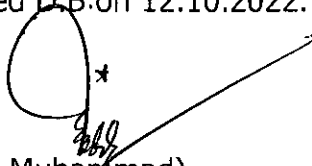


20.09.2022

Learned counsel for the appellant present. Mr. Anees Kaleem, Litigation Officer alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Vide previous order sheet, time was granted to respondents for production of any order passed by competent Authority regarding recalling/cancellation of appointment order of the appellant as well as other concerned record, however representative of the respondents again sought time for production of the same. Last opportunity given. To come up for production of said record as well as remaining arguments before the concerned D.B. on 12.10.2022.



(Mian Muhammad)  
Member (E)



(Salah-Ud-Din)  
Member (J)

12<sup>th</sup> Oct, 2022

Learned counsel for the appellant. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Anees Kaleem, SDO for respondents present.

Arguments could not be heard due to paucity of time. To come up for arguments on 22.11.2022 before D.B.



(Fareeha Paul)  
Member(Executive)



(Kalim Arshad Khan)  
Chairman

25<sup>th</sup> July 2022 Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

Learned counsel for the appellant seeks adjournment in order to prepare the brief of the instant appeal. Adjourned. To come up for arguments on 27.07.2022 before the D.B.



(Salah-Ud-Din)  
Member (J)



(Kalim Arshad Khan)  
Chairman

27<sup>th</sup> July 2022 Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Ms. Maham, SDO and Muhammad Owais, Superintendent for respondent present.

Arguments heard to a great extent. During the arguments, question of legality of the appointment order was seriously agitated and argued. The Tribunal put a query whether the appointment order issued to the appellant was cancelled/recalled, on which the representatives of the respondents and learned Additional Advocate General sought some time to dig out the record regarding the above fact because the office of SE C&W was shifted twice in the meantime. Let, in the interest of justice, time be given to them to produce any document showing that the orders of appointment of the appellants were recalled/cancelled and also to produce the copies of the other relevant record. To come up for production of record as well as remaining arguments on 20.09.2022 before the D.B.



(Salah-Ud-Din)  
Member (J)



(Kalim Arshad Khan)  
Chairman

31.08.2021

Syed Noman Ali Bukhari, Advocate, for the appellant present. Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present.

To come up for arguments alongwith connected Service Appeal bearing No. 437/2015 before the D.B on 01.11.2021.

(ATIQU-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

(SALAH-UD-DIN)  
MEMBER (JUDICIAL)


01.11.2021

Junior to counsel for appellant present.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

The learned Member (Judicial) is on leave, therefore, case is adjourned. To come up for arguments on 03.12.2021 before D.B.

3.12.21

  
Chairman  
*Proper A.B on T.M., therefore case adjourned to 16.2.22 for same.*

16-2-22

*Due to unavailability of Mr. Khan, the Chairman the case is adjourned to come up for next D.B. on 10-5-22*

4

28.12.2020

Due to summer vacation, case is adjourned to 15.3.2021 for the same as before.

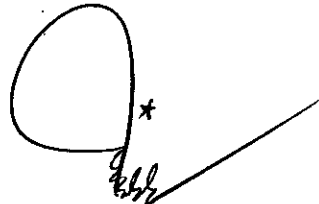
  
Reader

15.03.2021

Counsel for the appellant and Mr. Muhammad Rashid, DDA for the respondents present.

Former requests for adjournment as he has not prepared the brief.

Adjourned to 29.04.2021 before D.B.



(Mian Muhammad)  
Member(E)

  
Chairman

29.4.2021

*Due to COVID-19, the case is adjourned to 31.8.2021 for the same.*



*Handwritten notes at the bottom of the page, including the word 'Adjourned' and other illegible text.*

27.10.2020

Proper D.B is on Tour, therefore, the case is  
adjourned for the same on 28.12.2020 before D.B.

  
Reader

9.4.2020

Due to COVID19, the case is adjourned to

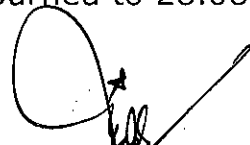
7/7/2020 for the same as before.

  
Reader

07.07.2020

Learned counsel for the appellant and Mr. Kabirullah Khattak learned Addl. AG for the respondents present.


On 04.10.2019 the appellant was imposed upon cost of Rs. 3000/- which still remains to be deposited. As the appellant is not in attendance today the matter is adjourned to 28.08.2020 before D.B.

  
Member

  
Chairman

28.08.2020

Due to summer vacation, the case is adjourned to 27.10.2020 for the same as before.


  
Reader

01.01.2020

Learned counsel for the appellant present. Mr. Usman Ghani learned District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 07.02.2020 before D.B.



(Hussain Shah)  
Member



(M. Amin Khan Kundi)  
Member

07.02.2020

Counsel for appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 02.03.2020 for arguments before D.B.



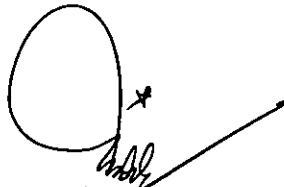
(Ahmad Hassan)  
Member



(M. Amin Khan Kundi)  
Member

02.03.2020

Appellant in person present. Mr. Kabirullah, Addl: AG for respondents present. Appellant seeks adjournment. Adjourned. To come up for arguments on 09.04.2020 before D.B.



Member



Member

07.11.2019 Junior to counsel for the appellant present. Mr. Usman Ghani, District Attorney for respondents present. Junior to counsel for the appellant seeks adjournment as his senior counsel was busy before the apex court. Adjourn. To come up for arguments on 08.11.2019 before D.B.

  
Member

  
Member

08.11.2019 Junior to counsel for the appellant present. Mr. Usman Ghani learned District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 27.12.2019 before D.B.

  
Member

  
Member

27.12.2019 Counsel for the appellant present. Mr. Ziaullah, DDA for respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 01.01.2020 before D.B.

  
Member

  
Member



05.08.2019

Junior to counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 27.09.2019 before D.B

  
Member

  
Member

27.09.2019

Counsel for the appellant present. Learned Asst: AG for respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 04.10.2019 before D.B.

  
Member

  
Member

04.10.2019

Appellant in person present. Addl: AG alongwith Mr. Jawad Hamid, SDO for respondents present. On the previous date of hearing on the request of learned counsel for the appellant, the case was fixed for hearing today. Even previously, the case was previously adjourned on 18.12.2018, 24.01.2019, 27.03.2019 and 05.08.2019 on the explicit request of the learned counsel for the appellant. Today, the appellant informed that his counsel was busy before the august Supreme Court of Pakistan. Last opportunity is granted for arguments but at cost of Rs. 3000/- which to be paid by the appellant to the respondents. To come up for further proceedings on 08.11.2019 before D.B.

  
Member

Member

18.12.2018

Mr. Taimur Ali Khan, junior counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Junior counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is busy in the Hon'ble Peshawar High Court. Adjourned. To come up for arguments on 25.01.2019 before D.B.

  
(Hussain Shah)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

25.01.2019

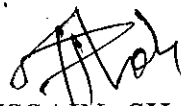
Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 27.03.2019 before D.B.

  
Member

  
Member

27.03.2019


Mr. Taimur Khan, junior counsel for the appellant and Kabirullah Khattak, Additional AG for the respondents present. Junior counsel for the appellant seeks adjournment on the ground that learned senior counsel for the appellant is busy in the Hon'ble Peshawar High Court and cannot attend the Tribunal today. Adjourned. To come up for arguments on 12.06.2019 before D.B.

  
(HUSSAIN SHAH)  
MEMBER

  
(M. AMIN KHAN KUNDI)  
MEMBER

12.6.2019

The Bench is incomplete  
Therefore case is adjourned  
to 5-8-2019

  
Ameen


03.05.2018

Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for same on 19.07.2018 before D.B

  
Reader

19.07.2018

Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney, for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 10.09.2018 before D.B.

  
(Ahmad Hassan)  
Member

  
(Muhammad Hamid Mughal)  
Member

10.09.2018

Junior to counsel for the appellant present. Mr. Kabir Ullah Khattak learned Additional Advocate General present. Junior to counsel for the appellant furnished photocopies of documents which are placed o file. Adjournment requested. Adjourned. To come up for arguments on 31.10.2018 before D.B

(Hussain Shah)  
Member

(Muhammad Hamid Mughal)  
Member


31.10.2018


Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 18.12.2018.

  
READER

08.02.2018


Counsel for the appellant and Addl. AG alongwith Muhammad Hamid Zia, SDO for the respondents present. Due to shortage of time, arguments could not be heard. To come up for arguments on 02.3.2018 before the D.B.

  
Member

  
Chairman

02.03.2018

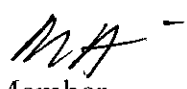
Counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG for the respondents present. Part arguments heard. To come up for further arguments and order on 30.03.2018 before this D.B alongwith connected appeal No. 437/15


  
(Ahmad Hassan)  
Member

  
Chairman

30.03.2018

Counsel for the appellant and Addl. AG for respondents present. To come up for further arguments alongwith connected appeal No. 1437/2015, 03.05.2018.

  
Member

  
Chairman

07.2.2018

Clerk of counsel and Mr. Kabirullah Khattak, Addl. AG for the official respondents present. The Learned counsel for the appellant was stated to be busy before the august Supreme Court of Pakistan. Seeks adjournment. To come up for arguments on 1.03.2018 before D.B.

  
Member

  
Chairman

01.03.2018

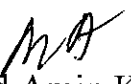
Clerk of counsel for the appellant, Addl. AG for the official respondents and counsel for private respondents present. Seeks adjournment by both the parties. Last opportunity granted. To come up for arguments on 26.03.2018 before the D.B.

  
Member

  
Chairman

26.03.2018

Junior to counsel for the appellant present. Mr. Kabir Ullah Khattak, Learned Additional Advocate General alongwith Abrar, AD for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel is not available. Adjourned in way of last opportunity. To come up for arguments on 09.04.2018 before D.B.

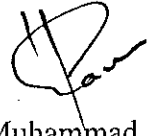
  
(Muhammad Amin Kundi)  
Member

  
(Muhammad Hamid Mughal)  
Member

21.11.2017

Counsel for the appellant present. Mr. Zia Ullah, Learned Deputy District Attorney for official respondent and Junior to counsel for private respondents present. Junior to counsel for private respondents seeks adjournment on the ground that learned senior counsel is not available today. Adjourn. Last opportunity granted. To come up for arguments on main appeal as well as COC on 13.12.2017 before D.B.

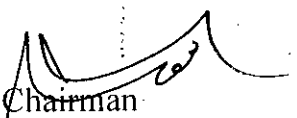
  
(Gul Zeb Khan)  
Member (E)

  
(Muhammad Hamid Mughal)  
Member (J)

13.12.2017

Counsel for the appellant, Addl. AG alongwith Murad Ali, Superintendent for official respondents and Jr. to counsel for the private respondents present. Mr. Saleem Abdullah, Advocate for private respondents present and requested for adjournment for submission of Wakalatnama and preparation of case. Granted. To come up for arguments on 08.01.2018 before the D.B.

  
Member

  
Chairman

08.01.2018

Counsel for the appellant present and Mr. Riaz Paindakhel, Assistant AG alongwith Murad Ali, Superintendent for official respondents and Jr. to counsel Mr. Shaukat Ali, Advocate for Saleem Abdullah, Advocate for private respondents present. He requested for adjournment. Last chance is given for submission of wakalat nama and arguments. To come up for arguments on 07.02.2018 before D.B.

  
Member

  
Chairman

20.10.2016

Counsel for the appellant and Addl. AG for respondents present. During the course of arguments learned counsel for the appellant submitted that record of summary dated 30.04.2015 in case of Shams-uz-Zaman Director Technical Education who was exonerated may be requisition which is very material for proper decision in these appeals. The respondent-department is directed to produce the same record on the next date. To come up for such record and arguments on 26.01.2017.



(ABDUL LATIF)  
MEMBER



(PIR BAKHSH SHAH)  
MEMBER.

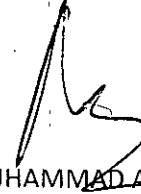
26.01.2017

Counsel for the appellant and Mr. Lal Pio Khattak, Supdt. alongwith Addl. AG for respondents present. Representative of the respondents failed to produce the record as requisition on previous order sheet and requested for adjournment. Last chance is given to him. Learned counsel for the appellant placed on file the summary vide which the officials were exonerated. 27-9-2017

21.12.16




(AHMAD HASSAN)  
MEMBER



(MUHAMMAD AAMIR NAZIR)  
MEMBER

26.11.2015

Agent of counsel for the appellant, M/S Muhammad Arif, SDO and Lal Paio Khan Khattak, Supdt. alongwith Addl: A.G for respondents present. Comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 11.4.2016.

  
Chairman

11.04.2016

Counsel for the appellant and Addl: AG for respondents present. Rejoinder submitted, copy whereof handed over to learned Addl: AG. To come up for arguments on 1-8-16.

  
Member

  
Member

01.08.2016

*7108-10-15*  
Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Learned counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 6-12-16 before D.B.

  
MEMBER

  
MEMBER



28.05.2015

Counsel for the appellant is not in attendance due to strike of the Bar. Adjourned to 11.06.2015 for preliminary hearing before S.B.

  
Chairman

4

11.06.2015

Counsel for the appellant and Assistant A.G for respondents present. Learned counsel for the appellant argued that the initial appointment order of the appellant was controverted by the respondents compelling the appellant to finally approach this Tribunal. That vide judgment dated 19.2.2015 this Tribunal directed the respondents to treat the service appeal as departmental appeal and pass order deemed appropriate. That vide impugned order dated 24.3.2015 the appellate authority has rejected the said appeal treated as departmental appeal and hence the instant service appeal.

That the appellant was lawfully appointed and the impugned order is against facts and law and therefore liable to be set-aside.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 21.9.2015. Notice of stay application be also issued for the date fixed.

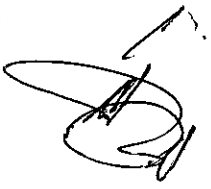
  
Chairman

21.09.2015

Agent of counsel for the appellant and Assistant AG for respondents present. Written reply not submitted. Requested for further adjournment. To come up for written reply/comments on 26.11.2015 before S.B.

  
Chairman

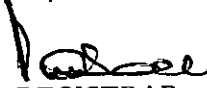

Appellant Deposited  
Security & Process Fee



Form- A  
FORM OF ORDER SHEET

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

Case No. 441/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	15.05.2015	<p>The appeal of Mr. Habibullah resubmitted today by Mr. Asad Jan Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR -</p>
2	25-5-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>28-5-15</u></p> <p style="text-align: right;"> CHAIRMAN</p>


SCANNED  
KPST  
Peshawar

The appeal of Mr. Habib Ullah son of Nasrullah received to-day i.e. on 22.04.2015 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of judgment/ order passed by this Tribunal dated 0202.2015 mentioned in para-8 of the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Annexures of the appeal may be annexed serial wise as mentioned in the memo of appeal.
- 3- Annexures of the appeal may be attested.
- 4- Page Nos. 24 to 28 and 30 of the appeal are illegible which may be replaced by legible/better one.

No. 598 /S.T,

Dt. 24/4 /2015

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Asad Jan Adv. Pesh.

1. Place on file
2. Annexures of the appeal are annexed serial wise as mentioned in the memo of appeal.
3. All the Annexures of the appeal are attested
4. Page Nos. 24 to 28 and 30 of the appeal are legible.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

**Service Appeal No.437/2015 and 19-others**

**VS**

**Govt. of Khyber Pakhtunkhwa C&W Department Peshawar/ PBMC**

**Hon'ble**

**Chairman**

**Khyber Pakhtunkhwa Service Tribunal**

**Subject: PROVISION OF OFFICIAL RECORD**

In pursuance to your kind orders dated 26/01/2017, the relevant official record, pertaining to Ex-Superintending Engineer of PBMC is annexed as under:-

- 1- Secretary C&W Department order No. SOE/C&WD/24-60/Association dated 13/07/2015.
- 2- Secretary C&W Department Notification No. SOE/C&WD/1-10/81 dated 27/11/2015 (Retirement order of officer).



**Mohammad Hamid Zia  
Sub-Divisional Officer  
PBMC C&W Department**



GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar, the July 13, 2015

363  
=

**ORDER:**

No.SOE/C&WD/24-60/Association: WHEREAS, the following officers/official of C&W Department were proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, for the alleged irregularities in the "Appointment in PBMC C&W Peshawar":

- i. Engr. Shams-uz-Zaman the then Director PBMC now working as Director (Tech) PERRA Abbottabad
- ii. Engr. Ghulam Yazdani the then XEN PBMC now working as XEN C&W Division Karak
- iii. Mr. Imtiaz Khan Junior Clerk/Dispatch Clerk O/O SE PBMC C&W Peshawar

2. AND WHEREAS, for the said act of misconduct they were served charge sheets/ statement of allegations.

3. AND WHEREAS, Sardar Muhammad Abbas the then Secretary to Government of Khyber Pakhtunkhwa Transport Department was appointed as inquiry officer, who submitted the inquiry report.

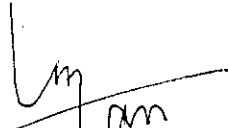
4. NOW THEREFORE, the Competent Authority after having considered the charges, material on record, inquiry report of the inquiry officer, explanation of the officers/official concerned, in exercise of the powers conferred by Section-14 (3) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, has been pleased to exonerate the above mentioned officers/official from the charges leveled against them.

