



S.A No.7567/2021

15th May, 2023 (. Appellant alongwith counsel present. Mr. Muhammad Jan, District Attorney alongwith Liaqatullah, Civil Nazar, for the respondents present.

✓ Learned counsel for the appellant requested for adjournment in order to further prepare the brief. Last opportunity is granted. To come up for arguments on 17.07.2023 before the D.B at Camp Court, D.I.Khan. Parcha Peshi given to the parties.

SCANNED
KPSB
Peshawar


(Fareeha Paul)
Member (E)
(Camp Court, D.I.Khan)


(Kalim Arshad Khan)
Chairman
(Camp Court, D.I.Khan)

Fazle Subhan, P.S

14.02.2023

Appellant alongwith his counsel present. Mr. Asif Masood Ali Shah,
Deputy District Attorney for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground
that he has not made preparation of the brief. Adjourned. To come up for
arguments on 21.03.2023 before D.B at camp court D.I.Khan. P.P given to
parties.

SCANNED
KPST
Peshawar



(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman
Camp Court D.I. Khan

21st Mar, 2023

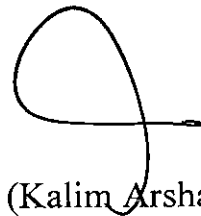
Learned counsel for the appellant present. Mr. Asad Ali
Khan, Assistant General for official respondent present.

Mr. Anwar Awan, Advocate present and has already filed
wakalatnama as well as application under Rule-27 of the
Khyber Pakhtunkhwa Service Tribunal Rules 1974 for the
purpose of restoration of defense of respondent No. 1 and 2
which is found placed on file. Learned counsel for the appellant
seeks time to file reply on the application submitted by the
private respondents No. 1 and 2. To come up for arguments on
15.05.2023 before D.B at camp court D.I.Khan. P.P given to the
parties.

SCANNED
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Peshawar



(Salah Ud Din)
Member(J)



(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan

21.11.2022

Tour to camp court D.I Khan has been cancelled therefore, the case is adjourned to 16.01.2023 for the same.


READER

16th Jan, 2023

Junior of learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Vide order sheet dated 24.10.2022, last chance was given to the respondents with a cost of Rs. 2000/- to file reply/comments but today there is nobody present on behalf of the respondents nor did they submit written reply/comments. The time provided in Rule-12 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974 for filing reply is seven days before the date fixed but despite providing opportunity the respondents have not filed the comments. They are thus placed ex-parte and their right to file reply stands struck off. To come up for arguments on 14.02.2023 before D.B at camp court D.I Khan.

SCANNED
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Peshawar



(Kalim Arshad Khan)
Chairman
Camp Court D.I Khan

22.08.2022

Due to summer vacation, the case is adjourned for the same on 26.09.2022.


Reader

26th Sept 2022

Counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present.

Written reply/comments on behalf of respondents not submitted. Respondents are directed to submit written reply/comments on the next date. Last opportunity granted. To come up for written reply/comments on 24.10.2022 before S.B at Camp Court, D.I. Khan.



(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan

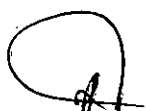
24.10.2022

Appellant in person present.

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

Reply not submitted. Learned AAG requested for time to submit reply/comments; granted but on payment of cost of Rs. 2000/- to be paid in Court through proper receipt which will later on be paid to the appellant. To come up for reply/comments 21.11.2022 before S.B at Camp Court, D.I.Khan.

SCANNED
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(Rozina Rehman)
Member (J)
Camp Court, D.I.Khan

14.12.2021

Appellant present through counsel. Preliminary arguments heard. Record perused.

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of reply/comments. To come up for reply/comments on 22.02.2022 before S.B at Camp Court, D.I.Khan.

Appellant Deposited
Security & Process Fee

(Rozina Rehman)
Member (J)
Camp Court, D.I.Khan

22/2/22

Due to retirement of the Honble
Chairman to come up for the same as
before on 30/6/2022

Reader

30th June 2022

Counsel for the appellant present. Mr. Farhaj Sikandar,
District Attorney for respondents present.

Written reply on behalf of the respondents have not
submitted. Learned District Attorney seeks time to contact the
respondents for submission of written reply/comments. To
come up for written reply/comments on 22.08.2022 before S.B
at camp court D.I.Khan.



(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7567 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	08/10/2021	<p>The appeal of Mr. Muhammad Riaz presented today by Mr. Gul Tiaz Khan Marwat Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>2-</p> <p>This case is entrusted to Touring S. Bench at D.I.Khan. Notices be issued to appellant/counsel for preliminary hearing to be put up there on <u>13/12/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

14.12.2021

Appellant present through counsel. Preliminary arguments
admitted. Record perused.

The copy of the order dated 30.01.2014 appended with
the appeal reveals that the appellant was suspended vide
order dated 23.01.2012 due to involvement in a criminal case
and on his acquittal by the Hon'ble Peshawar High Court
D.I. Khan Bench, he was reinstated in the Government
service treating his absence period as leave without pay.
There are arguable points whether the period under
suspension can be treated as absence and if the appellant
was reinstated into service whether he was not entitled to
benefit of second proviso of Section 17 of the Khyber
Pakhtunkhwa Civil Service Act, 1974.

