

29.08.2018

Appellant in person present. Due to summer vacations, the case is adjourned. To come up for the same on 18.10.2018 at camp court Abbottabad.

  
Reader

18.10.2018

Appellant with counsel Mr. Rizwanullah, advocate present. Mr. Muhammad Arshad, SDO alongwith Mr. Usman Ghani, District Attorney for the respondents present. Learned counsel for the appellant made a request for adjournment. Granted. To come up for arguments on 20.12.2018 before D.B at camp court, Abbottabad.

  
Member

  
Chairman  
Camp Court, A/Abad

20.12.2018

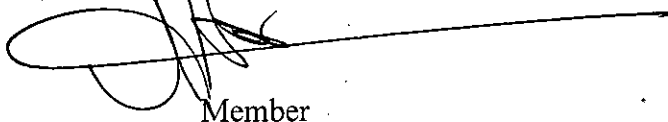
Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for respondents present.

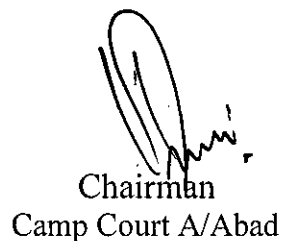
Learned counsel for the appellant states that in view of judgment reported as 2017 PLC (C.S) 1030, Tribunal was bereft of jurisdiction to grant the relief as prayed for in appeal. He therefore, requests for return of appeal in order to resolve the matter at proper forum

In view of the above instant appeal is hereby returned to the appellant. The office shall retain a copy of the complete brief of the appeal.

Announced:

20.12.2018


  
Member

  
Chairman  
Camp Court A/Abad

Received in original  
Today. H.T.P. Adv  
15-1-2019

17.01.2018

Appellant in person and Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Arshad, SDA for the respondents present. Written reply submitted. To come up for rejoinder and arguments on 18.04.2018 before D.B at camp court, Abbottabad.

  
Chairman  
Camp court, A/Abad.

18.04.2018

*Jr. to* Counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present. Counsel for the appellant is not in attendance. Seeks adjournment. Granted. To come up for arguments on 18.07.2018 before the D.B at camp court, Abbottabad.


  
Member

  
Chairman  
Camp court, A/Abad

26.06.2018

Appellant Muhammad Arshad in person present. Mr. Muhammad Idrees, Sub Engineer on behalf of the respondents alongwith Mr. Ziaullah, Deputy District Attorney present. Appellant made a request for adjournment as his counsel has not come from Peshawar. Adjourned. To come up for arguments on 29.08.2018 before the D.B at camp court, Abbottabad.

  
Member

  
Chairman  
Camp court, A/Abad


25.08.2017

Appellant present in person and Mr. Muhammad Bilal, Deputy District Attorney alongwith Muhammad Siddique, SDO for the respondents present. Seeks adjournment. Adjourned. To come up for written reply/comments on 16.10.2017 before S.B at camp court, Abbottabad.

  
Chairman  
Camp Court, A/Abad


16.10.2017

Appellant in person and Mr. Muhammad Bilal, Deputy District Attorney for the respondents present. The learned DDA seeks adjournment. Last chance is given to the respondents. To come up for written reply on 19.12.2017 before S.B at camp court, Abbottabad.

  
Chairman  
Camp court, Abbottabad.

19.12.2017

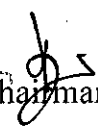
Appellant in person present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Sajad Ali Shah, Sub-Engineer for the respondents also present. Written reply on behalf of respondents not submitted despite last chance. Learned Additional AG requested for further adjournment. Another last chance is granted. Adjourned. To come up for written reply/comments on 17.01.2018 before S.B at Camp Court Abbottabad.

  
(Muhammad Amin Khan Kundi)  
Member (Judicial)  
Camp Court Abbottabad.

1004/16


14.12.2016

Junior to counsel for the appellant and Mr. Muhammad Arshad, Assistant alongwith Addl. AG for the respondents present. Requested for adjournment. It was informed that the case pertains to territorial limits of Hazara Division therefore assigned to camp court, Abbottabad for written reply/comments on 16.02.2017 before S.B.

  
Chairman

16.02.2017

Appellant in person and Mr. Muhammad Idrees, Sub Engineer alongwith Mr. Muhammad Siddique Sr.GP for the respondents present. Request for adjournment. To come up for written reply/comments on 18.05.2017 before S.B at camp court, Abbottabad.

  
MEMBER  
Camp Court, A/Abad

25.05.2017

Since tour programme to camp court, Abbottabad for the month of May, 2017 has been cancelled by the Worthy Chairman, therefore, case to come up for the same on 25.08.2017 at camp court, Abbottabad. Notices be issued to the parties for the date fixed accordingly

  
Registrar

04.10.2016

Mr. Muhammad Asif, junior to counsel for the appellant present and requested for adjournment. Adjourned for preliminary hearing to 17.10.2016 before S.B.

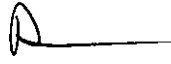
  
(PIR BAKHSH SHAH)  
MEMBER

17.10.2016

Learned counsel for the appellant argued that the appellant was appointed as Junior Clerk (BPS-5) on 8.10.1992 and was transferred to the post of Gauge Reader under section-10 to Abbottabad. On up-gradation post of Junior Clerk (BPS-5) to (BPS-7) his request for repatriation to the post of Junior Clerk was turned down. Thereafter the post of Gauge Reader was also up-graded to the (BPS-5) to (BPS-7). Subsequently the post of Junior Clerk was again up-graded to (BPS-11) in the year 2014 and as the appellant was sustaining recurring loss on account of pay, he requested for repatriation to the post of junior clerk on 02.05.2016 which was not responded in the statutory period of 90 days. Regarding question of limitation the learned counsel for the appellant referred to section-23 of limitation Act 1908 and also relied on 2009 PLCCS 178 arguing that where recurring of action was involved, limitation in such cases would not run in view of the judgment of the Supreme Court of Pakistan PLCCS 1439. He requested for admitting the case.

