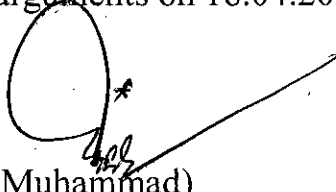


09.01.2023

Junior of learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 18.04.2023 before the D.B.



(Mian Muhammad)  
Member (E)



(Salah-ud-Din)  
Member (J)

18<sup>th</sup> April, 2023 1. Appellant in person present. Mr. Muhammad Jan, District Attorney for the respondents present;

2. Appellant seeks adjournment on the ground that his counsel is not available today. Adjourned. To come up on 21.06.2023 before D.B. P.P given to the parties.



(Fareeha Paul)  
Member (E)



(Kalim Arshad Khan)  
Chairman

\*Adnan Shah, P.A\*


SCANNED  
KPST  
Peshawar

SCANNED  
KPST  
Peshawar

29.08.2022

Clerk of learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

The Lawyers are on strike and Learned Member (Judicial) Ms. Rozina Rehman is also on leave, therefore, arguments could not be heard. Adjourned. To come up arguments on 22.11.2022 before the D.B.

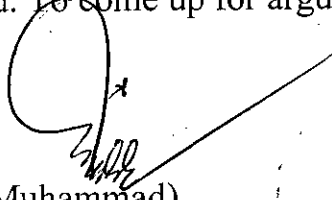
  
(Salah-Ud-Din)  
Member (Judicial)


22.11.2022

Appellant in person present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for official respondents present.

Appellant requested for adjournment on the ground that his counsel is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 09.01.2023 before the D.B.

SCANNED  
K-PT  
Peshawar


  
(Mian Muhammad)  
Member (E)

  
(Salah-Ud-Din)  
Member (J)

28.01.2022

Junior to counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

Former made a request for adjournment on the ground that senior counsel for the appellant is not available today. Adjourned. To come up for arguments on 27.04.2022 before the D.B.

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

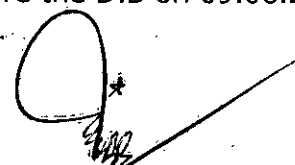
  
Chairman


27.04.2022

Appellant in person present. Mr. Kabirullah Khattak, Additional Advocate General for official respondents No. 1 to 3 and clerk of private respondents No. 6 present.

Appellant requested for adjournment on the ground that his learned counsel is indisposed today. Adjourned. To come up for arguments before the D.B on 09.06.2022.



  
(Mian Muhammad)  
Member(E)

  
(Salah Ud Din)  
Member(J)

9.6.22

*Prof. D.B is on leave, therefore the case is adjourned to 29.8.22 for leave.*





01.04.2021

Due to non availability of the concerned D.B, the case is adjourned to 06.07.2021 for the same.

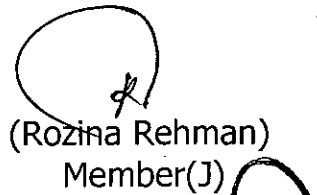
  
Reader

06.07.2021

Bilal Ahmad Kakazai Advocate present and submitted Wakalat Nama in favor of appellant.

Asif Masood Ali Shah learned Deputy District Attorney for respondents present.

Being freshly engaged, learned counsel for appellant made a request for adjournment; granted. To come up for arguments on 29.10.2021 before D.B.


  
(Rozina Rehman)  
Member(J)


  
Chairman

29.10.2021

Clerk of learned counsel for the appellant present. Mr. Mushtaq, Senior Clerk alongwith Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present.

Clerk of learned counsel for the appellant also requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 28.01.2022 before the D.B.

  
(Mian Muhammad)  
Member (E)

  
(Salah-Ud-Din)  
Member (J)

24.08.2020

Appellant present in person.

Mr. Riaz Khan Paindakheil learned Assistant Advocate General alongwith Mehboob Ali Senior Clerk (representative of respondents #.2 & 3) present. Counsel for private respondents #.4 & 5 present. Notice be issued to respondents #.1, 6 & 7.

Representative of respondents #.2 & 3 submitted written reply which is placed on file. Counsel for private respondents requested for time to furnish written reply; granted. To come up for written reply/comments of respondents #.1 & 4 to 7, on 30.09.2020 before S.B.



Member (J)

30.09.2020

Appellant in person, Addl. AG alongwith Mahboob Ali, Assistant for respondents No. 2 & 3 and counsel for private respondents No. 4 and 5 present.

Respondents 4 and 5 have furnished reply. Placed on record. Respondents No. 6 & 7 have not furnished their respective replies despite various opportunities. The matter is posted to D.B for arguments on 30.12.2020 before S.B. The appellant may furnish rejoinder, within one month, if so advised.

Chairman

30.12.2020

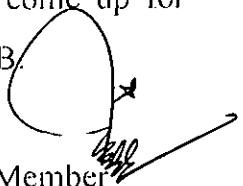
Due to summer vacation, case is adjourned to 01.04.2021 for the same as before.



Reader

02.03.2020

Appellant in person present. Addl. AG alongwith Mahboob Ali Senior Clerk for respondents No. 2 & 3 and respondent No. 5 in person present. They requested for further time to furnish reply/comments. Fresh notices be issued to respondents No. 1, 4, 6 and 7. To come up for written reply/comments on 09.04.2020 before S.B.

  
Member

09.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 01.07.2020 for the same. To come up for the same as before S.B.


  
Reader

01.07.2020

Appellant in person present.

Mr. Kabir Ullah Khattak learned Additional Advocate General for official respondents No.1 to 3 present. None present on behalf of private respondents No.4 to 7. Notice be issued to private respondents No.4 to 7.

Learned AAG requested for adjournment in order to submit written reply on behalf of official respondents No.1 to 3. Opportunity is granted. To come up for written reply/comments on 24.08.2020 before S.B.

  
Member (J)



18.11.2019

Counsel for the appellant present.

The grievance of appellant is that in the seniority list issued on 10.06.2019 his name has been placed at S.No. 5 while the date of his first appointment is the same on which the respondents No. 4 to 7 were appointed as Junior Clerk. The appellant being senior in age to all the private respondents was entitled to the seniority position No. 1, it was added.

In view of available record and arguments of learned counsel, instant appeal is admitted to regular hearing subject to all just exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 13.01.2020 before S.B.

  
Chairman


13.01.2020

Appellant present in person.

Submitted an application for extension of time to deposit security and process fee.

Application is accepted. Appellant is allowed to deposit the requisite fee within three days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 02.03.2020 before S.B.

Chairman

  
Appellant Deposited  
Security & Process Fee

13/1/20

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- 1023/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	05/08/2019	<p>The appeal of Mr. Karim Khan resubmitted today by Mr. Asif Ali Shah 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;"><i>[Signature]</i> REGISTRAR 5/8/19</p>
2-	20/08/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>30/09/2019</u>.</p> <p style="text-align: right;">CHAIRMAN</p>
	30.09.2019	<p>Notice be issued to appellant/counsel for preliminary hearing on 18.11.2019 before S.B.</p> <p style="text-align: right;">Chairman</p>



The appeal of Mr. Karim Jan Junior Clerk received to-day i.e. on 26.7.2019 is returned to the counsel for the appellant with the direction to submit One more copy/set of the appeal along with annexures i.e. complete in all respect within 15 days.

No. 1357 /S.T,

Dt. 31-7- /2019

  
Registrar

Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Mr. Asif Ali Shah Adv. Pesh.

*7/1*  
R/W.

The case is resubmitted after necessary  
completion.

  
Advocate

05/08/2019

**BEFORE THE CHAIRMAN KHYBER PUKHTOONKHWA  
SERVICE TRIBUNAL PESHAWAR**

Service appeal No 1023 2019

Karim Jan .....Appellant

**Versus**

Govt of KP & others..... Respondents

I N D E X			
S.No	Description	Annex	Page
1.	Ground of Service Appeal		1-9
2.	Affidavit		10
3.	Address of parties		11
4.	appointment order	"A"	12-13
5.	copy of the seniority List dated 10.06.2019	B	14-15
6.	copy of objection application / Representation dated. 13-06-2019	C	16-17
7.	Attested copy of order dated 26.06.2019	D	18-21
8.	Wakalat Nama		22

Date: 26-07-2019

Appellant

Karim Jan

Through

Asif Ali Shah

Qaiser Abass Muhammadzai

Syed Bilal Bacha

Advocates Peshawar

1

**BEFORE THE CHAIRMAN KHYBER PUKHTOONKHW  
SERVICE TRIBUNAL PESHAWAR**

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

Karim Jan Junior Clerk, Sessions Court, Charsadda  
presently posted as Moharrir/Junior Clerk in the  
Office of Judicial Magistrate-iv, Charsadda.  
(Appellant)

VERSUS

1. Govt of KP through Secretary Law & Parliamentary  
Affairs, Peshawar.
2. District & Session Judge, Charsadda.
3. Senior Civil Judge (Admn), Charsadda
4. Kifaytullah Jan
5. Sufaid Gul, (Reader/Senior Clerks (now promoted)  
Sessions Court, Charsadda.
6. Mushtaq Ali
7. Jahngir Shah, Moharrirs/Junior Clerk Sessions  
Court, Charsadda . . . . .  
(Respondents)