In view of the argued points this appeal is admitted for
regular hearing subject to all legal formalities. The appellant
is directed to deposit security and process fee within 10
days thereafter, notice to be issued to the respondents for
submission of reply/comments. To come up for
reply/comments on 27.01.2022 before S.B at Camp Court,
D.I. Khan.

(Reziaa Rehman)

Member (1)

Camp Court, D.I. Khan.

BEFORE THE SERVICE TRIBUNAL KPK
PESHAWAR

Service Appeal No 7567 /2021

Muhammad Riaz

.....Appellant

VERSUS

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Peshawar

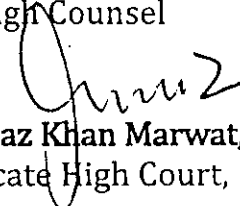
Qudratullah Process Server etc.Respondents

INDEX

S No	Descriptions	Annex	Pages
1	Grounds of Appeal	-	1-7
2	CMA for condonation of delay	-	8-9
3	Copy of appointment order	A	10-11
4	Copies of Seniority list and representation dated 31.01.2020	B&C	12-14
5	Copy of impugned order dated 01.02.2020	D	15
6	Copies of departmental appeal, comments and impugned order dated 09.10.2018	E,F&G	16-24
7	Copy of order dated 11.09.2021	H	25
8	Wakalat Nama	-	26

Dated: 05/10/2021

Your Humble Appellant,
Through Counsel


Gul Tiaz Khan Marwat,
Advocate High Court,
D.I.Khan

I

BEFORE THE SERVICE TRIBUNAL KPK
PESHAWAR

Service Appeal No. _____/2021

Muhammad Riaz Process Server Process Serving Agency
Court of Senior Civil Judge, Tank

.....Appellant

VERSUS

1. Qudratullah Process Server Process Serving Agency Court of Senior Civil Judge, Tank
2. Muhammad Mubashir Kamal Process Server Process Serving Agency Court of Senior Civil Judge, Tank.
3. Tauseef Waqar Process Server Process Serving Agency Court of Senior Civil Judge, Tank
4. Ishfaq Ahmad Process Server Process Serving Agency Court of Senior Civil Judge, Tank.
5. The Senior Civil Judge (Admin) Tank.

.....Respondents

APPEAL U/S 4 OF KPK SERVICE TRIBUNAL ACT 1974
AGAINST THE ORDER OF SENIOR CIVIL JUDGE (ADMIN)
TANK DATED 01.02.2020 AND 09.10.2018 VIDE WHICH
REPRESENTATION OF THE APPELLANT FOR CORRECTION
OF SENIORITY LIST AND FIXATION OF SENIORITY OF TH
APPELLANT AT SERIAL NUMBER 14 OF THE SENIORITY
LIST OF PROCESS SERVING AGENCY THE COURT OF
SENIOR CIVIL JUDGE HAS BEEN DISMISSED.

Respected Sir,

1. That the addresses of the parties given above are sufficient for the purpose of the service of the parties.
2. That the Appellant is a citizen of Islamic Republic of Pakistan and being a citizen of the Country has the rights and obligation under the constitution.

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3. That the Appellant with other process servers whose names are mentioned at S. No. 14 to 18 of the impugned Seniority list have been appointed through a common order bearing No. 336-342/JM-Tank dated 10.12.2014. Copy of appointment order is enclosed as **Annexure-A**.
4. That Seniority List of process servers working under in process serving agency Tank has been prepared and issued on 31.12.2019 but without circulation amongst the process servers and without inviting any objections from the concerned persons where the name of the Appellant has been placed at S. No. 18 which is legally and factually incorrect against which the Appellant preferred representation on 31.01.2020. Copies of Seniority list and Representation are enclosed as **Annexure - B&C** respectively.
5. That although the representation has been dismissed by the learned Senior Civil Judge Tank vide impugned order dated 01.02.2020, copy of which was not communicated to the Appellant rather copy of the same has been refused orally to the Appellant, hence the Appellant was unable to annex the copy of impugned order with the departmental appeal filed by the appellant before

Sumit

the learned District & Sessions Judge. Copy of order dated 01.02.2020 is enclosed as **Annexure D.**

6. That the appellant filed departmental appeal before the District & Sessions Judge on 04.03.2020 and in compliance with the Notice for comments issued by the learned District Sessions Judge, respondent No. 5 furnished comments dated 11.03.2020 to the Appellate Authority accompanied by a letter of the then Senior Civil Judge dated 09.10.2018 vide which the learned Senior Civil Judge Tank (Mr. Fida Muhammad) has passed observations that the appellant may seek remedy from proper forum i.e. Service Tribunal if he is aggrieved. Copies of Departmental appeal, Comments and order dated 09.10.2018 are enclosed as **Annexure - E,F&G** respectively.
7. That facing with these circumstances and having no other way the appellant was obliged to withdraw the departmental appeal on 11.09.2021 with permission to approach proper Forum. Copy of order is enclosed as **Annexure- H.**
8. That being aggrieved from the impugned order and having no other remedy, the Appellant is obliged to knock the door of this Learned Tribunal under its

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appellate jurisdiction inter alia of the following grounds.