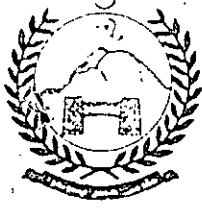
SECRETARY TO  
Government of Khyber Pakhtunkhwa  
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar
2. Chief Engineer (Centre) C&W Peshawar
3. Chief Engineer (East) Abbottabad
4. Superintending Engineer PBMC C&W Peshawar
5. Executive Engineer PBMC C&W Peshawar
6. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar
7. PS to Secretary, C&W Peshawar
8. Officers/official concerned.
9. Office order File/Personal File

  
(USMAN JAN)  
SECTION OFFICER (Estab)



GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

Dated Peshawar the November 27, 2015

**NOTIFICATION:**

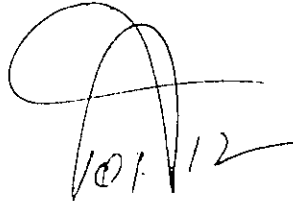
No.SOE/C&WD/1-10/81: In terms of Section-13 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, Engr. Shams-uz-Zaman Superintending Engineer (BS-19) C&W Department, presently working as Director (Technical) O/O Chief Engineer (East) Abbottabad, shall stand retire from Government Service with effect from 07.01.2016 (A.N) on attaining the age of superannuation i.e. 60 years, as his date of birth according to the record is 08.01.1956.

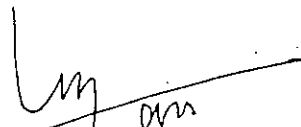
SECRETARY TO  
Government of Khyber Pakhtunkhwa  
Communication & Works Department

Endst of even number and date

Copy is forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. Chief Engineer (East) Abbottabad
3. District Accounts Officer Abbottabad/Mansehra
4. Incharge Computer Cell, C&W Department, Peshawar
5. Engr. Shams-uz-Zaman Director (Tech) O/O CE (East) Abbottabad
6. PS to Secretary, C&W Peshawar
7. Office order File/Personal File

  
10/1/12

  
(USMAN JAN)  
SECTION OFFICER (Estb)

**THE KPK SERVICE TRIBUNAL PESHAWAR.**

HABIB ULLAH S/O NASRULLAH R/O SHAHAB KHEL DISTRICT  
PESHAWAR

*Appeal no. 441/2015*

**VERSUS**

SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND  
WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK  
AND OTHERS.

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2.	<b>Affidavit</b>		7-8
3.	<b>Medical certificate.</b>	<b>A</b>	9
4.	<b>Copies of the appointment letters, arrival report and service book.</b>	<b>B, C &amp; D.</b>	10-15
5.	<b>Copy of the writ petition and order dated 27-01-2014</b>	<b>E &amp; F.</b>	16-23
6.	<b>Copy of the appeal/representation</b>	<b>G.</b>	24
7.	<b>Copy of the D.S.C. dated 14-01-2013, D.S.C. 28-06-2013</b>	<b>H &amp; I.</b>	25-29
8.	<b>Appointment letter of Noor Akber.</b>	<b>J.</b>	30-34
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Through



ASAD JAN (Advocate)

Supreme court of Pakistan)

OFFICE: ROOM NO. 211 AL-MUMTAZ  
HOTEL HASHTNAGRI PESHAWAR.

Dated: 20/04/2015

1

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

S.A. NO...441... /2015

HABIB ULLAH S/O NASRULLAH R/O SHAHAB KHEL  
DISTRICT PESHAWAR.

**P.W.F. Province  
Service Tribunal**

.....APPELLANT  
**VERSUS**

Diary No. 398  
Dated 22-4-2015

1. SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
2. EXECUTIVE ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
3. ASSISTANT DIRECTOR, IV PBMC C&W DEPARTMENT PESHAWAR PROVINCIAL BUILDING MAINTENANCE CELL BACHA KHAN CHOWK PESHAWAR.
4. SECRETARY C&W KHYBER PAKHTOON KHWA PESHAWAR.
5. SECTION OFFICER (ESTABLISHMENT) SECRETARIAT KPK PESHAWAR.

.....RESPONDENTS

**APPEAL U/ S 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST OFFICE ORDER DATED 24/03/2015 WHEREBY THE APPEALS OF APPEALANT SEND BY THIS HON'BLE COURT/TRIBUNAL TO APPELLATE AUTHORITY/RESPONDENT WAS DISMISSED.**

*Handwritten signature*  
Registrar  
22/4/15

**Prayer in appeal**

**ON ACCEPTANCE OF THIS APPEAL, THE OFFICE ORDER DATED 24/03/2015 BE SET ASIDE AND THE WITHHELD SALARIES OF THE APPELLANT SINCE APPOINTMENT AND ARRIVAL REPORT FOR DUTIES BE PAID ALONG WITH ALL BACK BENEFITS.**

re-submitted to-day and filed.

*Handwritten signature*  
Registrar  
15/5/15



Respectfully sheweth.

1. That the appellant is law abiding citizen of Pakistan.
2. That the appellant was appointed in the respondents establishment on post of Colly (BPS-02) vide order dated Peshawar the 18-01-2013 passed by respondent no-5 and is house hold staff after approval by the D.S.C. in the meeting held on 14-01-2013.
3. That the appellant accordingly carried out his medical from Service Hospital Peshawar.

**(Copy of the medical report is annexed)**

4. That the appellant has there after made arrival report on 23-01-2013.
5. That appellant furnished service book with medical certificate along with arrival report which were duly entered and certified by the Superintending Engineer and Executive Engineer.

**(Copies of the appointment letters and arrival report and service book are annexed here with)**

6. That the appellant performing his duties with full diligent and devotion since from the date of his arrival, but the respondents were not paying his monthly salaries to the appellant with out any cogent reasons, therefore appellant has instituted a writ petition before Peshawar high court Peshawar, however the respondent due to institution of the writ petition have become biased and even started not allowing appellant and his others colleagues to duties and created problems in this regard due to malafide reasons and at the time of arguments their lord ships were of the view that pay being falls within terms and condition of service therefore to withdraw the writ petition and to move the service tribunal KPK, hence the writ petition was withdrawn with permission to move the proper forum which was not objected by learned A.A.G.

**(Copy of the writ petition and order dated 27-01-2014 are annexed)**

3

7. That the appellant has also approached the then superintendent for the release/payment of his salaries but nothing has been paid, despite the legal rights of the appellant

**(Copy of the appeal/ representation is annexed)**

8. That this hon'able court was thereafter approached in this Hon'able Tribunal vide order dated 19/02/2015 treated appellant appeal as a department appeal and Respondent were directed to decide the appeal with one month after its receipts filing which there appeal shall be deemed to have excepted by this Tribunal (Copy of order is 19/02/2015 annexed).

9. That the Respondent through illegal order dated 24/03/2015 without the following the proper and legal procedure rejected appellants appeal (Copy of office order dated 24/03/2015 annexed).

10 That due to above mentioned appellant prefer this appeal on the following grounds amongst others:-

### **GROUNDS**

1. That due to non payment of the salaries, appellant has not been treated in accordance with law, and his right secured and guaranteed under the law have been violated by not releasing his salaries and issuance of appointment letter have created valuable right in favour of appellant and those rights can not be taken away in the manner respondents are adopting.
2. That the discrimination as observed by the respondents with appellant is highly deplorable and condemnable, being unlawful, unconstitutional, without authority, without jurisdiction, against the norms of natural justice and equity and against the law on subject, hence liable to declared as such.
3. That respondent are not acting in accordance with law and are taking illegal acts with ulterior motive and

malafide intention by not releasing appellants salaries which are stopped without any cogent reason since date of appointment / arrival report.

4. That the appellant was recommended for appointment as per DSC held on 14-01-2013 but are not being paid salaries though to three officials namely (i). Said Rasan (ii). Waqar.Ul.Islam (iii). Riaz Khan mentioned in the same D.S.C. were later on paid and even fresh appointment made of one Noor Akbar S/O Haji Akbar R/O village Akazai Tehkal Bala Peshawar on recommendation of D.S.C. held on 28-06-2013 in the same manner of appointment as of appellant was also made payment of salaries but appellant is treated discriminately which is not permissible under the law. **(Copy of the D.S.C. dated 14-01-2013 and dated 28-06-2013 along with appointment of Noor Akbar are annexed)**
5. That appellant is entitled for the receipt of his salaries and the act of respondent by not paying the same is against the law and rules and as such the respondents are under the legal obligation to pay salaries to appellant as per the appellant appointment order.
6. That the act of respondents by not allowing appellant to his duties due to institution of writ petition for salaries and others legal rights are based on malafide and illegal because demand of salary/ pay is a legal right.
7. That the respondent have not decided the appeal of Appellant within the time frame given by this Hon'able Tribunal and has violated the order of this Hon'able court/tribunal because clear cut direction was passed in the presence of Mr.Usman Ghani Sr. GP with Muhammad Arif SDO for the official respondents, the respondent failed to decide the departmental appeal within stipulated period.

- 8. That till date the impugned order was not communicated to the appellant nor the same addressed to the appellant, nor any copy given to the appellant and no opportunity of hearing was given to the appellant.
- 9. That appellant was condemned in her.
- 10. That impugned order was passed by incompetent authority.
- 11. That till date appointment order of the appellant has neither been cancelled nor withdrawn.
- 12. That on the principle of locus poententia, the appellant is entitled to perform duties and to get his salaries.
- 13. That no proper inquiry, show cause notice, formal charge along with charge sheet was issued to the appellant.
- 14. That no opportunity of personal hearing given to the appellant.
- 15. That the impugned order is based on malafide with ulterior motive.
- 16. That the other grounds will be raised at the time of argument.

**It is therefore requested that on acceptance of instant appeal, the impugned order 24/03/2015 be set aside and declare without lawful authority unlawful respondent be directed to pay the withheld salaries since arrival report for duty till date and onward and/not to create illegal hurdle in the way of performance of duties as well as to restrain respondents from taking any discriminatory action against appellant with such other relief as may be deemed proper and just in circumstances of the case.**

*Asad Jan*  
Appellant  
Through  
*Asad Jan*

ASAD JAN (advocate Supreme court of Pakistan)

Dated: 20/04/2015

6

**AFFIDAVIT**

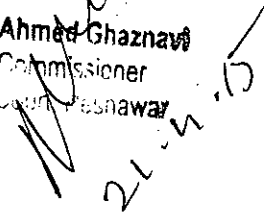
Declared on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed or kept secret from this Hon, able court.



**DEPONENT**

**ATTESTED**

Mukhtar Ahmed Ghaznavi  
Oath Commissioner  
District Court, Peshawar



**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

HABIB ULLAH S/O NASRULLAH R/O SHAHAB KHEL DISTRICT  
PESHAWAR

**VERSUS**

SUPERINTENDENT ENGINEER P BMC C& W AND OTHERS.

***PETITION FOR GRANT OF INTERIM RELIEF IN FAVOUR OF  
THE PETITIONER AGAINST RESPONDENTS TO THE EFFECT  
THAT THE RESPONDENTS BE RESTRAINED FROM FILLING  
THE POST IN QUESTION or taking any adverse action  
against the petitioner TILL FINAL DECISION OF THE  
APPEAL.***

**Respectfully Sheweth!**

1. That the above titled service appeal has been filed before this honorable court in which no date of hearing yet been fixed.
2. That the respondents are bent upon to fill the post on which the appointment order of the petitioner has been issued and the respondents are bent upon to adjust their dearer and nearer with malafide reasons.
3. That the petitioner performing his duties with full diligent and devotion since from the date of his arrival but the respondents were not paying his monthly salaries to the petitioner, since from his appointment and till Hence, the petitioner has filed the writ petition before Peshawar high court Peshawar.
4. That the respondents now due to the filing of the above titled writ petition creating hurdle for the petitioner and not allowing him to perform his duty.
5. That the due to appointment order, copies of the appointment letters and medical report as well as arrival report and service book the petitioner is got prima facie case, balance of convenience also lies in favour of the petitioner, more over if the instant petition is not accepted the petitioner will irreparable loss.

8

6. That there is no legal bar on the acceptance of this petition rather the same is in the interest of justice.
7. That the act of respondents by not allowing appellant to his duties due to institution of writ petition for salaries and others legal rights are based on malafide and illegal because demand of salary/ pay is a legal right.
8. That others grounds will be raised at the time of arguments.

**It is therefore requested that on acceptance of instant petition relief in favour of the petitioner against respondents to the effect that the respondents may kindly be restrained from *filling the post in question or taking any adverse action against the petitioner till final decision of the appeal in the interest of justice and other relief for which the petitioner entitled may also be granted.***

  
Petitioner.

Through



ASAD JAN (Advocate supreme  
court of Pakistan)

Dated: 20/04/2015

**AFFIDAVIT**

Declared on oath that the contents of this petition are true and correct to the best of my knowledge and belief and that nothing has been concealed or kept secret from this Hon, able court.

  
DEPONENT

**ATTESTED**  
Nukhtar Ahmad Chaznawi  
Oath Commissioner  
District Court, Rawalpindi

21-4-15

Anexure (7)

MEDICAL CERTIFICATE

Anexure 'A'

9

Name of official Mr Habibullah  
 Caste or race Muslim  
 Father's name Muhammadullah  
 Residence Shab Khan Teb & DSH Besra  
 Date of birth 02-07-1992  
 Exact height by measurement 5-6  
 Personal mark of identification nil  
 Signature of the official [Signature]  
 Signature of head of office \_\_\_\_\_

Seal of office \_\_\_\_\_

I do hereby certify that I have examined Mr. Habibullah a candidate  
 for employment in the Office of the PBMC Q & W Dept  
 and cannot discover that he had any disease communicable or other constitutional affection or bodily  
 infirmity except nil

I do not consider this as disqualification for employment in the office of the ASAD  
 His age according to his own statement 21 year and by appearance about  
 year 21

ATTESTED  
[Signature]

[Signature]  
 MEDICAL SUPERINTENDENT,  
 CIVIL HOSPITAL  
 Police Services, Hospital  
 Sakerwah.  
 18/07/13

LEFT HAND THUMB AND FINGER IMPRESSIONS

Attested  
 True Copy  
[Signature]  
 ASAD JAN  
 (Advocate High Court)  
 & C/J/MIO

Attested  
[Signature]  
 Advocate

ATTESTED  
[Signature]  
 ASAD JAN  
 (Advocate High Court)  
 & C/J/MIO



OFFICE OF THE SUPERINTENDING ENGINEER PBMC,  
COMMUNICATION & WORKS DEPARTMENT,  
KHYBER PUKHTUNKHWA, PESHAWAR.

No. 7735 141-E,

Dated Peshawar the, 18/1/2013

Annexure B

10

To,

Mr. Habibullah S/O Nasrullah  
R/O Shahab Khel District Peshawar.

Subject: APPOINTMENT AS SKILLED COOLY (BPS-02) HOUSEHOLD STAFF IN  
PBMC, COMMUNICATION & WORKS DEPARTMENT PESHAWAR.

As approved by the DSC in its meeting held on 14-01-2013, you are hereby offered the post of Skilled Cooly (BPS-02) i.e. Rs.(4900-170-10000) under the Rules 10 (4) of the Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, against the Employee Son's Quota on the following terms and conditions:-

1. Your services are liable for termination on one month's notice.
2. In case you wish to resign at any time one month's notice will be necessary or in lieu thereof one month pay shall be forfeited.
3. You will have to produce a medical certificate of fitness from the Medical Superintendent / Civil Surgeon Peshawar.
4. You will have to serve as house keeping/non house keeping employee any where in Khyber Pakhtunkhwa and against any post of equivalent status.
5. You will join duty on your own expenses.
6. Your appointment to the above post is subject to the eligibility and production of original certificate of qualification/experience, domicile, NIC and other documents.
7. You are appointed on probation period of one year.

According to Provincial Govt. orders notified vide No. SOR-VI (E&AD) 1-13/2005, dated 10/8/2005 and Section Officer (Accounts)PBMC/AD/BUDGET/3-2/2005/P-VI, dated 26/6/2006, you will not be entitled for pension gratuity but will contribute CP Fund @ 10% from your pay and 10% will be contributed by the Govt. of Khyber Pakhtunkhwa in lieu thereof.

If you accept the offer on the above terms and conditions, you should report for duty in the office of the Executive Engineer PBMC C&W, Department Peshawar.

ENGR: SHAMS UZ ZAMAN,  
SUPERINTENDING ENGINEER.

