner, Mardan vide his consolidated order dated 01-03-2021. Copies of surplus policy, judgment of Appex Supreme Court of Pakistan and that of the order of Additional Commissioner Mardan mentioned above are placed on file.

ATTESTED




Examination Officer
Mardan Division M.

In view of the above, the appeal in hand is accepted and the Deputy Commissioner Mardan is directed to modify the seniority list of Junior Clerks accordingly and the name of the appellant be placed at his real/right S.No. No order as to cost.

Announced
01-07-2021.

Commissioner
Mardan Division, Mardan



2 166960
Ali Azim Afridi
0333 9550000

(20)

VAKALATNAMA

BEFORE THE Service Tribunal KP Peshawar

Bashir Ahmad Plaintiff(s)/Appellant(s)
.....Applicant(s)/Petitioner(s)

VERSUS

Commissioner, Mardan etc Defendant(s)/Respondent(s)
.....Accused

FOR Bashir Ahmad.

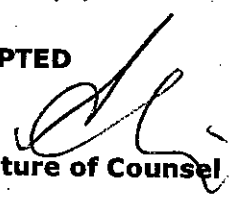
I/We, hereby appoint **Mr. Ali Azim Afridi, Hafeez Ullah Afridi**
(Advocate High Court)

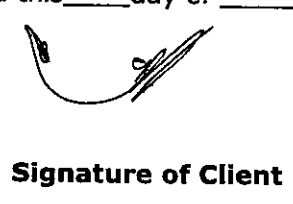
1. To appear, act and plead for me/us in the titled case before the Court/Tribunal in which the same maybe tried or heard, and any other proceedings arising therefrom or ancillary therewith and its stages that I personally could do if this instrument had not been executed.
2. That fee paid, or agreed to the said Counsel is for this Court alone and no part of the fee is refundable. The Counsel shall be entitled to retain costs payable by the opposite side.
3. I, we, will make arrangement for attending the Court on every hearing to inform my/our Counsel when the case is called. The Counsel shall in no way be responsible for any loss caused to me/us through my/our failure to inform him.

AND hereby agree:-

4. **That** the Counsel shall be entitled to withdraw from the prosecution of the titled case if the whole or any part of the agreed fee remains unpaid.
5. I/We have read the above terms and conditions and the same have been explained to me/us; and I/We have accepted them in WITNESS WHEREOF; I/We have set my/our hand this ___ day of _____ 20

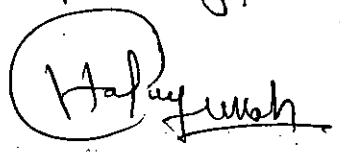
ACCEPTED


Signature of Counsel


Signature of Client

Email: - alee_1@live.com
Contact # 0333-9555000

Accepted by:-



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

Service Appeal No.7500/2021

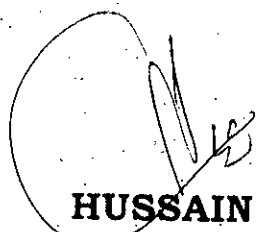
Bashir Ahmad & others. **APPELLANTS**

VERSUS

Commissioner Mardan Division & another. . **RESPONDENTS**

I N D E X

S.No.	Description of Documents	Annex	Pages
1.	Parawise Comments with Affidavit	—	1-3
2.	Authority Letter	—	4
3.	Copy of Para-6 of Surplus Pool Policy	"A"	5-8
4.	Copy of Judgment Reported as 1996 SCMR 1185	"B"	9-15



HUSSAIN AKBAR
Assistant Establishment
DC Office, Mardan

3

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

Service Appeal No. 7500/2021


Bashir Ahmad & other **APPELLANTS**

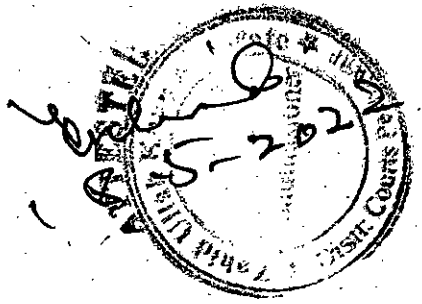
VERSUS

Commissioner Mardan Division & another. **RESPONDENTS**

AFFIDAVIT

I, Hussain Akbar (Assistant Estt.), DC Office, Mardan, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Comments** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.


DEPONENT
CNIC: 16101-7306270-3
CELL: 0300-5844549



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

Service Appeal No. 7500/2021

1. Bashir Ahmad & others Junior Clerks, DC Office, Mardan..... (Appellants)

VERSUS

1. Commissioner Mardan Division Mardan.
2. Deputy Commissioner, Mardan & others..... (Respondents)

PARWA-WISE COMMENTS BY RESPONDENT NO.1 & 2

Respectfully Sheweth:

Preliminary Objections:

1. The appellants have got no cause of action.
2. The appellants have not come to this Hon'ble Tribunal with clean hands.
3. This Honorable Tribunal has got no jurisdiction to adjudicate the matter.
4. The appeal is bad for non-joinder of necessary parties and joinder of unnecessary parties.
5. The appeal hopelessly time-barred.

PARA-WISE COMMENTS

1. No comments are offered.
2. As above.
3. As above.

REPLY ON FACTS:

4. Pertains to record, hence no comments are offered.
5. As above.
6. As above.
7. Facts are that the respondent No. 03, 04 and 05 were working as Junior Clerks in office of the erstwhile Deputy Commissioner before devolution was introduced in 2001. After the emerging of Devolution plan in 2001, they alongwith other colleagues were put on surplus pool in light of the Surplus Pool Policy, 2001. Subsequently, in light of the said policy, respondent No.3 was adjusted as Junior Clerk in Education Department, whereas the respondent No. 04 & 05 were adjusted as Secretaries UC in Local Govt Department. Later on, in 2018-19, in light of judgments by this Hon'ble Tribunal, they were re-adjusted in DC Office Mardan as Junior Clerks (BPS-11), and were placed at bottom of Seniority List by respondent No.02. Feeling aggrieved, they filed departmental appeals No. 125/9RCC, dated 14.01.2021 and Appeal No. 03/9RCC dated 01.03.2021 before the respondent No.1. Relevant law/policy regarding seniority of readjusted surplus employees is para 6(a) of Surplus Pool policy, which provides:

"In case a surplus employee could be adjusted in the respective cadre of his parent department, he shall regain his original Seniority in that cadre"

Thus in light of the said policy coupled with Judgment in case titles Hameed Akhtar Niazi VS Secretary Establishment Division 1996 SCMR 1185 etc, the appeals were accepted and vide order dated 01.03.2021 and 01.07.2021, respondent No.02 was directed put the respondents No.03 to 04 on right place of seniority list.