GROUND:

- A. That the impugned order of dismissal of presentation by the learned Senior Civil Judge Tank by holding that the presentation is time barred is not sustainable under the law as the alleged provisional Seniority List dated 09.10.2018 has neither been circulated amongst the process servers nor any objections have been invited nor the same has ever been served upon the Appellant and it was prepared at the back of Appellant and was kept secret in the office.
- B. That even the final Seniority List as allegedly stood final on 31.12.2019 has also not been circulated amongst the concerned persons nor objections have been invited from the process servers and as and when the factum of preparation of Seniority List dated 31.12.2019 came into the knowledge of Appellant, the Appellant there and then submitted representation to the learned Senior Civil Judge Tank on 01.02.2020 which has been dismissed on the same time and day i.e. on 01.02.2020 through non-speaking order and the impugned order has also not been communicated to the Appellant

Ground

which is against the law and rules as provided under the General Clauses Act.

- C. That it is a settled proposition of service laws that when any Seniority List is prepared, the first Seniority List is to be marked as tentative list and objections must be invited from all the concerned persons and it must be circulated amongst the all concerned persons but it is very strange that the Seniority List dated 09.10.2018 has neither been circulated nor objections have been invited from all concerned persons but it has been prepared and kept secretly and it is the position of final Seniority List dated 31.12.2019.
- D. That both the Seniority Lists dated 09.10.2018 and 31.12.2018 are legally and factually incorrect as it is also a settled proposition of service laws and rules that when appointment order of the officials is issued on one and the same day then the employee older in age is to be placed senior in the Seniority List but in spite of this legal and factual proposition, the Appellant whose date of birth is 15.03.2019 and is thus older in age from employees whose names are placed at S. No. 14 to 17 has been placed at Serial Number 18 which requires amendment and correction.

James

- E. That the impugned orders dated 01.02.2020 and 09.10.2018 have not so ever been communicated officially to the Appellant, therefore no limitation runs against the same as the limitation start from gaining knowledge of the same.
- F. That the impugned order dated 09.10.2018 came into the knowledge of Counsel for appellant and the appellant as well during the course of arguments of departmental appeal before the Appellate Authority / District & Sessions Judge on 11.09.2021, therefore, limitation will run from the date of knowledge i.e 11.09.2021.
- G. That Appellant became victim of use of colourable exercise of powers which amounts exploitation and is against the fundamental rights guaranteed under the constitution of the country.
- H. That all the impugned orders of issuance of Seniority List as well as impugned order dated 01.02.2020 and 09.10.2018 are void and it is a settled proposition of law that when initial order is void then the superstructure built thereon collapse automatically.

In view of the submissions made above, it is, therefore, humbly prayed that on acceptance this Appeal, the impugned orders of dismissal of

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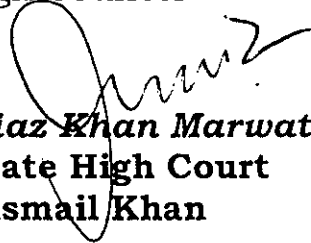
representation dated 01.02.2020, 09.10.2018 and Seniority Lists dated 09.10.2018 and 31.12.2019 may please be set aside and the Appellant may please be given his due Seniority and name of Appellant may please be placed at Serial No. 14 by preparing revised Seniority List so as to meet the ends of justice.

Dated: 05/10/2021

Your Humble Appellant,



Muhammad Riaz
Through Counsel



Gul Tiaz Khan Marwat
Advocate High Court
Dera Ismail Khan

AFFIDAVIT

I, Muhammad Riaz Process Server Office of the Senior Civil Judge, Tank, the Appellant do hereby solemnly affirm and declare on Oath that the contents of the Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Court.



DEPONENT

BEFORE THE SERVICE TRIBUNAL KPK
PESHAWAR

Civil Misc. Application No. _____/2021

In

Service Appeal No. _____/2021

Muhammad Riaz VERSUS Qudratullah Process Server etc.

PETITION U/S 5 OF LIMITATION ACT CONTAINING THE
REQUEST FOR CONDONATION OF DELAY IN FILING OF APPEAL.

Respected Sir,

1. That the accompanied Appeal is being filed before this learned Tribunal.
2. That the appellant filed departmental appeal before the District & Sessions Judge on 04.03.2020 against the order dated 01.02.2020 passed by learned Senior Civil Judge (Admin) Tank.
3. That in compliance with the Notice for comments issued by the learned District Sessions Judge, respondent No. 5 furnished comments dated 11.03.2020 to the Appellate Authority accompanied by a letter of the then Senior Civil Judge dated 09.10.2018 vide which the learned Senior Civil Judge Tank (Mr. Fida Muhammad) has passed observations that the appellant may seek remedy from proper forum i.e. Service Tribunal if he is aggrieved.
4. That facing with these circumstances and having no other way the appellant was obliged to withdraw the departmental appeal on 11.09.2021 with permission to approach proper Forum.
5. That the impugned order dated 09.10.2018 came into the knowledge of Counsel for appellant and

Qudratullah

the appellant as well during the course of arguments of departmental appeal before the Appellate Authority / District & Sessions Judge on 11.09.2021, therefore, limitation will run from the date of knowledge i.e 11.09.2021.