Appellant Deposited  
Security & Process Fee

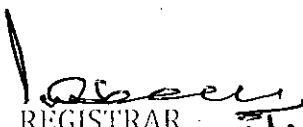

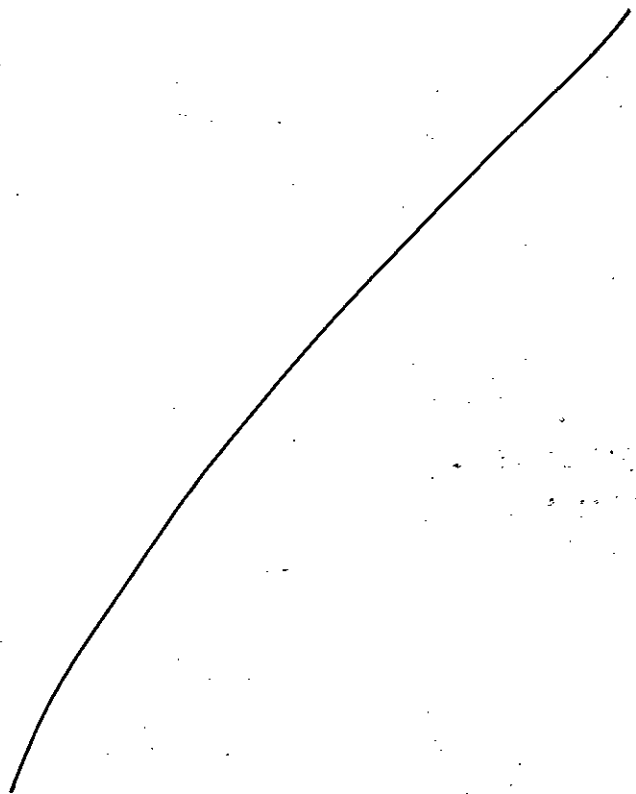
Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days; notices be issued to the respondents for written reply/comments for 14.12.2016 before S.B.

  
Member

Form- A  
FORM OF ORDER SHEET

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

Case No. 1004/2016

S No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	26/09/2016	<p>The appeal of Mr. Muhammad Arshad-II presented today by Mr. Rizwanullah Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 26/9/2016</p>
2-	27.09.2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>04-10-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p> 

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

In the matter

Service Appeal No. 1004 /2016.

Muhammad Arshad-II  
Gauge Reader

**VERSUS**

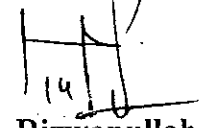
Secretary Government of Khyber  
Pakhtunkhwa, Irrigation Department  
Peshawar

**I N D E X**

S.No	Particulars	Annexure	Pages #
1	Service Appeal	-	1-5
2	Affidavit	-	6
3	Copy of appointment order dated 08-10-1992	"A"	7
4	Copy of office order dated 22.07.2003	"B"	8
5	Copy of application dated 03.06.2010	"C"	9
6	Copy of rejection order	"D"	10
7	Copy of application 02.09.2016	"E"	11
8	Wakalatnama	—	—

  
Appellant

Through

  
Rizwanullah  
M.A. LL.B

Advocate High Court,  
Peshawar

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. \_\_\_\_\_/2016

Muhammad Arshad-II Gauge Reader, Hydrology Irrigation Sub-Division,  
Abbottabad.

**APPELLANT**

**VERSUS**

1. Secretary Government of Khyber Pakhtunkhwa, Irrigation Department,  
Peshawar.
2. Chief Engineer, Irrigation Department, Khyber Pakhtunkhwa, Peshawar.
3. Director Siran Right Bank Canal, Irrigation Project, Abbottabad.
4. Sub-Divisional officer, Hydrology, Irrigation Sub-Division, Abbottabad.

**RESPONDENTS**

**APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL ACT, 1974 FOR REPATRIATION  
OF THE APPELLANT AGAINST HIS  
ORIGINAL POST OF JUNIOR CLERK (B-11)**

**Prayer in Appeal**

*By accepting this appeal, the appellant may graciously be repatriated to his original post of Junior Clerk (B-11) with all consequential benefits.*

*Any other relief deemed appropriate in the circumstances of the case, not specifically asked for, may also be granted to the appellant.*

**Respectfully Sheweth,**

**Short facts giving rise to the present appeal are as under:-**

1. That the appellant was appointed as Junior Clerk (BPS-5) on 08-10-1992 in the Irrigation Department, Khyber Pakhtunkhwa, Peshawar, after observing all legal



and codal formalities.

**(Copy of appointment order is appended as Annex-A)**

2. That the appellant assumed the charge of the said post accordingly. He worked as Junior Clerk for a period of 11 years at Peshawar. He then submitted an application for transfer to Abbottabad (being his native District) on various humanitarian grounds.
3. That the Competent Authority (Respondent No. 2) was pleased to transfer him against equivalent post of Gauge Reader (B-5) including other employees in Hydrology Irrigation Sub-Division, Abbottabad. It was also observed in the above order that **"they would be posted back to their original post if deemed necessary by the Competent Authority in future"**

**(Copy of office order is appended as Annex-B)**

4. That the posts of Junior Clerks were upgraded from B-5 to B-7 in the year 2010 and as such the appellant submitted an application to the respondent No. 2 for repatriation against his original post as Junior Clerk because the post of Gauge Reader, holding by the appellant, was not upgraded and that he had been receiving lesser salary than Junior Clerk. He was therefore sustaining financial loss continuously. But his request was turned down without any legal justification.