(Copy of Para-6 of Surplus pool policy is Annex-A)
(Copy of 1996 SCMR 1185 is Annex-B of Comments)

Therefore, the respondent No.02, issued revised seniority list dated 28.06.2021.

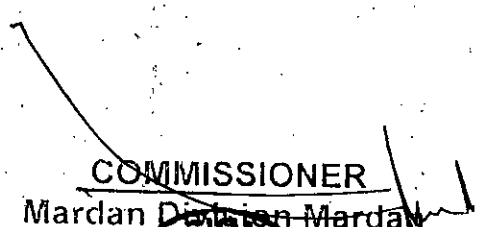
8. As explained in the preceding para.

REPLY ON GROUNDS:

- A. Incorrect. As explained in reply of para-7 of facts above.
- B. As above.
- C. Incorrect. Para 6(a) of Surplus Pool policy is very clear regarding seniority of readjusted surplus employees. Therefore, the revised seniority list has been issued in light of said policy coupled with Judgment by August Supreme Court of Pakistan in case titles Hameed Akhtar Niazi VS Secretary Establishment Division 1996 SCMR 1185 etc.
- D. As explained in the preceding para.
- E. As above.
- F. Incorrect. As explained in reply of Para-C, the departmental appeals of private respondents (No. 3,4 and 5) were accepted in light of relevant policy and judgments by the Superior Court.
- G. As above.
- H. As above.
- I. As explained in reply of para-7 of facts and para-C of grounds above, the revised seniority list has been issued in accordance with law & rules.
- J. As above.
- K. The respondent will also adduce further grounds during arguments.

In light of the above, the appeal is devoid of merit and law; therefore, it is requested to be dismissed in limine.


DEPUTY COMMISSIONER
Mardan (Respondent#:2)


COMMISSIONER
Mardan Division Mardan
(Respondent#:1)



4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 7500/2021

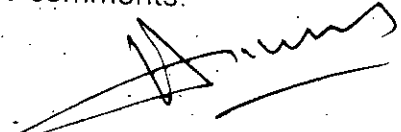
Bashir Ahmad, Junior Clerk, DC Office, Mardan & other.....(Appellants)

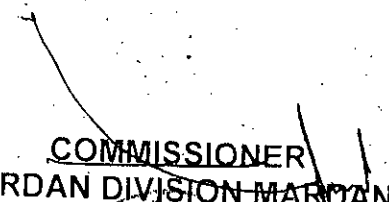
VERSUS

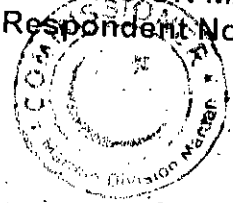
- 1. Commissioner Mardan Division Mardan.**
- 2. Deputy Commissioner, Mardan & others.....(Respondents)**

AUTHORITY LETTER

Mr. Hussain Akbar (Assistant Establishment, CNIC No. 16101-7306270-3) DC Office, Mardan is hereby authorized to attend Khyber Pakhtunkhwa Service Tribunal and file Para-Wise comments.


**DEPUTY COMMISSIONER
MARDAN (Respondent No.02)**


**COMMISSIONER
MARDAN DIVISION MARDAN
(Respondent No.01)**



(5)

Annex "A"

49

GOVERNMENT OF N.W.F.P.
ESTABLISHMENT & ADMINISTRATION DEPARTMENT
(REGULATION WING)

NO. SOR-I(E&AD)1-200/98.
Dated Peshawar the 8TH June /2001

To

- 1) All Administrative Secretaries in NWFP.
- 2) The Secretary to Governor, N.W.F.P.
- 3) All Commissioners in N.W.F.P.
- 4) All Heads of Attached Department in N.W.F.P.
- 5) All Heads of Autonomous/Semi-Autonomous Bodies in NWFP.
- 6) The Registrar, Peshawar High Court, Peshawar.
- 7) All Districts & Session Judges in NWFP.
- 8) All Deputy Commissioners/Political Agents in NWFP.
- 9) The Secretary, NWFP Public Service Commission, Peshawar.
- 10) The Director, Anti-Corruption Establishment, Peshawar.
- 11) The Registrar, NWFP Service Tribunal, Peshawar.

SUBJECT: POLICY FOR DECLARING GOVERNMENT SERVANT AS SURPLUS AND THEIR SUBSEQUENT ABSORPTION/ADJUSTMENT

Sir,

I am directed to refer to the subject noted above and to say that the Provincial Government has been pleased to make the following policy for absorption/adjustment of Government Servants declared as surplus in view of the transition of District System and resultant re-structuring of the Government Organizations/Departments etc:

1. POWER WITH REGARD TO THE DECLARATION OF POSTS AS SURPLUS.

The Finance Department in consultation with Department concerned and with the approval of competent authority would decide with regard to the declaration of a particular organization, set up or individual post as redundant or inessential.

2. CREATION OF SURPLUS POOL.

There will be a surplus pool's cell in the E&AD. After abolition of such posts in the concerned department, duly notified by the Finance Department, equal number of posts in the corresponding basic pay scales would be created in the E&AD for the purpose of drawl of pay and allowances etc by the employees declared surplus as such.

3. IMPLEMENTATION/MONITORING CELL.

For the purpose of coordination and to ensure proper and expeditious adjustment / absorption of surplus staff, the Government of NWFP has been pleased to constitute the following committee:

- a. Additional Secretary (Establishment) E&AD Chairman.
- b. Deputy Secretary LG& RD Department. Member.
- c. Deputy Secretary Finance Department. Member.
- d. Deputy Secretary (Establishment) E&AD. Secretary

4. CRITERIA FOR DECLARING A GOVERNMENT SERVANT AS SURPLUS AS A RESULT OF ABOLITION OF POST.

Consequent upon the abolition of a post in a particular cadre of a department, the junior most employee in that cadre would be declared as surplus. Such posts should be abolished in the respective departments and created in the surplus pool as indicated in para 2 above for the purpose of drawl of pay and allowances and also for consideration for subsequent adjustment

5. PROCEDURE FOR ADJUSTMENT OF SURPLUS EMPLOYEES.

Notwithstanding anything contained in any other law, rules or regulation to the contrary, for the time being in force, the following procedure for the adjustment of surplus staff would be followed:

- (a) Before transferring an employee to the surplus pool, he should be given option by the concerned department
 - (i) to proceed on retirement with normal retiring benefits under the existing rules;

OR

- (ii) to opt for readjustment/absorption against a future vacancy of his status/BPS which may not necessarily be in his original cadre/department.
- (b) Those who opt for retirement would be entitled for usual pension and gratuity according to the existing Government Servants Pension and Gratuity Rules of the Provincial Government. Those who opt for absorption/re-adjustment, a category-wise seniority list will be caused in the Surplus Pool for their gradual adjustment against the future vacancies as and when occurred in any of the Government Departments. These adjustment shall be on seniority-cum-fitness basis. For this purpose the seniority list will be caused category-wise with reference to their respective dates of appointment in the cadre. In case where dates of appointment of two or more persons are the same, the person older in age shall rank senior and shall be adjusted first.