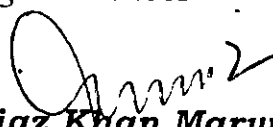
5. That keeping in view the circumstances explained above the period spent by the petitioner in the Court of District & Sessions Judge is to be condoned as the petitioner action of seeking remedy before the Appellate Authority is a bona fide mistake, therefore delay in filing of Appeal if any may please be condoned in the interest of justice.

It is, therefore, humbly prayed on acceptance this Petition, this Honorable Tribunal may very graciously be pleased to condon the delay if any in filing of appeal.

Your humble Petitioner,


Muhammad Riaz
Through Counsel

Dated
5.10.21


Gul Tiaz Khan Marwat
Advocate High Court
Dera Ismail Khan

AFFIDAVIT

I, Muhammad Riaz Process Server Office of the Senior Civil Judge, Tank, the Petitioner do hereby solemnly affirm and declare on Oath that the contents of the Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Court.


DEPONENT

10 A

OFFICE OF THE SENIOR C

No. _____ / SCJ Tank

Dated: 10th December.

APPOINTMENT ORDER

On the recommendations of the Departmental Selection Committee dated 10.12.2014, the Competent Authority is pleased to order the appointment on temporary basis of the following against the vacant posts of Process Servers (BPS-03) in the interest of public service with immediate effect:-

S#	Name/Father Name	Post/BPS	Resident of
1	Qudrut Ullah Son of Sarwar Jan	Process Server/BPS-03	Village Muhammad Akbar.
2	Muhammad Mubashar Kamal son of Khizar Hayat	Process Server/BPS-03	Village Dolat Khan Kamala.
3	Tauseef Waqar son of Zulfiqar	Process Server/BPS-03	Mohallah Qutab Colony Tank City.
4	Ashfaq Ahmed son of Meharban	Process Server/BPS-03	Mohallah Qutab Colony Tank City.
5	Muhammad Riaz son of Ghulam Qadir	Process Server/BPS-03	Mohallah Illahi Abad Tank City.

2. Their appoints to the service will be subject to the following terms and conditions.

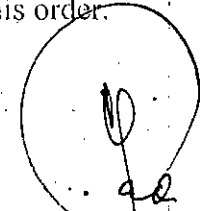
- i. They will be governed by the NWFP Civil Servants Act, 1973 and NWFP Government Servants (Appointment, Promotion & Transfer) Rules 1989.
- ii. They will be allowed the minimum pay of BPS- 03 plus other allowances as admtssible under the rules.
- iii. They will be governed by such rules and instructions relating to leave, TA and Medical Attendance as may be prescribed from time to time.
- iv. They will be on probation initially for a period of one year extendable up to two years.
- v. They will be eligible for continues and eventual confirmation in the post on satisfactory completion of their probationary period, subject to availability of permanent post and the completion of prescribed training if any.
- vi. Their services will be liable to be dispensed with at any time without any notice and assigning any reason before the expiry of the period of their probation/extended period of probation, if their work or conduct during this period is not found satisfactory. In the event of termination from service, fourteen days notice or in lieu, therefore, fourteen days pay will be paid by the Gove. In case of resignation, he will give one month notice to competent Authority or in lieu, therefore, one month pay shall be forfeited to the Gove, the resignation shall, however, be subject to the acceptance by the Competent Authority.
- vii. They will be governed by the NWFP Government Servants (Efficiency & Discipline) Rules. 1973 & the NWFP, Government

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Servants conduct Rules, 1987 and any other instructions which may issue by the competent Authority from time to time.

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

4. He shall joint duty at his own expenses.



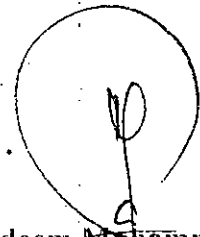
(Nadeem Muhammad)
Senior Civil Judge Tank

336-342
No. _____ / SCJ/ JM Tank

Dated 10th December 2014

Copy forwarded for information to the:-

1. ✓ The Registrar Peshawar High Court Peshawar
2. The Hon' ble District and Sessions Judge Tank.
3. Raja Muhammad Shoaib Khan Civil Judge Dera Ismail Khan.
Member/Nominee of Peshawar High Court Peshawar.
4. Mrs. Tania Hashmi Member / Nominee of Senior Civil Judge Tank
5. District Account Officer Tank.
6. Individual by name.
7. COC for preparation of personal file/Service Record.
8. Office Copy.