**(Copy of application and rejection orders are appended as Annex-C& D)**

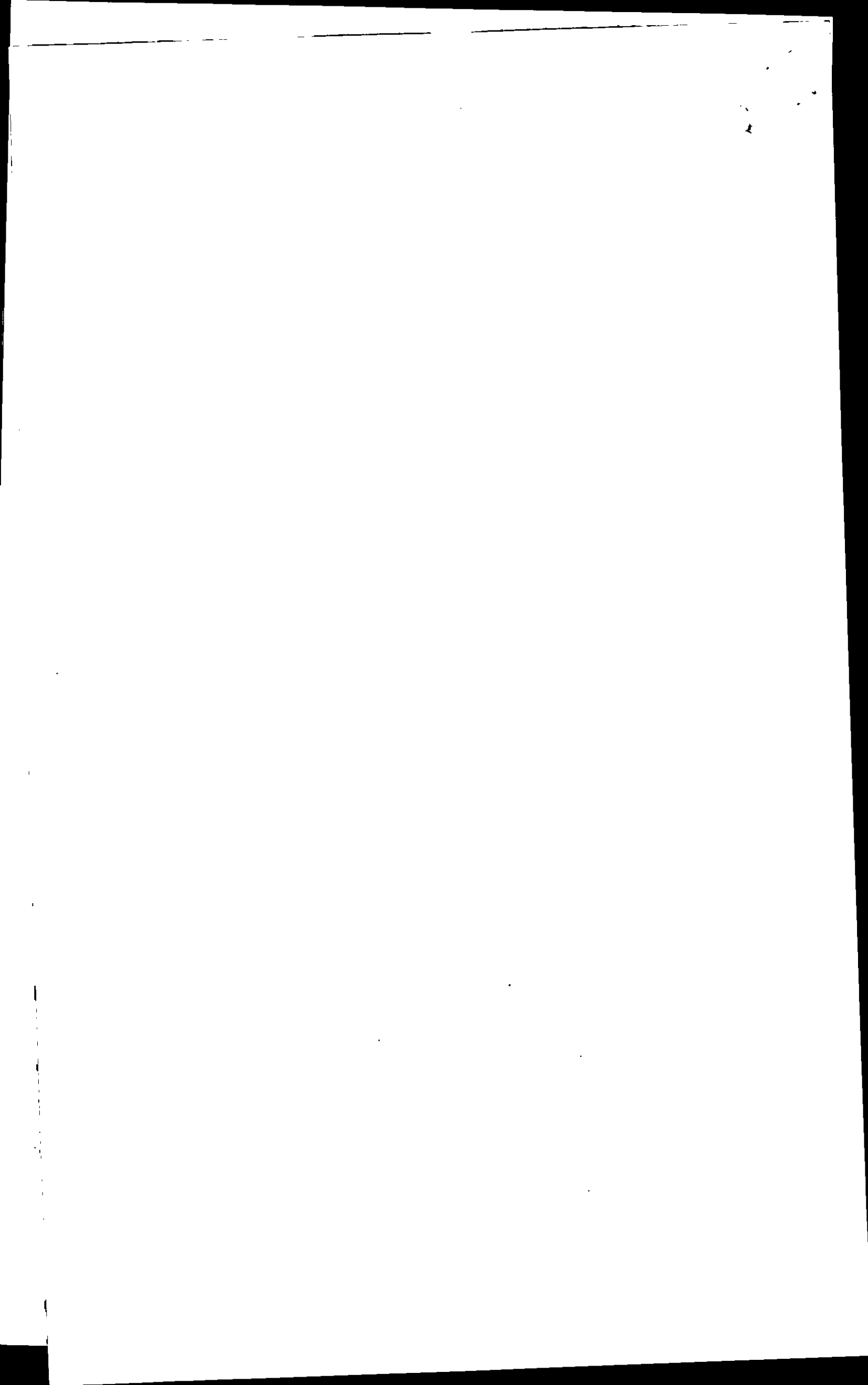
5. That the posts of Junior Clerks were again upgraded from BPS-7 to BPS-11 during the Financial Year 2015-16 and therefore, appellant moved another application on 02-05.2016 for his repatriation to his original post as Junior Clerk in order to enable him to get financial benefit. But the same was not responded.

**(Copy of application is appended as Annex-E)**

6. That the appellant now files this appeal before this Hon'ble Tribunal inter-alia on the following: -

GROUNDS OF APPEAL 

- A. That respondents have not treated appellant in accordant with Law, Rules and Policy on the subject and acted in violation of **Article 4 of the Constitution of Islamic Republic of Pakistan, 1973.**
- B. That the appellant was selected as Junior Clerk (B-5) by the legally constituted committee and thereafter, he was appointed against the said post. He worked as a junior clerk for a period of 11 years with great zeal and devotion. He had also unblemished service record to his credit. He had some domestic problems and as such he submitted an application to the Competent Authority (Respondent No.2) for transfer to Abbottabad on humanitarian grounds. The respondent No. 2 vide order No. 17962 dated 22.07.2003, accommodated and posted the appellant against equivalent post of Gauge Reader B-5 in the Hydrology Irrigation, Sub Division, Abbottabad. It was also added in the above order that the services of the appellant will be requisitioned if required by the Department at any time. This clearly shows that the appellant was only transferred by virtue of section 10 of Khyber Pakhtunkhwa Civil Servants Act, 1973.
- C. That when the posts of Junior Clerks were upgraded from B-5 to C-7 and then B-11 from time to time, the appellant duly submitted applications for repatriation to his original post of Junior Clerk on the ground that the post of Gauge Reader occupied by appellant was not upgraded alike the former post and that he had been sustaining financial loss each month by getting lesser pay than his original post of Junior Clerk.
- D. That the respondent No. 2 was under statutory obligation to have considered the case of appellant regarding repatriation to his original post as Junior Clerk in its true perspective and also in accordance with law but, he failed to do so and deprived the appellant of his legally achieved/due right in utter violation of well

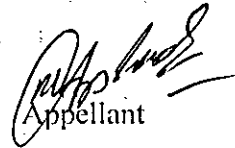


- H. That the defiant attitude/conduct of the Competent Authority regarding non-repatriation of the appellant against his original post of Junior Clerk is illegal, unlawful and against the spirit of administration of justice.
- I. That the petitioner would like to seek the permission of this Hon'ble Court to advance some more grounds at the time of arguments.