- (c) Adjustment shall be made on vacant post pertaining to initial recruitment quota from those in the surplus pool in the following manner:
- (i) In case of occurrence of vacancies in their corresponding posts in any Government Department/Organization, the senior most employee in the surplus pool should be adjusted first
 - (ii) In case of cross cadre adjustment, the persons with such minimum qualification as prescribed in the relevant Service Rules for the post in question shall be adjusted keeping in view their seniority position.
 - (iii) If an employee possess the basic academic qualification but lacks the professional/technical qualification, he may be adjusted against such post subject to imparting the requisite training.
 - (iv) (a) The surplus employees holding such posts which fall to promotion quota in about all the Departments, he shall remain in the surplus pool till the availability of a post in the parent department.

OR

- (b) Where no equivalent post is available the civil servant may be offered a lower post in such manner, and subject to such conditions, as may be prescribed and where such civil servant is appointed to a lower post the pay being drawn by him in the post immediately preceding his appointment to a lower post shall remain protected.

Endst even No. & date

Copy forwarded to the:-


1. COS HQ, 11 Corps, Peshawar Cantt.
2. HQ PMCS C/O HQ Engineer 11 Corps, Peshawar Cantt.
3. All Addl/Deputy Secretaries in (Establishment) E&AD.
4. Deputy Secretary (Admn) E&AD.
5. Director, STI, Benevolent Fund Building, Peshawar.
6. The Accountant General, NWFP, Peshawar.
7. Deputy Secretary Benevolent Fund Cell, E&AD.
8. All District Accounts Officers in NWFP.


 (GHULAM JILANI ASIF)
 DEPUTY SECRETARY (REG-1)

Endst even No. & date

Copy forwarded to:-

1. All Section Officers in (Establishment) E&AD.
2. All Section Officer in General Administration E&AD.
3. The Estate Officer, E&AD.
4. PS to Chief Secretary, NWFP.
5. PS to Secretary (Establishment) E&AD.
6. PS to Secretary (General Administration) E&AD.
7. Librarian, E&AD.


 SECTION OFFICER (REG-1)

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Annex "B"

1996 S C M R 1185

[Supreme Court of Pakistan]

Before Ajmal Mian, Saiduzzaman Siddiqui and Mukhtar Ahmad Junejo, JJ

HAMEED AKHTAR NIAZI---Appellant

versus

**THE SECRETARY, ESTABLISHMENT DIVISION, GOVERNMENT OF
PAKISTAN and others---Respondents**

Civil Appeal No.345 of 1987, decided on 24th April, 1996.

(On appeal from the judgment dated 11-12-1986 of the Federal Service Tribunal, Islamabad, passed in Appeal No. 124(L) of 1980).

Per Ajmal Mian, J.; Saiduzzaman Siddiqui, J. agreeing---

(a) Civil Servants Act (LXXI of 1973)---

---S. 8(4)---Constitution of Pakistan (1973), Art. 212(3)---Establishment Secretary's D.O. Letter No.2/4/75-AVI, dated 2-10-1975---Seniority---Merger of four occupational groups of civil servants---Leave to appeal was granted to consider the questions as to whether the seniority list of 1979 was properly prepared in accordance with law and what was the effect of the reliance from the Government side in the Supreme Court in another appeal on the list of 1976; whether when preparing the list of 1979, S. 8(4) of the Civil Servants Act, 1973 and other related provisions of law had been kept in view; whether a civil servant could be allowed to count his seniority in a post from a date earlier than the one of his actual regular continuous officiation in that post; if not whether the fact that the respondents in appeal belonged to the different civil services of Pakistan would make any difference; whether one uniform principle of seniority would apply to all members of the Secretariat Group or the officers joining the Group from different sources/cadres would have to be treated differently; if so, whether such treatment with or without the support of statutory rules or directions would not be in contravention of the relevant provisions of Civil Servants Act, 1973 and in that context what was the effect of the abolition of C.S.P. Cadre; whether the eligibility of civil servant for appointment to a selection post conferred any right of seniority in that post and cadre without issuance of a formal promotion/appointment order in accordance with the prescribed procedure and whether in that context a civil servant belonging to ex C.S.P. Cadre was entitled to 'automatic promotion to the post of Deputy Secretary after he had completed eight years of service but without the requirement of being actually selected/promoted or appointed; and what was the effect of the Supreme Court judgment in Khizar Haider Malik ad others v Muhammad Rafiq Malik and another 1987 SCMR 78 on the case.

(b) Civil Servants Act, (LXXI of 1973)---

---Ss. 8 & 23---Seniority---Merger of C.S.P and P.S.P cadres and creation of APUG---Seniority of such an officer, who was working in province or elsewhere, could not be distorted/disturbed to his detriment on account of the merger of said groups and creation of APUG and junior of such civil servant could not be made senior to him nor a junior to his junior could be made senior to him but this has to be done within the framework of the rules of reorganization of services---If the case of any civil servant does not fall within the ambit of said re-organisation rules, S. 23 of the Civil Servants Act, 1973 can be pressed into service by the President of Pakistan to oblivate the inequitable and unjust result arising out of the merger of the two cadres in respect of seniority of any of the civil servants.

ESTACODE, 1989 Edn., pp. 1014, 1096 and 1097 ref.

(c) Service Tribunals Act (LXX of 1973)---

---S. 4---Constitution of Pakistan (1973), Art.212---Appeal to Service Tribunal or Supreme Court---
 Effect---If the Service Tribunal or Supreme Court decides a point of law relating to the terms of service of a
 civil servant which covers not only the case of civil servant who litigated, but also of other civil servants,
 who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance
 demand that the benefit of such judgment by Service Tribunal/Supreme Court be extended to other civil
 servants, who may not be parties to the litigation instead of compelling them to approach the Service
 Tribunal or any other forum.