(Nadeem Muhammad)
Senior Civil Judge Tank

B 12

OFFICE OF THE SENIOR CIVIL JUDGE, TANK

SENIORITY LIST OF THE PROCESS SEVER AGENCY, TANK AS IT STOOD ON 31.12.2019

Sr.#	Name & Designation	Date of birth	Domicile	Qualification	Date & post of first entry in Govt: service	Date of Present Post	Date of attaining superannuation	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	Liaqatullah Civil Nazir	04-02-1975	Tank	B.A	01-03-1994	23-12-2005	04-02-2035	
2	Muhammad Salim Naib Nazir	16-04-1972	Tank	Matric	03-11-1994		16-04-2032	
3	Shams-uz-Zaman Naib Nazir	03-03-1968	Tank	Matric	01-08-2003	23-12-2005	03-03-2028	
4	Obaidullah Jan Bailiff	15-02-1962	Tank	Middle	18-07-1983	22-04-2003	15-02-2022	
5	Habibullah Bailiff	00-00-1977	Tank	Matric	02-05-1997	03-12-2014	00-00-2037	
6	Ibrahim Khalil Bailiff	09-04-1975	Tank	Matric	01-08-2003	03-12-2014	09-04-2035	
7	Rehmatullah Bailiff	05-01-1978	Tank	F.A	01-08-2003	30.04.2018	05-01-2038	
8	Murid Abbas Bailiff	10-02-1974	Tank	Matric	23-04-2004	30.04.2018	10-02-2034	
9	Abdullah Jan Bailiff	10-01-1974	Tank	F.A	05-04-2005	31.03.2019	10-01-2034	
10	Tariq Mehmood Shah Process Server	09-03-1983	Tank	Matric	05-04-2005		09-03-2043	
11	Naseebullah Process Server	07-01-1988	Tank	F.A	13-01-2006		07-01-2048	
12	Barkatullah Process Server	12-05-1978	Tank	M.A.	03-11-2011		12-05-2038	
13	Muhammad Jibrán Process Server	01-02-1990	Tank	B.A	20-12-2012		01-02-2050	
14	Qudratullah Process Server	03-06-1993	Tank	B.A	11-12-2014		03-06-2053	
15	M. Mubashar Kamal Process Server	03-05-1993	Tank	F.S.C	11-12-2014		03-05-2053	
16	Tauseef Waqar Process Server	10-10-1991	Tank	D-Com	11-12-2014		10-10-2051	
17	Ishfaq Ahmad Process Server	20-04-1993	Tank	F.S.C	11-12-2014		20-04-2053	
18	Muhammad Riaz Process Server	15-03-1989	Tank	M.A	11-12-2014		15-03-2044	
19	Hafiz Fayyaz Muhammad Process Server	25-12-1990	Tank	B.A	29-07-2015		25-12-2050	
20	Abid Ullah Process Server	05.12.1993	Tank	Matric	18.04.2019		25.12.2053	
21	Noor Zaman Process Server	04.04.1992	Tank	M.Sc	18.04.2019		04.04.2052	
22	Sher Khan Process Server	05.04.1993	Tank	M.A	18.04.2019		05.04.2053	
23	Muhammad Ehsan	01.09.1996	Tank	B.Sc	18.04.2019		01.09.2053	

Senior Civil Judge (Admn), Tank

C

13

BEFORE THE LEARNED SENIOR CIVIL JUDGE (ADMIN) TANK

Subject: **REPRESENTATION FOR CORRECTION OF SENIORITY LIST AND AS A CONSEQUENCE THEREOF TO PLACE THE NAME OF APPLICANT AT SERIAL NO.14 OF THE SENIORITY. LIST OF PROCESS SERVING AGENCY TANK**

Respected Sir,

The following few lines are submitted for your kind and sympathetic consideration: -

1. That the applicant along with others whose names are mentioned at S# 14 to 17 of the impugned seniority list have been appointed Process Servers through a common order bearing No.336-342/SCJ/JM-Tank dated: 10/12/2014;
2. That now Seniority list of the Process Serving Agency Tank has been prepared and issued but without inviting any objections from the concerned officials and name of the applicant has been placed at S#18 which is legally and factually incorrect against which the applicant prefers the instant representation inter alia on the following grounds; -
 - a. That it is a settled proposition of service laws that when any seniority list is prepared and issued it is to be circulated as provisional and objections if any must be invited from the concerned employees/officials in a stipulated time frame but in the instant case no such provisional list has been circulated nor any date of its issuance stands recorded therein. However, the seniority list came into the knowledge of the applicant few days ago;
 - b. That the seniority list so prepared and issued, is legally and factually incorrect as it is also a settled proposition of service laws and rules that when appointment order of the employees/officials is issued on the one and the same day then the older in age is to be placed senior in the seniority list but in spite of this legal and factual proposition, applicant whose date of birth is 15-3-1989 and is thus older in age from all the employees/officials whose names are placed at S#14 to 17 has been placed at S#18; and

ATTESTED
17 JUL 2015
CLERK
Sessions Court Tank

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c. That as submitted above, the seniority list is legally and factually incorrect and is thus requires your kind indulgence for reconsideration, so as the same may be rectified:

It is, therefore, humbly prayed that the matter may please be reconsidered in the light of law and rules on the subject and a revised seniority list may please be issued wherein name of the applicant may please be placed at S#14 so as to meet the ends of justice.

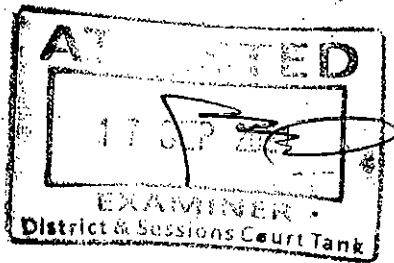
The applicant shall be highly thankful and obliged.