Copy forwarded for information to the:

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Executive Engineer PBMC C&W Department Peshawar.
3. Section Officer (E) C&W Department Peshawar.
4. Case 41-E

*[Handwritten signature]*

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SUPERINTENDING ENGINEER

ASAD JAN  
(Advocate High Court)  
Peshawar

ATTESTED  
*[Handwritten signature]*  
ASAD JAN  
(Advocate High Court)  
Peshawar

بسم اللہ تعالیٰ  
صاحب بی بی الیم سی پشاور  
Amexure  
عنا ب علی

جیل حسین اللہ والد لکھنؤ آرڈر نمبر ۱۷۳۵/۴۱-۵  
مورخ ۱۳ جنوری ۲۰۱۳ء بمخالف آج مورخ ۱۳/۱/۲۰۱۳  
کہ شادی دینا ہو۔

حسین اللہ  
والد لکھنؤ

D No. 410/19-15  
dt 27/2/2013

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[Signature]  
Advocate

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True Copy  
[Signature]  
(Advocate High Court)  
K-CJ/MIC

ATTESTED  
[Signature]  
ASAD JAN  
(Advocate High Court)  
K-CJ/MIC

(12) Amended: D

# SERVICE BOOK

OF

Mr. Habibullah Khan

S/o Muzaffar Khan

Designation Shildat Colony

Department P.B. & C. P. Deptt

ATTESTED

*[Signature]*

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*[Signature]*  
Advocate

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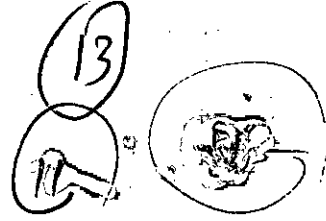
Price: Rs. 50/-

ATTESTED

*[Signature]*  
ASAD JAN  
Advocate High Court  
K-C/J/MIC

ASAD JAN  
Advocate High Court  
K-C/J/MIC

(For use in Police Department only)



No

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Education Roll No. dated received back

Left Thumb Impression

Qualification	Date	Qualification	Date
First Arts			
B.L. Or B.A.			
Pleadership examination			
Training School Final examination			
Other qualification:—			
Instructing			
Duties			
Additional Duties			

ATTESTED

*[Signature]*

ASAD JAN  
Advocate High Court  
B-CJ/JMIC

Attested to be

True Copy

*[Signature]*  
(Advocate High Court)  
B-CJ/JMIC

Attested  
*[Signature]*

Advocate

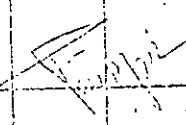
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ASAD JAN  
Advocate High Court  
B-CJ/JMIC

N.B.— Line to be drawn under the qualification possessed.

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of  
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9. Sign  
10. Sign  
Head  
Office

(12)

(14)

10	11	12	13		14	15			
Signature of the holder of the post, or of a representative officer, in attendance at column 1 to 5	Date of termination or appointment.	Reason of termination, such as promotion, transfer, dismissal, etc.	Signature of the head of the office or officiating officer.	Leave and other days of leave taken	Leave: Allocation of public or Government pay while absent from duty, which leave may be debitable to another Government. Period Government of origin, etc.		Signature of the head of the office or officiating officer.	Reference to any records, publication or copy of the Government records.	
			<p>Appointed as skilled Cook B/S 02 (4900-170-10) with 92 B/w of No. 1735/417 dt 18/12.13 S. Reported for duty on 22/1/2013</p>						
									
			<p style="text-align: right;">Attested <i>[Signature]</i> Also</p>						
			<p style="text-align: center;">Attested to be True <i>[Signature]</i></p>						

ATTESTED

*[Signature]*

Attested  
*[Signature]*  
Also

Attested to be  
True  
*[Signature]*

ATTESTED  
 ASAD JAN  
 (Advocate High Court)  
 B-C/J/MIC

Note:- The entries in this page should be renewed or re-attested at least every five years and the signature to 9 and 10 should be dated.

1. Name: Habibullah (15) (13)

2. Race: Islam

3. Residence: Shah-e-Khal Distt. Peshawar

4. Father's name and residence: Mrs. Roshah

5. Date of birth by Christian era as nearly as can be ascertained: 20-7-1992

6. Exact height by measurement: 5-6"

7. Personal marks for identification: NIL

8. Left hand thumb and finger impression of (Non-Gazetted) officer:

Little Finger



Ring Finger



Middle Finger



Fore Finger



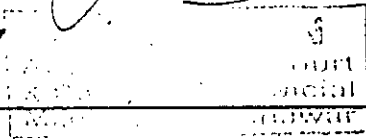
Thumb



9. Signature of Government Servant: [Signature]

[Signature]

[Signature]



10. Signature and designation of the Head of the Office, or other Attesting Officer: [Signature]

Superintendent Engineer  
PBMCC&W Deptt.  
Khyber Pakhtunkhwa Peshawar

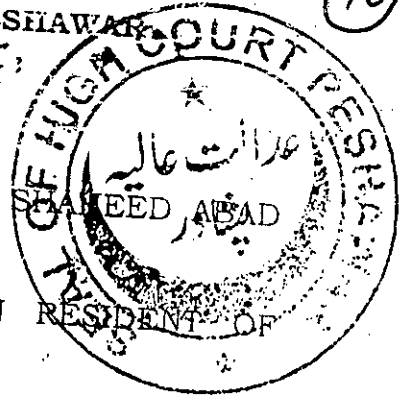
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**ATTESTED**  
AS ADVO  
(Advoc. & High Court)  
K-CJ/MIC

Attested  
[Signature]  
Adv



Writ Petition No. \_\_\_\_\_ / 2013



1. MR. ASAD SON OF SANAB GUL RESIDENT OF SHAHEED ABAD KHAISHKI NOWSHERA.
2. MR. NAVID-UR-REHMAN S/O FAIROAZ KHAN RESIDENT OF VILLAGE TEHKAL BALA, PESHAWAR.
3. MR. RUHULLAH SON OF SHAFIQR REHMAN RESIDENT OF SARBAND BARA ROAD DISTRICT, PESHAWAR.
4. MR. HUSSAIN KHAN SON OF RAJ WALI VILLAGE AMANKOT, DISTRICT NOWSHERA.
5. MR. YASIR MUBARAK SON OF MUBARAK SHAH RESIDENT OF PARAM KORONA DISTRICT NOWSHERA.
6. MR. SHAHABUDDIN SON OF NASRAT GUL RESIDENT OF VILLAGE SURIZAI PESHAWAR.
7. MR. MUZZAFFAR SON OF HIDAYATULLAH RESIDENT OF VILLAGE QAYYUM ABAD PO UMERZAI CHARSADEA.
8. MR. MUFTI ASIF MANSOOR SON OF MUFTI JAN GUL RESIDENT OF MOHALLAH ISLAMABAD BAIROCN LAHOORI PESHAWAR.
9. MR. ALAMGIR KHAN SON OF MUHAMMAD AJMAL RESIDENT OF CANAL COLONY BEHIND SECONDARY BOARD PESHAWAR.
10. MR. TAHIR HUSSAIN SHAH SON OF NOOR HASAN RESIDENT OF VILLAGE DAG, PESHAWAR.
11. MR. AFTAB SON OF ZAHID RASHEED RESIDENT OF SHAH MUHAMMAD GHARI, PESHAWAR.
12. MR. ASFANDYAR SON OF FIR MUHAMMAD RESIDENT OF BARA BANDA RISALPUR.
13. MR. HABIPULLAH SON OF NASRULLAH RESIDENT OF SHAHAB KHEL DISTRICT, PESHAWAR.
14. MR. KHURRUM SON OF MASOOD AHMAD RESIDENT OF BIDA ABAD BERON YAKA TOOT, PESHAWAR.
15. MR. WAREEDULLAH SON OF GUL ZADA RESIDENT OF PASANI BALA MATTANI DISTRICT, PESHAWAR.
16. MR. HASSAN DAD SON OF RAHIM DAD RESIDENT OF VILLAGE BANDA DISTRICT, NOWSHERA.
17. MR. SAJJAD KHAN SON OF AKHTER ZAMAN RESIDENT OF VILLAGE JHANSA PO KALABAGH NATHIAGAI RESIDENT OF ABBOTTABAD.

Attested  
  
 ASAD JAN  
 Advocate High Court  
 E-CJ/JMIC

**ATTESTED**  
  
 ASAD JAN  
 Advocate High Court  
 E-CJ/JMIC

Attested  
  
 Adv

**ATTESTED**  
 EXAMINER  
 Peshawar High Court  
 8 JAN 2014



- 18. MR. MUHAMMAD TANWEER SON OF SALEEM KHAN RESIDENT OF DHERI ISHAQ DISTRICT NOWSHERA.
- 19. MR. ASIF ALI SON OF MUSHTAQ HUSSAIN RESIDENT OF GHARI SAIDAN.
- 20. MR. RAEES KHAN SON OF MUNEEER KHAN RESIDENT OF VILLAGE DAG DISTRICT, PESHAWAR.
- 21. MR. MUHAMMAD ISMAIL SON OF AKBER ALI VILLAGE AMANKOT, DISTRICT NOWSHEHRA.
- 22. MR. SAID RASSAN RESIDENT OF PBMC OFFICE PESHAWAR BACHA KHAN CHOWK.
- 23. WAQAR UL ISLAM SON OF AHMAD SAEED RESIDENT OF TEHSIL AND DISTRICT RAWALPENDINGI KHBER PAKHTUNKHWA HOUSE (KPK) ISLAMABAD.

----- PETITIONERS.

VERSUS

- 1. SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK.
- 2. EXECUTIVE ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK.
- 3. DIRECTOR PBMC CIVIL SECRETARIAT, PESHAWAR.
- 4. ASSISTANT DIRECTOR, IV PBMC C & W DEPARTMENT PESHAWAR PROVINCIAL BUILDING MAINTENANCE CELL BACHA KHAN CHOWK PESHAWAR.
- 5. SECRETARY C&W KHYBER PAKHTUNKHWA PESHAWAR.

-----RESPONDENTS

WRIT PETITION UNDER ARTICLE 199 OF CONSITUTION OF ISLAMIC REPUBLIC OF PAKISTAN 1973

RESPECTFULLY SHEWETH; -

PETITIONERS SUBMIT AS UNDER:-

- 1- That the petitioners are law abiding citizen of Pakistan.
- 2- That the petitioners were appointed in the respondent's establishment on different posts on dated 14/01/2013 and are house hold staff after all the formalities the petitioners have made arrival in the month of Jan/Feb 2013.

Att: ASAD JAN  
 Advocate High Court  
 K-CJ/JMIC

**ATTESTED**  
 ASAD JAN  
 Advocate High Court  
 K-CJ/JMIC

Attested  
 Advocate

**ATTESTED**  
 EXAMINER  
 Peshawar High Court  
 31 JAN 2014

(3)      C      (18)

(Copies of the appointment letters and medical report are annexed as annexure "A" and "B" respectively)

- 3- That the petitioners are performing their duties with full diligent and devotion since from the date of their appointments but the respondents are not paying their monthly salaries to the petitioners without any cogent reasons, since from their appointments and till date no money has been given to the petitioners as monthly salary.
- 4- That the petitioners have also approached the respondent no. 1 for the release/payment of their salaries who directed the respondent no.2 for the redressal of the petitioner's grievances. but the respondent no. 2 despite that is not releasing/paying the salaries to the petitioner without any cogent reasons.
- 5- That due to the above mentioned reasons the petitioners have no option but to knock the door of this honorable court due to violation of their fundamental rights guaranteed under article 11 of the constitution of Islamic republic of Pakistan, 1973. Hence, filing the instant writ petition on the following grounds inter-alia

**GROUND OF PETITION; -**

- I- That the petitioners have not been treated in accordance with law, and his right secured and guaranteed under the law, and constitution have been violated.
- II- That the discrimination as observed by the respondents with petitioners are highly deplorable and condemnable, being unlawful, unconstitutional, without authority. without jurisdiction, against the norms of natural justice and equity and against the law on subject, hence liable to declared as such.
- III- That respondents are bent upon to force employees work without salary and such concept is against Islam which envisage payment of wages before sweat of toil is dried up. Performance of duties under such circumstances, were amount to forced labour which is forbidden under article 11 of the constitution, whereby all forms of forced labour are prohibited.
- IV-
- V- That the petitioners are entitled for the payment of their salaries and this act of the respondents not paying the same is against the law and rules and as such the respondents is under obligation to pay their salaries as per the petitioners appointment orders.

ATTESTED

EXAMINED  
Peshawar High Court

31 JAN 2014

Attested to be  
True Copy

ASAD JAN

Advocate High Court  
Peshawar HC

ATTESTED

ASAD JAN

(Advocate High Court)

K-CJ/JMIC

Attested  
Advocate

VI- That the act of respondents not paying the monthly salaries is based on malafide and against the norm of natural justice.

VII- That the action on the part of the Respondents has adversely affecting petitioners financial rights as protected by the constitution and the petitioners be treated as in accordance with the law and rules.

VIII- That the petitioner seek the permission of this Hon, able court to rely on additional grounds at the hearing of this petition

It is therefore, most humbly prayed that on acceptance of the instant writ petition an appropriate writ may please issued and the respondents be directed to released/pay monthly salary to the petitioners since from their appointment.

PETITIONER

THROUGH

*Asad Jan*  
ASAD JAN  
(ADVOCATE HIGH COURT)

CERTIFICATE

Priorly no such writ petition has been filed on behalf of the petitioners before this Hon, able court.

*Asad Jan*  
Advocate Peshawar.

List of books:

1. CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN.
2. CASE LAW AND ANY OTHER LAW BOOK ACCORDING TO NEED.

Attested to be  
True Copy

**ATTESTED**

*Asad Jan*  
ASAD JAN  
(Advocate High Court)  
E-CJ/JMIC

**ATTESTED**

EXAMINER  
Peshawar High Court  
31 JAN 2014

MR. ASAD AND OTHERS

VERSUS

SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR AND OTHERS.

PETITIONERS

ADDRESSES OF THE PARTIES

1. MR. ASAD SON OF SANAB GUL RESIDENT OF SHAHEED ABAD KHAISHKI NOWSHERA.
2. MR. NAVID-UR-REHMAN S/O FAIROAZ KHAN RESIDENT OF VILLAGE TEHKAL BALA, PESHAWAR.
3. MR. RUHULLAH SON OF SHAFIQUR REHMAN RESIDENT OF SARBAND BARA ROAD DISTRICT, PESHAWAR.
4. MR. HUSSAIN KHAN SON OF RAJ WALI VILLAGE AMANKOT, DISTRICT NOWSHERA, HOUSE NO. 133L-2 PHASE III HAYATABAD PESHAWAR.
5. MR. YASIR MUBARAK SON OF MUBARAK SHAH RESIDENT OF FARAM KORONA DISTRICT NOWSHERA.
6. MR. SHAHABUDDIN SON OF NASRAT GUL RESIDENT OF VILLAGE SURIZAI PESHAWAR.
7. MR. MUZZAFFAR SON OF HIDAYATULLAH RESIDENT OF VILLAGE QAYYUM ABAD PO UMERZAI CHARSAKDA.
8. MR. MUFTI ASIF MANSOOR SON OF MUFTI JAN GUL RESIDENT OF MOHALLAH ISLAMABAD BAIROON LAHOORI PESHAWAR.
9. MR. ALAMGIR KHAN SON OF MUHAMMAD AJMAL RESIDENT OF CANAL COLONY BEHIND SECONDARY BOARD PESHAWAR.
10. MR. TAHIR HUSSAIN SHAH SON OF NOOR HASAN RESIDENT OF VILLAGE DAG, PESHAWAR.
11. MR. AFTAB SON OF ZAHID RASHEED RESIDENT OF SHAH MUHAMMAD GHARI, PESHAWAR.
12. MR. ASFANDYAR SON OF PIR MUHAMMAD RESIDENT OF BARA BANDA RISALPUR.
13. MR. HABIBULLAH SON OF NASRULLAH RESIDENT OF SHAHAB KHEL DISTRICT, PESHAWAR.
14. MR. KHURRUM SON OF MASOOD AHMAD RESIDENT OF FIDA ABAD BERON YAKA TOOT, PESHAWAR.
15. MR. WAREEDULLAH SON OF GUL ZADA RESIDENT OF PASANI BALA MATTANI DISTRICT, PESHAWAR.
16. MR. HASSAN DAD SON OF RAHIM DAD RESIDENT OF VILLAGE BANDA DISTRICT, NOWSHERA.
17. MR. SAJJAD KHAN SON OF AKHTER ZAMAN RESIDENT OF VILLAGE JHANSA PO KALABAGH NATHIAGAI RESIDENT OF ABBOTTABAD.
18. MR. MUHAMMAD TANWEER SON OF SALEEM KHAN RESIDENT OF DHERI ISHAQ DISTRICT NOWSHERA.
19. MR. ASIF ALI SON OF MUSHTAQ HUSSAIN RESIDENT OF GHARI SAIDAN.
20. MR. RAEES KHAN SON OF MUNEER KHAN RESIDENT OF VILLAGE DAG DISTRICT, PESHAWAR.

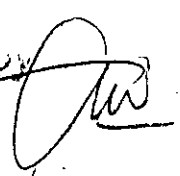
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31 JAN 2014

Attested

True Copy

ASAD JAN

Advocate High Court  
Peshawar



**ATTESTED**

ASAD JAN  
(Advocate High Court)  
K-CJ/JMIC

Attested  
Advocate

- (3) (21)
21. MR. MUHAMMA ISMAIL SON OF AKBER ALI VILLAGE AMANKOT, DISTRICT NOWSHEHRA HOUSE NO. 42 PHASE VI HAYATABAD, PESHAWAR.
  22. MR. SAID RASSAN.
  23. WAQAR UL ISLAM SON OF AHMAD SAEED RESIDENT OF TEHSIL AND DISTRICT RAWALPENDI.