Per Mukhtac Ahmad Junejo, J.---

(d) Service Tribunals Act (LXX of 1973)---

---S. 4---Appeal to Service Tribunal, scope and extent.

M. Bilal, Senior Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record for Appellant.

Raja Muhammad Bashir, Deputy Attorney-General and Ch. Akhtar Ali, Advocate-on-Record for Respondents.

Dates of hearing: 7th and 8th April, 1996.

JUDGMENT

AJMAL MIAN, J.---This is an appeal with the leave of this Court against the judgment dated 11-12-1986 passed by the Federal Service Tribunal, Islamabad, hereinafter referred to as the Tribunal, passed in Appeal No.124(1)

of 1980, filed by the appellant, praying for the following reliefs:--

"16. In view of the above, the appellant (who was eventually promoted with effect from 28-8-1980) humbly prays that this honourable Tribunal may kindly direct the respondent No. 1 to proceed in accordance with law and to declare him to have been promoted before the ineligible and junior officers promoted in August, 1979 and February and May, 1980. It is further prayed that full salary and all other benefits may also kindly be allowed to the appellant from the date on which he would have been promoted if his name had been put up for the consideration of the C.S.B. according to his seniority. Cost may also graciously be allowed,"

dismissing the same for the reasons recorded in Appeal NO. I 16(R) of 1981, filed by one M. Ramizul Haq.

2. Leave to appeal was granted to consider inter alia the following questions:--

(a) Whether the seniority list of 1979 was properly prepared in accordance with law and what is the effect of the reliance from the Government side in the Supreme Court in another appeal on the list of 1976?

(b) Whether when preparing the list of 1979, section 8(4) of the Civil Servants Act, 1973 and other related provisions of law, have been kept in view?

(c) Whether a civil servant can be allowed to count his seniority in a post from a date earlier than the one of his actual regular continuous officiation in that post; if not, whether the fact that the respondents belonged to the defunct Civil Service of Pakistan will make any difference?

(d) Whether one uniform principle of seniority will apply to all members of the Secretariat Group or the officers joining the Group from different source/cadres would have to be treated differently; if so, whether such treatment whether with or without the support of statutory rules or directions would not be in contravention of the relevant provisions of the Civil Servants Act, 1973; and in this context what is that effect of the abolition of the C.S.P. Cadre? and

(e) Whether the eligibility of a civil servant for appointment to a selection post confers any right of seniority

in that post and cadre without issuance of a formal promotion/appointment order in accordance with the prescribed procedure and whether in this context a civil servant belonging to ex-C.S.P cadre is entitled to automatic promotion to the post of Deputy Secretary after he completes eight years of service but without the aforementioned requirement of being actually selected/promoted or appointed? and

(f) What is the effect on this case of the judgment of this Court in Khizar Haider Malik and others v. Muhammad Rafiq Malik and another 1987 SCMR 78.?

3. It may be observed that the order of granting leave was recalled on 10-2-1992, but upon review, the same was set aside through an order dated 14-2-1994 and thereby the aforesaid leave granting order was restored.

4. The brief facts are that the appellant joined Pakistan Military Lands and Cantonments Service on the basis of the results of competitive examination held in June, 1960. It is the case of the appellant that in 1967, he proceeded to U.S.A. on study leave and obtained a Master's Degree in Public Administration from the Maxwell School of Public Affairs and Citizenship, Syracuse University. It is also his case that in June/July, 1972, the Planning Division recommended him for promotion to the post of Deputy Secretary to the Government of Pakistan. It is his further case that pending approval of the Establishment Division, Planning Division promoted him as Deputy Secretary by an order dated 9-8-1972. The above order reads as follows:--

"OFFICE ORDER

It has been decided that Mr. Hameed Akhtar Niazi, PML & CS will look after the work of Deputy Secretary (Administration) with immediate effect. He will be designated as Officer on Special Duty (Administration).

Mr. Zafar Iqbal is posted as Deputy Secretary, Programming."

It has also been averred by the appellant that he was promoted as Deputy Secretary on regular basis on 9-4-1973 and posted in the Establishment Division.

5. It seems that in August, 1973, C.S.P. and P.S.P. cadres were merged into All Pakistan Unified Grades, hereinafter referred to as APUG. It further seems that after the aforesaid merger, four occupational groups were created, namely, Tribal Areas Group, District Management Group, Secretariat Group and Police Group. The appellant opted for the Secretariat Group. It is the case of the appellant that the Gradation List of Deputy Secretaries i.e. of the Secretariat Group was prepared in accordance with the provision of section 8(4) of the Civil Servants Act, 1973, hereinafter referred to as the Act, which provides that "Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post". According to the appellant, the above Gradation List was circulated in June, 1976, wherein the appellant's name appeared at Serial No. 69. However, the appellant learnt in August, 1979, that civil servants belonging to erstwhile Civil Service of Pakistan (C.S.P.), whose names appeared much below the appellant in the aforesaid Gradation Lists of 1976, were being promoted to the rank of Joint Secretary (Grade-20) and his name had not been put up for promotion to the General Selection Board for consideration. He first made efforts to get redress from the department, but eventually, he filed the aforementioned service appeal in the Tribunal, which was dismissed as stated above. After that he filed a petition for leave to appeal in this Court, which was granted to consider the above questions.

6. It may be pertinent to observe that in the above appeal, besides the Federation, 14 civil servants were arrayed as respondents. It may further be observed that, in addition to the above respondents, 7 other civil servants were impleaded pursuant to an application dated 4-1-1988. Dr. Sh. Aleem Mehmood was impleaded as a respondent (respondent No. 23 in the present appeal) on his own application, whereas the applications of Muhammad Aslam and Tariq Junejo for being impleaded, remained pending till today. However, they were heard. One, Malik Zahoor Akhtar, has also appeared though he had not filed any application for getting himself impleaded in the aforesaid appeal.

7. Be that as it may, in support of the above appeal, Mr. M. Bilal, learned Sr. A.S.C. for the appellant, has vehemently contended that after the merger of the two cadres, namely, C. S. P. and P. S. P. and creation of APUG, the Gradation List of the Deputy Secretaries prepared in 1976 could not have been disturbed and

- that certain civil servants could not have been given seniority over the appellant from a date prior to their regular appointments as the Deputy Secretaries in the above cadre. To reinforce the above submission, reliance has been placed by him inter alia on section 8(4) of the Act and para. 8 of ESTACODE, 1989 Edition, under the caption "Secretariat Group" at Serial No. 19 incorporated on the authority of O.M.No.2/2/75-ACR, dated 12-4-1976.

The aforementioned newly added respondent supports Mr. Bilal's contention.