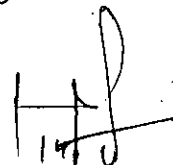
In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the appellant may graciously be repatriated to his original post as Junior Clerk (B-11) with all consequential benefits.

Any other relief deemed proper and just in the circumstances of the case, may also be granted.

Dated: 26-9-2016

  
Appellant

Through

  
**Rizwanullah**  
M.A. LL.B  
Advocate High Court,  
Peshawar

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

In the matter  
Service Appeal No. \_\_\_\_\_/2014

Muhammad Arshid-II  
Gauge Reader

**VERSUS**

Secretary Government of Khyber  
Pakhtunkhwa, Irrigation Department  
Peshawar

**AFFIDAVIT**

I, Muhammad Arshad-II Gauge Reader, Hydrology Irrigation Sub-Division, Abbottabad do hereby solemnly affirm and declare that the contents of the accompanied Service Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.



*Muhammad Arshad-II*  
Deponent 26/09/2016

7

REGISTERED.

OFFICE OF THE CHIEF ENGINEER  
IRRIGATION DEPARTMENT NWFP  
PESHAWAR.

NO. 29496 /TB/A/4-E(ix),  
Dated Peshawar the 8/10/1992/.

To

Mr. Mohammad Arshad S/O Roshan Din,

Vill: Dehrian P/O Public School,

Tehsil and District, Abbottabad.

Subject:- APPOINTMENT AS JUNIOR CLERK.

Consequent upon the recommendations of the Departmental Selection Committee, you are hereby offered the post of officiating/ temporary Junior Clerk at Rs. 1035/- P.M in BPS-5 (Viz: Rs. 1035-49-1770) plus usual allowances as admissible under the Rules subject to the following conditions :-

1/ Your services shall be governed by the NWFP, Civil Servants Act. 1973, the West Pakistan Irrigation Department, Ministerial Service (Regional Office) Rules 1962, the N.W.F.P., Civil Servants Appointment, Promotion & Transfer) Rules 1989 and all such Rules operative under the aforesaid Act.

2/ If you are willing to accept this offer of appointment on the above terms and conditions of appointment, you should return the attached undertaking (in duplicate) and report to the Chief Engineer Development Irrigation Department, Peshawar.

not later than 25/10/1992 positively. The offer of appointment shall stand cancelled if you fail to report by the stipulated date.

3/ You shall have to submit on your joining the Department, the following original certificates :-

- a) Matriculation (b) Domicile (c) that you are not a dismissed Govt. Servant (d) Medical fitness Certificate. (e) Character.

~~\_\_\_\_\_  
SUPERINTENDING ENGINEER~~

~~(HEAD QUARTER)~~

NO. 29497-50 /TB/A/4-E(ix)

Copy of the above is forwarded to the :-

- 1/ Accountant General, NWFP, Peshawar for information.
- 2/ Provincial Coordinator, ISRP, NWFP, Peshawar, for information.
- 3/ Director Small Dams Directorate, Irr: Deptt: for information.
- 4/ Executive Engineer, Hydrology Irrigation Division Peshawar,
- 5/ Cash and Bill Clerk (Local) for information & necessary action.

6/ Chief Engineer, Deve:  
Irr: Department Pesh:

~~\_\_\_\_\_  
SUPERINTENDING ENGINEER  
(HEAD QUARTER)~~

OFFICE OF THE CHIEF ENGINEER  
IRRIGATION DEPARTMENT NWFP

NO. 17962 /IB/A/15-CE  
Dated Peshawar the 22/07/2003/

OFFICE ORDER.

The following Junior clerks BS-5 of Regional office cadre Irrigation Department NWFP are hereby re-designated as Gauge Readers BS-5 against the vacant posts in Hazara Irrigation Division Abbottabad and Hydrology Irrigation Sub Division Abbottabad with immediate effect subject to the condition that they will not claim any right / seniority upon the posts of Junior clerks in Regional Office Cadre and that they would be posted back to their original post if deemed necessary by the competent authority in future. Moreover, they would be placed at the bottom of the seniority list of Gauge Readers.

SL: NO	NAME	REMARKS
✓ 1	Mr. Mohammad Arshad-II Attached to NDP Cell Pesh:	As Gauge Reader BS-5 in Hydrology Irrigation Sub Division Abbottabad.
2	Mr. Saeed Mohammad O/O Chief Engineer (Dev:)	As Gauge Reader BS-5 in Hazara Irrigation Division Abbottabad
3	Mr. Naem Gul Hydrology Irr: Divn: Pesh:	As Gauge Reader BS-5 in Hazara Irrigation Division Abbottabad.

NOTE:- No TA / DA is allowed.

*A. M. M. M. M.*  
CHIEF ENGINEER  
PHONE NO. 9212116

22/7/03

NO. 17963-71 /IB/A/15-CE,

Copy forwarded to the :-

1. Private Secretary to Minister for Irrigation and Power Department NWFP Peshawar with reference to his letter No. PS/MIN/Irr/1-3/03, dated 3-2-2003.
2. Secretary to Government of NWFP Irrigation and Power Department Peshawar.
3. Chief Engineer (Development) Irrigation Department NWFP Peshawar,
4. Deputy Project Director National Drainage Programme Cell Peshawar
5. Accountant General NWFP Peshawar.
6. Superintending Engineer, Malakand Irrigation Circle Swat with reference to his letter No. 3825-26/2-E, dated 23-5-2003.
7. Executive Engineer, Hazara Irrigation Division Abbottabad,
8. Executive Engineer, Hydrology Irrigation Division Peshawar.
9. District Accounts Officer, Abbottabad,
10. ✓ Officials concerned,

For information and necessary action.