**SERVICE APPEAL U/S 4 OF SERVICE TRIBUNAL  
ACT 1973, AGAINST THE JUDGMENT/ORDER  
DATED 26-06-2019 PASSED BY RESPONDENT NO. 2,  
ON THE REPORT OF SUPERINTENDENT OF THE  
SESSIONS COURT CHARSADDA AND LEARNED  
SENIOR CIVIL JUDGE (ADMN) TO WHOM  
REPRESENTATION/OBJECTION APPLICATION OF  
THE APPELLANT WAS MARKED BY RESPONDENT  
NO. 2, IS ILLEGAL, VOID ABINITIO AND WITHOUT  
ANY LEGAL JUSTIFICATION DISMISSED THE SAID**

**REPRESENTATION / OBJECTION APPLICATION OF  
THE APPELLANT.**

**PRAYER IN APPEAL:-**

ON ACCEPTANCE OF THIS SERVICE APPEAL THE  
IMPUGNED ORDER DATED 26/06/2019 OF  
RESPONDENT NO.2 MAY VERY GRACIOUSLY BE SET  
A SIDE AND APPELLANT MAY BE ORDERED BE  
PLACED AT SERIAL. NO. 1 OF THE SENIORITY LIST  
OF JUNIOR CLERKS / MOHARRIRS ISSUED ON  
10/06/2019 WITH ALL BACK BENEFITS.

**RESPECTFULLY SHEWETH**

The Appellant respectfully submits as under:-

**BRIEF FACTS OF THE CASE**

1. That the Appellant alongwith respondents No.2 to 5 were inducted into service of judiciary as junior clerks in the Establishment of Respondent No.2 vide order bearing No. 1273-84 DJ90 dated 14-07-2003 on one and the same date in one batch. (Copy is attached as annexure "A")
2. That Appellant during his tenure of service remained posted as junior clerk / Moharrir in various courts at district Charsadda.

3. That though seniority lists would have been issued by the office of Respondent No.2, as mentioned in the report of Superintendent, Sessions Court, Charsadda, but the same were not circulated / conveyed to Appellant to put his objection on the same.
4. That the Appellant came to know about the issuance of seniority list dated 10/06/2019, though again not circulated / conveyed to Appellant wherein he found his name at Serial.No.5 despite of the fact that he and Respondents No. 4 to 7 are batch-mates being appointed through one and the same order dated: 14-07-2003 and per Rules, being older in age appellant deserved seniority over respondents No.4 to 7. **(Copy of Seniority list dated 10/06/2019 is annexed as annexure "B")**
5. That when the Appellant came to know of this incorrect seniority list, he filed objection application / representation dated 13-06-2019 against the same for correction. **(Attested copy of the objection application is annexed as annexure "C")**
6. That the said objection application was marked by Respondents No.2 to Superintendent, Session

Court, Charsadda for report who submitted his report on 20/06/2019 to Respondent No. 2.

7. That thereafter the objection application alongwith report of Superintendent, Sessions Court, Charsadda was sent by Respondent No.2 to Senior Civil judge (Admn) Charsadda / Respondent No.3 for his further report who while endorsing the report of Superintendent of Session Court, Charsadda submitted his report on 24/06/2019.
8. That on receipt of this report Respondent No.2 dismissed the objection application of the Appellant vide order dated 26/06/2019. **(Attested copy of order dated 26/06/2019 is available on annexure "D")**
9. That Appellant being aggrieved from the said order prefers this Service Appeal on the following grounds amongst others:-

### **GROUND**

- A. That the order dismissing the objection application of Appellant passed by Respondent No.2 on the reports of superintendent, Sessions Court Charsadda and learned Senior Civil Judge(Admn) Charsadda / Respondent No.3 is illegal without

lawful Authority, against facts and material available on record law and Rules on the subject and principle of natural justice, hence liable to be set aside and on acceptance of objection application, the respondent No. 2 & 3 may be directed to place the appellant at S, No. 1 of Seniority list of junior clerks/moharrir dated 10-06-2019.

- B. That the Appellant was never conveyed any earlier seniority list, directly or through immediate boss issued by Respondent No. 2 & 3 and that is why he remained unaware of his position in the same.
- C. That the reports of Superintendent and Respondent No.3 /learned Senior Civil Judge (Admn) Charsadda are not supported by any proof to the effect that Appellant had been conveyed the seniority list issued on yearly bases by Respondent No.2 directly or by his immediate boss in whose court he was posted by that time, hence on this score too the impugned order is liable to be set aside.
- D. That since no need had arisen till the preparation of papers for meeting of Departmental Promotion Committee for the promotion of respondents No.2 & 3 who were later on promoted, therefore, the

Appellant never enquired about his position in the seniority list as such the impugned order is liable to be set aside..

- E. That as per verdicts of superior courts, issued from time to time, the Appellant accrued cause of action when he came to know about his juniority from respondents No.4 to 7 in the seniority list issued on 10/06/2019 by Respondent No. 2.
- F. That it was the primary duty of Respondent No. 2 & 3 and establishment to have issued correct seniority list for the first year after the appointment of Appellant and respondent No.4 to 7 in one batch and on one and the same date on the basis of date of birth, but this fault can not be shifted to Appellant to have earlier applied for correction of that incorrect first seniority list and then coming seniority lists specially when he was never conveyed any of the seniority lists, hence on the acceptance of this appeal the seniority list merit correction and Appellant right position in seniority list at S.No 1 but the Respondent No.2 has committed illegality, hence impugned order is liable to be set aside.



- G. That injustice commenced at that time when the appellant was not considered as senior on the basis of older age amongst his batch-mates in the previous and present seniority lists which were not conveyed to appellant through any source, hence acceptance of this appeal and the impugned order dated 26/06/2019 may be set aside and Appellant may be ordered to place at S. No. 1. of the seniority list of the Junior Clerks/Moharrirs.
- H. That the illegality committed in the previous seniority lists of junior clerks, was on the part of respondent No.2 & 3 and other relevant staff and Appellant can not be termed to have committed fault by not challenging the earlier seniority lists, though, every seniority list creates fresh cause of action to Appellant, and does not hit by limitation hence the impugned order is liable to be set aside and the appellant being senior most on the bases of date of birth may be ordered to be placed at S. No. 1 of the seniority list dated 10-06-2019.
- I. That in matters of promotion, pay and other emoluments, cause of action is recurring, limitation does not foreclose the vested right of Appellant, more so when he has moved a

representation/objection application on the seniority list for 2019, immediate after it came to his sight, as such the impugned order issued by respondent No.2 on the reports of Superintendent and Respondent No.3 / learned Senior Civil Judge(Admn) Charsadda being illegal and without any lawful authority, is liable to be set aside (2014 PLC (C.S) 272, PLJ 2009 SC 125) are referred in this respect)

J. That after rejection of the objection application of appellant respondent No. 2 being chairman and other member of DPC without any hesitation promoted the juniors (Respondent No. 4 and 5) to the post of senior clerks which is against the norms of justice and badly affect the vested right of the Appellant, as such impugned order is liable to be set aside.

K. That the facts and circumstances of the case as given in the report of Superintendent Sessions Court Charsadda by referring PLD 2014 SC 338 and the fact and circumstances of the case of the Appellant are totally different and can not be applied against the Appellant, as such on this score for the impugned order is liable to be set aside.

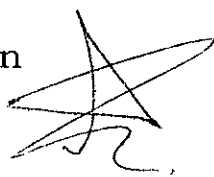
L. That other grounds do exist which will be agitated but with the kind permission of this hon'ble Tribunal.

**IT IS, THEREFORE HUMBL Y PRAYED THAT ON ACCEPTANCE OF THIS SERVICE APPEAL THE IMPUGNED ORDER DATED 26/06/2019 OF RESPONDENT NO.2 MAY VERY GRACIOUSLY BE SET A SIDE AND APPELLANT MAY BE ORDERED TO PLACE AT SERIAL NO. 1 OF THE SENIORITY LIST OF JUNIOR CLERKS / MOHARRIRS ISSUED ON 10/06/2019 WITH ALL BACK BENEFITS.**

Date: 26.-07-2019

  
Appellant

Karim Jan

Through 

Asif Ali Shah

Qaiser Abass Muhammadzai

Syed Bilal Bacha

Advocates Peshawar

**BEFORE THE CHAIRMAN KHYBER PUKHTOONKHWA  
SERVICE TRIBUNAL PESHAWAR**

Service appeal No \_\_\_\_\_ 2019

Karim Jan .....Appellant

**Versus**

Govt of KP & others..... Respondents


**AFFIDAVIT**

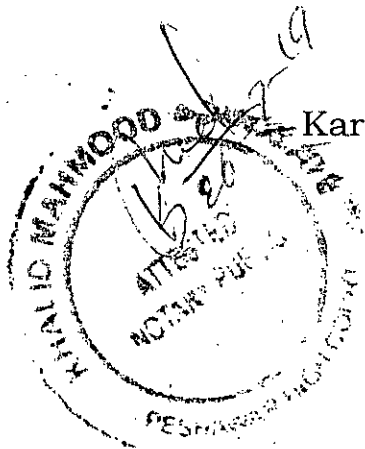
I Karim Jna Junior Clerk/Moharrir in the  
stablishment of Respondent No. 1 and posted in the  
court of Judicial Magistrate-IV as computer operator do  
hereby solemnly affirm and declare on Oath that all the  
contents of accompanying appeal are correct to the best  
of my knowledge and belief and nothing has been  
concealed from this Honourable Tribunal.