On the other hand, Mr. Raja Muhammad Bashir, learned Deputy Attorney-General, has contended that seniority inter se of the civil servants belonging to C.S.P. cadre obtaining prior to its merger could not have been distorted to the detriment of any of the above civil servants and, therefore, if C.S.P. officers, who were not actually posted as Deputy Secretaries but were deputed to various Provinces on account of public exigencies, could not have been made junior to civil servants who were junior to them prior to the merger of aforesaid two cadres and who were working as Deputy Secretaries and were senior inter alia to the appellant.

8. It appears that the Tribunal proceeded on the premises as urged by learned Deputy Attorney-General. It may be advantageous to reproduce the relevant portion of the impugned judgment, which reads as follows:--

"It appears that the question of seniority was not examined when persons not being Members of the Service were appointed to APU J with the approval of the President vide Notification No.1/1/73-ARC, dated 14-9-1973. Nevertheless, the seniority lists were prepared of the Deputy Secretaries and Joint Secretaries, etc. and they included only those officers of the former C.S.P. who at the relevant time were serving against these posts. At that time, the Rule for appointment of the Deputy Secretaries was that a C.S.P. Officer who had completed 8 years' service could be appointed as Deputy Secretary. No doubt, subsequently by Office Memo. No.3/7/74-AR.II, dated the 20th May, 1974, 12 years period was provided for Grade-19 and for horizontal movement of Grade-18 Officers to the post of Deputy Secretary vide para. 3 of Office Memo. No. 2/2/75-ARC, dated 21-2-1975, but this deviation in the length of service is immaterial as far as C.S.P. Officers are concerned. Their names already existed as Members of C.S.P. and subsequently of APUG. Their seniority was to be changed in accordance with some principle and not by making any rule affecting their vested right. All Rules made under the Civil Servants Act or the Civil Servants Ordinance have to be construed with prospective operation and not with retrospective operation. All those Rules which affect the former Officers of the C.S.P. have to be applied for the situations existing after the enactment of the Civil Servants Ordinance, 1973, and the Rules made thereunder. The seniority of the C.S.P. Officers in APUG could not, therefore, be distorted. Any seniority to which a Member of the Cadre was entitled before the constitution of Secretariat Group, could not be affected by the provisions of section 8(4) of the Civil Servants Act, 1973. In other words, the seniority of such a person cannot be destroyed by any subsequent change in the principles of seniority. By making a provision in the relevant Officer Memorandum that seniority shall count from the date when an officer becomes Deputy Secretary or is promoted to Grade-19, whichever is earlier, the distortion in the seniority of other Federal Services was removed, but in case of C.S.P. Officers this formula could not work as there was no scale comparable to Grade-19 (Junior Administrative Grade) and the C.S.P. Officers used to be promoted to the Joint Secretary's grade from Senior C.S.P. Scale which is comparable with Grade-18, and the post of Deputy Secretary was never a promotion post in the cadre. Thus, in our opinion, if after the coming into force of the Civil Servants Act, an officer of former C.S.P. who was senior to his colleagues working as Deputy Secretary in the Secretariat, but an officer who was working in the Province or elsewhere would, when brought to the Secretariat later, retain his seniority vis-a-vis his own colleagues. In other words, if an officer of the former C.S.P. is appointed as Deputy Secretary in the Secretariat Sub-Group, within APUG, he would count his seniority from the date he completes 8 years of service if any of his colleagues junior to him had already been promoted. It is this principle, which the Establishment Division has applied and we think that this is a proper course by which the distortion in the seniority can be removed."

9. In this regard, it may be pertinent to refer to page 1014 of the ESTACODE, 1989 Edition, in which under the caption "Reorganisation of APUG in to four Occupational Groups Seniority of members of the Group" at Serial No. 17 has provided as under on the basis of Establishment Secretary's D.O. Letter No.2/4/75-AVI, dated 2-10-1975:--

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"Sl. No. 17:

Kindly refer to Establishment Secretary's Circular D.O. Nos.5/1/73ARC, dated the 7th September, 1973, 2/2/73-AVI, dated the 26th November, 1973, and 2/1/74-AVI, dated the 29th May, 1974, alongwith which the combined seniority lists of officers of All-Pakistan Unified Grades in various grades were circulated.

2. In the meantime, the All-Pakistan Unified Grades has been organised into four Occupational Groups---the Secretariat Group, the District Management Group, the Police Group and the Tribal Areas Group. The rules and procedures etc. governing the administration of each of these Groups have already been issued and sent to you vide the Establishment Division's Office Memoranda No.2/2/75-ARC, dated 21st February, 1975 (Secretariat Group) No.2/2/74-ARC, dated 23rd February, 1974 (District Management Group), No.3/2/75-ARC, dated 31st May, 1975 (Police Group) and D.O. No. 1/6/73-ARC, dated 20th October, 1973 (Tribal Areas Group). Consequently the seniority lists have now been drawn up separately in respect of each Group.

3. As already indicated, each group will henceforth be managed under the respective rules quoted above. A member of a particular Group will be governed by prospects of promotion and advancement available within the Group. While entry into other Groups by horizontal movement is possible with the approval of Central Selection Board, there will be no automatic mobility from one Group to the other. In other words, officers shown in any particular Group will now belong to that Group once for all unless specifically selected and approved for movement to another Group.

4. You may now kindly inform the officers under your administrative control accordingly. Officers shown in the Secretariat Group but belonging originally to some other Group may let this Division know finally as to whether they would like to remain in the Secretariat Group or go back to their parent Group. Option once exercised will- be final. Such option should reach us not later than 31st October, 1975. Failure to exercise option by that date will be presumed to be an option for the Group where the name appears presently.

5. In the meantime, these lists may be treated as provisional and in case there are any omissions or discrepancies, these may please be communicated to us immediately for rectification."

10. Reference may also be made to paras. 3 and 8 of the ESTOCODE, 1989 Edition, at pages 1096 and 1097 thereof under the caption "Secretariat Group" at Serial No. 19 and which read as under:--

Para. 3 of the ESTACODE: 3. Deputy Secretary.--Appointment to the post of Deputy Secretary will be made in accordance with the following methods: --

(i) By promotion of Grade-18 Officers of Office Management Group and the Secretariat Group on the recommendations of the Central Selection Board.

(ii) By horizontal movement from other Occupational Groups of Grade 19 Officers who have been recommended by the Ministries/Divisions, Departments or Provincial Governments and have been found fit by the Central Selection Board.

(iii) By direct appointment or the recommendations of the Federal Public Service Commission of persons possessing such qualifications and experience etc., as may be prescribed.