**RESPONDENTS.**

1. SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR.
2. EXECUTIVE ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR.
3. DIRECTOR PBMC CIVIL SECRETARIAT, PESHAWAR.
4. ASSISTANT DIRECTOR, IV PBMC C & W DEPARTMENT PESHAWAR.
5. SECRETARY C&W KHYBER PAKHTUNKHWA PESHAWAR.

P E T I T I O N E R S

T H R O U G H

*Asad Jan*  
ASAD JAN  
(ADVOCATE HIGH COURT)

C E R T I F I E D T O B E T R U E C O P Y

*Asad Jan*  
Examiner  
Peshawar High Court, Peshawar  
Authorized Under Article 87 of  
The Qanun-e-Supremacy Order 1984

31 JAN 2014

Attested to be  
True Copy

**ATTESTED**

*Asad Jan*  
ASAD JAN  
(Advocate High Court)  
S-CJ/MIC

*Attested*  
*Asad Jan*  
*Asad*

Advocate High Court  
S-CJ/MIC

IN THE COURT OF PESHAWAR HIGH COURT PESHAWAR.

Writ Petition No. / 2013

MR. ASAD AND OTHERS

VERSUS

SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR AND OTHERS.

AFFIDAVIT

As per instruction of my clients I, Asad Jan advocate (Peshawar high court) do hereby solemnly affirm and declare on oath that the contents of the writ petition are true and correct to the best of my knowledge and belief and that nothing has been concealed or kept secret from this Hon, able court.

DEPONENT

ATTESTED  
EXAMINER  
Peshawar High Court.  
31 JAN 2014

Attested to be  
True Copy

ATTESTED

ASAD JAN  
(Advocate High Court)  
E-CJ/JMIC

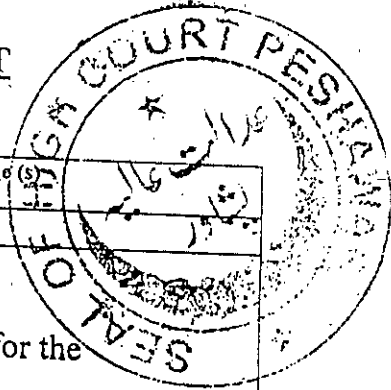
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Adv

**PESHAWAR HIGH COURT,  
PESHAWAR**

*Annexure 3F*

**FORM OF ORDER SHEET**



Date of Order or Proceedings	Order or other Proceedings with Signature of Judge (s)
1	2
27.01.2014	<p><u>W.P. No.1301-P/2013.</u></p> <p><b>Present:-</b> Mr. Asad Jan, advocate, for the petitioners. Mr. Waqar Ahmad, AAG for the respondents.</p> <p align="center">*****</p> <p><b>ROOH-UL-AMIN KHAN, J. -</b> After arguing the case at some length, learned counsel for the petitioners stated at the bar that he would not press this writ petition provided petitioners are allowed to approach the proper forum for redressal of their grievance. Learned AAG has no objection on request of learned counsel for the petitioners.</p> <p>2. In view of statement of learned counsel for the petitioners made at the bar, this writ petition stands dismissed being not pressed. However, the petitioners are at liberty to approach the proper forum for redressal of their grievance in accordance with law.</p> <p><u>Announced:</u> 27.01.2014.</p>

Attested to be True Copy  
ASAD JAN  
(Advocate High Court)  
K-CJ/JMIC


*sd/- Rooh ul Amin Khan - J*  
*sd/- Waqar Ahmad Khan - J*

CERTIFIED TO BE TRUE COPY  
Examiner  
Peshawar High Court, Peshawar  
Authorised under Article 87 of  
The Constitution of Pakistan Order 1984  
31 JAN 2014  
*31-1-14*

**ATTESTED**  
*[Signature]*  
ASAD JAN  
(Advocate High Court)  
K-CJ/JMIC

**PESHAWAR HIGH COURT, PESHAWAR****FORM OF ORDER SHEET**

Date of Order or Proceedings	Order or other Proceedings with Signature of Judge
1	2
27-01-2014	<p>W.P. No. 1301-P/2013</p> <p>Present:- Mr. Asad Jan, Advocate, for the petitioners. Mr. Waqar Ahmad, AAG for the respondents.</p> <p style="text-align: center;">*****</p> <p><b><u>ROOH-UL-AMIN KHAN, J 1.</u></b> After arguing the case at some length, learned counsel for the petitioners stated at the bar that he would not press this writ petition provided petitioners are allowed to approach the proper forum for redressal of their grievance. Learned AAG has no objection on request of learned counsel for the petitioners.</p> <p>2. In view of statement of learned counsel for he petitioners made at the bar, this writ petition stands dismissed being not pressed. However, the petitioners are at liberty to approach the proper forum for redressal of their grievance in accordance with law.</p> <p><u>Announced:</u> 27-01-2014</p>

**ATTESTED**  
  
**ASAD JAN**  
 ( Advocate High Court )  
 K-CJ/JMIC



پرمیٹڈ ایجنٹ کے طور پر

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As per admitted  
as requested.

ڈیپارٹمنٹ - ایس ایچ

صوبہ

مختص

مقام

پریس

Superintendent, Engineering  
Khyber Pakhtunkhwa, Peshawar

آئی ایس ایچ

پریس

مقام

صوبہ

Attested  
and  
Ad

13 Hussain Khan  
17801-1234567-1

Shahabuddin

محمد طاہر حسن شاہ

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ASAD JAN  
Advocate High Court  
K-C/J/M/C

ATTESTED  
ASAD JAN  
Advocate High Court  
K-C/J/M/C

بحضور جناب سپرنٹنڈنٹ انجینئر C&W(PBMC) ڈیپارٹمنٹ

پشاور

ڈیپارٹمنٹ اپیل

**جناب عالی!**

گزارش یہ ہے کہ آپ صاحبان کے ذیل زمنوں کو مختلف پوسٹوں پر عمل تعیناتی کی گئی اور تمام کے آرڈرز دیانتداری سے ڈیوٹی سرانجام دیتے رہے ایکس پی بی ایم سی کورپورٹ کر دیا لیکن تاحال ہمارے نہ تنخواہیں نہیں ملی ہے۔ لہذا مودبانہ گزارش ہے کہ ہمارے تنخواہیں منظور کرنے کے لئے ایکسی صاحب کو ہدایت کی جاوے۔

\_\_\_\_\_

**آپکا تابعدار نوکرز**

- ۱۔ ورید اللہ ۲۔ حسن داد ۳۔ محمد تنویر ۴۔ ساجد خان ۵۔ آفتاب
- ۶۔ حبیب اللہ ۷۔ محمد عمران ۸۔ مظہر ۹۔ محمد طاہر حسن شاہ ۱۰۔ یاسر مبارک
- ۱۱۔ محمد عالمگیر ۱۲۔ شہاب الدین ۱۳۔ روح اللہ ۱۴۔ اسد علی ۱۵۔ حسین خان
- ۱۶۔ اسماعیل ۱۷۔ نوید ۱۸۔ اسفندیار وغیرہ

**ATTESTED**  
*(Signature)*  
**ASAD JAN**  
(Advocate High Court)  
K-CJ/JMIC

OFFICE OF THE SUPERINTENDING ENGINEER  
PBMC C&W DEPARTMENT PESHAWAR

NO. 178 124-79 Dated 15/1/2013

Annexure : H

To

Executive Engineer,  
PBMC C&W Department Peshawar

Subject: MINUTES OF THE DSC MEETING HELD ON 14.01.2013.

The approved Minutes of DSC meeting held on 14.01.2013 is sent to your office for record and further necessary action.

*[Signature]*  
SUPERINTENDING ENGINEER PBMC  
C&W DEPARTMENT PESHAWAR

Copy to the Section Officer (Establishment) for information with a copy of the Minutes of subject cited meeting for record.

*[Signature]*  
SUPERINTENDING ENGINEER PBMC

*Sec*

*Attested  
Cum  
Adv*

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ASAD JAN  
Advocate High Court  
Peshawar

The post of Carpenter BPS-06 shall deemed to be downgraded to BPS-04.

Contd:- 2

**ATTESTED**  
*[Signature]*  
ASAD JAN  
(Advocate High Court)  
B-CJ/JMIC

Better Copy 25

**OFFICE OF THE SUPERINTENDENT ENGINEER PBN C&W DEPARTMENT  
PESHAWAR**

No. 96 124-M

Dated: 15/01/2013

To,

Executive Engineer,

PBMC C&W Department Peshawar.

Subject: MINUTES OF THE DSC MEETING HELD ON 14.01.2013

The approved Minutes of the DSC Meeting held on 14.01.2013 is sent to your office for record and further access by action.

Superintendent Engineer PBMC  
C&W Department Peshawar.

Copy to the Section Officer (Establishment) for information with a copy of the Minutes of subject cited meeting in record.

SPERINTENDENT ENGINEER PBMC

The post of Carpenter BPS-06 shall deem be downgraded to BPS-04

**ATTESTED**  
*[Signature]*  
ASAD JAN  
( Advocate High Court )  
K-CJ/JMIC

Minutes of the Departmental Selection and Promotion Committee  
PBMC, C&W Department

5  
76

A meeting of the DSC&PC was held on 14.1.2013 in the office of the Superintending Engineer PBMC C&W Department and make decision on the agenda items. The following attended the meeting:-

- |                              |                                    |
|------------------------------|------------------------------------|
| 1. Engr: Shams-uz-Zaman      | Superintending Engineer PBMC:      |
| 2. Engr: G. Yazdani Khanzada | Executive Engineer PBMC:           |
| 3. Mr. Rahim Badshah         | Section Officer (Estt:) C&W Deptt: |

The Committee was assisted by the relevant staff of PBMC in consideration of the cases as per rules. The Committee was informed that appointments on vacant post of different cadre will be filled up against employee's son quota and against class IV establishment in PBMC C&W Department. To consider the cases of the appointment of applicants against vacant post of House hold staff both for employee's sons and fresh recruitment total 38 applications were received and considered according to merit.

The following applicants were selected against the vacant posts as below.

1. M. Tahir Hassan Shah S/o Noor Hassan resident of Village Dag Peshawar against the post of Work Superintendent in PBS-09 (Diploma in Civil Technology)
2. Alamgir Khan S/o Muhammad Aimal resident of Canal colony behind secondary board Peshawar against the post of Work Superintendent in BPS 9 (Diploma Holder in Civil Technology). The required age relaxation granted and approved by the Selection Committee.
3. Mohammad Tanveer S/o Saleem Khan resident of village Dheri Ishaq District Nowshera (Diploma in Civil Technology) Employee's son against the post of Work Mistri in BPS-06.
4. Ruhullah S/o Shafeequr Rehman resident of Sarband Bara Road District Peshawar against the post of Work Mistri in BPS-06 (Bachelor, Employee's son)
5. Raees Khan S/o Muneer Khan resident of Village Dag District Peshawar against the post of Carpenter in BPS-06 (Retired High court section Employee's son).
6. In light of Supreme Court orders Said Rasool already working as sweeper in BPS-01 is allowed proper scale BPS-04 as Pump Operator and adjusted temporarily on the post of Carpenter in BPS-06 on stop gap arrangement and the post of Carpenter BPS-06 shall be deemed to be downgraded.
7. Waqar ul Islam will be adjusted on stop gap arrangement against the post of Carpenter BPS-06 subject to the court decision and his post of Plumber in BPS-04 will be restored. The post of Carpenter BPS-06 shall be deemed to be downgraded to BPS-04.

Contd:-P-

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ASAD JAN  
(Advocate High Court)  
B-C/J/M/C

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ATTESTED

ASAD JAN  
(Advocate High Court)  
B-C/J/M/C

Minutes of the Departmental Selection and Promotion Committee  
PBMC, C&W Department

A meeting of the DSC&PC is held on 14.01.2013 in the office of the Superintendent Engineer PBMC C&W Department and make decision on the agenda items. The following attended the meeting.

- |                             |                                   |
|-----------------------------|-----------------------------------|
| 1. Engr. Shams-uz-Zaman     | Superintending Engineer PBMC      |
| 2. Enge. G.Yazdani Khanzada | Executive Engineer PBMC           |
| 3. Mr. Rahim Badshah        | Section Officer (Estt) C&W Deptt: |

The Committee was assisted by the relevant staff of PBMC in consideration of the cases as per rules. The Committee was informed that appointments on vacant post of different cadre will be filled up against employees son quota and against class IV establishment in PBMC C&W Department to consider the cases of the appointment of applicants against vacant post of House hold staff both for employees sons and fresh recruitment total 38 applications were received and considered according to merit.

The following applicants were selected against the vacant posts as below.

1. M.Tahir Hussan Shah S/o Noor Hassan R/o village Dag Peshawar against the post of Work Superintendent in BPS-09 (Diploma in Civil Technology).
2. Alamgir Khan S/o Muhammad Ajmal R/o Canal Colony behind secondary board Peshawar against the post of Work Superintendent in BPS-9 (Diploma Holder in Civil Technology). The required age relaxation granted and approved by the Selection Committee.
3. Mohammad Tanveer S/o Saleem Khan R/o village Dheri Ishaq District Nowshera (Diploma in Civil Technology) Employees son against the post of work mistri in BPS-06.
4. Ruhullah S/o Shafeeq ur Rehman resident of Sarband Bara Road District Peshawar against the post of work Mistri in BPS-06 (Bachelor Employee's son).
5. Raees Khan S/o Muneer Khan resident of village Dag District Peshawar against the post of Carpenter in BPS-06 (Retired High Court section Employee's son).
6. In light of Supreme Court orders said Raees already working as sweeper in BPS-01 is allowed proper scale BPS-04 as Pump Operator and adjusted temporally on the post of Carpenter in BPS-06 on stop gap arrangement and the post of Carpenter BPS-06 shall deemed to be downgraded.
7. Waqar ul Islam will be adjusted on stop gap arrangement against the post of Carpenter PBS-06 subject to the court decision and the against at Plumber in BPS-04 will be in stored the post of Carpenter BPS-06 shall deemed downgraded to BPS-04.

**ATTESTED**  
*[Signature]*  
ASAD JAN  
Advocate High Court  
K-CJ/MIC

8. Hassar Dad S/o Rahim Dad resident of village Banda District Nowshera against the post of Pipe Fitter in BPS- 04(Matriculation)
9. Wareedullah S/o Gul zada village pasam in Mulkani District Peshawar against the post of Pipe Fitter in BPS-04. Employee' son.
10. Muhammad Imran S/o Muhammad Hamid resident of village Mohib Banda district Nowshera against the post of Pipe fitter in BPS 04.
11. Mr. Khurram S/o Maqsood Ahmad (Ex-Employee in PBMC) resident of Fida abad Beroon Yaka Toot Peshawar against the post of Electrician Grade IV in BPS 04 (F.A)
12. Asif Ali S/o Mushtaq Hussain resident of Shahallah Ghari Saidan Hashtnagri Peshawar against the post of Electrician Grade IV in BPS 02.
13. Mohammad Ismail S/o Akbar Ali H#402 Phase IV Hayat abad Peshawar against the post of Electrician in BPS-02. (Qualification Matric).
14. Sajid Khan S/o Akhtar Zaman village Jharan PO Kala bagh Nathiagali Abbottabad against the post of Electrician Grade II in BPS 05 ( Matriculation ;Certificate in air conditioning from technical training school Gahar Peshawar and Electrician Certificate course from NTDC Peshawar).
15. Habibullah S/o Nasrullah village Shahab Kherel District Peshawar against the post of Skilled cooly in BPS- 02 (Qualification FA , Employee' son)
16. Asfandyar S/o Pir Muhammad resident of Banda Banda Risalpur against the post of Skilled Cooly in BPS-02.
17. Navaid ur Rehman S/o Fairoz Khan Village Mehkal Bala against the post of Khansama in BPS-04
18. Aftab S/o Zahid Rasheed resident of Shah Muhammad ghari Peshawar for the post of Mali in BPS -02.
19. Assad S/o Sanab gul resident of Shahood abad Khaishki Nowshera against the post of Mali in BPS-02.
20. Hussain S/o Raj Wali resident of H# 133L- phase III Hayat abad against the post of cooly in BPS-01 (matric)

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ASAD AN  
 Advocate  
 K-CJ/JMIC

**ATTESTED**  
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**ASAD AN**  
 (Advocate High Court)  
 K-CJ/JMIC

8. Hassan Dad S/o Rahim Dad resident of village Banda District Nowshera against the post of pipe Fitter in BPS-04 (Matriculation).
9. Wareed Ullah S/o Gul Zada village pasani Mattani District Peshawar against the post of Pipe Fitter in BPS-04, Employee's son).
10. Muhammad Imran S/o Muhammad Hameed Jan resident of village Mohib Banda District Nowshera against the post of Pipe Fitter in BPS-04.
11. Mr. Khurram S/o Maqsood Ahmad (Ex-Employee in PBMC) resident of Fida Abad Beroon yaka toot Peshawar against the post of Electrician Grade IV in BPS-04 (F.A)
12. Asif Ali S/o Mushtaq Hussain resident of Mohallah Ghari Saidan Hashtnagri Peshawar against the post of Electrician Grade IV in BPS-02.
13. Mohammad Ismail S/o Akbar Ali House No. 402 Street No. 2 Phase IV Hayatabad Peshawar against the post of Electrician in BPS-02 (Qualification Matric).
14. Sajid Khan S/o Akhtar Zaman village Jhara PC Kata Bagh Nathiagali Abbotabad against the post of Electrician Grade II in BPS-05 (Matriculation Certificate in air conditioning from NTDC Peshawar).
15. Habib Ullah S/o Nasrullah village Shahab Khel district Peshawar against the post of skilled coolly in BPS-02 (Qualification F.A Employee son).
16. Astanayar S/o Pir Muhammad resident of Banda Risalpur against the post of Skilled Coolly in BPS-02.
17. Navaid ur Rehman S/o Fairoz Khan village Tehkal Bala against the post of Khansama in BPS-04
18. Aftab S/o Zahid Rasheed resident of Shah Muhammad Ghari Peshawar for the post of Mali in BPS-02.
19. Asad S/o Sanab Gul resident of Shaheedabad Khaishki Nowshera against the post of Mali in BPS-02.
20. Hussain S/o Raj Wali resident of House No. 133 Phase III Hayatabad against the post of Coolly in BPS-01 (Matric).