  
Deponent

Date 26-07-2019

Karim Jan

Identified by 



**BEFORE THE CHAIRMAN KHYBER PUKHTOONKHWA  
SERVICE TRIBUNAL PESHAWAR**

Service appeal No \_\_\_\_\_ 2019

Karim Jan .....Appellant

**Versus**

Govt of KP & others..... Respondents

**ADDRESSES PF THE PARTIES**

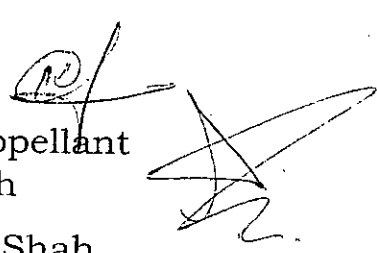
**APPELLANT**

Karim Jan Junior Clerk, Sessions Court, Charsadda  
presently posted as Moharrir/Junior Clerk in the  
Office of Judicial Magistrate-iv, Charsadda.  
(Appellant)

**RESPONDENTS**

8. Govt of KP through Secretary Law & Parliamentary  
Affairs, Peshawar.
9. District & Session Judge, Charsadda.
10. Senior Civil Judge (Admn), Charsadda
11. Kifaytullah Jan
12. Sufaid Gul, (Reader/Senior Clerks (now promoted)  
Sessions Court, Charsadda.
13. Mushtaq Ali
14. Jahngir Shah, Moharrirs/Jnior Clerk Sessions  
Court, Charsadda .

Date: 25-07-2019

  
 Appellant  
 Through  
 Asif Ali Shah

Advocate Peshawar

(12)

Annexure - A

OFFICE OF THE DISTRICT & SESSIONS JUDGE, CHARSADDAOFFICE ORDER.

In pursuance of Peshawar High Court, Peshawar notification bearing enforcement No. 1670-1721 dated 25.3.2003 read with Peshawar High Court, Peshawar letter No. 4313-4360/Adm: dated Peshawar the 19th April, 2003 and on the recommendation of Departmental Selection Committee, the following candidates are appointed as Junior Clerks-BPS-5 against the newly created posts with immediate effect in the interest of public service.

<u>S. NO.</u>	<u>Name of candidate.</u>	<u>Father's name</u>
1-	Nasr-ul-Haq	Muhammad Isaq.
2-	Ijaz	Maroof.
3-	Shahid Ali	Hemish Gul.
4-	Syed Shakir Hussain Shah	Noor Ali Shah.
5-	Kifayatullah	Jam Rehmat Jan.
6-	Said Wali	Muhammad Saeed.
7-	Jehangir Shah	Masbat Shah.
8-	Sufaid Gul	Majeed Gul.
9-	Mazhar Hussain	Imdad Hussain
10-	Fazal-e-Amin	Mahboob Elahi.
11-	Karim Jan	Abdullah.
12-	Mushtaq Ali	Murad Ali.

TERMS AND CONDITIONS.

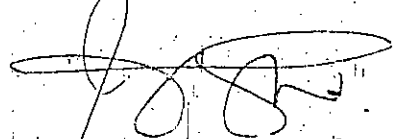
- 1- The appointment shall be purely on temporary basis.
- 2- The service will be liable to termination at any time without notice and showing any reasons.
- 3- He shall have to complete period of probation to the satisfaction of his superior.

~~CONFIDENTIAL~~

(2)

- 4- He shall produce medical fitness certificate before taking the charge.
- 5- He shall produce original identity card for determination of his age.

In case the above terms and conditions are acceptable to him, he should report to the undersigned for assuming his duty within seven days from today, failing which the offer shall stand withdrawn.



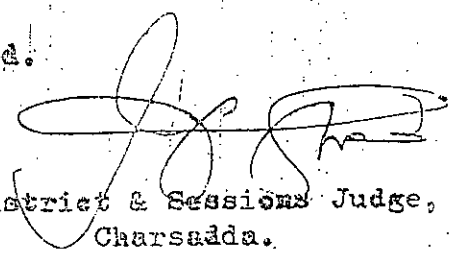
( Mrs. Irshad Qaisar )  
 District & Sessions Judge  
 Charsadda.

Di 90

No. 1273-89 dated Charsadda the 14/17/2003.

Copy forwarded to:-

- 1- The Registrar, Peshawar High Court, Peshawar.
- 2- Mr. Niaz Muhammad Khan, Addl: Member Inspection Team, Peshawar High Court, Peshawar.
- 3- The Accountant General, NWFP, Peshawar.
- 4- The District Accounts Officer, Charsadda.
- 5- All the concerned.



District & Sessions Judge,  
 Charsadda.



Annexure-B (19)

Junior Clerks (BPS-11)

S.No	Name of officials	Initial appointment	BPS	Date of Birth	Domicile	Date of First Appointment	Date of Arrival	Present Post	Date of Promotion	BPS	Qualification	Remarks
1	Kifayat Ullah Jan 3	Junior Clerk	5	10.05.1974	Charsadda	14.07.2003	15.07.2003	Junior Clerk		11	MA	
2	Sufaid Gul	Junior Clerk	5	28.08.1980	Charsadda	14.07.2003	15.07.2003	Junior Clerk		11	MA	
3	Mushtaq Ali	Naib Nazir	5	07.01.1981	Charsadda	29.02.2000	15.07.2003	Junior Clerk	14.07.2003	11	BA	Through Proper Channel
4	Jehangir Shah	Junior Clerk	5	04.04.1982	Charsadda	14.07.2003	15.07.2003	Junior Clerk		11	MA	
5	Karim Jan	Junior Clerk	5	15.04.1973	Charsadda	14.07.2003	16.07.2003	Junior Clerk		11	BA	
6	Mazhar Husain	Junior Clerk	5	07.06.1977	Charsadda	14.07.2003	16.07.2003	Junior Clerk		11	BA	
7	Nasruhaq	Junior Clerk	5	24.03.1979	Charsadda	14.07.2003	16.07.2003	Junior Clerk		11	MA	
8	Muhammad Ijaz	Junior Clerk	5	02.09.1975	Charsadda	14.07.2003	17.07.2003	Junior Clerk		11	B.Com	
9	Sartaj Muhammed	Junior Clerk	5	28.02.1974	Charsadda	02.12.2003	03.12.2003	Junior Clerk		11	BA	
10	Fazle Haht	Junior Clerk	5	02.05.1976	Charsadda	02.12.2003	03.12.2003	Junior Clerk		11	MSC	
11	Abid Ali	Junior Clerk	5	05.04.1977	Charsadda	02.12.2003	03.12.2003	Junior Clerk		11	BA	
12	Jafar Shah	Junior Clerk	5	03.01.1979	Charsadda	02.12.2003	03.12.2003	Junior Clerk		11	MA	
13	Muhammad Mohsin	Junior Clerk	5	15.03.1979	Charsadda	02.12.2003	03.12.2003	Junior Clerk		11	BSC	
14	Reveed Khan	Junior Clerk	5	16.05.1980	Charsadda	02.12.2003	03.12.2003	Junior Clerk		11	BA	
15	Fawad Ur Rehman	Junior Clerk	5	10.04.1981	Charsadda	02.12.2003	03.12.2003	Junior Clerk		11	MA	
16	Abid Jan	Junior Clerk	5	02.01.1982	Charsadda	02.12.2003	03.12.2003	Junior Clerk		11	MA	
17	Riaz Ur rehman	Junior Clerk	5	16.03.1982	Charsadda	02.12.2003	03.12.2003	Junior Clerk		11	MA	
18	Muhammad Riaz Ijaz	Junior Clerk	5	18.05.1982	Charsadda	02.12.2003	03.12.2003	Junior Clerk		11	BA	
19	Abid Shah	Junior Clerk	5	10.10.1980	Charsadda	08.12.2003	13.12.2003	Junior Clerk		11	MA	
20	Shahid Ali	Junior Clerk	5	13.04.1979	Charsadda	08.03.2005	10.03.2005	Junior Clerk		11	BA	