*A. M. M. M. M.*  
ADMINISTRATIVE OFFICER  
PHONE NO. 9212122

The Chief Engineer(O&M)  
Irrigation Department  
Peshawar.

**Subject: APPLICATION FOR THE REDESIGNATION OF POST/RETURN  
TO THE ORIGINAL POST/CADRE OF JUNIOR CLERK**

*Through Proper Channel:*

Respected Sir,

With due respect it is submitted that I was appointed as Junior Clerk in the Irrigation Department on 12-10-92.(Photocopy of the appointment letter attached as annex-1). I performed my duty in the capacity of Junior Clerk at the Peshawar Headquarters from 12-10-92 to 31-07-03 i.e for about 11 years. Sir, I belong to Abbottabad district of the Hazara Division. My parents, Wife and children all live in our native village of Abbottabad. During the period I was deputed at Peshawar, I had to face lot of problems like non availability of the Govt accommodation; very meager salary etc. As it was very difficult for me to support the family while performing duty at Peshawar, I applied for transfer to the home station Abbottabad on number of occassions, but unfortunately due to the non availability of vacant post of Junior Clerk in Hazara Irrigation Division Abbottabad, my applications were not entertained. During this period my problems increased manifold. At last seeing no other feasible option, I applied for redesignation to the vacant post of Canal Inspector, in Hazara Irrigation Division Abbottabad during July 2003. But due to some <sup>Administrative</sup> technical hindrances/points I was redesignated to the vacant post of Gauge Reader instead of Canal Inspector (Photo Copy attached as Annex-2). Now working on the post of gauge reader I have to bear continuous loss in the salary as well as in the promotion.

Respected Sir, in the order issued for the redesignation to the post of gauge reader provision has been kept that if the Competent Authority deems appropriate I can again be designated to my original cadre and post of Junior Clerk. It is therefore requested to change my cadre to the original post of junior clerk from my present cadre of gauge reader and if possible for your goodself I may be posted as SDC (Junior Clerk) at Hydrology Irrigation Sub Division Abbottabad.

I'll be very grateful to your Goodself for this act of kindness.

Yours Obediently

*Mohd Arshad*  
23/08/2010  
**Mohd Arshad -II**  
Gauge Reader  
Hydrology Irr: Sub Div:  
Abbottabad.

Encl, As above.

S/C



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COPY OF THE LETTER NO. 126/IB/A/15-CE, DATED 05/07/2010, RECEIVED FROM ADMINISTRATIVE OFFICER O/O THE CHIEF ENGINEER (O&M) IRR. DEPT. PESHAWAR TO XEN HYDROLOGY.

SUBJECT: - APPLICATION OF MUHAMMAD ARSAHD GAUGE READER THROUGH PROPER CHANNEL.

I am directed to refer to the subject noted above and to state that there is no vacant post of Junior Clerk in Hydrology Irrigation Division Peshawar/Sub Division Abbottabad, therefore the appeal of the applicant has been rejected by the competent authority.

S/D  
Administrative Officer.

OFFICE OF THE EXECUTIVE ENGINEER HYDROLOGY IRRIGATION DIVISION PESHAWAR.

NO. 59 16-F Dated 07/07/10

Copy of the above is forwarded to the Sub Divisional Officer Hydrology Irrigation Sub Division Abbottabad with reference to his letter No. 906/4-E, dated 07/06/2010, for information.

*[Signature]*  
Executive Engineer  
Ph: No. 09149212114

*SD*  
*Inform the applicant and file application*

*4-E*

To

The Chief Engineer(South),  
Irrigation Department,  
Peshawar.

Through: - Proper channel.

Subject- APPLICATION FOR THE REDESIGNATION OF POST/  
RETURN TO THE ORIGINAL POST/CADRE.

Respected Sir,

With due respect it is submitted that I was appointed as Junior Clerk in the Irrigation Department on 12/10/1992. I performed my duty in the capacity of Junior Clerk at the Peshawar Headquarter from 12/10/1992 to 31/07/2003 i.e. for about 11 years.

Sir, I belong to District Abbottabad and due to some domestic problems, I applied during 2003 for re-designation as Canal Inspector due to non availability of the post of Junior Clerk in Abbottabad at that time, but my request was not entertained due to administrative problems (Annex-I). However, subsequently I was re-designated as Gauge Reader despite my option for Canal Inspector(Annex-II).

RETURN TO THE ORIGINAL POST/CADRE.

During the year 2010, I requested for designation to the original post of Junior Clerk, but my request was turned down due to non-availability of vacant post (Annex-III).I was also requested for the same in 2011 and 2012.

Now I have come to know that some posts of Junior Clerks have become vacant as such it is once again requested that my post may be re-designated to Junior Clerk. I shall be very grateful.

Encl:/As above.

Yours Obediently

Muhammad Arshad-II (G/R)  
Hyd: Ir: Sub-Divn: A/Abad.

Copy with enclosures in advance to Chief Engineer Irrigation Department Peshawar, for information and necessary action please.

Encl:As above.

Muhammad Arshad-II(G/R)

Junior Clerk, I shall be very grateful.

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2

POWER OF ATTORNEY

Muhammad Saddiq Sub Divisional Officer <sup>Hydrology</sup> ~~Mechanical~~ Irrigation Sub Division  
Abbottabad is hereby authorized to attend the Khyber Pakhtunkhwa Servicer Tribunal Peshawar  
in connection with Appeal No. 1004/2016 filled by Muhammad Arshad-II Gauge Reader on  
behalf of respondent No.1, 2, 3 & 4.