Para: 8 of the ESTACODE: 8. Deputy Secretary.--Seniority would be determined from the date of continuous regular officiation as Deputy Secretary, or in a post in Grade-19, whichever is earlier."

11. We may observe that in the present case, section 8(4) of the Act is relevant as it will be covered by the rules framed for regulating APUG. It is evident from afore-quoted para. 4 of ESTACODE, 1989 Edition, at page 1014 that after the creation of Secretariat Group, the civil servants were given the option to opt the above Group or any other Group by 31-10-1975. Whereas above quoted para. 3 of the ESTACODE at page 1096 under the caption "Secretariat Group" at Serial No.19, indicates as to how the appointment to the post

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of Deputy Secretary will be made i.e. by promotion of Grade-18 Officers by horizontal movement and by direct appointment on the recommendation of the Federal Public Service Commission.

12. It may further be noticed that para. 8 of the above ESTACODE at page 1097 provides that seniority would be determined from the date of continuous regular officiation as Deputy Secretary or in a post in Grade-19, whichever is earlier.

13. The Tribunal has not taken into consideration that above relevant provisions of the ESTACODE while dilating upon the controversy in issue. It should have decided, whether the respondents had exercised the options in terms of aforesaid para. 4 of the above ESTACODE at page 1014, by 31-10-1975 and whether the seniority list was prepared as per aforesaid para. 8 of the ESTACODE, i.e. from the date of continuous regular officiation as Deputy Secretary or in a post in Grade-19, whichever is earlier.

14. There is no doubt that the seniority of an officer, who is working in a Province or elsewhere, cannot be distorted/disturbed to his detriment on account of the merger of above two cadres of C.S.P. and P.S.P. and creation of APUG. His junior cannot be made senior to him nor a junior to his junior can be made senior to him. But, this is to be done within the framework of the rules of reorganisation as given in the above ESTACODE. If the case of any civil servant does not fall within the ambit of the above rules, section 23 of the Act can be pressed into service by the President to obliterate the inequitable and unjust result arising out of the above reorganisation in respect of seniority of any of the civil servants.

15. It was also contended by Mr. Raja Muhammad Bashir, learned Deputy Attorney-General, that since that appellant has already been promoted to Grade-20, the above appeal has become in fructuous. However, this contention was refuted by Mr. Bilal and it was urged by him that the appellant is entitled to get his seniority restored according to the rules.

16. In our view, it will be just and proper to remand the case to the Tribunal with the direction to re-examine the above case after notice to the affected persons and to decide the same afresh in the light of above observations. We may observe that if the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings; in such a case, the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum.

17. The above appeal stands disposed of in the above terms, with no order as to costs.

(Sd.)

Ajmal Mian, J.

(Sd.)

Saiduzzaman Siddiqui, J.

MUKHATAR AHMAD JUNEJO, J.--My learned brother Ajmal Mian, J. was kind enough to send me draft of the judgment proposed to be delivered by him in Civil Appeal No.345 of 1987 (Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan etc.) With due respects to my learned brother, I am unable to agree with him that this matter be remanded to the Federal Service Tribunal with some directions including the direction to re decide the case.

The facts of the case have already been given by my learned brother and they need not be reiterated. In the context of the facts given in para.4 of the draft judgment, appellant Hameed Akhtar Niazi filed his appeal before the Federal Service Tribunal under section 4 of the Service Tribunals Act with prayer in the following words:--

"In view of the above the appellant who was eventually promoted with effect from 28-8-1980 humbly prays that this Honourable Tribunal may kindly direct the respondent No.1 to proceed in accordance with law and to declare him to have been promoted before the ineligible and junior officers promoted in August, 1979 and February and May, 1980. It is further prayed that full salary and all other benefits may also kindly be

allowed to the appellant from the date on which he would have been promoted if his name had been put up for the consideration of the C.B.S. according to his seniority. Cost may also graciously be allowed. "

Perusal of the prayer shows that the appellant seeks his promotion from a date earlier than the dates of promotion of certain officers termed by him to be ineligible and junior. According to section 4 of the Service Tribunals Act, a civil servant can invoke jurisdiction of the Tribunal in respect of any of his terms and conditions of service. However, no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade, vide clause (b) of the proviso to section 4 of the said Act. By asking the Tribunal to direct his promotion on a date earlier than the promotion of ineligible and junior officers, the appellant wanted the Tribunal to determine him to be fit for promotion and to determine the other officers to be ineligible for promotion by labelling them as ineligible. As regards the claim for salary and monetary benefits, the same is again based on the presumptive promotion of the appellant. Since the main relief of promotion cannot be given to the appellant by the Tribunal, the consequential relief can also not be given to him.

In my humble view appellant's appeal before the Federal Service Tribunal was not maintainable and it required to be rejected. In my humble view this appeal merits dismissal.

(Sd.)

Mukhtar Ahmad Junejo, J.

ORDER OF THE COURT

By majority judgment this appeal is allowed, .The case is remanded to the Tribunal in terms of the majority view.

(Sd.)

Ajmal Mian, J.

(Sd.)

Saiduzzaman Siddiqui, J.

(Sd.)

Mukhtar Ahmad Junejo, J.

M.B.A./H-251/S

Appeal allowed.

BEFORE THE SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. _____/2021

Bashir Ahmad

VERSUS

Commissioner Mardan Division Mardan & Others

Parawise Reply on behalf of Respondents(2 to 5) to the Service Appeal against the Order Dated:12/08/2021 issued by the Worthy Commissioner Mardan Division Mardan.

Respectfully Sheweth: The Reply On behalf of Respondents is as under:-

PRELIMINARY OBJECTGIONS:

1. That the Appellants have got no locus standi to institute the present appeal.
2. That the appeal of the petitioners is badly time barred due to which is reasons the appeal of the appellant is liable to be dismissed.
3. That Bashir Ahmad appellant has already got his seniority since then is a senior Clerk moreover Waheed Ur Rahman was senior then Bashir Ahmad as evident from seniority list as Serial No 1 where as Bashir Ahmad is Serial No: 2 Vide No 320/DC(M)/EA-35 dated 23-02-2021 but despite this Bashir Ahmad has got his Seniority as a senior Clerk while Waheed Ur Rahman is still a joiner Clerk.
4. That the seniority lists and other documents including orders of the additional commissioner Mardan Division Mardan, Commissioner Mardan Division Mardan are not attested/Verified by the competent concert form, moreover the stamps present are the said documents are not of the concert office.
5. That due to Non-Joinder and mis-joinder of necessary parties and the case in hand , in the instant appeal is liable to be dismissed.
6. That the petitioners has by themselves admitting the factum of issuance of revised seniority list as per direction of the worthy Additional Commissioner Mardan vide Order Dated:01/03/2021,moreever Order of the Worthy Additional Commissioner Mardan is based upon merit and Various Judgments of Apex Courts of Pakistan i.e Hameed Akhtar

Vs Establishment Division (1996 SCMR 1185), due to which reasons the Petitioners are disentitled of any relief from this August Court.