Dated: 31/01/2020

Your humble applicant,



Muhammad Riaz,
Process Server,
Process Serving Agency,
Establishment of Senior Civil Judge,
Tank.



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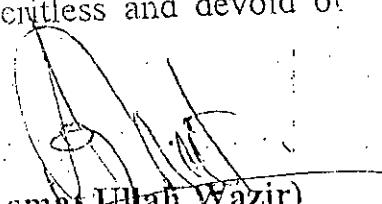
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Mr. Riaz has moved the present application/representation for correcting the Seniority list. The contents of the application and record reveal that already the issue of seniority has been decided by my learned predecessor Senior Civil Judge, Tank vide order dated 9.10.2018.

The instant application, being time barred, meritless and devoid of force, stands dismissed.


(Asmat Ullah Wazir)
Senior Civil Judge (Admn)
Tank

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BEFORE THE HONOURABLE DISTRICT AND SESSIONS JUDGE TANK.

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DEPARTMENTAL APPEAL _____/2020

APPEAL UNDER RULE-3 OF KPK CIVIL SERVANTS, APPEAL RULES 1986 AGAINST THE ORDER DATED 01.02.2020 PASSED BY LEARNED SENIOR CIVIL JUDGE (ADMN) TANK VIDE WHICH REPRESENTATION OF APPELLANT FOR CORRECTION OF SENIORITY LIST HAS BEEN DISMISSED.

Respected Sir,

The Appellant submits as under:

- (1) That the Appellant is a citizen of Islamic Republic of Pakistan and being a citizen of the Country has the rights and obligation under the constitution.
- (2) That the Appellant with other process servers whose names are mentioned at S. No. 14 to 17 of the impugned Seniority list have been appointed through a common order bearing No. 336-342/JM-Tank dated 10.12.2014. Copy of appointment order is enclosed as **Annexure - A.**
- (3) That Seniority List of process servers working under in process serving agency Tank has been prepared and issued on 31.12.2019 but without circulation amongst the process servers and without inviting any objections from the concerned persons where the name of the Appellant has been placed at S. No. 18 which is legally and factually incorrect against which the Appellant preferred representation on 01.02.2020 but the same has been dismissed as time barred

Stamp of the District & Sessions Court Tank, containing the text 'EXAMINED' and 'District & Sessions Court Tank'.

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by the learned Senior Civil Judge Tank vide impugned order dated 01.02.2020, copy of which has not so far communicated to the Appellant rather copy of the same has been refused orally to the Appellant, hence the Appellant is unable to annex the copy of impugned order with the appeal. Copies of Seniority List and representation are enclosed as **Annexure B&C** respectively.

- (4) That feeling aggrieved from the impugned order of dismissal of representation of Appellant, the Appellant seeks the indulgence of the Appellate Authority under its appellate jurisdiction inter alia on the following grounds:-

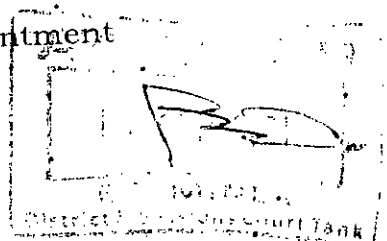
GROUND:

- A. That the impugned order of dismissal of presentation by the learned Senior Civil Judge Tank by holding that the presentation is time barred is not sustainable under the law as the alleged provisional Seniority List dated 09.10.2018 has neither been circulated amongst the process servers nor any objections have been invited nor the same has ever been served upon the Appellant and it was prepared at the back of Appellant and was kept secret in the office.
- B. That even the final Seniority List as allegedly stood final on 31.12.2019 has also not been circulated amongst the concerned persons nor objections have been invited from the process

B 18

servers and as and when the factum of preparation of Seniority List dated 31.12.2019 came into the knowledge of Appellant, the Appellant there and then submitted representation to the learned Senior Civil Judge Tank on 01.02.2020 which has been dismissed on the same time and day i.e. on 01.02.2020 through non-speaking order and the impugned order has also not been communicated to the Appellant which is against the law and rules as provided under the General Clauses Act.

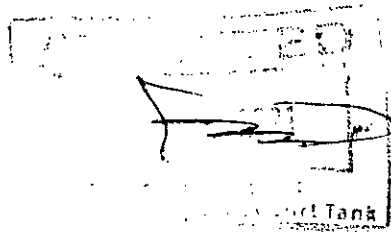
- C. That it is a settled proposition of service laws that when any Seniority List is prepared, the first Seniority List is to be marked as tentative list and objections must be invited from all the concerned persons and it must be circulated amongst the all concerned persons but it is very strange that the Seniority List dated 09.10.2018 has neither been circulated nor objections have been invited from all concerned persons but it has been prepared and kept secretly and it is the position of final Seniority List dated 31.12.2019.
- D. That both the Seniority Lists dated 09.10.2018 and 31.12.2018 are legally and factually incorrect as it is also a settled proposition of service laws and rules that when appointment



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order of the officials is issued on one and the same day then the employee older in age is to be placed senior in the Seniority List but in spite of this legal and factual proposition, the Appellant whose date of birth is 15.03.2019 and is thus older in age from employees whose names are placed at S. No. 14 to 17 has been placed at S. No. 18 which requires amendment and correction.