Imqastud -

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

Qasim

Chief Engineer (South) Irrigation  
Deptt: Peshawar.  
(Respondents No.2)

Arshad  
Director Siran Right Bank Irrigation  
Project Abbottabad.  
(Respondents No.3)

Muhammad Saddiq  
Sub Divisional Officer Hydrology Irr.  
Sub Division Abbottabad  
(Respondents No.4)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR****Appeal No. 1004/2016**Muhammad Arshad-II  
Gauge Reader

Appellant

VERSUS

1. Secretary to Govt: of Khyber Pakhtunkhwa  
Irrigation Department Peshawar.
- 2) Chief Engineer (South) Irrigation Deptt: Peshawar.
- 3) Director Siran Right Bank Irr: Project Abbottabad.
- 4) Sub Divisional Officer Hydrology Sub Division Abbottabad.

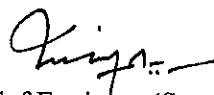
Respondents

**COUNTER AFFIDAVIT**

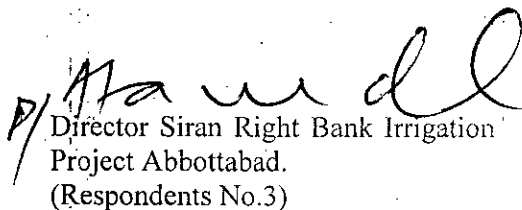
We do hereby solemnly affirm and declare the that contents of the para wise comments given in appeal No. 1004 of 2016 filed by Muhammad Arshad-II Gauge Reader are correct to the best of our knowledge and nothing has been concealed from August Service Tribunal.




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



Chief Engineer (South) Irrigation  
Deptt: Peshawar.  
(Respondents No.2)



Director Siran Right Bank Irrigation  
Project Abbottabad.  
(Respondents No.3)



Sub Divisional Officer Hydrology  
Sub Division Abbottabad  
(Respondents No.4)

3)

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**BEFORE HONOURABLE SERVICE TRIBUNAL PESHAWAR**

**Appeal No. 1004/2016**

Muhammad Arshad-II  
Gauge Reader

**Appellant**

**VERSUS**

1. Secretary to Govt: of Khyber Pakhtunkhwa  
Irrigation Department Peshawar.
- 2) Chief Engineer (South) Irrigation Deptt: Peshawar.
- 3) Director Siran Right Bank Irr: Project Abbottabad.
- 4) Sub Divisional Officer Hydrology Sub Division Abbottabad.

**Respondents**

**Subject:- JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.1 TO 4.**

**Respectfully Sheweth.**

**Preliminary objections**

- i. That the appeal is time barred.
- ii. That the appellant has no locus standi.
- iii. That the appeal is bad for mis joinder and non joinder of necessary parties.
- iv. that the appellant has not come to Honourable Tribunal with clean hand.

**FACTS**

- 1) Correct to the extent that the appellant was appointed as Junior Clerk BS-5.
- 2) The appellant after rendering a long period of service in Peshawar has submitted applications for adjustment against the post of Gauge Reader vide (Annex-I).
- 3) The application of the appellant was considered on humanitarian grounds with the condition that he will have no right over the post of Junior clerk in the cadre.
- 4) Since the adjustment of the appellant was considered on his own request therefore, his repatriation to the post of Junior Clerk has no legal footing.
- 5) As per para-4 above.
- 6) That the instant appeal is not maintainable on the following grounds.

**Ground**

- A) Incorrect, the appellant was adjusted as Gauge Reader on his own request.
- B) Incorrect, the transfer of the appellant is evidence of his interest in the post of Gauge Reader at that time.

- (4)
- 22
- C) Incorrect, the appellant has no vested right for repatriation to the post of Junior Clerk as per condition of the orders.
  - D) As per para-C of the grounds.
  - E) Incorrect, the official was transferred and adjusted on his own request.
  - F) Incorrect, the service of the appellant is not required by the respondents in the capacity of Junior Clerk due to a huge gap between the post of Gauge Reader and Junior Clerk.
  - G) As per reason explained in the above para-F.
  - H) Incorrect, the appellant already takes advantage of serving in the native district.

It is very humbly prayed to dismiss the appeal with cost.

*Jawid Taseed*

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

*Khizar*

Chief Engineer (South) Irrigation  
Deptt: Peshawar.  
(Respondents No.2)

*Ahmed*

Director Siran Right Bank Irrigation  
Project Abbottabad.  
(Respondents No.3)

*M. S. Khan*

Sub Divisional Officer Hydrology  
Sub Division Abbottabad  
(Respondents No.4)

(57)

(1)

To

The General Manager(Operatiom),  
NWFPIDA/Chief Engineer(O&M),  
Irr: Department, Peshawar.

Through:-

PROPER CHANNEL.

Subject:-

CHANGE OF DESIGNATION.

R/Sir,

Stated that I have been serving as a Junior Clerk in this department since 12/10/1992. I am permanent resident of District Abbottabad. I have numerous problems in Peshawar.

2- Now I have come to know from some reliable sources that there is a vacant post of Canal Inspector in Hazara Irrigation Division, Abbottabad. So my designation may kindly be changed as Canal Inspector and posted against the same vacant post in Hazara Irrigation Division, Abbottabad.

Thanking you.

Dated 27/03/2003.

Yours Obediently,

*Handwritten initials and date:*  
D/D  
P  
27/3/03

*Handwritten signature and date:*  
27/3/03  
MOHAMMAD ARSHAD (J/O)  
S/O Roshan Din.  
C/O the Provincial  
Coordinator, NEP, NWFP,  
Peshawar.

16

7

REGISTERED.

OFFICE OF THE CHIEF ENGINEER  
IRRIGATION DEPARTMENT NWFP  
PESHAWAR.

NO. 29496 /IB/A/4-E(ix),  
Dated Peshawar the 8/10/1992/.

To Mr. Mohammad Arshad S/O Roshan Din,  
Vill: Dehrian P/O Public School,  
Faisal and District, Abbotabad.

Subject:- APPOINTMENT AS JUNIOR CLERK.