7. That Respondents (2 and 3) were appointed as Junior Clerks in the year 1993, while respondent No.5 was appointed as Junior Clerk in the year 1995.
8. That later on they were rendered surplus in the year 2001 after the devolution of DC office Mardan, Later on respondent no.4 was adjusted in Excise Department in 2007 and subsequently as Sectary Union Council Katlang in the year 2010 and subsequently adjusted in his parent Department in DC Office Mardan in the year 2018, whereas Respondent no.3 was adjusted in Education Department in 2007 and later on was adjusted in his parent Department in DC Office Mardan in 2018, similarly respondent no.5 was adjusted as Sectary Union Council kati Garhi, after the revival of DC office Mardan respondent no. 5 was adjusted as Junior Clerk in his respective Cadre vide order no 693/DC(M)/EA-23 Dated: 18/04/2019, However after revival of DC Office Mardan, Additional charge of the post of reader to AAC-ii Mardan was given to respondent no. 5 vide letter no. 3070-80/DC(M)/PS/EA-4 Dated: 25/03/2013 and since then respondent no.5 is performing his duty as Reader to AAC-iv Mardan.
9. That respondents were adjusted in the other Departments mentioned above but neither their adjustment was Permanent in nature nor they have gained any Seniority in the concerned Departments and were readjusted in their parent Department i.e DC Office Mardan in their respective Cadre.
10. That the respondents have a very long tenure of Service in the Department than the Petitioners and keeping their names in the bottom of the Seniority List and keeping Junior officials in the row of senior Officials in the Seniority list is against Justice, Equity, and against the rules and Laws of the land as well as against Para no.6 of the Surplus Policy regarding the subject matter.
11. That following Judgments of the August Supreme Court of Pakistan i.e 1996 SCMR 1185 as well as surplus policy fully support the case of respondents.
12. That office of the DC Mardan issued the seniority list on 23/02/2021 in which the Present respondents were placed at serial no. 9 , 10 and 18 which Seniority List was resisted by the respondents and Department Representation was made to the Competent Forum which was accepted and revised Seniority list was issued by the DC Office Mardan vide no.865/DC(M)/EA-35, Dated:28/06/2021 and Seniority of the Present Respondents NO (3 , 4 & 5) were made in light of the Policy enacted on 8/06/2001 regarding seniority of the surplus employees.
13. That Respondent.2 has issued revised seniority list as per the direction of Additional Deputy Commissioner Mardan in which the present respondents were rightly placed at their respective Serial numbers by keeping in view the length of Service and repatriation to their parent Department as per Policy already enacted in this behalf.
14. That as per surplus police and various judgments and rules of the apex Courts the respondents are entitle to be given their original seniority right from the date of

appointments in the their respective cadre in their parent department (DC office Mardan) but still the respondent have not given original seniority which the share violation of Law, Justice and Policy.

ON FACTS:

4. That para no.1 to the extent of petitioner being civil Servant is correct, moreover petitioner has already got his seniority and is a Senior Clerk and enjoying the same, therefore denied.
5. That para no.2 is incorrect, because the said seniority list was wrong, and against the policy, rules and law on the subject, therefore the same was resisted by the respondents, hence denied.
6. That as the said Seniority List has already been resisted and revised by the competent Forum, therefore this fact that the respondents were placed at serial no.9 and 10 in the list does not hold the ground, hence denied.
7. That para no. 4 is correct, need no further explanation.
8. That para no.8 is incorrect, because the Order of the Learned Commissioner Mardan Division Mardan is based upon merit of the case, rules, law and surplus policy on the subject, moreover there was no merit in the Appeal of the appellants therefore the same turn down. Hence denied.

ON GROUNDS:

- A. That revised Seniority list has been issued according to the service length of the officials, the same is issued on the basis of merit as well as Policy and law, hence denied.
- B. That petitioner was in knowledge of the entire process/ proceeding from the issuance of final/ first Seniority list till issuance of Revised Seniority list as well as was in knowledge of court proceedings conducted in this respect, therefore this is a lame excuse that the petitioner was unaware about the proceedings, hence denied.
- C. That this para is incorrect, hence denied.
- D. That respondents 1&2 has appreciated the Surplus Policy, law, rules on the subject matter in its true perspective and thereafter issued revised Seniority list, there are many examples in the field in which the employees of the surplus pool were repatriated to their parent Department without any objection who were at par with present answering respondents and they were given the seniority as per policy which created a right in respect of the present respondents, furthermore, no objection on the previous adjusted employees creates an estoppel upon the present Petitioner to object the instant revised Seniority List.

Note-1: Rest of the (Paras on Ground) consist upon the principles of law discussed in various Judgments of the Apex Courts of Pakistan which may be discussed during Arguments before this Hon'ble Court.

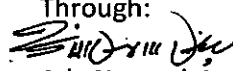
Note-2: All relevant Documents including Order of Additional Commissioner Mardan Division Mardan, Order of Commissioner Mardan Division Mardan, Final Seniority List, as well as Revised Seniority list and Orders of Readjustment of Respondents are attached with the instant Written Reply.

It is therefore most humbly prayed that the appeal of the Appellant/Petitioner is against the law, against the merit of the case, against the facts, against policy may please be dismissed.

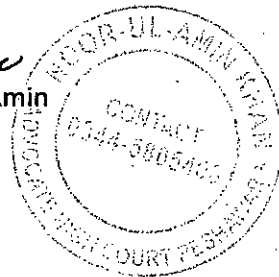
Dated: 18-07-2022

Respondents(3,4&5).

Through:



Adv Noor-ul-Amin
High courts.



BEFORE THE SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. _____/2021

Bashir Ahmad

VERSUS

Commissioner Mardan Division Mardan & Others

Parawise Reply on behalf of Respondents(2 to 5) to the Service Appeal against the Order Dated:12/08/2021 issued by the Worthy Commissioner Mardan Division Mardan.