- E. That the impugned order dated 01.02.2020 has not so far been communicated officially to the Appellant, therefore no limitation runs against the same as the limitation start from gaining knowledge of the same.
- F. That Appellant became victim of use of colourable exercise of powers which amounts exploitation and is against the fundamental rights guaranteed under the constitution of the country.
- G. That all the impugned orders of issuance of Seniority List as well as impugned order dated 01.02.2020 are void and it is a settled proposition of law that when initial order is void then the superstructure built thereon collapse automatically.



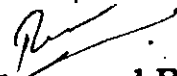
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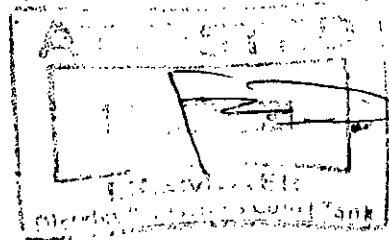
In view of the submissions made above, it is, therefore, humbly prayed that on acceptance this Appeal, the impugned order of dismissal of representation dated 01.02.2020 and Seniority Lists dated 09.10.2018 and 31.12.2019 may please be set aside and the Appellant may please be given his due Seniority and name of Appellant may please be placed at S. No. 14 by preparing revised Seniority List so as to meet the ends of justice.

The Appellant may please be provided an opportunity of personal hearing also.

Dated: 04/03/2020

Your Humble Appellant,


Muhammad Riaz
Process Server
Processing Serving Agency,
Establishment of Senior
Civil Judge Tank.



To,

The Hon'ble District Judge,
Tank.

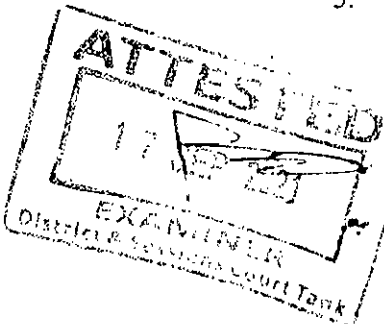
Subject: DEPARTMENTAL APPEAL.

Muhammad Riaz Appellant
Versus
The Senior Civil Judge, Tank etc Respondent

Respected Sir,

With reference to the letter No.283/DSJ Tank dated 09.03.2020, I have the honour to offer my comments as under:

1. That the appellant Muhammad Riaz, was appointed as process server vide Order dated 10.12.2014, in the light of Peshawar High Court (Subordinate Court Staff) Recruitment Rules, 2003 read with the Khyber Pakhtunkhwa Civil Servants (appointments, promotion and transfer) Rules 1989.
2. According to High Court Rules 2003 ibid the recruitment procedure for Process Server involves the marking of academic marks+ higher qualification+ experience + test+ interview. The applicant claimed his seniority on the ground, of being senior in age. One has to secure high marks accumulatively in all respect of above criteria. The applicant did not show any fault in the recruitment process and seniority once fixed by the authority in the recruitment order has got presumption of correctness. According to Rule 17 of Khyber Pakhtunkhwa Civil Servants (appointments, promotion and transfer) Rules 1989.
3. That the seniority inter se of civil servants (appointed to a service, cadre or post) shall be determined in case of persons appointed by initial recruitment by the Departmental Selection Committee. In the case of applicant, the Departmental Selection Committee vide its meeting dated 10.12.2014 have fixed the seniority once for all. As far as the plea of being senior in age is concerned, the applicant could only



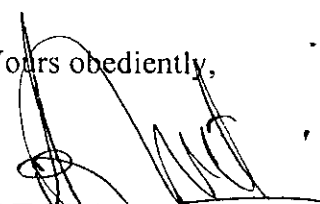
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be given benefit in case of a tie in between two candidates securing equal marks. Such a case is also not specifically agitated by the applicant.

4. *The appellant Muhammad Riaz, Process Server, on 01.02.2020 filed representation for rectification of the seniority list and the same was dismissed vide order dated 01.02.2020. Copy of record of the said representation is hereby annexed for ready reference.*

For what has been submitted above, the appeal in hand is frivolous having no legs to stand upon and may be dismissed.

Yours obediently,


ASMAT ULLAH WAZIR
Senior Civil Judge (Admn), Tank

No. 270 /SCJ

Dated Tank the 09th October, 2018

To,

The Hon able District Judge
Tank.

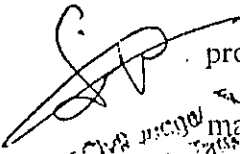
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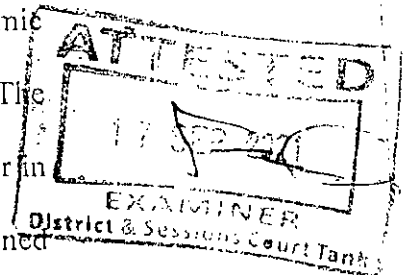
Fida Muhammad
Senior Civil Judge/JM,
Tank.