**ATTESTED**

**ASAD JAN**

( Advocate H. S. (rt) )




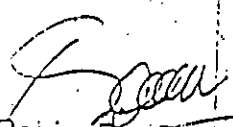
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- 21. Yasir Mubarak S/o Mubarak Shah Resident of Faram corona District Nowshera against the post of Cooly in BPS- 01.
- 22. Shahabuddin S/o Nasrat gui village Mirizai Peshawar against the post of Chowkidar in BPS-01
- 23. Riaz Khan Carpenter working in BPS 02 allowed proper Scale BPS-06
- 24. Fazle Ijaz reverted to his own grade S-06 as Work Mistri.
- 25. Muzzaffar S/o Hidayatullah village Qadum abad P.O Umerzai charsadda against the post of Muslim Sweeper in BPS- 01.
- 26. Mufti Asif Mansoor S/o Mufti Jan Gul Resident of Mahallah Islam abad Bairoon Lahoori Peshawar as Muslim Sweeper in BPS-0

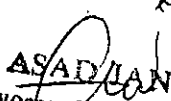
Meeting ended with the vote of thanks from the chair.

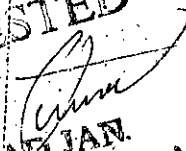
  
 Engr. G. Yazdani Khanzada  
 (Member)  
 Executive Engineer PBMC,  
 C&W Department Peshawar.

  
 Rahim Badshah  
 (member)  
 Section Officer (Estt.)  
 C&W Department Peshawar

  
 Engineer Shams Az Zaman  
 (Chairman)  
 Superintending Engineer,  
 PBMC, C&W Department Peshawar.

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 ASAD JAN  
 (Advocate High Court)  
 S-CJ/JMIC

ATTESTED  
  
 ASAD JAN  
 (Advocate High Court)  
 S-CJ/JMIC

21. Yasir Mubarak S/o Mubarak Shah resident of Faram Korona District Nowshera against the post of Coolly in BPS-01.
22. Shahab Uddin S/o Nasrat Gul village Narizan Peshawar against the post of Chowkidar in BPS-01.
23. Riaz Khan Carpenter working in BPS-02 allowed proper Scale BPS-06.
24. Fazle Ijaz reverted to his own grade BPS-06 as Work Mistri.
25. Muzaffar S/o Hidayat Ullah village Qayyum Abad P.O Umerzai charsadda against the post of Muslim Sweeper in BPS-01.
26. MUFTI Asif Mansoor S/o Mufti Jan Gul resiedent of Mohallah Islamabad Bairoon Lahori Peshawar as Muslim Sweeper in BPS-01


Meeting ended with the vote of thanks from the chair..

Eng: G.Yazdani Khanzada (Member)  
Executive Engineer PBMC  
C&W Department Peshawar.

Rahim Badshah (member)  
Section Officer (Estt)  
C&W Department Peshawar

Engineer Shams ul Zaman  
(Chairman)  
Superintending Engineer,  
PBMC, C&W Department Peshawar.

**ATTESTED**

  
**ASAD JAN**  
( Advocate High Court )  
K-CJ/JMIC

(29) *Amended*

MINUTES OF THE DEPARTMENTAL SELECTION COMMITTEE /  
DEPARTMENTAL PROMOTION COMMITTEE NO.II, HELD ON 28/06/2013 AT 10-00  
AM UNDER THE CHAIRMANSHIP OF SUPERINTENDING ENGINEER PBMC C&W  
DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR.

*Amended 31;*

Meeting started with recitation from the Holy Quran

A Meeting of the Departmental Selection Committee/Departmental Promotion Committee No.II was held on 28/06/2013 at 10:00 A.M. in the office of the SUPERINTENDING ENGINEER PBMC C&W Deptt: Peshawar under his Chairmanship to recommend the Candidate for appointment as Cooly (BPS-01) in Governor's House Peshawar against the existing vacancy.

The following attended the meeting:-

1. Muhammad Ashraf Khan, Chairman  
Superintending Engineer PBMC  
C&W Deptt: Peshawar.
2. Muhammad Taufeeq Member  
Section Officer (Estt: )  
C&W Deptt: Peshawar
3. ENGR: Muhammad Nawaz Khan Member  
Executive Engineer PBMC.  
C&W Deptt: Peshawar.

The appointment case of the candidate noted below was examined and recommended for appointment as Cooly (BPS-01) in Governor's House Peshawar being House Hold Post.

S/No	Name & Address	Name of Vacancy	Place of post	Remarks
1.	Mr. Noor Akbar S/O Haji Akbar Village Akazi Tehkal Bala Teh: & Distt: Peshawar	Cooly (BPS-01)	Governor's House Peshawar	Recommended for appointment and otherwise eligible for the post of Cooly.

Meeting ended with the vote of thanks from and to the Chair.

1. Muhammad Ashraf Khan,  
Superintending Engineer PBMC  
C&W Deptt: Peshawar.
2. Muhammad Taufeeq  
Section Officer (Estt: )  
C&W Deptt: Peshawar
3. ENGR: Muhammad Nawaz Khan  
Executive Engineer PBMC.  
C&W Deptt: Peshawar.

Attested

True Copy

ASAD JAN

Advocate High Court

X-CJ/J MIC

ATTESTED

ASAD JAN  
(Advocate High Court)  
X-CJ/J MIC

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MINUTES OF THE DEPARTMENTAL SELECTION COMMITTEE DEPARTMENTAL PROMOTION COMMITTEE NO.11, HELD ON 28/06/2013 AT 10:00 UNDER THE CHAIRMANSHIP OF SUPERINTENDING ENGINEER PBMC C&W DEPARTMENT KHYBER PAKHTUNKHWA PESHAWAR

Meeting started with recitation from the Holy Quran

A Meeting of the Departmental Selection Committee/Departmental Promotion Committee No. 11 was held on 28/06/2013 at 10:00 A.M in the office of the Superintending Engineer PBMC C&W Deptt: Peshawar under his Chairmanship to recommend the Candidates for appointment as Coolly (BPS-01) in Governor's House Peshawar against the existing vacancy.

The following attended the meetings:-

1. Muhammad Ashraf Khan, Chairman  
Superintending Engineer PBMC  
C&W Deptt: Peshawar.
2. Muhammad Tafeeq Member  
Section Officer (Estt)  
C&W Deptt: Peshawar
3. ENGR: Muhammad Nawaz Khan Member  
Executive Engineer PBMC,  
C&W Deptt: Peshawar.

The appointment case of the candidate noted below was examined and recommended for appointment as Coolly (BPS-01) in Governor's House Peshawar being House Hold Post.

S No	Name & Address	Name of Vacancy	Place of post	Remarks
1	Mr. Noor Akbar S/o Haji Akbar village Akazi Tehkal Bala The & District Peshawar	Coolly (BPS-01)	Governor's House Peshawar	Recommended for appointment and otherwise eligible for the post of Coolly

Meeting ended with the vote of thanks from and to the Chair

1. Muhammad Ashraf Khan,  
Superintending Engineer PBMC  
C&W Deptt: Peshawar
2. Muhammad Tafeeq  
Section Officer (Estt)  
C&W Deptt: Peshawar
3. ENGR: Muhammad Nawaz Khan  
Executive Engineer PBMC  
C&W Deptt: Peshawar.

**ATTESTED**  
*[Signature]*  
**ASAD JAN**  
( Advocate High Court )  
K-CJ/JMIC

(30)

J

OFFICE OF THE SUPERINTENDING ENGINEER PBMC,  
COMMUNICATION & WORKS DEPARTMENT,  
KHYBER PUKHTUNKHWA, PESHAWAR.

No. 715 /41-E,

Annexure : J

Dated Peshawar the, 20/9/2013.

To

Mr. Noor Akbar S/O Haji Akbar,  
Village Akazi Tehkal Bala,  
Teh: & Dist: Peshawar.

Subject:

APPOINTMENT AS COOLY (BPS-01) IN (GOVERNOR'S HOUSE  
SECTION) PBMC COMMUNICATION & WORKS DEPARTMENT  
PESHAWAR.

As approved by the DSC in its meeting held on 28/06/2013, you are hereby offered the post of Cooly (BPS-01) (House Keeping), after fulfillment of the following terms and conditions:-

1. Your services are liable for termination on one month's notice.
2. In case you wish to resign at any time, one month's notice will be necessary or in lieu thereof one month pay shall be forfeited.
3. You will have to produce a medical certificate of fitness from the Medical Superintendent / Civil Surgeon Peshawar.
4. You will have to serve as house keeping/non house keeping employee any where in Khyber Pakhtunkhwa and against any post of equivalent status.
5. You will join duty on your own expenses.
6. Your appointment to the above post is subject to the eligibility and production of original certificate of qualification/experience, domicile, NIC and other documents.
7. You are appointed on probation period of one year.

According to Provincial Govt. orders notified vide No. SOR-VI(E&AD)1-13/2005, dated 10/8/2005 and Section Officer (Accounts)PBMC/AD/BUDGET/3-2/2005/P-VI, dated 26/6/2006, you will not be entitled for pension gratuity but will contribute CP Fund @ 10% from your pay and 10% will be contributed by the Govt. of Khyber Pakhtunkhwa in lieu thereof.

If you accept the offer on the above terms and conditions, you should report for duty in the office of the Executive Engineer PBMC C&W Department Peshawar within 15 days of the issue of this letter.

Engr: Muhammad Ashraf Khan,  
Superintending Engineer (PBMC)

Copy forwarded for information to:

1. The Accountant General Khyber Pakhtunkhwa Peshawar.
2. The Executive Engineer PBMC C&W Department Peshawar.
3. The Sub-Divisional Officer Concerned.

ATTESTED

Superintending Engineer (PBMC)

ASAD JAN  
(Advocate High Court)  
K-CJ/J/MC

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OFFICE OF THE SUPERINTENDING ENGINEER PBMC COMMUNICATION & WORKS DEPARTMENT  
KHYBER PAKHTUNKHWA, PESHAWAR

To,

Mr. Noor Akbar S/o Haji Akbar  
Village Akazi Tehkal Bala  
The: & Distt: Peshawar

Subject: APPOINTMENT AS COOLLY (BPS-01) IN (GOVERNOR'S HOUSE SECTION)  
PBMC COMMUNICATION & WORKS DEPARTMENT PESHAWAR

As approved by the D&C in its meeting held on 28/06/2013, you are hereby offered the post of Coolly (BPS-01) House Keeping, after fulfillment of the following terms and conditions:-

1. Your services are liable for termination on one month's notice.
2. In case your wish to resign at any time, one month's notice will be necessary or in lieu thereof one month pay shall be forfeited.
3. You will have to produce a medical certificate of fitness from the Medical Superintendent/Civil Surgeon Peshawar.
4. You will have to serve as house keeping/non house keeping employee any where in Khyber Pakhtunkhwa and against any last of equivalent status.
5. You will join duty on your own expensive.
6. Your appointment to the above post is subject to eligibility and production of original certificate of qualification/experience, domicile, NIC and other documents.
7. You are appointed on probation period of one year.

According to Provincial Govt orders satisfied vide No. SOR-V (E&AD) 1-13/2005, dated 10/08/2005 and Section Officer (Accounts) PBMC/AD/BUDGET/3-2/2005/P-VI, dated 26/06/2006, you will not be entitled for pension gratuity but will contribute CP Fund @ 10% from your pay and 10% will be contributed by the Govt. of Khyber Pakhtunkhwa in lieu thereof.

It you accept the offer on the above terms and conditions, you should report for duty in the office of the Executive Engineer PBMC C&W Department Peshawar within 15 days of the issue of this later.

Engr: Muhammad Ashraf Khan,  
Superintending Engineer (PBMC)

Copy forwarded for information to:

1. The Accountant General Khyber Pakhtunkhwa Peshawar
2. The Executive Engineer PBMC C&W Department Peshawar.
3. The Sub-Divisional Officer

Superintending Engineer (PBMC)

**ATTESTED**  
*Asad Jan*  
**ASAD JAN**  
(Advocate High Court)  
B-CJ/JMIC

31

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To,

The Executive Engineer,  
PBMC C&W Department,  
Peshawar.

Subject: ARRIVAL REPORT.

In compliance with office order No.715/41-E Dated:20-09-2013 I beg to submit my arrival report to day on dated 23-09-2013 (Fore Noon) for duty please,

Thanks

*HC / Estab. Clerk*  
*For S/O Akbar*  
*Khan*  
*23/9*

Your's obediently..

*Noor Akbar*  
Noor Akbar  
S/O Haji Akbar  
Village Akazi Tehkal Bala,  
Teh: & Distt: Peshawar

Attested to be

True Copy

*ASAD JAN*

ASAD JAN  
(Advocate High Court)  
B-CJ/JMIC

*ASAD JAN*

**ATTESTED**

*ASAD JAN*

ASAD JAN  
(Advocate High Court)  
B-CJ/JMIC

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To,

The Executive Engineer,  
PBMC C&W Department,  
Peshawar.

Subject: **ARRIVAL REPORT**

In compliance with office order No. 715/41-E Dated 20/09/2013, I beg to submit my arrival report to day on dated 23/09/2013 (Fere Noon) for duty Please.

Thanks

Your's obediently  
**Noor Akbar**  
**S/o Haji Akbar**  
Village Akazi Tehkal Bala,  
Tehsil & District Peshawar

**ATTESTED**  
  
**ASAD JAN**  
( Advocate High Court )  
K-CJ/J MIC



(32)

(1)

MEDICAL CERTIFICATE

Name of official Noor Akbar  
 Caste or race Alghor  
 Father's name Haji Akbar  
 Residence Akzo Tehkal Buda Plo Has Distt & Tehsil Peshawar  
 Date of birth 19-03-1982  
 Exact height by measurement 5-7  
 Personal mark of Identification \_\_\_\_\_  
 Signature of the official [Signature]  
 Signature of head of office \_\_\_\_\_

Seal of office \_\_\_\_\_

I do hereby certify that I have examined Mr. Noor Akbar a candidate for employment in the Office of the P.B.M.C. (Carpenter's Section) and cannot discover that he had any disease communicable or other constitutional affection or bodily infirmity except M/C

I do not consider this as disqualification for employment in the office of the P.B.M.C. His age according to his own statement 31 (Thirty one) year and by appearance about 31 (Thirty one) year.

19/9/13

Attested to be

[Signature]

Sub Divisional Officer-II  
 P.B.M.C. Peshawar

MEDICAL SUPERINTENDENT,

CIVIL HOSPITAL

Medical Superintendent  
 Police/Service Hospital  
 Peshawar

26/9/13

LEFT HAND THUMB AND FINGER IMPRESSIONS

[Signature]

Note - The entries in this page should be renewed or re-affiliated at least every five years and the signature to lines 9 and 10 should be dated.