Respectfully Sheweth: The Reply On behalf of Respondents is as under:-

PRELIMINARY OBJECTGIONS:

1. That the Appellants have got no locus standi to institute the present appeal.
2. That the appeal of the petitioners is badly time barred due to which is reasons the appeal of the appellant is liable to be dismissed.
3. That Bashir Ahmad appellant has already got his seniority since then is a senior Clerk moreover Waheed Ur Rahman was senior then Bashir Ahmad as evident from seniority list as Serial No 1 where as Bashir Ahmad is Serial No: 2 Vide No 320/DC(M)/EA-35 dated 23-02-2021 but despite this Bashir Ahmad has got his Seniority as a senior Clerk while Waheed Ur Rahman is still a joiner Clerk.
4. That the seniority lists and other documents including orders of the additional commissioner Mardan Division Mardan, Commissioner Mardan Division Mardan are not attested/Verified by the competent concert form, moreover the stamps present are the said documents are not of the concert office.
5. That due to Non-Joinder and mis-joinder of necessary parties and the case in hand, in the instant appeal is liable to be dismissed.
6. That the petitioners has by themselves admitting the factum of issuance of revised seniority list as per direction of the worthy Additional Commissioner Mardan vide Order Dated:01/03/2021, moreover Order of the Worthy Additional Commissioner Mardan is based upon merit and Various Judgments of Apex Courts of Pakistan i.e Hameed Akhtar

Vs Establishment Division (1996 SCMR 1185), due to which reasons the Petitioners are disentitled of any relief from this August Court.

7. That Respondents (2 and 3) were appointed as Junior Clerks in the year 1993, while respondent No.5 was appointed as Junior Clerk in the year 1995.
8. That later on they were rendered surplus in the year 2001 after the devolution of DC office Mardan, Later on respondent no.4 was adjusted in Excise Department in 2007 and subsequently as Sectary Union Council Katlang in the year 2010 and subsequently adjusted in his parent Department in DC Office Mardan in the year 2018, whereas Respondent no.3 was adjusted in Education Department in 2007 and later on was adjusted in his parent Department in DC Office Mardan in 2018, similarly respondent no.5 was adjusted as Sectary Union Council kati Garhi, after the revival of DC office Mardan respondent no. 5 was adjusted as Junior Clerk in his respective Cadre vide order no 693/DC(M)/EA-23 Dated: 18/04/2019, However after revival of DC Office Mardan, Additional charge of the post of reader to AAC-ii Mardan was given to respondent no. 5 vide letter no. 3070-80/DC(M)/PS/EA-4 Dated: 25/03/2013 and since then respondent no.5 is performing his duty as Reader to AAC-iv Mardan.
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13. That Respondent 2 has issued revised seniority list as per the direction of Additional Deputy Commissioner Mardan in which the present respondents were rightly placed at their respective Serial numbers by keeping in view the length of Service and repatriation to their parent Department as per Policy already enacted in this behalf.
14. That as per surplus police and various judgments and rules of the apex Courts the respondents are entitle to be given their original seniority right from the date of

appointments in the their respective cadre in their parent department (DC office Mardan) , but still the respondent have not given original seniority which the share violation of Law, Justice and Policy.

ON FACTS:

4. That para no.1 to the extent of petitioner being civil Servant is correct, moreover petitioner has already got his seniority and is a Senior Clerk and enjoying the same, therefore denied.
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ON GROUNDS:

- A: That revised Seniority list has been issued according to the service length of the officials, the same is issued on the basis of merit as well as Policy and law, hence denied.
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Note-1: Rest of the (Paras on Ground) consist upon the principles of law discussed in various Judgments of the Apex Courts of Pakistan which may be discussed during Arguments before this Hon'ble Court.

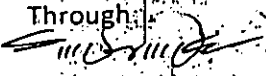
Note-2: All relevant Documents including Order of Additional Commissioner Mardan Division Mardan, Order of Commissioner Mardan Division Mardan, Final Seniority List, as well as Revised Seniority list and Orders of Readjustment of Respondents are attached with the instant Written Reply.

It is therefore most humbly prayed that the appeal of the Appellant/Petitioner is against the law, against the merit of the case, against the facts, against policy may please be dismissed.

Dated: 16-07-2022

Respondents(3,4&5).

Through:


Adv. Noor-ul-Amin
High courts.

موزخہ _____ 20ء منجانب: رسائل نمائندگی
 مقدمہ بعنوان _____ سید احمد نام _____ گھنٹہ خاصا فردوں (دو عینہ)
 مقدمہ نمبر _____ رجوعہ _____
 نوعیت مقدمہ _____
 مقدمہ علت نمبر _____ مورخہ _____
 جرم _____ تھانہ _____
 سروس اپیل

50
روپے

باعث تحریر آنکہ



مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دی وکل کاروائی متعلقہ

آن مقام پشاور کیلئے نورالہدیٰ خان اسٹوڈیوٹ پرائیویٹ کورپوریشن کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل مقررہ کو راضی نامہ کرنے و تقرر ی ثالث و فیصلہ بر حلف دینے عرضی دعویٰ، جواب دعویٰ، اقبال دعویٰ، جواب الجواب، عذر داری، درخواست زبردفعہ (2) 12 ض د، درخواست برآمدگی و سرسبزی مقدمہ، درخواست برآمد منسوخ کاروائی و ڈگری یکطرفہ دائر کرنے جواب الجواب وغیرہ درخواست کاروائی اجراء دائر کرنے و وصولی چیک و رقم اور درخواست از ہر قسم کی تصدیق زراس پر دستخط وغیرہ کرنے کا اختیار ہوگا۔ اپیل، اپیل دراپیل، نگرانی، نظر ثانی، رٹ و عذر داری وغیرہ دائر کرنے کا بھی اختیار ہوگا۔ اور بصورت ضرورت مذکورہ کے عمل یا جزوی کاروائی کے واسطے وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برداشتہ منظور و قبول ہوگا اور دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کا بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی پر وکیل موصوف مقام دورہ پر ہو یا حد سے باہر ہو یا بیمار ہو یا کوئی ضروری کام ہو۔ تو وکیل صاحب پابند نہ ہونگے کہ پیروی مقدمہ مذکورہ کریں لہذا وکالت نامہ لکھ دیا تاکہ سند رہے۔

المقوم: _____
 مقام پشاور کے لئے منظور ہے۔

نوٹ: اس کالت نامہ کو کوئی ناقابل قبول ہوگی۔

Advocate I.D: bc 12-3493

Bar Council

kp

Bar Association

DBA Mardan

Contact #:

0344 - 580540 8

Emboss

Attested

&

Accepted

Adv NOOR-U-M-AJAIN

Ichan Hk.