

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Shafi Ullah

..... Petitioner

VERSUS

District & Sessions Judges/ZQ Dir Upper & others

..... Respondents

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Dated 01.07.2024

Respondents

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 1352 of 2022

Shafi Ullah..... (Appellant/Petitioner)

---versus---

The District & Sessions Judge/ZQ, Dir Upper &
others..... (Respondents No. 1)

REPLY ON BEHALF OF RESPONDENT No. 1:

Respectfully Sheweth:

Preliminary Objections:

1. The appellant has got no cause of action.
2. The appellant has got no *locus standi* to file the appeal.
3. The appellant is estopped to sue by his own conduct.
4. The appellant remained mum for a long time and failed to challenge the seniority list and promotion order of the year, 2010 within time, hence not maintainable.
5. The order dated 15/03/2022 in favour of appellant/petitioner, passed by the then learned District & Sessions Judge/ZQ, Dir Upper has been made impugned by the respondent No. 04, 05 and 06 by way of departmental appeals before the august Peshawar High Court, Peshawar, (*Annexure A, B & C*), which is *subjudice* and prior to disposal of the same, proceedings in the instant appeal would be premature.
6. The appellant has concealed the actual and material facts from this Honourable Court.

PARA WISE REPLY:

Respondent No.1 submits as under:

Khyber Pakhtunkhwa
Service Tribunal
Docket No. 13869
Date: 01-07-24



- i. Para No.1 is correct. The appellant and respondent No. 3 to 6 were initially recruited as junior clerks vide appointment order No.290-30/District & Sessions Judge/Zilla Qazi, Dir Upper/ZQ, Upper Dir dated 04/03/2005. (*Annexure D*)
- ii. Para No.2 is correct. The appellant was placed at serial No.9, whereas respondents No.3 to 6 were placed at serial No.10, 11, 12 and 15, respectively in the appointment order. (*Annexure D*)
- iii. Para No. 3 is correct to the extent that according to the minutes dated 01/03/2005 of Departmental Promotion Committee/Departmental Selection Committee (*Annexure E*), respondent No. 3 Shahzada Fahad and respondent No. 4 Jamil-ur-Rahman were placed senior from the appellant, while respondents No. 5 Sultan Bakht and respondent No. 6 Hamid Khan were placed junior to the appellant, but unlike the minutes of the Departmental Selection Committee, the appellant vide Office Order No. 290-309/DSJ/ZQ Upper Dir Dated 04/03/2005 (*Annexure D*), was placed senior to respondents No. 3 to 6, which was declared as clerical mistake by the then learned Senior Civil Judge (J), Dir Upper in his report dated 07/03/2022 (*Annexure F*) and vide order dated 15/03/2022 passed by my learned predecessor in office, has corrected the said mistake by issuing fresh seniority list as per the merit list of DSC in the minutes (*Annexure G*).
- iv. Para No.4 is correct to the extent that respondents No. 3 to 6 were promoted to the post of Senior Clerks vide order bearing No. 231-04/District & Sessions Judge/Zilla Qazi, Dir Upper/ZQ, Upper Dir

namely Mr. Hamid (respondent No. 6). The Departmental Promotion Committee vide minutes bearing No.229-04/District & Sessions Judge/Zilla Qazi, Dir Upper/ZQ, Dir Upper, dated 12/06/2010 recommended Mr. Inayat Ullah, Mr. Shahzada Fahad (respondent No. 3), Mr. Jamil-ur-Rahman (respondent No.4), Mr. Sultan Bakht (respondent No.5) and Mr. Hamid (respondent No.6) vide officer order bearing No.231/04/District & Sessions Judge/Zilla Qazi, Dir Upper/ZQ, Dir Upper dated 12/06/2010, the Junior Clerks, mentioned above were promoted to the post of Senior Clerks. (*Annexure L*)

- v. Para No.5 is correct. The appellant was promoted to the post of Senior Clerk (BPS-09) vide recommendation bearing No.463-66/4/District & Sessions Judge/Zilla Qazi, Dir Upper/ZQ, Dir Upper, dated 14/05/2018 (*Annexure M*) and he was placed junior to all the respondents in the pool of Senior Clerks at District Judiciary, Dir Upper and a fresh seniority list was issued in the year 2018 accordingly. (*Annexure N*)
- vi. Para No.6 and 7 are correct. The seniority list of the year 2021 (*Annexure O*) was objected upon by the appellant in the year 2022 with the prayer to revisit the seniority list by placing him as senior to respondents on the basis of merit list of Departmental Selection Committee dated 04/03/2005 (*Annexure E*). The said objection petition was entrusted to Mr. Akbar Ali, learned Senior Civil Judge(J), Dir Upper, who after through proceedings, finally opined that in the minutes of Departmental Promotion Committee,

no remarks or observation were recorded by the committee about non-fitness, fault or demerit of appellant and that in the annual confidential report (ACRs) for the year 2008 to 2010, the appellant was declared as fit for promotion. Hence, in the light of recommendation of the Senior Civil Judge(J), Dir Upper, the appellant was placed senior to the respondents No.5 and 6 and junior to respondents No.3 and 4 by the then District & Sessions Judge/Zilla Qazi, Dir Upper vide order dated 15/03/2022.