C.A.I.C. NO. 17301-1256153-7

1. Name: NOOR AHMED (33)

2. Race: Afghan

3. Residence: Village Abazai, Dist. Bala, Teh. # Dist. Peshawar

4. Father's name and residence: Abdullah



5. Date of birth by Christian era or nearly as can be ascertained: 19-03-1982



6. Exact height by measurement: 5-7

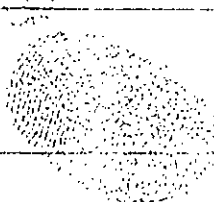
7. Personal marks for identification: None

8. Left hand thumb and finger impression of (Non Gazetted) officer:



Little Finger  Ring Finger 

Middle Finger  Fore Finger 

Thumb 

9. Signature of Government Servant: [Signature]

10. Signature and designation of the Head of the Office, or other Attesting Officer: [Signature]

Sub Divisional Officer-II  
PBMC C&W Deptt  
Peshawar

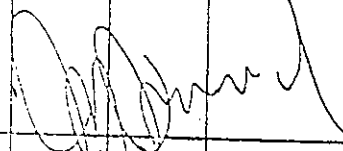
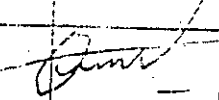

[Signature]

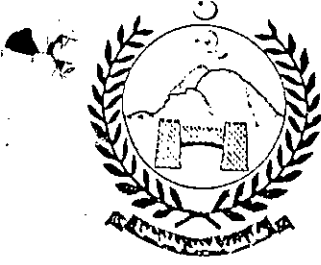
**ATTESTED**  
[Signature]  
**ASAD JAN**  
(Advocate High Court)  
K-CJ/JMIC



34



Name of Government Servant	Signature and Designation of the head of the office or other attesting officer in attestation of column 1 to 5	Date of termination or appointment	Reason of termination (such as promotion, transfer, retirement, etc.)	Post of appointing or attesting officer	Leave taken	Leave		Signature of the head of the office or other attesting officer	Reference to record of appointment or practice of Government Servant
						Allocation of period of leave on average pay upto four months for which leave salary is debitible to another Government	Government to which debitible		
<p>Appointed As cooly BPS-01  in the time scale (4500-150-9300)  vide P.E. PBMC Peshawar. 0/0  No. 715/41-E dt 20/9/2013  Reported arrival for duty on  23/9/2013</p>									
					 Sub Divisional Officer-II PBMC C&W Deptt: Peshawar				
Attested by True copy ASAD JAN Advocate High Court K-CJII MIC									
					<b>ATTESTED</b>  ASAD JAN (Advocate High Court) K-CJII MIC				



GOVERNMENT OF KHYBER PAKHTUNKHWA  
COMMUNICATION & WORKS DEPARTMENT

No. No. SOE/C&WD/24-60/Association  
Dated Peshawar, the March 24, 2015

TO

The Superintending Engineer  
PBMC C&W Peshawar

Subject: COC/2014 in Service Appeal No.183/2014 & 19 others – Muhammad Alamgir Khan VS SE PBMC and others (regarding illegal appointment in PBMC)

I am directed to refer your office letter No.1919/52-C dated 06.03.2015, whereby you have forwarded copy of Service Tribunal Khyber Pakhtunkhwa judgment dated 19.02.2015 for appropriate action. In the judgment, the court has directed to treat the appeals of the appellant as departmental appeals and decide it within one month of its receipt, failing which these appeals shall be deemed to have been accepted by the Tribunal.

2. In compliance of aforementioned Service Tribunal judgment, the appeals were examined and placed before the Appellate Authority. The Appellate Authority has rejected their appeals, as proper procedure was not followed in their appointments.

Endst even No. & date

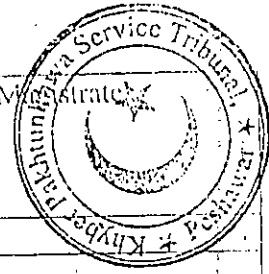
Copy forwarded for information to the:

1. The Registrar Service Tribunal Khyber Pakhtunkhwa with reference to Tribunal judgment dated 19.02.2015
2. PS to Secretary C&W Department, Peshawar

(USMAN JAN)  
SECTION OFFICER (Estb)

**ATTESTED**  
*Asad Jan*  
**ASAD JAN**  
(Advocate High Court)  
&-CJ/JMIC

*Uman Jan*  
SECTION OFFICER (Estb)



Sr. No.	Date of order/proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 183/2014,  
Muhammad Alamgir Khan Versus Superintending Engineer,  
PBMC, C&W Department, Peshawar & 4 others.

19.02.2015

PIR BAKHSI SHAH, MEMBER.- Appellant with his counsel (Mr. Asad Jan, Advocate), Mr. Usman Ghani, Sr.GP with Muhammad Arif, SDO for the official respondents and private respondent No. 5 with his counsel (Mr. Muhammad Asif Yousafzai, Advocate) present.

2. Summarizing facts of the case are that on the recommendations dated 14.01.2013 of the Departmental Selection Committee, appointment letters were issued to the appellants, by respondent No. 5, Shams-uz-Zaman, Ex-Superintending Engineer, PBMC, C&W Department, Peshawar, presently posted as Director (Tech) EQAA, Abbottabad, The appellants - as following - with their separate appeals, are 20 in numbers and as common issue of payment of salary is involved, therefore, all these appeals are proposed to be disposed off jointly by this single judgment:-

Sr. No	Appeal No.	Name	Designation	BP S	Date of appointment
1.	183/2014	M. Alamgir Khan	W.Supt.	09	16.01.2013
2.	184/2014	Hussain Khan	Cooly	01	14.01.2013
3.	185/2014	Khurram Shehzad	Electrician	04	18.01.2013
4.	186/2014	Warcedullah	Pipe Fitter	04	23.01.2013
5.	187/2014	Habibullah	Cooly	02	18.01.2013

ATTESTED

Khyber Pakhtunkhwa Service Tribunal  
Peshawar

6.	188/2014	Muhammad Ismail	Electrician	02	28.01.2013
7.	189/2014	Sajid Khan	Electrician	05	23.01.2013
8.	190/2014	M.Tahir Hussain Shah	Suptdt.	09	16.01.2013
9.	217/2014	Yasir Mubarak	Cooly	01	14.01.2013
10.	218/2014	Hasan Dad	Pipe Fitter	04	23.01.2013
11.	219/2014	Muzzaffar	M.Sweeper	01	15.01.2013
12.	220/2014	Muhammad Imran	Pipe Fitter	04	18.01.2013
13.	221/2014	Muhammad Tanveer	Mistri	06	14.01.2013
14.	222/2014	Ruhullah	Work Mistri	06	24.01.2013
15.	223/2014	Raees Khan	Carpenter	06	28.01.2013
16.	249/2014	Asfandyar	Skilled Cooli	02	17.01.2013
17.	250/2014	Aftab	Mali	02	17.01.2013
18.	251/2014	Shahabuddin	Chowkidar	01	15.01.2013
19.	759/2014	Asad Ali	Mali	02	17.01.2013
20.	760/2014	Naveed ur Rahman	Khansama	04	28.01.2013

Appellants claim per their appeal that they submitted arrival reports, after formality of being medically examined and so much so that necessary entries in their service books have also been made. They further claim that they were performing their duties from the date of their arrival but the respondent-department has denied to them their salary on which they knocked at the door of the Hon'ble Peshawar High Court in Writ Petition No. 1301-P/2013. The Hon'ble Peshawar High Court vide its order dated 27.01.2014, dismissed the Writ Petition being not pressed but observed that the petitioners are at liberty to approach the proper forum for redressal of their grievances in accordance with the law. Hence these separate service appeals have been filed before this Tribunal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that on acceptance of instant appeal, the respondent be directed to pay the withheld salaries since arrival report for duty till date and onward

ATTESTED

and not to create illegal hurdle in the way of performance of duties as well as to restrain respondents from taking any discriminatory action against the appellant. The record further reveals that this Bench, then presided by our learned predecessors passed order dated 16.04.2014 under which the respondent department was directed to allow the appellants to perform duties and to start paying them their monthly salary provisionally. Feeling aggrieved from this order, the respondent department filed Civil Petitions No. 517-P to 534-P/2014 before the august Supreme Court of Pakistan. The august Apex Court was pleased to pass the following order on 16.10.2014:-

"From the nature of the lis and also from the order, under question, we are not inclined to interfere in the interim order, passed by the learned Service Tribunal. However, we direct the Registrar of the learned Service Tribunal to fix these cases, if not yet fixed, in the week commencing 3<sup>rd</sup> November, 2014 and the learned Tribunal is directed to decide all these cases within a week thereof. Disposed of accordingly."

On 16.02.2015, we the undersigned became seized of the appeals for the first time.

The record shows that respondent No. 5 has been transferred from his erstwhile post long ago and he has been made respondent in his private capacity. He however, owns that appointment orders to have been issued by him. On the other hand the respondent department per their written reply have termed these appointments illegal, to be shorn of the required criteria of domicile and reserved quota, that those were made in violation of the rules and void ab-initio.

ATTESTED

Kh. E. Service Tribunal



4. We have heard the learned counsel for the appellant, Mr. Usman Ghani, Sr.GP for the official respondents and private counsel for respondent No. 5 at length, and perused the record with their assistance.

5. The learned counsel for the appellant contended that the appellants are civil servants, duly appointed by the appointing authority (respondent No.5) after fulfilment of all the codal formalities. The appellants have also submitted their arrival reports after their medical examination but due to change of the incumbents in the office of respondent No. 5, the department-respondent is neither letting the appellants to perform their duties nor paying them their salary. The arguments of the learned counsel for the appellant were further augmented by the learned counsel for private respondent No. 5 that for filing an appeal before this Tribunal, the impugned order in writing was not essential. Reliance placed on PLD 1991 (SC)226.

6. The learned Addl. Advocate General and Senior Government Pleader vehemently resisted these appeals. Their contention is that this Tribunal under Section 4 r/w Section 7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 lacks jurisdiction because there is neither any original order nor any final order against which the appeals should have been filed. On merits, it was submitted that the appointment orders are totally illegal, void ab-initio, do not fulfil the required criteria and qualifications. In this respect it was submitted that some of the appointment orders were made under

Rule 10 (4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 but it has been found in enquiry conducted by Engr. Shahid Hussain that the appointees were not sons of the deceased employees; that some of the appointment orders have been shown issued in hurry on the very date on which the Departmental Selection Committee took its meeting; that some of the appointees as prescribed in Rule 12 (3) of the rules ibid have not been appointed from the respective districts. It was also submitted that the relevant record like arrival report etc. were also not found in the office and further that notice thereof was also taken by the Audit Party. They also contended that the appeal is time barred and finally prayed that all the appeals may be dismissed.

7. We have considered submissions of the parties and have thoroughly gone through the record. This is not disputed by the respondent department that at the relevant time respondent No. 5 was the competent appointing authority for the disputed appointments. Respondent No. 5 has openly conceded that he had made the appointments and has further taken plea that after fulfilment of all the codal formalities the appointments were made. In defence of appointments, he referred to corrigendum dated 08.02.2013 issued to rectify mistakes in the original appointment orders pertaining to quoting rule 10(4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in the appointment orders. This is also very important aspect of the matter that so far these appointment orders have not been cancelled by the

ATTESTED  
 Khyber Pakhtunkhwa  
 Provincial  
 Selection  
 Committee

respondent-department. The issue pertains to the payment/non-payment of salary to the appellants, therefore, in the light of the above factual position on record, we are led to prima-facie opinion that the appellants qualify to attract jurisdiction of this Tribunal. Hence jurisdiction is assumed.

8. On record, there is enquiry report conducted by Engr. Shahid Hussain and being important we are also inclined to reproduce its final conclusion at para-5 which is follows:-

"In the light of the findings/Conclusion, detailed above, it is found that not only the prevailing rule 10 & 12 of Appointment, Promotion & Transfer Rules-1989 as well as merit list of employee sons were not followed but also numerous lapses mentioned above are observed in whole process, hence the aforesaid appointment can not be termed as legal."

This being so, this is also noticeable that the appellants have not made the present incumbent/competent authority as respondent. On the other hand the department-respondent has its objection on making Mr. Shamsuz Zaman, then appointing authority as respondent No. 5 in which respect it was also submitted that departmental proceedings on the basis of these disputed appointments had also been initiated against him. It is our considered opinion that the factual position of arrival report, charge assumption reports and performance of duty really pertains to the office of the respondent department and a person cannot be held to be entitled to salary merely on the basis of the appointment orders and that which is also disputed by the department to be legal. Unfortunately, the said appointing/competent authority has not been

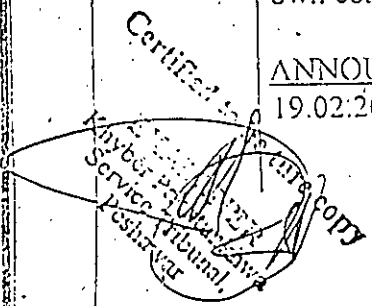
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made respondent who would have assisted the Tribunal on these factual position because the facts mentioned above has a very close connection with the payment/non-payment of salaries to the appellants. For the above said reasons, the Tribunal feels itself in vacuum and perceive a disconnect between the disputed appointment orders and payment of salary on its basis. On record, it was also not shown that departmental appeal had been moved by the appellant before the competent appellate authority next above the appointing authority as contemplated in Khyber Pakhtunkhwa Civil Servants (Appcal) Rules, 1986, much less that the outcome of such appeal would have come before the Tribunal. Hence, while concluding this discussion, it is the considered opinion of the Tribunal to treat these appeals as departmental appeals and to remit the cases to the appellate authority who is directed to decide the appeals within one month of its receipt failing which these appeals shall be deemed to have been accepted by this Tribunal. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED  
19.02.2015

*SAJ P M Bakhshi Clerk*  
*SAJ Ahsan Lateef Member*



Date of receipt of Application 3-3-2015  
 No. 2800  
 Date of receipt of copy 16  
 Date of receipt of copy 16  
 Date of receipt of copy 4-3-2015  
 Date of receipt of copy 4-3-2015

بعدالت جتار سرو سن ٹریبونل ج صاحب سیدام

441/15

مورخہ

مقدمہ

دعویٰ

جرم

کراچی 2015ء منجانب ایڈووکیٹ

حسب اللہ بنام سید منشا امین

(سرو سن ایپیل)

### باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ  
آن مقام مقیم کیلئے اسماعیل انور سید کی سید منشا امین کے پاس یا کسی اور شخص سے  
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 ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی  
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار 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 داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ 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 لکھ دیا کہ سندر ہے۔

20/1

ماہ اپریل

الرقوم 27

العبد گواہ العبد

کے لئے منظور ہے۔

Accepted

مقام



خدمت حساب سپر ڈیپنڈنٹ الجیسٹریٹ PBMc پشاور

اپیل برائے تنخواہ

## حجرات عالی

گزارش ہے کہ فدوی نے آرڈر نمبر 1735/41E مورخہ

18/01/2013 کے مطابق 18/01/2013 کو سٹیکل کر واکر دفتر میں

حاضر رہی رپورٹ ایچ آر ڈی کے سرٹیفکیٹ دی اور تاحال

ڈیوٹی کر رہا ہوں لیکن ابھی تک میری تنخواہ نہیں

ہی۔ لہذا میری صحیحہ میری تنخواہ ایکٹیو صاحب

کو یہ دعوت کہ میں کہ میری جاری کریں۔

میں گزارش ہوگی

## الراشدی

Appeal accepted  
for release of Salim  
and for reinstatement  
order in the matter

(Signature)

29/03/2013

(Signature)  
29/3/2013

(37)

محکمات عیناب انیس صاحب بی بی الیم سی بیٹا اور

عیناب علی

میں حسین اللہ والہ لکھنؤ آرڈر پبلشرز E-41/1735

مورخ 18 جنوری 2013ء مکالمہ آج مورخ 28/1/2013

کو بخاری دینا ہو۔

صحت

حسین اللہ والہ لکھنؤ

DN No. 410/19-E  
dt 7/2/2013



**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.441/2015

Mr. Habib Ullah S/O Nasrullah **Versus** Govt of Khyber Pakhtunkhwa C&W Department.

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1

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 441/2015.

Mr. Habib Ullah S/O Nasrullah  
Resident of Shahab Khel District Peshawar.....Appellant

**VERSUS**

1. Superintending Engineer PBMC C&W Department Peshawar
2. Executive Engineer PBMC C&W Department Peshawar.
3. Assistant Director/SDO-IV PBMC C&W Department Peshawar.
4. Secretary to Govt of Khyber Pakhtunkhwa C&W Department Peshawar.
5. Section Officer (Establishment) C&W Department Peshawar.

..... Respondents.

**COMMENTS ON BEHALF OF RESPONDENT NO.1 TO 5.**

**PRELIMINARY OBJECTIONS.**

1. Appellant's father was neither a government servant nor died official. Appointment of appellant is not covered under Rules 10 (4) of Khyber Pakhtunkhwa Civil Servant A.P.T Rules 1989, hence illegal, void abinitio and not warranted by any law. Rules-10(4) gives a rise to appointment to Son/Daughter/Widow/Wife whose father/husband dies/died or invalidated on medical grounds during Service and not others.
2. The alleged offer of appointment to the Appellant is illegal and void abinitio, having no cause of action to invoke the jurisdiction of this Honourable Tribunal. The principal of locus poenitentiae is not being attracted in the cases of illegal appointments.
3. The Appellant has deliberately concealed the material facts from this Honourable Tribunal in the appeal in hand.
4. The appellant has not come to the Tribunal with clean hands.
5. The appeal is bad for misjoinder and non joinder of necessary and proper parties i.e. the then Executive Engineer, Mr. Ghulam Yazdani who signed the Service Books and other documents and not released the salaries if appointment was regular and not illegal/Malicious then.