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21	Shaukat Masih	Sweeper	1	02.02.1971	Charsadda	24.09.2002	00.9.2007	Junior Clerk	26.09.2007	11	Matric
22	Ghauhar Ali	Chokidar	1	10.04.1981	Charsadda	01.03.2002	00.9.2007	Junior Clerk	26.09.2007	11	Matric
23	Ishfaq Azim	Junior Clerk	5	14.08.1978	Charsadda	08.08.2008	09.08.2008	Junior Clerk		11	MA
24	Muhammad Shahid	Junior Clerk	5	15.05.1984	Charsadda	08.08.2008	09.08.2008	Junior Clerk		11	MA
25	Syed Abdul Haseeb	Junior Clerk	5	20.04.1989	Charsadda	08.08.2008	09.08.2008	Junior Clerk		11	BA
26	Mujahid Jan	Chokidar	5	16.05.1981	Charsadda	22.07.2003	17.03.2009	Junior Clerk	17.03.2009	11	BA
27	Gul Zada	Naib Qasid	5	04.03.1979	Charsadda	15.07.2003	23.07.2012	Junior Clerk	2012	11	Matric
28	Muhammad Numan	Junior Clerk	5	04.06.1979	Charsadda	21.07.2012	23.07.2012	Junior Clerk		11	BA
29	Asim Nawaz	Junior Clerk	5	21.02.1985	Charsadda	21.07.2012	23.07.2012	Junior Clerk		11	MA
30	Muhammad Rizaz	Junior Clerk	5	03.01.1985	Charsadda	21.07.2012	23.07.2012	Junior Clerk		11	MSC
31	Irfanullah	Junior Clerk	5	21.03.1985	Charsadda	22.06.2013	25.06.2013	Junior Clerk		11	BA
32	Javid Gul	Naib Qasid	1	20.04.1961	Charsadda	01.12.1985	2015	Junior Clerk	15.12.2015	11	Matric
33	Khan Wali	Naib Qasid	3	12.02.1965	Charsadda	28.07.2003	28.07.2003	Junior Clerk	2017	11	Matric
34	Abdul Wajid	Chowkidar	1	12.05.1970	Charsadda	21.07.2003	12.08.2017	Junior Clerk	12.08.2017	11	FA
35	Hayat Khan	Chowkidar	1	18.04.1970	Charsadda	04.12.2003	16.08.2017	Junior Clerk	12.08.2017	11	Matric
36	Qasim Jan	Sweeper	1	15.05.1977	Charsadda	04.12.2003	02.04.2018	Junior Clerk	31.03.2018	11	BA
37	Shabeer Khan	Naib Qasid	2	03.03.1993	Charsadda	28.05.2012	02.04.2018	Junior Clerk	31.03.2018	11	Matric
38	Imran Khan	Junior Clerk	11	21.03.1992	Charsadda	24.05.2018	25.05.2018	Junior Clerk		11	BS Commerce
39	Muhammad Ishfaq	Junior Clerk	11	01.05.1978	Charsadda	24.05.2018	25.05.2018	Junior Clerk		11	MBA
40	Ahmad Yar	Naib Qasid	1	20.04.1970	Charsadda	15.07.2003	04.06.2018	Junior Clerk	04.06.2018	11	Matric
41	Tariq Jan	Sweeper	1	01.01.1981	Charsadda	17.07.2003	04.06.2018	Junior Clerk	04.06.2018	11	Matric
42	Murad Khan	Sweeper	1	05.01.1983	Charsadda	04.12.2003	05.12.2003	Junior Clerk		11	Matric
43	Uzair	Junior Clerk		13.03.1993	Charsadda	21.01.2019	24.01.2019	Junior Clerk		11	MSC
44	Muhammad Ali	Junior Clerk		30.04.1994	Charsadda	21.01.2019	24.01.2019	Junior Clerk		11	MA

OFFICE OF THE DISTRICT & SESSIONS JUDGE, CHARSADDA.

Endst No. 1250 DJ-05

Dated 10 08 2019

Copy forwarded to all the Judicial Officers of the District for its circulation amongst their staff working in their courts.

DISTRICT & SESSIONS JUDGE  
CHARSADDA

*At*

ATTES

*[Handwritten signature]*

16

To

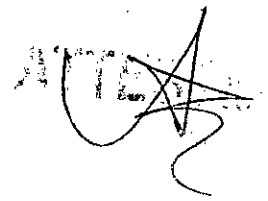
The District & Sessions Judge,  
Charsadda.

Subject: **OBJECTION ON SENIORITY LIST ISSUED ON  
10-06-2019 REGARDING JUNIOR CLERKS OF  
THE ESTABLISHMENT.**

**Respectfully Sir,**

With due respect I submit my objection on the seniority list of the junior clerks of the establishment issued on 10/06/2019 as following.

8. That I am serving as junior clerk in this establishment since 14-07-2003.
9. That at present I am posted a Moharrir/Junior Clerk in the court of Judicial Magistrate-IV, Charsadda and performing the duty of computer operator. (Copy Attached)
10. That we, the officials/Junior Clerk at serial number. 1 to 8 appointed in one batch on 14/07/2003.
11. That as per rule of seniority, the official who is older in age should have been placed senior to others as provided in **PLJ 2009 SC 125** (copy annexed) but in the seniority Final list to, I have been shown Junior to the officials/Junior Clerk at SN. 1 to 4 despite of the fact that my date of birth is 15/04/1973 while others are younger to me.
12. That in view of the verdict of august Supreme Court of Pakistan, above cited; I deserve the right of my seniority to others appointed in the same batch.

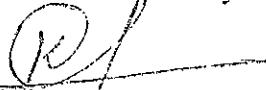


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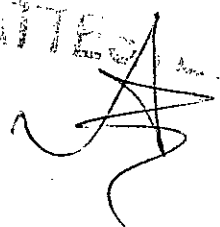
It is, therefore, requested that while considering my request sympathetically in the light of worthy judgment of august Supreme Court of Pakistan, I may very kindly be placed on S. No. 1 of the final seniority of junior Clerks issued on 10/06/2019 and obliged.

Date: 13-06-2019

Yours Obediently



Karim Jan  
Junior Clerk (BPS-11)  
District Judiciary  
Judicial Complex Charsadda.

ATTEN  




*objection  
on Seniority  
List*

District Judiciary Charsadda

(18)

Senior Civil Judge,  
Charsadda

Phone: 091 - 92 20 435

REPORT:

Subject: OBJECTION ON SENIORITY LIST

Respected Sir,

Reference application on the subject by Karim Jan, Junior Clerk / Muharrir (BPS-11) requesting for placing his name at S. No. 01 being older in age from all the incumbent officials mentioned at S. No. 01 to 08.

It is worthwhile to state that the applicant is performing his duty as Junior Clerk / Muharrir since 2003. He has not impugned the seniority list of the official regularly issued on each calendar year, which comes within the ambit of estoppel on the part of official concerned. Petitioner himself acquiesced and abandoned his right to claim seniority over that respondent through his own act & conduct, thus principle of estoppel would debar the petitioner from asserting right of seniority. Wisdom is taken from esteem judgement of August Supreme Court of Pakistan PLD 2014 Supreme Court 338.

Furthermore, the petitioner Karim Jan has challenged the seniority list on the verge of promotion which also shows his vested interest and filed the instant application after a lapse of 16 years, which is highly time barred as well. The application is hit by the law of estoppel and limitation and the same is liable to dismissal.

I am fortified with the worthy judgement of Supreme Court of Pakistan PLD 2014 Supreme Court 338.

Report is submitted for your kind perusal and appropriate orders, please.

**ATTESTED**

28 JUN 2019

Examiner  
Copying Agency Branch  
C.O. of Distt & Session's Judge  
Charsadda

29/06/19  
Senior Civil Judge (Administration),  
Charsadda

19

Subject:- OBJECTION ON SENIORITY LIST.

Respected Sir,

Reference application on the subject submitted by Mr. Karim Jan, Junior Clerk/Muharrir, requesting for placing his name at serial No. 01 in the seniority list being older in age from all the incumbents mentioned from serial No. 01 to 04.

In this regard it is submitted that the applicant is performing duty as Junior Clerk/Muharrir since 14.07.2003 and after laps of fifteen years the applicant was silent despite the fact the seniority list of the official regularly issued in the first month of every calendar year. In this scenario the objection filed by the applicant is highly time barred and not maintainable.

Submitted for appropriate order, please.

*Alie* 20/6/19  
Superintendent  
Sessions Court, Charsadda

Ment. Condonaable.  
Late  
applicant for endu.

Report, pl

desi sis (Admn)

R/SIA

Report of SCF (Admn) is annexed  
herewith. *E. B. B. 25/6*

In view of the report appeal being time barred  
is dismissed

*P* 26/6

ATTESTED

28 JUN 2019

Examiner  
Copying Agency Branch  
Courts of Distt & Sessions Judge  
Charsadda

مدرجہ نقل - آئی ڈی، جے ایم اے، سری  
الکوارٹری - نقل نیٹ

FORM 'A'

20

FORM OF ORDER SHEET

Court of: Senior Civil Judge, Charsadda

Case No. \_\_\_\_\_ of \_\_\_\_\_

ORDER  
04.05.2019

Petitioner in person present.

This order of mine is directed to dispose of an objection application filed by the petitioner, over the seniority list of Process Servers issued by this office dated 18.01.2019.