Consequent upon the recommendations of the Departmental Selection Committee, you are hereby offered the post of officiating/ temporary Junior Clerk at Rs. 1035/- P.M in BPS-5 (Viz: Rs. 1035-49-1770) plus usual allowances as admissible under the Rules subject to the following conditions :-

1/ Your services shall be governed by the NWFP, Civil Servants Act. 1973, the West Pakistan Irrigation Department, Ministerial Service (Regional Office) Rules 1962, the N.W.F.P., Civil Servants Appointment, Promotion & Transfer) Rules 1989 and all such Rules operative under the aforesaid Act.

2/ If you are willing to accept this offer of appointment on the above terms and conditions of appointment, you should return the attached under-taking (in duplicate) and report to the Chief Engineer Development Irrigation Department, Peshawar.

not later than 25/10/1992 positively. The offer of appointment shall stand cancelled if you fail to report by the stipulated date.

3/ You shall have to submit on your joining the Department, the following original certificates :-

- a) Matriculation. (b) Domicile. (c) that you are not a dismissed Govt. Servant. (d) Medical fitness Certificate. (e) Character.

SUPERINTENDING ENGINEER  
(HEAD QUARTER)

NO. 29497-56 /IB/A/4-E(ix)

Copy of the above is forwarded to the :-

- 1/ Accountant General, NWFP, Peshawar for information.
- 2/ Provincial Coordinator, ISRP, NWFP, Peshawar for information.
- 3/ Director Small Dams Directorate, Irr:Deptt for information.
- 4/ Executive Engineer, Hydrology, Irrigation Division Peshawar,
- 5/ Cash and Bill Clerk (Local) for information & necessary action.
- 6/ Chief Engineer, Deve: Irr: Department Pesh:

SUPERINTENDING ENGINEER  
(HEAD QUARTER)



(7)

8

OFFICE OF THE CHIEF ENGINEER  
IRRIGATION DEPARTMENT NWFP

NO. 17962 /IB/A/15-CE  
Dated Peshawar the 22/07/2003/.

OFFICE ORDER.

The following Junior clerks BS-5 of Regional office cadre Irrigation Department NWFP are hereby re-designated as Gauge Readers BS-5 against the vacant posts in Hazara Irrigation Division Abbottabad and Hydrology Irrigation Sub Division Abbottabad with immediate effect subject to the condition that they will not claim any right / seniority upon the posts of Junior clerks in Regional Office Cadre and that they would be posted back to their original post if deemed necessary by the competent authority in future. Moreover, they would be placed at the bottom of the seniority list of Gauge Readers.

SL: NO	NAME	REMARKS
✓ 1	Mr. Mohammad Arshad-II Attached to NDP Cell Pesh:	As Gauge Reader BS-5 in Hydrology Irrigation Sub Division Abbottabad.
2	Mr. Saeed Mohammad O/O Chief Engineer (Dev:)	As Gauge Reader BS-5 in Hazara Irrigation Division Abbottabad
3	Mr. Naem Gul Hydrology Irr: Divn: Pesh:	As Gauge Reader BS-5 in Hazara Irrigation Division Abbottabad.

NOTE:- No TA / DA is allowed.

*A. W. ...*  
CHIEF ENGINEER  
PHONE NO. 9212116

22/7/03

NO. 17963-71 /IB/A/15-CE.

Copy forwarded to the :-

1. Private Secretary to Minister for Irrigation and Power Department NWFP Peshawar with reference to his letter No. PS/MIN/Irr/1-3/03, dated 3-2-2003,
2. Secretary to Government of NWFP Irrigation and Power Department Peshawar.
3. Chief Engineer (Development) Irrigation Department NWFP Peshawar,
4. Deputy Project Director National Drainage Programme Cell Peshawar
5. Accountant General NWFP Peshawar.
6. Superintending Engineer, Malakand Irrigation Circle Swat with reference to his letter No. 3825-26/2-E, dated 23-5-2003.
7. Executive Engineer, Hazara Irrigation Division Abbottabad,
8. Executive Engineer, Hydrology Irrigation Division Peshawar.
9. District Accounts Officer, Abbottabad,
10. ✓ Officials concerned,

For information and necessary action.

*A. J.*  
ADMINISTRATIVE OFFICER  
PHONE NO. 9212122

8

(4)

The Chief Engineer(O&M)  
Irrigation Department  
Peshawar.

Subject: APPLICATION FOR THE REDESIGNATION OF POST/RETURN  
TO THE ORIGINAL POST/CADRE OF JUNIOR CLERK

*Through Proper Channel:*

Respected Sir,

With due respect it is submitted that I was appointed as Junior Clerk in the Irrigation Department on 12-10-92. (Photocopy of the appointment letter attached as annex-1). I performed my duty in the capacity of Junior Clerk at the Peshawar Headquarters from 12-10-92 to 31-07-03 i.e for about 11 years. Sir, I belong to Abbottabad district of the Hazara Division. My parents, Wife and children all live in our native village of Abbottabad. During the period I was deputed at Peshawar, I had to face lot of problems like non availability of the Govt accommodation, very meager salary etc. As it was very difficult for me to support the family while performing duty at Peshawar, I applied for transfer to the home station Abbottabad on number of occasions, but unfortunately due to the non availability of vacant post of Junior Clerk in Hazara Irrigation Division Abbottabad, my applications were not entertained. During this period my problems increased manifold. At last seeing no other feasible option, I applied for redesisgnation to the vacant post of Canal Inspector in Hazara Irrigation Division Abbottabad during July 2003. But due to some <sup>Administrative</sup> technical hindrances/points I was redesignated to the vacant post of Gauge Reader instead of Canal Inspector (Photo Copy attached as Annex-2). Now working on the post of gauge reader I have to bear continuous loss in the salary as well as in the promotion.