**FACTS.**

1. Not need to comments.

- 2
2. Incorrect no orders have been passed by Responent-5 as he had not an Authority of appointments in the PBMC. No official record exists to show that any such appointments were made through DSC on 14/01/2013 and what to say about the offer of appointment. Of Course when a Writ Petition No. 1301-P/2013 was filed by the appellant and others and the High Court issued notice for reply, then it was become to know that some persons were claiming their appointment in PBMC, which were issued by the then outgoing Superintending Engineer PBMC in the month of April, 2013 maliciously. The offers of appointments dated 23-1-2013 (for 3 Nos) 24-01-2013 (2 Nos) and 28-1-2013 (3 Nos) are issued during the imposed Ban Period conveyed by the Election Commission of Pakistan vide Notification dated 22-01-2013 (**Annex-I**).
  3. Incorrect, as stated in above para of comments no record was/is existing with the department.
  4. Incorrect, No record of appellants is available with respondent department.
  5. Incorrect: The alleged documents has never been furnished, not submitted to concern quarter according to prescribed procedure.
  6. Incorrect. Neither the appellant nor others assumed charge physically for duty and accordingly. The plea and claim of appellant and his other colleagues regard their performance of duty and non-payment of salaries is against the facts and circumstances. One cannot become entitled for duty and salary on void, illegal offers of appointment. The appellant is bound under the law to prove his appointment order as legal one, which has not been proved by them in earlier Writ Petition 1301-P/2013 and Service Appeal 189/2014. Rest of the para pertains to record.
  7. Incorrect. The appellant has neither approached nor entitled for salary as his offer of appointment is bogus and illegal one.
  8. The Appellate Authority rejected the Departmental Appeal (Service Appeal terming into Departmental Appeal) on 24-3-2015 within time of ONE month as given by the Tribunal.
  9. Incorrect. As stated in para 8-Supra.

- 4
6. Incorrect/False. The appellant is not entitled for salary. He has not been appointed in accordance with prescribed manner and rules. The offer of appointment is void ab initio.
  7. Incorrect. As stated in Para-8 of the facts, the Appellate Authority has decided appeals well within time of ONE Month as given by this Hon'able Tribunal:
  8. Incorrect. During the proceeding on his Execution Petition orders passed on 08-06-2015, appellant was fully aware of the facts of the Appeal decided by the Appellate Authority (Respondt-4). The plea taken, that the impugned orders was not communicated, then how the Appellant and others filed present Appeal(s) against the Respondent-4's order dated 24-03-2015. The appellant should have to applied for the decision of Appellate Authority at the appropriate time rather agitated in this Tribunal.
  9. Incorrect as described in Para-8 of the grounds.
  10. Incorrect. The orders stated as impugned, have been passed by the Respondent-4, being Competent and Appellate Authority because the appeals were sent to Secretary C&W on 04-03-2015 by this Honourable Tribunal for disposal within a period of one month.
  11. Misconceiving, the malicious Offers for Appointment (not proper Appointment Orders) were made under sub rule-4 of Rule-10 of the A.P.T Rules, 1989, while the ibid rules, gives a rise to appoint Son/Daughter/Widow/Wife of those Govt Servants who died/ dies or invalidated on medical grounds, thus the malicious offer of appointment by itself is void and illegal.
  12. Incorrect. The principle of Locus Poententia is not applicable to the appellant as no lawful and constitutional right of the appellant has been infringed. Illegal and void offers of appointment cannot confer any lawful right to anyone.
  13. Mis-conceiving. The Appellant and others (Similarly placed appointed under sub-rule-4 of Rules-10 of the APT Rules, 1989) cannot be termed as Govt Servant. The desired actions i.e Show Cause Notice, formal



Sr. No.	Date of order/proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 183/2014,  
 Muhammad Alamgir Khan Versus Superintending Engineer,  
 PBMC, C&W Department, Peshawar & 4 others.

19.02.2015

PIR BAKHSH SHAH, MEMBER.- Appellant with his

counsel (Mr. Asad Jan, Advocate), Mr. Usman Ghani, Sr.GP with Muhammad Arif, SDO for the official respondents and private respondent No. 5 with his counsel (Mr. Muhammad Asif Yousafzai, Advocate) present.

2. Summarizing facts of the case are that on the recommendations dated 14.01.2013 of the Departmental Selection Committee, appointment letters were issued to the appellants, by respondent No. 5, Shams-uz-Zaman, Ex-Superintending Engineer, PBMC, C&W Department, Peshawar, presently posted as Director (Tech) EQAA, Abbottabad, The appellants - as following - with their separate appeals, are 20 in numbers and as common issue of payment of salary is involved, therefore, all these appeals are proposed to be disposed off jointly by this single judgment:-

ATTENDED  
 MEMBER  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

Sr. No.	Appeal No.	Name	Designation	BP S	Date of appointment
1.	183/2014	M. Alamgir Khan	W. Supdt.	09	16.01.2013
2.	184/2014	Hussain Khan	Cooly	01	14.01.2013
3.	185/2014	Khurram Shehzad	Electrician	04	18.01.2013
4.	186/2014	Wareedullah	Pipe Fitter	04	23.01.2013
5.	187/2014	Habibullah	Cooly	02	18.01.2013

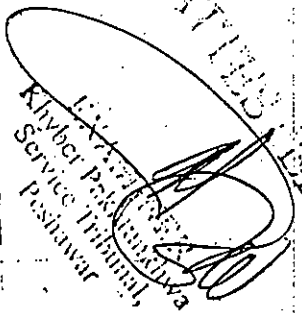
439/2015

449/2015

441/2015

447/2015	6.	188/2014	Muhammad Ismail	Electrician	02	28.01.2013
437/2015	7.	189/2014	Sajid Khan	Electrician	05	23.01.2013
	8.	190/2014	M. Tahir Hussain Shah	Suptdt.	09	16.01.2013
	9.	217/2014	Yasir Mubarak	Cooly	01	14.01.2013
	10.	218/2014	Hasan Dad	Pipe Fitter	04	23.01.2013
	11.	219/2014	Muzzafar	M.Sweeper	01	13.01.2013
445/2015	12.	220/2014	Muhammad Imran	Pipe Fitter	04	18.01.2013
454/2015	13.	221/2014	Muhammad Tanveer	Mistri	06	14.01.2013
450/2015	14.	222/2014	Ruhullah	Work Mistri	06	24.01.2013
	15.	223/2014	Races Khan	Carpenter	06	28.01.2013
	16.	249/2014	Asfandyar	Skilled Cooli	02	17.01.2013
	17.	250/2014	Aftab	Mali	02	17.01.2013
455/2015	18.	251/2014	Shahabuddin	Chowkidar	01	15.01.2013
	19.	759/2014	Asad Ali	Mali	02	17.01.2013
446/2015	20.	760/2014	Naveed ur Rahman	Khansama	04	28.01.2013

Appellants claim per their appeal that they submitted arrival reports, after formality of being medically examined and so much so that necessary entries in their service books have also been made. They further claim that they were performing their duties from the date of their arrival but the respondent-department has denied to them their salary on which they knocked at the door of the Hon'ble Peshawar High Court in Writ Petition No. 1301-P/2013. The Hon'ble Peshawar High Court vide its order dated 27.01.2014, dismissed the Writ Petition being not pressed but observed that the petitioners are at liberty to approach the proper forum for redressal of their grievances in accordance with the law. Hence these separate service appeals have been filed before this Tribunal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that on acceptance of instant appeal, the respondent be directed to pay the withheld salaries since arrival report for duty till date and onward.



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and not to create illegal hurdle in the way of performance of duties as well as to restrain respondents from taking any discriminatory action against the appellant. The record further reveals that this Bench, then presided by our learned predecessors passed order dated 16.04.2014 under which the respondent department was directed to allow the appellants to perform duties and to start paying them their monthly salary provisionally. Feeling aggrieved from this order, the respondent department filed Civil Petitions No. 517-P to 534-P/2014 before the august Supreme Court of Pakistan. The august Apex Court was pleased to pass the following order on 16.10.2014:-

“From the nature of the lis and also from the order, under question, we are not inclined to interfere in the interim order, passed by the learned Service Tribunal. However, we direct the Registrar of the learned Service Tribunal to fix these cases, if not yet fixed, in the week commencing 3<sup>rd</sup> November, 2014 and the learned Tribunal is directed to decide all these cases within a week thereof. Disposed of accordingly.”

On 16.02.2015, we the undersigned became seized of the appeals for the first time.

3. The record shows that respondent No. 5 has been transferred from his erstwhile post long ago and he has been made respondent in his private capacity. He however, owns that appointment orders to have been issued by him. On the other hand the respondent department per their written reply have termed these appointments illegal, to be shorn of the required criteria of domicile and reserved quota, that those were made in violation of the rules and void ab-initio.

4. We have heard the learned counsel for the appellant, Mr. Usman Ghani, Sr.GP for the official respondents and private counsel for respondent No. 5 at length, and perused the record with their assistance.

5. The learned counsel for the appellant contended that the appellants are civil servants, duly appointed by the appointing authority (respondent No.5) after fulfilment of all the codal formalities. The appellants have also submitted their arrival reports after their medical examination but due to change of the incumbents in the office of respondent No. 5, the department-respondent is neither letting the appellants to perform their duties nor paying them their salary. The arguments of the learned counsel for the appellant were further augmented by the learned counsel for private respondent No. 5 that for filing an appeal before this Tribunal, the impugned order in writing was not essential. Reliance placed on PLD 1991 (SC)226.

The learned Addl. Advocate General and Senior Government Pleader vehemently resisted these appeals. Their contention is that this Tribunal under Section 4 r/w Section 7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 lacks jurisdiction because there is neither any original order nor any final order against which the appeals should have been filed. On merits, it was submitted that the appointment orders are totally illegal, void ab-initio, do not fulfil the required criteria and qualifications. In this respect it was submitted that some of the appointment orders were made under



Rule 10 (4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 but it has been found in enquiry conducted by Engr. Shahid Hussain that the appointees were not sons of the deceased employees; that some of the appointment orders have been shown issued in hurry on the very date on which the Departmental Selection Committee took its meeting; that some of the appointees as prescribed in Rule 12 (3) of the rules ibid have not been appointed from the respective districts. It was also submitted that the relevant record like arrival report etc. were also not found in the office and further that notice thereof was also taken by the Audit Party. They also contended that the appeal is time barred and finally prayed that all the appeals may be dismissed.

7. We have considered submissions of the parties and have thoroughly gone through the record. This is not disputed by the respondent department that at the relevant time respondent No. 5 was the competent appointing authority for the disputed appointments. Respondent No. 5 has openly conceded that he had made the appointments and has further taken plea that after fulfilment of all the codal formalities the appointments were made. In defence of appointments, he referred to corrigendum dated 08.02.2013 issued to rectify mistakes in the original appointment orders pertaining to quoting rule 10(4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 in the appointment orders. This is also very important aspect of the matter that so far these appointment orders have not been cancelled by the

APPROVED  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

respondent-department. The issue pertains to the payment/non-payment of salary to the appellants, therefore, in the light of the above factual position on record, we are led to prima-facie opine that the appellants qualify to attract jurisdiction of this Tribunal. Hence jurisdiction is assumed.

8. On record, there is enquiry report conducted by Engr. Shahid Hussain and being important we are also inclined to reproduce its final conclusion at para-5 which is follows:-

“In the light of the findings/Conclusion, detailed above, it is found that not only the prevailing rule 10 & 12 of Appointment, Promotion & Transfer Rules-1989 as well as merit list of employee sons were not followed but also numerous lapses mentioned above are observed in whole process, hence the aforesaid appointment can not be termed as legal.”

This being so, this is also noticeable that the appellants have not made the present incumbent/competent authority as respondent. On the other hand the department-respondent has its objection on making Mr. Shamsuz Zaman, then appointing authority as respondent No. 5 in which respect it was also submitted that departmental proceedings on the basis of these disputed appointments had also been initiated against him. It is our considered opinion that the factual position of arrival report, charge assumption reports and performance of duty really pertains to the office of the respondent department and a person cannot be held to be entitled to salary merely on the basis of the appointment orders and that which is also disputed by the department to be legal. Unfortunately, the said appointing/competent authority has not been

made respondent who would have assisted the Tribunal on these factual position because the facts mentioned above has a very close connection with the payment/non-payment of salaries to the appellants. For the above said reasons, the Tribunal feels itself in vacuum and perceive a disconnect between the disputed appointment orders and payment of salary on its basis. On record, it was also not shown that departmental appeal had been moved by the appellant before the competent appellate authority next above the appointing authority as contemplated in Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986, much less that the outcome of such appeal would have come before the Tribunal. Hence, while concluding this discussion, it is the considered opinion of the Tribunal to treat these appeals as departmental appeals and to remit the cases to the appellate authority who is directed to decide the appeals within one month of its receipt failing which these appeals shall be deemed to have been accepted by this Tribunal. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED  
19.02.2015

*Mr. J. I. Bakhsh, Member*  
*Self, Abdul Latif, Member*

Certified to be true copy  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Receipt of Application: 20.12.2015  
Number: 2800  
Page: 16  
Total: 16  
Date of: 2.3.2015  
Date of: 7.3.2015

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**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

*Execution Petition No. 10/2015*

Muhammad Alamgir Khan S/O Muhammad Ajmal R/O Kanal Colony Behind Secondary Board, Peshawar.

----- **Petitioner**

**VERSUS**

K.P.K. Service Tribunal  
Diary No. 220  
Dated 26-3-15

1. SUPERINTENDENT ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
2. EXECUTIVE ENGINEER PBMC COMMUNICATION AND WORKS DEPARTMENT PESHAWAR BACHA KHAN CHOWK PESHAWAR.
3. ASSISTANT DIRECTOR, IV PBMC C&W DEPARTMENT PESHAWAR PROVINCIAL BUILDING MAINTENANCE CELL BACHA KHAN CHOWK PESHAWAR.
4. SECRETARY C&W KHYBER PAKHTOON KHWA PESHAWAR
5. SHAMS UZ. ZAMAN EX- SUPERINTENDENT ENGINEER.PBMC C&W PESHAWAR PRESENTLY POSTED AS DIRECTOR (TECH ).EQAA ABBOTTABAD.

**RESPONDENTS**

5  
08.06.2015  
*[Signature]*

Counsel for the petitioner and Mr. Muhammad Arif, SDO alongwith M/S Kabirullah Khattak, Assistant A.G and Usman Ghani, Sr. GP for respondents present. Arguments heard and record perused.

According to the judgment of this Tribunal dated 19.2.2015 service appeal of the petitioner was treated as departmental appeal with the direction to the appellate authority to decide the same within a period of one month. According to notification dated 24.3.2015 the appellate authority has rejected the said service appeal treated as departmental appeal regarding which the petitioner has already preferred another service appeal before this Tribunal.

In view of the above, the petition has become infructuous and disposed of accordingly. File be consigned to the record.

**ANNOUNCED**  
08.06.2015

**Certified to have true copy**  
Khyber Pakhtoon Khwa  
Service Tribunal,  
Peshawar

*1329/52-C*  
*15-06-2015*  
*[Signature]*

VMS

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**ELECTION COMMISSION OF PAKISTAN**

**NOTIFICATION**

*Islamabad, the 22<sup>nd</sup> January, 2013*

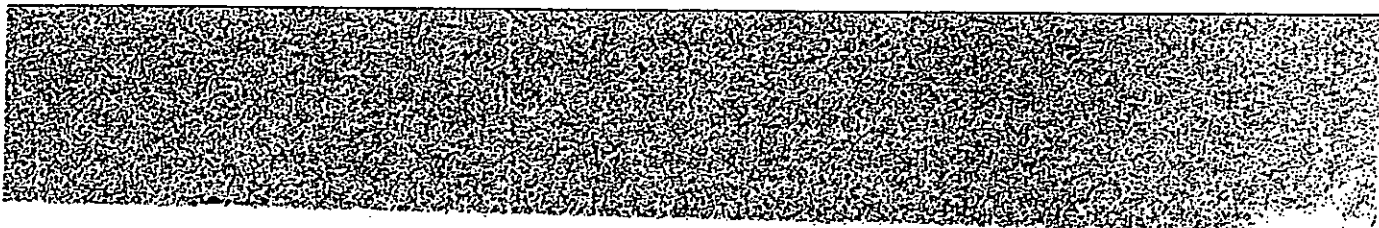
No.F.8(12)/2012-Cord.- WHEREAS, the Election Commission of Pakistan is charged with the constitutional duty to organize and conduct elections in terms of Article 218 of the Constitution of the Islamic Republic of Pakistan and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with the law and that corrupt practices are guarded against;

AND WHEREAS, it is grave concern of all people in different segments of society that some government departments are in the process of inducting thousands of people on various positions which amounts to pre-poll rigging as political bribe.

AND WHEREAS, for tangible reasons, the Election Commission is of the considered view that such mass recruitments at this point of time when the general elections of the National Assembly and Provincial Assemblies are going to take place shortly, will substantially influence the results of elections, therefore, it is imperative on all standards of legal, moral and democratic ethics that all kinds of recruitments except the recruitments which are made by the Federal and Provincial Public Service Commission be banned forthwith.

AND WHEREAS, the Commission has considered the repeated concern of the people as expressed and voiced in the national press that money allocated to various important development projects in the country is being diverted to the discretionary fund of the Prime Minister of Pakistan for its utilization in the development of his constituency, is nothing short of yet another facet of pre-poll-rigging which if not checked and brought to an immediate end is likely to influence the electoral process adversely and thus sending an extremely wrong message to the public at large, making the election tainted and falling short of the constitutional provisions contained in Article 218 (3) of the Constitution.

AND WHEREAS, it has become imperative that the Commission takes all necessary steps under the law to prevent any action on the part of the federal, provincial and local governments that amounts to influencing the results of upcoming general elections by depriving candidates from having a level playing field.