Brief facts of the petition are that the petitioner is serving as Process Server for the last fifteen years and he alongwith two others Process server at Serial No.10 & 15 were inducted into service on 07.01.2004 and seniority list was issued by the then office of senior civil judge, charsadda in which the petitioner was kept at Serial No.2 after the Process server namely sawar Khan who left the service. That Process Server at Serial No.10 & 11 namely Fazal Muhammad and Akbar Ali respectively, were kept junior to him in that very seniority list dated 13.01.2004. That now, the petitioner was kept junior to both the process server named above without any reason which is against law and facts and the seniority list is liable to correction in accordance with the seniority list of 2004.

The report of COC was requisitioned who submitted his report on 22.01.2019.

Arguments of the petitioner heard while gone through the record.

From the bare reading of the record, it reveals that the present petitioner alongwith others were inducted into service on 03.01.2004 vide minutes of the meeting of the departmental Selection Committee held in the office of Senior

4/4 - نرسید  
40/19 - برسر  
4/5 - سنر  
13/15 - موصول  
18.01.19

24/5/19

ATTESTED  
19

✓

FORM 'A' (21)  
FORM OF ORDER SHEET

Court of: Senior Civil Judge, Charsadda

Case No. \_\_\_\_\_ of \_\_\_\_\_

ORDER.....Cond.....  
04.05.2019

Civil Judge, Charsadda on 3rd January 2004. After his induction into service the petitioner took the charge on 07.01.2004 with Sawar Khan while Fazal Muhammad Process Server/respondent joined his duties on 08.01.2004, Therefore the petitioner was kept senior to Fazal Muhammad on the basis of his joining of service, prior to the process sever inducted/appointed on the same date. The petitioners had passed his SSC later in time from the said process servers and is also younger to him. The petitioner alongwith two others were appointed on the same day and the petitioner on the basis of charge assumption, was kept senior from the other in seniority lists issued on 08.01.2004. Thereafter he was kept junior to Fazal Muhammad and Akbar Ali PS in seniority list issued dated 18.01.2019. In this respect, it is held by the August Supreme Court in case law PLJ 2009 SC 125 (Appellate Jurisdictions) that petitioner and respondent were appointed on the same batch. Admittedly, respondent is older in age than the petitioner and petitioner assumed duties earlier would not adversely affect the seniority position of respondent. In the instant situation, the petitioner was kept junior in the incumbent seniority list.

It is evident from the record, that Fazal Muhammad & Akbar Ali No.2, Process Server are Senior to Falak Niaz, process server on the ground of age because date of birth of Fazal Muhammad is 01.11.1977, & Akbar Ali is 11.05.1978 whereas the date of birth of petitioner/Falak Niaz is 22.08.1980.

ATTESTED

12/05/2019

Examiner  
Copying Agency Branch  
C.O. of Dist. J. Charsadda

Handwritten signature and date: 09/07/19

ORDER.....Cond...  
04.05.2019

Thus the petitioner was inadvertently entered senior than respondent on the basis of charge assumptions in the early seniority list while vide the seniority list issued dated 18.01.2019, he has been correctly placed, junior to the respondent/Fazal Muhammad on the basis of age. Hence, the very objections of the applicant being meritless, stand dismissed.

File be consigned to Record Room after necessary completion and compilation.

Nasser Ahmad  
Senior Civil Judge,  
Charsadda.



04/05/19

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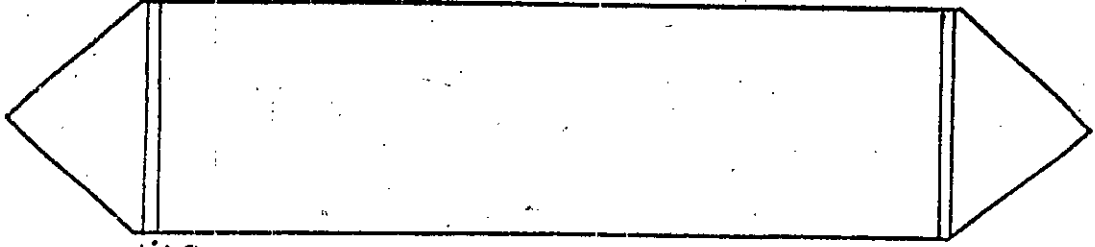
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10-6-19

10-6-19



BEFORE COURT OF SERVICE TRIBUNAL, PESHAWAR بعد الت



Plaintiff

بنام

KARIM JAN

Govt. of KPK etc.,

موزخه

مقدمہ

دعویٰ

جرم

## باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ  
آن مقام PESHAWAR کیلئے BILAL A. KAKAIZAI Adv.

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز  
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور صولی چیک دروپیا عرضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی  
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار  
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ  
پر واختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائد التوائے مقدمہ کے سبب سے ہوگا۔  
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی  
مذکور کریں۔ لہذا وکالت نامہ لکھنیا کہ سند ہے۔

Attested  
&  
Accepted

20

المرقوم

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بمقام

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.

APPEAL NO. 1023/2019.

Karim Jan Junior Clerk Sessions Court, Charsadda presently posted as  
Muharrir/Junior Clerk in the office of Judicial Magistrate-IV, Charsadda.  
(Appellant)

Vs

1. Govt. Of KP through Secretary Law & Parliamentary Affairs, Peshawar.
2. The District & Sessions Judge, Charsadda
3. The Senior Civil Judge (A), Charsadda.
4. Kifayatullah Jan Senior Clerk
5. Sufaid Gul Senior Clerk
6. Mushtaq Ali Junior Clerk
7. Jehangir Shah Junior Clerk Sessions Court, Charsadda.....(Respondent)

Respected sheweth,

1. Correct.
2. Correct
3. Incorrect, it is clearly mentioned by the appellant that seniority list of all the employees are issued regularly once in a year. But after deep slumber of 15 years the applicant awakened. Missing 14 opportunities of appeals.
4. Incorrect, the office order bearing No. 1273-89/DJ-90 dated 14.07.2003 (Copy of appointment order is annex-A) was issued in view of merit rather than of age, therefore, the applicant was shown junior to respondents No. 02 to 05.
5. No Comments.
6. Correct.
7. Correct.
8. Correct.
9. Correct.
10. No Comments.

**Grounds:**

- A. **Denied;** All the process of promotion was conducted in accordance with rules and prescribed criteria.
- B. **Denied;** The appellant was fully aware of fact that seniority list is regularly issued from the office of the respondent No. 01 on each calendar year and circulated.
- C. **Denied;** Laps of fifteen (15) years is a sufficient proof for dismissal of his plea for consideration.

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

Service Appeal No. 1023/2019

*Karim Jan, Junior Clerk, Sessions Court, Charsadda,  
Posted at Court of Civil Judge / Judicial Magistrate-IV, Charsadda*  
..... *Appellant*

**VERSUS**

1. *Govt. of KP through Secretary Law & Parliamentary Affairs,  
Peshawar*
2. *District & Sessions Judge, Charsadda.*
3. *Senior Civil Judge (Admin), Charsadda.*
4. *Kifayat Ullah Jan.*
5. *Sufaid Gul, (Reader/Senior Clerk (now promoted) Sessions Court,  
Charsadda.*
6. *Mushtaq Ali*
7. *Jehangir Shah, Muharrir/Junior Clerk Sessions court, Charsadda.*  
..... *Respondents*

**SERVICE APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1973**  
**AGAINST THE JUDGEMENT/ORDER DATED 26-06-2019 PASSED BY**  
**THE HON'BLE DISTRICT & SESSIONS JUDGE, CHARSADDA**

*Respectfully Sheweth,*

Reply / Comments on behalf of Respondents No. 3, Senior Civil  
Judge (Admin), Charsadda are as follows:

The official Mr. Karim Jan belongs to the establishment of District &  
Sessions Judge, Charsadda where the Hon'ble District & Sessions Judge,  
Charsadda is the appointing/competent authority. This office only entertained  
the objection on seniority by the official, marked to this office by the Hon'ble  
District & Sessions Judge, Charsadda.

The appellant is serving since 2003, and has not challenged the  
seniority list of the officials which is regularly issued in each calendar year.

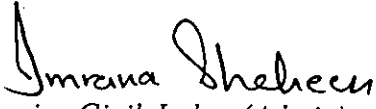
*Amrana Shehryar*

Senior Civil Judge (Admin),  
Charsadda

Furthermore, the appellant challenged the seniority list, after a lapse of 16 years, on the verge of his promotion which also shows his vested interest, the same was hit by the law of estoppel and limitation and was badly time barred as well. (In this respect, this office has already submitted report to the Hon'ble District & Sessions Judge, Charsadda which is annexure "A") Reliance was placed on the esteem judgment of August Supreme Court of Pakistan PLD 2014 Supreme Court 338 (copy is annexed for ready reference as annexure "B").

In view of the above, it is therefore requested that the appeal of the appellant being devoid of any merits may kindly be dismissed with cost.

Respondent No.3

  
Senior Civil Judge (Admin),  
Charsadda.