Subject: APPLICATION OF PROCESS SERVER OF
MUHAMMAD RIAZ FOR SENIORITY

Respected Sir,

In response of the application of Process Server Muhammad Riaz, after hearing the applicant personally the report is hereby submitted in consultation with the record produced by the Muhammad Nawaz Clerk of Court. Record shows that the applicant was appointed vide Order dated 10.12.2014 by my Predecessor in office in the light of Peshawar High Court (Subordinate Court Staff) recruitment Rules 2003 read with the Khyber Pakhtunkhwa Civil Servants (appointments, promotion and transfer) Rules 1989. According to High Court Rules 2003 ibid the recruitment procedure for Process Server involves the marking of academic marks+ higher qualification+ experience + test+ interview. The applicant claimed his seniority on two grounds, firstly senior in age and secondly claiming higher education. As explained above higher education is not the sole criteria for to be placed senior. One has to secure high marks accumulatively in all

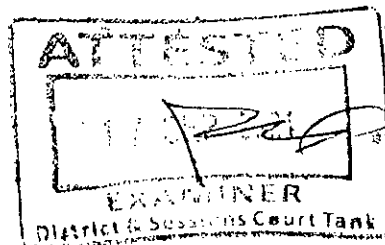

Senior Civil Judge/JM,
District & Sessions Court Tank

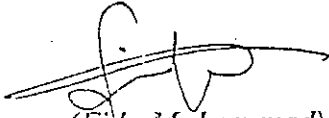


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respect of above criteria. The applicant did not show any fault in the recruitment process and seniority once fixed by the authority in the recruitment order has got presumption of correctness. According to Rule 17 of Khyber Pakhtunkhwa Civil Servants (appointments, promotion and transfer) Rules 1989, the seniority inter se of civil servants (appointed to a service, cadre or post) shall be determined in case of persons appointed by initial recruitment by the Departmental Selection Committee. In the case of applicant the Departmental Selection Committee vide its meeting dated 10.12.2014 have fixed the seniority once for all. As far as the plea of senior in age is concerned the applicant could only be given benefit in case of a tie in between two candidates securing equal marks. Such a case is also not specifically agitated by the applicant. The application made by the applicant is not on the proper forum as per service law guidance. If the applicant is aggrieved of his seniority order he may file the Departmental representation with specific allegations and not general allegations, and thereafter a departmental appeal if aggrieved, and so on exhaust the Service Tribunal and Judicial Hierarchy for his cause.

Submitted, thanks.




(Fida Muhammad).
Senior Civil Judge, Tank
Senior Civil Judge &
Judicial Magistrate Tank

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IN THE COURT OF DISTRICT & SESSIONS JUDGE, TANK

Muhammad Riaz ... Vs... SCJ (Admn), Tank etc (Departmental Appeal No. 03/13 of 2020)

Serial No. of Order of Proceedings	Date of Order of Proceedings	Order/Proceedings
1	2	3
	11.09.2021	<p>Present: Appellant Riaz in person. Record was requisitioned and received.</p> <p>Petitioner submitted an application for withdrawal of the instant departmental appeal in hand on the ground mentioned therein that he withdraws the appeal in order to approach the proper forum and requested that the appeal may be dismissed as withdrawn. In this respect, his statement was also recorded and exhibited withdrawal application as Ex. PA while photo copy of his CNIC as Ex. PB (original seen and returned).</p> <p>In view of the above situation, the Departmental Appeal in hand is hereby dismissed as withdrawn. File be consigned to record room after its necessary completion and compilation.</p> <p>Announced: 11.09.2021</p> <p style="text-align: right;"><i>Ghulam Abbas</i> Ghulam Abbas District & Sessions Judge, Tank.</p> <div data-bbox="654 1694 1037 1949" style="border: 1px solid black; padding: 5px; text-align: center;"><p>ATTESTED</p><p>17 SEP 2021</p><p>EXAMINER</p><p>District & Sessions Court, Tank</p></div>

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VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar
D.I.Khan

Mohammad Riaz VERSUS Qudratullob ete

Title Service Appeal

I/Mohammad Riaz

The above named Appellant hereby appoint Gul Tiaz Khan Marwat Advocate High Court D.I.Khan, in the above mentioned case to all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this court/tribunal in which the same may be tried or heard or any other proceedings out of our connected therewith.
 2. To sign and verify and file or withdraw all proceedings, petitions, appeals, affidavits, and applications for compromise or withdrawal, or for the submission to arbitration of the said case or any other documents, may be deemed necessary or advisable by them by the conduct, prosecution or defense of the said case at all its stages.
 3. To receive payments of and issue receipts for all moneys that may be or become due and payable to us during the course on conclusion of the proceeding.
- To do all other acts and things, which may deemed necessary or advisable during the course of proceedings.

AND hereby agree:

- a. To ratify whatever advocates may do the proceedings.
- b. Not to hold the advocates responsible if the said case be proceed ex-parte or dismissed in default in consequence of their absence from the court when it is called for hearing.
- c. That the advocates shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains un-paid.
- d. That advocates may be permitted to argue any other point at the time of arguments.

In witness whereof I/we have signed this vakalatnama here under the contents of which have been read/explained to me/us which is truly understood by me/us.

Date: 5/10/2021

[Signature]
Signature of Executants (s)
Mohammad Riaz

Attested & Accepted:
[Signature]
Gul Tiaz Khan Marwat
Advocate High Court D.I.Khan (KPK)
Cell No. 0300-9092488 / 0345-9853488