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NOW THEREFORE, in exercise of the powers conferred upon it under Articles 218(3) and 220 of the Constitution, Article 6 of the Election Commission Order.2002, section 103 (c) and 104 of the Representation of the People Act, 1976 and all other powers enabling it in that behalf, the Election Commission of Pakistan is pleased to direct as under:

- a. That all kinds of recruitments in any Ministry, Division, Department or Institution of the Federal Government or any Department or Institution of any Provincial and Local governments is banned forthwith except recruitments by the Federal or a Provincial Public Service Commission.
- b. That diversion of funds already allocated to various development projects in the country is banned forthwith and the spending of funds so diverted shall stand frozen forthwith.

By order of the Election Commission of Pakistan.

  
(Ishtiaq Ahmad Khan)  
Secretary

22/01/2013

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BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

SERVICE APPEAL NO. 1407/2010

Date of institution ... 21.07.2010

Date of judgment ... 27.10.2011

Abdul Salam S/o Shah Suliman,  
D.I.Khan, Ex. P.T.C GPS, Kamal Khel

.. (Appellant)

VERSUS

1. Province of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education, Peshawar.
2. Director of Education (E&S) Khyber Pakhtunkhwa, Peshawar.
3. Executive District Officer (E&S) Dera Ismail Khan.
4. District Coordination Officer, Dera Ismail Khan. ... (Respondents)

APPEAL U/S 4 OF NWFP (KHYBER PAKHTUNKHWA) SERVICE TRIBUNALS ACT, 1974 AGAINST IMPUGNED ORDER DATED 04.9.2009, WHEREBY THE APPELLANT HAS BEEN TERMINATED FROM SERVICE, BY THE INCOMPETENT AUTHORITY, DISREGARD OF THE RULES, AND WITHOUT OBSERVING THE LEGAL REQUIREMENTS, AND HIS DEPARTMENTAL APPEAL ELICITED NO RESPONSE WITHIN STATUTORY PERIOD.

1. Shahzada Irfan Zia, Advocate for the appellant
  2. Ashraf Ali Khattak
  3. Ghulam Nabi
  4. Saadullah Khan Marwat
  5. Muhammad Arif Baloch
  6. Muhammad Anwar Awan
  7. Shaukat Ali Jan
  8. Matiullah Rand
  9. Abdul Qayyum Qureshi
  10. Muhammad Ismail Alizai
  11. Abdul Hamid Khan
  12. Muhammad Waqar Alam
  13. Muhammad Saeed Bhutta
  14. Muhammad Saeed Khan & M. Asghar Khan
  15. Rustam Khan Kundi
  16. Gul Tiaz Khan
  17. Zahid Muhibullah
  18. Khalil-ur-Rehman Hissam
  19. Fazal-ur-Rehman Baloch
  20. Javed Iqbal
  21. Yasir Zakria Baloch
  22. Allah Nawaz, Advocates
- Advocates from S.No.2 to 22 for the remaining appellants.  
Mr. Sher Afgan Khattak, AAG. .. For respondents

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status following judgment/order dated 11.6.2009 of the Peshawar High Court, D.I.Khan Bench, whereby a clear direction was issued to act upon the inquiry report, but they lost sight of the fact that no direction of any authority could absolve the departmental authority from following the law/rules on the subject and fulfill necessary legal requirements before passing the impugned order.

9. As a sequel to the foregoing-discussion, we would make the following orders:-

- (i) All the appeals of Junior Clerks, Lab. Assistants and Assistant Store Keeper(M) are dismissed with costs, being devoid of merit.
- (ji) The appeal of Ms.Shahana Niazi (Service Appeal No. 2177/10) is accepted, and by setting aside the impugned order, she is reinstated in service with consequential/back benefits.
- (iii) The appeals of the rest of the appellants including PSTs(M&F), CTs(M&F), PETs(M&F), DMs(M&F), ATs(M&F), TTs(M&F) and Qaris (M&F) are also accepted and impugned termination order in their cases set aside, but instead of their outright reinstatement, their cases are remanded/sent back to the Secretary, Elementary & Secondary Education Department, Peshawar (Respondent No.1) for reconsideration of the cases in the light of above observations for reinstatement of the qualified appellants and a speaking order in respect of those who are not found qualified, by the competent authority, after affording opportunity of hearing to the said appellants through an efficient and fair mechanism to be evolved for the purpose by him so as to ensure compliance with the mandatory legal requirements on the one hand





and integrity of the proceedings on the other. Since the matter has already been delayed inordinately, it is expected that the proposed exercise should not take more than three months, whereafter a progress report be submitted to the Registrar of the Tribunal.

- (iv) The respondent-department should also look into claim of those appellants who have alleged performance of duty for considerable time after their appointments, and if they are found to have actually performed duty for certain period, and, as such, entitled to pay/salary for the period of the duty, legal procedure should be adopted for recovery of their claims from the then EDO D.I.Khan who has already been held responsible for appointments in question as a consequence of departmental proceedings against him.

ANNOUNCED  
27.10.2011 (SYED MANZOOR ALI SHAH)  
MEMBER

(QALANDAR ALI KHAN)  
CHAIRMAN



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**REGISTERED**  
Nos. C.P. 2026 & 2029 of 2013 - SCJ  
**SUPREME COURT OF PAKISTAN.**

Islamabad, dated 16/1/2014.

The Registrar,  
Supreme Court of Pakistan,  
Islamabad.

The Registrar,  
Peshawar High Court,  
Peshawar.

**Subject: CIVIL PETITION NOS. 2026 & 2029 OF 2013.**  
Mushtaq Ahmed & another ...in C.P. 2026/2013  
Muhammad Nasir Ali & others ...in C.P. 2029/2013  
**VERSUS**  
Government of Khyber Pakhtunkhwa through Chief Secretary,  
Peshawar & others ...in both cases

**On appeal from the Judgment/Order of the  
Peshawar High Court, Peshawar dated  
02.10.2013 in W.P. 271-P & 663-P/2013**

Dear Sir,  
I am directed to enclose herewith a certified copy of the Order of  
this Court dated 15.01.2014 dismissing the above cited civil petitions with  
directions for information and further necessary action.

I am also to invite your attention to the directions of this Court  
contained in the enclosed Order.

Please acknowledge receipt of this letter along with its enclosure  
immediately.

Encl: Order

Yours faithfully,

**(NAZAR ABBAS)**  
ASSISTANT REGISTRAR (IMP)  
FOR REGISTRAR

Copy with a certified copy of the Order of this Court dated 15.01.2014 is  
forwarded to Mr. Sikandar Khan, Chief Engineer, Public Health Engineering  
Department, Khyber Pakhtunkhwa, Peshawar for immediate necessary action  
and report compliance.

Encl: Order

ASSISTANT REGISTRAR (IMP)  
FOR REGISTRAR

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IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI  
MR. JUSTICE EJAZ AFZAL KHAN

C. Ps. No. 2026 and 2029 of 2013.

[On appeal against the judgment  
dt. 2.10.2013 passed by the  
Peshawar High Court, Peshawar in  
W. Ps. No. 271-P and 663-P of 2013].

Mushtaq Ahmed and another,  
Muhammad Nasir Ali and others.

(in CP. 2026/13)

(in CP. 2029/13)

...Petitioners

Versus

Government of KPK through Chief Secretary,  
Peshawar and others.

(in both cases)

...Respondents

For the petitioners:

Mr. Ghulam Nabi Khan, ASC.

Syed Safdar Hussain, AOR.

For the respondents:  
(on court notice)

Sikandar Khan, Chief Engineer, PHEC, KPK.

Date of hearing:

15.01.2014.

ORDER

ANWAR ZAHEER JAMALI, J. - After hearing the arguments of the learned ASC for the petitioners and careful perusal of the case record particularly the reasons assigned in the impugned judgment, we are satisfied that no case for grant of leave to appeal is made out, including the plea of discrimination raised by the petitioners, as one wrong or any number of wrongs, cannot be made basis to justify an illegal action under the garb of Article 25 of the Constitution. Both these petitions are, therefore, dismissed. Leave is refused.

2. So far as some other illegalities in the appointments brought to our notice is concerned, in response to our earlier order dated 09.01.2014, Mr. Sikandar Khan, Chief Engineer, Public Health Engineering, Department, KPK is present in Court, he states that

ATTESTED



Deputy Clerk  
Supreme Court of Pakistan  
Islamabad

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although many other illegal appointees in his department have been removed from service, but against many others such action is in process at various stages and they are still in service.

3. In view of the above statement, he is directed to finalize the action against such illegal appointees within one month from today and submit his report through Registrar of this Court. In case, he faces any difficulty in this regard, those difficulties may also be brought to our notice so that appropriate orders may be passed.

Sd/- Anwar Zaheer Jamali  
Sd/- Ejaz Afzal Khan

Certified to be True Copy

Superintendent  
Supreme Court of Pakistan  
Islamabad



Service Appeal No. 441/2015.

Mr. Habib Ullah S/O Nasrullah  
Resident of Shahab Khel District Peshawar.....Appellant

**VERSUS**

Govt of Khyber Pakhtunkhwa C&W Department  
..... Respondents.

**REPLY/COMMENTS OF RESPONDENT(S) 1 TO 5 IN THE PETITION AS  
SOUGHT FOR INTERIM RELIEF**

**PRELIMINARY OBJECTIONS.**

1. Appellant's father was neither government servant nor died official. Appointment of appellant is not covered under Rules 10 (4) of Khyber Pakhtunkhwa Civil Servant A.P.T Rules 1989, hence illegal, void abinitio and not warranted by any law. Rules-10(4) gives a rise to appointment to Son/Daughter/Widow/Wife whose father/husband dies/died or invalidated on medical grounds during Service and not others.
2. The offer of appointment to the Appellant is illegal and void abinitio, has got no cause of action to invoke the jurisdiction of this Honourable Tribunal and the principal of locus poenitentiae, proper orders of appointment had never been issued nor produced with the appela(s).
3. The Appellant has deliberately concealed the material facts from this Honourable Tribunal in the appeal in hand.
4. The appellant has not come to the Tribunal with clean hands.
5. The appeal is bad for misjoinder and non joinder of the then Executive Engineer, Mr. Ghulam Yazdani who signed the Service Books and other documents and not released the salaries if appointment was regular and not illegal/Malicious then.

**Respectfully Sheweth:**

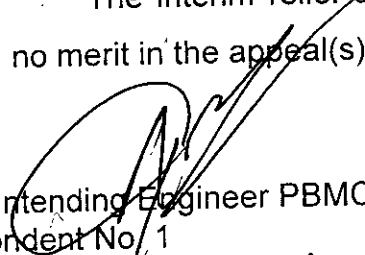
1. The reply/comments in the Main Service Appeals No. 437/2015 has since been admitted/filed in this Honourable Trinbual.
2. Incorrect/Mis-conceiving. The Respondent(s) Department is not going to induct the favoritees with any reason hence wrong perception.
3. Incorrect. The detail position and statute of the Appellant and others have been narrated in very detail in the replies to main Appeal. Not performed

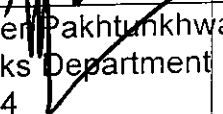
nor performing the duties, cannot be paid salaries at any cost under the Policy of the Govt to put extra burden on the Govt Ex-Chequer.

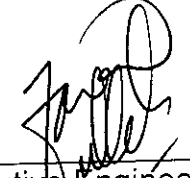
4. Incorrect. By stating that, on filling of above title Petition / Service Appeals, Respondent(s) are not allowing him and others to perform duties, is irrelevant perception.
5. Incorrect, appellant (and others) does not come under the ambit of Govt Servants on the mere stand that offers have seen issued while proper and valid orders of appointment had never been issued. The balance of convenience tilts in favour of respondents. The respondents will suffer irreparable loss if the petition / appeal accepted.
6. Incorrect. The petition is badly barred by law.
7. Incorrect. The appellant is not entitled for salary.
8. As prayed in the reply to main appeal(s).

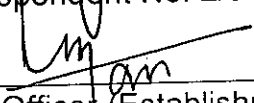
The Replying Respondents earnestly pray please not to pass any controversy orders for the release of salaries and directions to allow the Appellants for duties then by now.

The interim relief sought for may graciously be dismissed in limine having no merit in the appeal(s)

  
Superintending Engineer PBMC  
Respondent No. 1

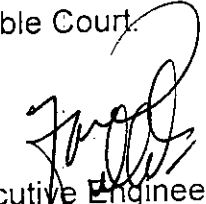
  
Secretary to Govt of Khyber Pakhtunkhwa  
Communication & Works Department  
Respondent No.-4

  
Executive Engineer PBMC  
Respondent No. 2/3

  
Section Officer (Establishment)  
Communication & Works Department  
Respondent No.-5

### COUNTER AFFIDAVIT

I, Engr. Farmanullah, Executive Engineer PBMC do hereby solemnly affirm that the reply/comments filed thereto are correct to the best of my knowledge and nothing has been concealed from this Honourable Court.

  
Executive Engineer  
PBMC C&W Department  
Respondent No.-2

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 441 /2015

*Habib ullah*

VS

C&W Deptt:

REJOINDER ON BEHALF OF APPELLANT

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-5) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 No comments endorsed by the respondents department which mean that they have admitted Para-1 of the appeal as correct.
- 2 Incorrect. While Para-2 of the appeal is correct. Moreover, writ petition No. 1301-P/2013 was withdrawn with the permission to move the proper forum which was not objected by the learned A.A.G and hence the writ petition was dismissed being not pressed and said that the petitioners are at liberty to approach the proper forum.
- 3 Incorrect. While Para-3 of the appeal is correct. Moreover, maintaining of record is duty of department.
- 4 Incorrect. While Para-4 of the appeal is correct. Moreover, maintaining of record is duty of department.
- 5 Incorrect. While Para-5 of the appeal is correct. Moreover, all record is submitted according to procedures and duly certified by the

Superintending Engineer and Executive Engineer. Documents were already attached with the main appeal.

6 Incorrect. While Para-6 of the appeal is correct. Moreover, writ petition No. 1301-P/2013 was withdrawn with the permission to move the proper forum which was not objected by the learned A.A.G and hence the writ petition was dismissed being not pressed and said that the petitioners are at liberty to approach the proper forum and the service appeal 189/2014 of the appellant was considered as department appeal by the August Tribunal and appeal was remit to the Appellate Authority who is directed to decide the appeal within one month Which was rejected by the department for no good grounds.

7 Incorrect. While Para-7 of the appeal is correct. Moreover, appellant was properly appointed by the Departmental Selection and Promotion Committee and the appellant gave his arrival report and performing his duties with full diligent and devotion.

8 Incorrect. While Para-8 of the appeal is correct. Moreover, the respondents through illegal order 24.3.2015 without following the proper and legal procedure rejected the departmental appeal.

9 Incorrect. While Para-9 of the appeal is correct. Moreover, as explained in above Para-8 not he rejoinder.

10 Not denied which means admitted correct by the respondents.

**GROUND:**

1. Incorrect. While Para-1 of grounds of the appeal is correct. Moreover, non-payment of salaries is against the law and the appellant right is secured and granted under the law because appointment order creates valuable rights in favor of appellant which is not taken away under the principle of locus poenitentiae.



2. Incorrect. While Para-2 of grounds of the appeal is correct as mention in the main appeal, of the appellant.
3. Incorrect. While Para-3 of grounds of the appeal is correct as mention in the main appeal, of the appellant. Moreover, appellant was properly appointed by the Departmental Selection and Promotion Committee and the appellant gave his arrival report and performing his duties with full diligent and devotion.
4. Incorrect. While Para-4 of grounds of the appeal is correct as mention in the main appeal, of the appellant. Moreover, the names mention in the para-4 and the appellant both were appointed through recommendation of D.S.C. but he appellant was discriminated which is against the law, rules and norms of justice.
5. Incorrect. While Para-5 of grounds of the appeal is correct as mention in the main appeal, of the appellant. Moreover, as explained in the Para-7 of the facts and Para-3 and Para-1 of the grounds of the appeal.
6. Incorrect. While Para-6 of grounds of the appeal is correct as mention in the main appeal, of the appellant. Moreover, as explained the above Para's of the rejoinder.
7. Incorrect. While Para-7 of grounds of the appeal is correct as mention in the main appeal, of the appellant. Moreover, as explained in the Para-8 of the facts of the appeal.
8. Incorrect. While Para-8 of grounds of the appeal is correct as mention in the main appeal, of the appellant
9. Incorrect. While Para-9 of grounds of the appeal is correct as mention in the main appeal, of the appellant.
10. Incorrect. While Para-10 of grounds of the appeal is correct as mention in the main appeal of the appellant.



DEPONENT

It is affirmed and declared that the contents of rejoinder and appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from the Hon'able Tribunal.

**AFFIDAVIT**

(M. ASIF YOUSAFZAI)  
ADVOCATE, PESHAWAR.

Through:

**APPELLANT**

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

- 11. Incorrect. While Para-11 of grounds of the appeal is correct as mention in the main appeal, of the appellant.
- 12. Incorrect. While Para-12 of grounds of the appeal is correct as mention in the main appeal of the appellant.
- 13. Incorrect. While Para-13 of grounds of the appeal is correct as mention in the main appeal of the appellant.
- 14. Incorrect. While Para-14 of grounds of the appeal is correct as mention in the main appeal, of the appellant.
- 15. Incorrect. While Para-15 of grounds of the appeal is correct as mention in the main appeal, of the appellant.
- 16. Legal.