Senior Civil Judge (Admin).  
Charsadda



Annexure "A"  
B.  
District Judiciary Charsadda

Civil Judge (Admin).  
Charsadda

Senior Civil Judge,  
Charsadda

Phone: 091 - 92 20 435

REPORT:

Subject: OBJECTION ON SENIORITY LIST

Respected Sir,

Reference application on the subject by Karim Jan, Junior Clerk / Muharrir (BPS-11) requesting for placing his name at S. No. 01 being older in age from all the incumbent officials mentioned at S. No. 01 to 08.

It is worthwhile to state that the applicant is performing his duty as Junior Clerk / Muharrir since 2003. He has not impugned the seniority list of the official regularly issued on each calendar year, which comes within the ambit of estoppel on the part of official concerned. Petitioner himself acquiesced and abandoned his right to claim seniority over that respondent through his own act & conduct, thus principle of estoppel would debar the petitioner from asserting right of seniority. Wisdom is taken from esteem judgement of August Supreme Court of Pakistan PLD 2014 Supreme Court 338.

Furthermore, the petitioner Karim Jan has challenged the seniority list on the verge of promotion which also shows his vested interest and filed the instant application after a lapse of 16 years, which is highly time barred as well. The application is hit by the law of estoppel and limitation and the same is liable to dismissal.

I am fortified with the worthy judgement of Supreme Court of Pakistan PLD 2014 Supreme Court 338.

Report is submitted for your kind perusal and appropriate orders, please.

24/08/2018  
Senior Civil Judge (Administration),  
Charsadda

Annerjee '68 B'  
Senior Civil Judge (Admin)  
Chambada

PLD 2014 Supreme Court 338

Present: Anwar Zaheer Jamali, Khilji Arif Hussain and Gulzar Ahmed, JJ

SAROSH HAIDER---Appellant

Versus

MUHAMMAD JAVED CHUNDRIGAR and others---Respondents

Civil Appeal No.187-K of 2010, decided on 20th December, 2013.

(a) Civil service---

---Promotion---Inter se seniority---Considerable delay in challenging seniority list---Acquiescence---Effect---Vested right, creation of---Estoppel---Locus poenitentiae, principle of---Appellant and respondent (both civil servants) were appointed on the same date i.e. 16-6-1986---Appellant was senior in age to the respondent and also submitted his joining report on 30-6-1986, whereas respondent submitted his joining report on 1-7-1986---Appellant was shown as senior to respondent in different seniority lists and a notification issued between the years 1991 and 2001---Respondent never challenged such lists and notification and was satisfied being junior to the appellant---Seniority of appellant was challenged for the first time on 30-3-2002 by filing an appeal before the competent authority, which was rejected as being time barred---Respondent filed another appeal before the Chief Secretary on 20-11-2002, which was allowed and after an intervening period of almost 14 years seniority of appellant was all of a sudden reversed in favour of respondent---Appellant enjoyed position of seniority above that of respondent for such a long period of time, which created a vested right in the appellant of being senior to respondent---Such right of appellant could not have been upset as principle of locus poenitentiae would come into application and competent authority would have no power to recede, more so, when appellant was not provided any right of hearing whatsoever by the Chief Secretary, which was violation of the mandatory provision of audi alteram partem---Respondent had more than one occasion to agitate about his seniority but he himself chose not to challenge the same and allowed it to attain finality---Respondent could have challenged the seniority lists and notification within the limitation period prescribed by law to have them corrected or set aside, but he chose not to do so---Respondent himself acquiesced and abandoned his right to claim seniority over that of appellant through his own act and conduct, thus principle of estoppel would debar respondent from asserting right of seniority---Order passed by Chief Secretary was not in accordance with law, thus not sustainable---Appeal was allowed accordingly.

Abdul Ghani v. Mst. Shaheen and others 2007 SCMR 834 distinguished.

Wazir Khan v. Government of N.-W.F.P. through Secretary Irrigation, Peshawar and 4 others 2002 SCMR 889 and Faris Rahman Khan v. Federation of Pakistan through Secretary, Establishment Division Islamabad and others 1995 SCMR 579 ref.

(b) Civil service---

---Competent authority passing a voidable order---Setting aside of such order---Limitation---Where competent authority did any act or passed any order, which was adverse to any person, who had full knowledge of the same, then such order would remain in the field and operate fully until it was challenged through proceedings within the prescribed limitation period---Such an order would not be void ab initio but merely a voidable order, which could be corrected if proceedings against it were brought within prescribed period of limitation.

Chairman District Screening Committee, Lahore and another v. Sharif Ahmed Hashmi PLD 1976 SC 258 ref.

M. M. Aqil Awan, Senior Advocate Supreme Court for Appellant.

Noor Muhammad Memon, Advocate Supreme Court and Ghulam Qadir Jatoi, Advocate-on-Record for Respondent No.1.

## ORDER

GULZAR AHMED, J.---By this appeal, appellant Sarosh Haidar has challenged the order dated 28-4-2010 passed by a learned Division Bench of High Court of Sindh, Circuit Court, Hyderabad, by which the Constitutional Petition No.D-302 of 2009, filed by the respondent No.1, was allowed and the official respondents were directed to implement the order dated 29-5-2004 of Chief Secretary allowing the seniority to the respondent No.1 over and above the appellant.

2. Vide order dated 8-9-2010 leave to appeal was granted, inter alia, to consider the question as to whether the order of Chief Secretary dated 29-5-2004 was justifiable and legal and whether promotion could merely be granted on the opinion of Law Department.

3. We have heard the learned counsel for the parties and have gone through the record.

4. Learned Senior Advocate Supreme Court for the appellant has vehemently argued that though the appellant and respondent No. 1 were appointed on the same date i.e. 16-6-1986 as Draftsman BPS-13 in the Town Planning Department, Hyderabad but the appellant was senior in age and has also submitted his joining report on 30-6-1986, whereas the respondent No. 1 submitted his joining report on 1-7-1986 and pursuant to these differences, the name of appellant, always appeared above that of respondent No. 1 in seniority list. In this respect he referred to the seniority list of December, 1991, of December 1994, the notification dated 14-12-1995, whereby the appellant and respondent No.1 were promoted to the post of Sr. Draftsman BPS-16 and the seniority list dated 1-1-2000. He contended that none of these seniority lists or the notification, wherein the name of appellant appeared at Sr. No. 1, was ever challenged by respondent No. 1 and it was only at the stage when the recommendation for promotion to the post of Chief Draftsman BPS-17 was initiated the respondent No.1 filed a belated appeal dated 30-3-2002 claiming seniority over and above the appellant. This appeal of the respondent No. 1 was rejected by the competent authority being time barred vide letter dated 20-10-2002. He contended that vide notification dated 8-11-2002 the appellant was promoted to the post of Chief Draftsman BPS-17 in the Directorate of Town Planning Sindh with immediate effect. He further contended that it was after such promotion of the appellant was made that the respondent No.1 submitted an appeal dated 18-11-2002 to the Chief Secretary, whereby he sought his seniority to be corrected with that of appellant. He contended that the appeal did not lie to the Chief Secretary and even otherwise it was time-barred. He further contended that promotion of the appellant as Chief Draftsman BPS-17 was never challenged by respondent No.1 through proper remedy. He has further contended that no notice of hearing of appeal of respondent No.1. was issued to the appellant and further the order of Chief Secretary is a non-speaking one and does not assign any reasons. In support of his submissions, the learned counsel relied upon the case of ABDUL MAJEED ZAFAR and others v. GOVERNOR OF PUNJAB THROUGH CHIEF SECRETARY and others (2007 SCMR 330).

5. On the other hand, learned Advocate Supreme Court appearing for respondent No. 1 has supported the impugned order and has contended that in terms of Law Department's opinion, opportunity of hearing was provided to the appellant and appellant could not have any grievance against the order of Chief Secretary. In support of his submissions, he has relied upon the case of ABDUL GHANI v. MST. SHAHEEN and others (2007 SCMR 834).

6. On Court directions, learned Additional Advocate General Sindh has placed on record copy of appeal dated 18-11-2002 of respondent No.1 along with office noting. He has referred to para 15 of notes appended to appeal and has contended that while the appellant and respondent No.1 were appointed on one and same date, respondent No.1 having higher marks than that of appellant, his seniority was rightly corrected.

7. The facts that appellant and respondent No.1 were appointed on one and same date i.e. 16-6-1986 as Draftsman BPS-13 in the-Town Planning Department, Hyderabad and that the appellant being senior in age to that of respondent No. 1 and has submitted his joining report dated 30-6-1986 and respondent No. 1 has submitted his joining report on 1-7-1986 are not disputed. Further more, it is also not disputed that the seniority lists of December 1991, December 1994, the notification dated 14-12-1995 by which the appellant and respondent No. 1 were promoted as Sr. Draftsman in BPS-16, the seniority list dated 1-1-2000 and the seniority list dated 13-8-2001 were not objected to or challenged by respondent No. 1. In all these seniority lists and the notification the appellant was shown senior to respondent No. 1. It is also an admitted fact that it was at the stage when recommendation for promotion to the post of Chief Draftsman BPS-17 was initiated; the respondent No. 1 filed an appeal dated 30-3-2002 claiming seniority

8-11-202 to the Chief Secretary, in which his claim was that of correction of seniority with that of appellant on the basis of recommendation for initial appointment dated 4-3-1986, where in the category of draftsman the name of respondent No.1 was shown at Serial No.1 while that of appellant at Serial No.2 and this appears to be for the reasons that respondent No.1 has obtained 39 marks while the appellant has obtained 36 marks out of 50 marks.