Respected Sir, in the order issued for the redesignation to the post of gauge reader provision has been kept that if the Competent Authority deems appropriate I can again be designated to my original cadre and post of Junior Clerk. It is therefore requested to change my cadre to the original post of junior clerk from my present cadre of gauge reader and if possible for your goodself I may be posted as SDC (Junior Clerk) at Hydrology Irrigation Sub Division Abbottabad. I'll be very grateful to your Goodself for this act of kindness.

Encl. As above.

s/c

Yours Obediently

*Mohd Arshad*  
23/08/2011  
Mohd Arshad -II  
Gauge Reader  
Hydrology Irr: Sub Div:  
Abbottabad.

**BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR**

**Rejoinder in Service Appeal No. 1004/2016**

1. Muhammad Arshad-II Gauge Reader, Hydrology Irrigation Sub-Division, Abbottabad.

**APPELLANT**

**VERSUS**

1. Secretary Government of Khyber Pakhtunkhwa, Irrigation Department, Peshawar etc.

**RESPONDENTS**

**REJOINDER ON BEHALF OF  
APPELLANT IN THE ABOVE  
CAPTIONED APPEAL**

**RESPECTFULLY SHEWETH,  
PRELIMINARY OBJECTIONS**

- 1-4. All the preliminary objections raised by the respondents are incorrect, baseless and not in accordance with law and rules rather the respondents are estopped by their own conduct to raise any objection.

**ON FACTS**

1. Para No.1 of reply needs no rejoinder as the respondents have admitted it as correct.
2. Para-2 is incorrect and misconceived as the appellant had never submitted any application for adjustment as Gauge Reader and the respondents have misinterpreted the application appended with their reply as (*Annex-1*) in order to divert the attention of this Hon'ble Tribunal from the real issue of Repatriation of appellant against his original post of Junior Clerk (B-11) It is further clarified that the said application was moved for change of designation from the post of Junior Clerk to that of Canal Inspector as evident from it. But the

request of appellant was declined vide letter (Annex-A-B). The respondents have not produced any order regarding adjustment of appellant as Gauge Reader. It is well settled law that mere oral assertion is not sufficient to justify the stance of any party unless proved by cogent and reliable evidence including documentary proof. Mere charge of designation is not synonymous to that of adjustment. The adjustment/description is only made when the post of civil servant is abolished and that he is declared as surplus and then he is adjusted against another equivalent post either in his own department or any other department by virtue of Section 11-A of the Khyber Pakhtunkhwa Civil Servants Act 1973. Thus, the plea of respondents regarding adjustment is illegal and the same is not sustainable in the eye of law.

3. Incompet as the appellant was accommodated as Gauge Reader but the Authority was not competent to annihilate his fundamental right and deprive him of his original post of Junior Clerk (B II) acquired by him under Article 18 of the Constitution of Islamic Republic of Pakistan, 1973.

4. Incompet as the appellant never requested for adjustment/description against the post of Gauge Reader. But the fact is that he was posted under Section 10 Provision II of the Khyber Pakhtunkhwa Civil Servants Act 1973 against equivalent post as Gauge Reader.

5. Incorrect and detail reply offered in Form-4 above.

6. Incorrect as the appellant has a good prima facie case to invoke the jurisdiction of this Hon'ble Tribunal for relief.

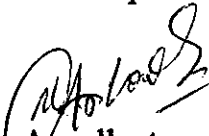
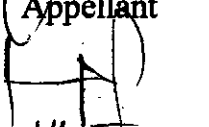
ON GROUNDS

1. Incorrect as the appellant was not treated in accordance with the mandate of Article 4 of the Constitution of Islamic Republic of Pakistan 1973 which contemplates that it is the inalienable right of every citizen to be treated in accordance with law. Therefore, the posting order of the appellant cannot be treated as adjustment order.

- B. In response to Para-B, it is stated that the appellant was transferred as Gauge Reader and this fact has been categorically admitted by the respondents in the instant Para.
- C. Incorrect as civil servant cannot be deprived of his due right guaranteed under the Constitution on the pretext of illegal and void condition.
- D. Same reply as Para-C above.
- E. Incorrect and detail reply furnished in Para-B above.
- F. Same reply as Para-C above.
- G. Same reply as Para-C above.
- H. Arguments are restricted to positions taken in pleadings.

It is, therefore, respectfully prayed that while considering the above rejoinder, the appeal may kindly be accepted with special costs.

Through

  
Appellant  
  
Rizwahullah  
M.A. LL.B

Advocate High Court, Peshawar.

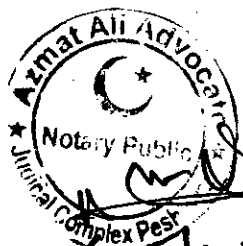
Dated: 16-04-2018

**AFFIDAVIT**

I, Muhammad Arshad-II Gauge Reader, Hydrology Irrigation Sub-Division, Abbottabad, do hereby solemnly affirm and declare that the contents of the accompanied rejoinder are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

**ATTESTED**

  
**DEPONENT**



13/01.0855416-5

16-4-18

Annex-AR-1

OFFICE OF THE CHIEF ENGINEER  
IRRIGATION N.W.F.P. PESHAWAR

NO. 19674-75 IB/A/1634-PF,

Dated Peshawar, the 25/06/2003

To,

Mr. Mohammad Arshad,  
Junior Clerk,  
O/O the Provincial Coordinator,  
National Drainage Programme Cell,  
Peshawar.

Subject:- CHANGE OF DESIGNATION.

Ref, use:- Deputy Director NDP Cell Peshawar  
letter No. 1056/NDP/PCFC-15, dated 28-3-2003.

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I am directed to inform you that due to  
some administrative problems, your request cannot be  
entertained.

*mind this do  
in July.*  
*26/6/03*

*D/S*  
*26/6/03*

- sd -  
ADMINISTRATIVE OFFICER  
(PHONE: 9212122)

cc.

✓ Copy to Provincial Coordinator National Drainage  
Programme Peshawar with ref. to his letter quoted above for information.

*26/6/03*

ADMINISTRATIVE OFFICER

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