8. Learned Advocate Supreme Court for respondent No. 1 has heavily relied upon Rule 11 Sindh Civil Servants (Probation, Confirmation and Seniority) Rules, 1975 and has contended that the seniority of the respondent No.1 could not have been changed from the one assigned to him on initial appointment. He contended that the order of the Chief Secretary has already been implemented and the respondent No.1 has been placed as Senior to the appellant.

9. There cannot be two views with regard to the provision of Rule 11 that the inter se seniority of civil servant, appointed in a batch or on the same date is to be based in order of merit, assigned by the selection authority. In the present case though the name of respondent No. 1 was above that of appellant at the time of selection in 1986 but in seniority lists of December 1991, December 1994, the notification dated 14-12-1995, the seniority list dated 1-1-2000, the name of the appellant appeared as senior to that of the respondent No. 1. From December 1991 upto 1-1-2000, which is the period of almost about nine years, the respondent No. 1 was satisfied with his seniority position that being junior to the appellant and did not either make any representation or file any appeal. From the office note dated 22-8-2002 it appears that another seniority list dated 13-8-2001 of senior draftsmen was issued and circulated amongst the senior draftsmen. Against this seniority list, also the respondent No.1 did not file any appeal. but when the case of the appellant was taken up for promotion as Chief Draftsman BPS-17, the respondent No.1 rose from his deep slumber and for the first time filed an appeal dated 30-3-2002, which was rejected by competent authority on 20-10-2002 as being time barred. In the meanwhile, the appellant was promoted as Chief Draftsman by the Departmental Promotion Committee and notification dated 8-11-2002 of promotion of appellant was also issued. The respondent No.1 then preferred further appeal dated 20-11-2002 to the Chief Secretary which as it appears has been allowed vide order dated 29-5-2004 and the seniority which the appellant was enjoying, on the basis of which he was promoted as senior draftsman and then as Chief Draftsman, was all of sudden reversed in favour of respondent No. 1. The total intervening period being that of almost 14 years.

10. Having enjoyed the position of seniority by the appellant above that of respondent No. 1 for such a long period, created a vested right in the appellant of that being senior to the respondent No. 1 and such right of appellant could not have been upset as principle of locus poenitentiae will come into application in that authority will have no power to recede, more-so, when no hearing whatsoever was provided to the appellant while considering the case of seniority. Thus the mandatory provision of law of audi alteram partem has been seriously violated by the Chief Secretary while passing the order dated 29-5-2004. The learned counsel for the respondent No.1 has relied upon the case of Abdul Ghani (supra) which decides the case on the basis of order passed in violation of mandatory provision of law and it was held that no limitation would run for challenging such order. We may note that this judgment relied upon by the learned counsel for respondent No. 1 would be of no help for the reasons that the respondent No. 1 had more than one occasions to agitate about his seniority but he himself chose not to challenge the same and allowed them to attain finality and thus he himself acquiesced and abandoned his right to claim seniority over that of appellant and principle of estoppel will surely come into operation and debar the respondent No.1 from asserting the right of seniority over and above that of appellant, which he himself through his own act and conduct has rested.

11. In the case of CHAIRMAN, DISTRICT SCREENING COMMITTEE, LAHORE and another v. SHARIF AHMED HASHMI (PLD 1976 SC 258), this court has elaborately dealt with and has laid down the distinction between the word "Void" and "Voidable" and in doing so has observed as follows:--

"There is great looseness in the use of the words "void" and "voidable" and very often they are used interchangeably. Nevertheless there is a clear distinction between things "void" and "voidable" though the two terms are not infrequently used without special regard for the difference or distinction particularly where such distinction is of no consequence or where the attention of the Court is not particularly directed to this distinction. The expression "Void" in the strict or accurate sense means "absolutely null" that is to say incapable of ratification or confirmation and of no effect whatever. The word "voidable" on the other hand is something which could be avoided or confirmed and which is not absolutely void. In other words what is voidable has some force or effect, but which may be set aside or annulled for some error or inherent vice or defect. Thus that which is voidable operates to accomplish the thing sought to be accomplished until the fatal vice in the transaction has been judicially ascertained



ratification or confirmation. See section 11 of the Contract Act, 1872. Law forbids the enforcement of such a transaction even if the minor were to ratify it after attaining majority. This is clearly distinguishable from a case in which a thing or an act is "relatively void" which the law condemns as wrong to the individual concerned who can avoid it by appropriate proceedings. A common place instance of such transaction is that which is brought about by undue influence, fraud etc. Which remains of full effect unless avoided by appropriate proceedings. In the relevant field, an order of dismissal etc. of a Government servant by an authority who had ab initio no authority will fall under the first category. For instance, if the respondent had been retired by a Superintendent Police instead of appellant No. 2 the order would have been void ab initio. On the other hand an order by competent authority but suffering from a procedural defect will be voidable and fall under second category. The first case is of total incapacity, assimilable to a defect falling under section 11 of the Contract Act and the resulting act is a dead letter. In the latter case, the order is by the competent authority though in violation of certain rules.

Bearing this distinction in mind, the cardinal fact in the instant case is that respondent was retired compulsorily by appellant No.2 who was his Appointing Authority and not by an interloper, Under the Constitution of 1956 read with the Law (Continuance in Force) Order, 1958 appellant 2 being the Appointing Authority was fully competent to do so, subject however to satisfying certain procedural requirements. Appellant 2 purported to act under the Public Conduct (Scrutiny) Ordinance, 1959 (Ordinance III of 1959) and the Public Conduct (Scrutiny) Rules, 1959 framed thereunder, Rule 2 of these Rules as Originally framed provided as follows:--

"Where a Committee is of the opinion that there is reason to believe that person to whom the Ordinance applies-

- (a) is corrupt. . . . .
- (b) . . . . .
- (c) is inefficient or has ceased to be efficient and is not likely to recover his efficiency.

It may so inform that person and call upon him to explain any fact or circumstance appearing against him."

This covered the respondent's case. But by a subsequent amendment clause (c) of the rule was omitted with effect from 28-2-1957. Appellant 2 however, apparently ignorant of the amendment proceeded against the respondent as if the rule as originally framed had continued and ordered respondent's compulsory retirement, on the report of the Screening Committee constituted under section 3 of the Ordinance. Any penal action properly taken under the rules was protected under section 10 *ibid*. But the impugned order not being under the rules is not protected and is therefore, open to challenge.

The result therefore is that the impugned order was made by the authority otherwise competent to make it: it is under attack because of the defective procedure. But all the same it had taken effect as from 1-7-1959 according to its tenor and has not been recalled notwithstanding many representations made by the respondent. In this situation, it is in my opinion wholly wrong to treat the order void ab initio in the sense of an absolute nullity. It was made by the authority inherently competent to make it, though a wrong procedure was followed. Appellant 2 could have proceeded under the Civil Servants (Efficiency and Discipline) Rules. It was therefore, merely voidable which could have been avoided by the respondent by appropriate proceedings. This he did, but not until after the lapse of twelve years. Since then further three years have gone by.

✓ Therefore, it can scarcely be controverted that the respondent's writ petition in the High Court suffered from inordinate delay and ordinarily relief should have been refused to him as it was done by the learned single Judge for reasons of gross Laches."

12. In the present case, it is not disputed that the seniority lists and the notification by which the appellant and respondent No.1 were promoted as Senior Draftsmen were issued by the competent authority. Thus, where the competent authority does any act or passes any order, which is adverse to any person and he being in full knowledge of the same, such act and order remains in the field and operates fully until it is challenged through a proceeding within prescribed limitation period. Such an order will not be void ab initio but merely be a voidable which can be corrected if proceedings against it is brought within prescribed limit of limitation. Thus, in the present case, seniority lists and the notification which admittedly were issued by the competent authority if at all were adverse to respondent No. 1, he could

13. In the case of WAZIR KHAN v. GOVERNMENT OF N.-W.F.P. THROUGH SECRETARY IRRIGATION, PESHAWAR and 4 othes (2002 SCMR 889), this Court has observed as follows:--

" The next question relates to the limitation. It is not denied that upon rejection of the representation by the competent Authority against the revised seniority list published in 1981. the appellant did not prefer appeal before the Service Tribunal and allowed the same to attain finality. The appellant also did not raise any objection to the seniority list issued periodically in the intervening period and consequently it would be deemed that he has accepted the seniority assigned to him in the revised seniority list published in the year 1981. The matter relating to the seniority of private respondents inter se having. attained finality would be deemed as past and closed transaction and could not be re-agitated after lapse of a period of about 15 years through a fresh representation.

14. In another case of FARIS RAHMAN KHAN v. FEDERATION OF PAKISTAN THROUGH SECRETARY, ESTABLISHMENT DIVISION, ISLAMABAD and others (1995 SCMR 579), this Court has observed as follows:--

"The facts as stated above, clearly show that after the recommendation of September 1981 was returned, appellant's case was reconsidered many times during the years 1983 to 1988 and on all occasions it was rejected and persons junior to him were promoted superseding him. The appellant remained quiet till 1990 and agitated after he was promoted on the basis of recommendation made by the Board on 12-4-1989. The delay in making claim is fatal to the appellant's case: The learned counsel for the appellant contended that the appellant was not aware of what had been happening as no list of the persons considered for promotion was circulated nor any information was supplied. This seems to be a naïve argument. Every civil servant is aware of the promotion and supersession."

15. In view of the above pronouncements of this Court, there was hardly any justification for the learned Division Bench of High Court to pass order that of implementation of the order dated 29-5-2004 of the Chief Secretary which in terms as noted above was not in accordance with law. The impugned order, therefore, suffers from defects, which is not sustainable in law.

16. For the foregoing reasons, this appeal is allowed, the impugned order dated 28-4-2010 of High Court of Sindh is set aside.

MWA/S-1/SC

Appeal allowed.

**VAKALAT NAMA**

NO. 1023 /2019 .

IN THE COURT OF KP Service Tribunal, Peshawar

Kasim Jan

(Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Govt. of KP etc.

(Respondent)  
(Defendant)

I/We, Respondent no. 4&5

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate Supreme Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated \_\_\_\_\_/20

Kifayatullah Sajid Gul  
(CLIENT)

ACCEPTED

Am. Jan  
**M. ASIF YOUSAFZAI**  
Advocate Supreme Court Peshawar.  
&  
Am. Jan  
**TAIMUR ALI KHAN**  
Advocate High Court, Peshawar  
&  
**SYED NOMAN ALI BUKHARI**  
Advocate High Court  
& S. Khan  
**SHAHKAR KHAN YOUSAFZAI**  
Advocate.

**OFFICE:**

Room # FR-8, 4<sup>th</sup> Floor,  
Bilour Plaza, Peshawar,  
Cantt: Peshawar

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

Service Appeal No.1023/2019

Karim Jan

Versus

Govt. of KPK etc

**PARAWISE COMMENTS ON BEHALF OF  
RESPONDENTS NO.4&5**

**RESPECTFULLY SHEWETH,**

**PRELIMINARY OBJECTION:**

1. That the appeal is not maintainable in its present form.
2. That the appeal is not entertainable in its present form.
3. That the appellant has no cause of action and locus standi.
4. That the appeal is barred by time.
5. That the appeal is bad for mis-joinder and non-joinder of parties.
6. That the appellant is stopped due to his own conduct to file the instant appeal.
7. That the appellant has not come to the august Tribunal with clean hands and has concealed material facts from the august Tribunal.
8. That the appellant had never objected over the past fifteen seniority lists, despite having full knowledge.
9. That the appellant has not objected the tentative list (05-01-2019), Hence under principle of acquiescē present appeal is not maintainable.

**FACTS:**

1. No comments, however, it is added that even in that order, the appellant was lower in merit. Moreover the appellant has kept mum over past seniority lists i.e. for more than 15 years. Therefore, he now cannot agitate the seniority issue under principle of estoppel.
2. Pertains to record.
3. Incorrect. Each and every seniority List duly issued, sent to each branch for circulation and information. Moreover, as at District Level the establishment is very small, therefore, everyone has the knowledge of seniority. The appellant had acknowledged the seniority list of the year, 2011, but remained mum over that for long 9 years.

4. Incorrect and misconceived. The appellant was low in merit, therefore, his name appears at S.No.11 of the order dated 14/07/2003. As far as, the age factor is concerned, that would be taken into consideration if two candidates have equal/same score/merit position, which is not in the instant case. Moreover, date of joining is thrash hold seniority determination, in view of Sub Section 3 of 8 of Act 1973 and Civil Servants (Seniority) Rules 1993 Rule 02. Sub-Rules 03 (b) and rule 03 (b) as well as case law reported in 2019 SCMR 349 Supreme Court. The appellant joined the service on 16/07/2003 while the respondents No.4 & 5 joined the service one day before i.e. 15/07/2003.
5. Not admitted. The appellant never objected one tentative seniority list. Therefore, instant is not maintainable.
- 6&7. Matter of record. The report was based on facts and legal prevailing position. Therefore, the instant appeal is liable to be dismissed.
8. The objection application of the appellant was rightly dismissed being barred by time. The appellant never submitted any objection over the seniority list dated 05/01/2019 and kept mum. Thus the objection in June 2019 was badly barred by time. If the objection petition is considered, then there is no departmental appeal at all and the appeal is not maintainable.
9. Incorrect. The appellant has no case at all his appeal is liable to be dismissed on the following grounds:

**GROUND:**

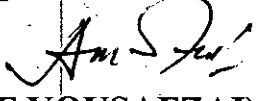
- A. Incorrect. His objection application was rightly dismissed keeping in view the legal and factual position.
- B. Incorrect. As explained in Para-3 above. The appellant has concealed the material facts and is not entitle for any relief due to his own conduct.
- C. Incorrect and baseless, hence denied. As explained above, the appellant had the knowledge of all seniority lists issued from time to time.
- D. Incorrect, hence denied.
- E. Incorrect. The Superior Courts has distinguished those cases in latest judgments. Therefore, the appeal in hand is liable to be dismissed.


- F. Incorrect, misconceiving and hence denied. The appellant was fully aware of the issued seniority lists and now cannot, legally, shift his burden to others under the principle of acquiescence.
- G. Incorrect. As explained above the appellant was having knowledge of all issued seniority lists, but kept mum. Thus the present appeal is not maintainable under the principle of Estoppel.
- H. Incorrect, misconceived, hence denied. The Superior Courts have held otherwise.
- I. Incorrect under the principle of acquiescence the limitation means otherwise.
- J. Incorrect and misconceived. The replying respondents were promoted after finalizing seniority issue and the official respondents were fully justified being competent under the Law and also keeping in view the instructions regarding promotion issued by Govt.
- K. Incorrect. Hence denied.
- L. Legal.

It is, therefore, most humbly prayed that the instant appeal in hand may be dismissed with cost being devoid of merit.


  
Replying Respondents No. 4 & 5.

THROUGH:-

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


  
Taimur Ali Khan  
(Advocate)

  
(SYED NOMAN ALI SHAH BUKHARI)  
ADVOCATE ON HIGH COURT.

  
(SHAHKAR KHAN YOUSAFZAI)  
ADVOCATE PESHAWAR

**COUNTER AFFIDAVIT**

It is affirmed and declared that the contents of para-wise comments are true and correct to the best of my knowledge and belief and nothing has been concealed from the honorable Tribunal.

  
**DEPONENT**



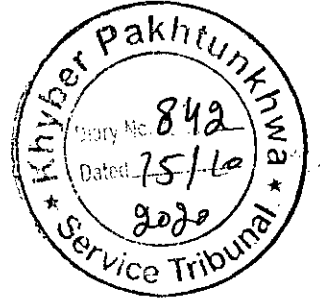
Handwritten notes in Urdu: "مقبول ہے" (Accepted) and "مستحق ہے" (Deserving).

Handwritten signature and notes in Urdu, including the name "میرزا محمد" (Mirza Muhammad).

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR.

SERVICE APPEAL NO. 1023 OF 2019

KARIM JAN..... VS..... GOVT OF KPK ETC.



APPLICATION FOR SETTING ASIDE EXPARTE PROCEEDINGS  
INITIATED AGAINST RESPONDENTS NO.06 VIDE DATED  
30.09.2020.

Respected Sir,

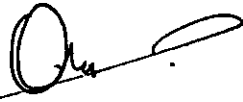
The Petitioner submits as under:

1. That the above titled service appeal is pending before this Hon'ble Court and is fixed for **30.12.2020**.
2. That the petitioner has been made respondent in this appeal but has not been served properly by the petitioner when filing the appeal nor any notice has been served by the tribunal after filing of the appeal.
3. That the petitioner has been proceeded Ex-Parte, which need to be restored as the precious rights of the petitioner are involved.
4. That the petition of the petitioner is well with in time.
5. That as per dictum of superior courts cases are to be decided on merits and technicalities should be avoided.
6. That other grounds will be agitated during the course of arguments with the permission of this Honorable tribunal.

**Prayers:**

It is therefore, requested the keeping in view the above facts and circumstances Ex-parte proceedings initiated against respondent No. 06 may kindly be set-aside and he may be allowed to contest the appeal in the interest of justice, please.

Dated: 15.10.2020

  
Petitioner/Respondent No. 06  
Mushtaq Ali,  
Junior Clerk  
Sessions Court, Charsadda.  
0333-9392316