(Annexure G)

vii. Regarding Paras No.8 and 9 which are interconnected, it is stated that review petition of the appellant against the order dated 15/03/2022 and prayed for antedate promotion and back benefits was disposed of by my learned predecessor in office vide order dated 14/04/2022 on the ground that as respondents have preferred an appeal against the final order dated 15/03/2022 and this court lacks jurisdiction to entertain the same. *(Annexure Q)*. At the cost of repetition, it is stated that the order dated 15/03/2022 in favour of appellant/petitioner, passed by the then learned District & Sessions Judge/ZQ, Dir Upper has been made impugned by the respondent No. 04, 05 and 06 by way of departmental appeals before the august Peshawar High Court, Peshawar, *(Annexure A, B & C)*, which is *subjudice* and prior to disposal of the same, proceedings in the instant appeal would be premature.

viii. Para No. 10 is correct, hence no comments.




- ix. Paras No. 11 & 12 are left to the decision of the worthy tribunal court, hence no comments.

COMMENTS ON GROUNDS.

Para Numbered A, B, C, D, E, F, G, H & I of the grounds as drafted are incorrect, misconceiving as the answering respondent has not acted in violation of any law for the time being enforced. Detailed reply has been given in the preceding Paras on facts, which may be considered as reply hereto. The appellant/petitioner remained mum for a long time and failed to challenge the seniority list and promotion order of the year, 2010 within time, hence not maintainable. The order dated 15/03/2022 in favour of appellant/petitioner, passed by the then learned District & Sessions Judge/ZQ, Dir Upper has been made impugned by the respondent No. 04, 05 and 06 by way of departmental appeals before the august Peshawar High Court, Peshawar, (*Annexure A, B & C*), which is *subjudice* and prior to disposal of the same, proceedings in the instant appeal would be premature.

Respondent No. 2


**Registrar
Peshawar High Court
Peshawar**

Ikhtisar Khan

Respondent No. 1


**District & Sessions Judge /
ZQ Dir Upper**

Fazal Sattar Khan

MINUTES OF THE MEETING OF
DEPARTMENTAL PROMOTION COMMITTEE /DEPARTMENTAL SELECTION
COMMITTEE DATED 01/03/2005

In continuation of letter No. 2323/Admn dated 6/3/2004, with reference to all correspondence on the subject matter and pursuant to letter No. PHC/Admn/(DSC-DPC)/23 dated 9/2/2005 of the Hon'ble Peshawar High Court Peshawar, after the applications were invited through advertisement in Daily Mashriq dated 29 June 2004, Khabrain dated 15/01/2005 and Mashriq dated 27/01/2005, the following Departmental Promotion Committee and Departmental Selection committee was constituted, today on 01/03/2005, in office of the undersigned, to conduct the Departmental Selection Committee proceedings and to make recruitments against the posts and vacancies given below:-

COMMITTEE

1. Pir Bakhsh Shah
 District & Sessions Judge/
 Zilla Qazi Dir Upper(Chairman)
2. Aman Ullah Khan Salik
 Addl: Distt:&Sessions Judge/
 Izafi Zilla Qazi Wari
 Nominee of District & Sessions Judge/
 Zilla Qazi Dir Upper. (Member)
3. Mr. Fazal Sattar Khan
 Senior Civil Judge/Aala Illaqa Qazi
 Malakand at Batkhela
 Nominee of the Hon'ble Peshawar
 High Court, Peshawar(Member)

DETAILS OF VACANCIES.

S/No	Vacancy /BPS	No.of Vacancies	Establishment
1.	Stenographer BPS-15	One	District & Sessions Judge
2.	Stenotypist BPS-12	Two	Senior Civil Judge
3.	Key Punch Operator BPS-10	Three	One District Sessions Judge & Two Senior Civil Judge
4.	Junior Clerks BPS-5	Eight	Five District Sessions Judge & Three Senior Civil Judge
5.	Naib Qasid BPS-1	One	District & Sessions Judge

DEPARTMENTAL PROMOTION COMMITTEE PROCEEDINGS.

There is one vacancy of Stenographer BPS-15 such vacancy shall be filled in, 75% by promotion and 25% through direct recruitment. In this context first of all promotion case was considered on the basis of seniority cum fitness . There were two contestants namely Syed Iftikhar Ahmed and Jan Bakht Said both promoted to BPS-12 in the year 1995 with equal qualification as FA . However Syed Iftikhar Ahmed was promoted in January 1995, while the later was promoted in April 1995. Besides this the service record of Syed Iftikhar Ahmed is more transparent than Jan Bakht Said , therefore, Syed Iftikhar Ahmed was considered senior and fit .

DEPARTMENTAL SELECTION COMMITTEE PROCEEDINGS.

Only one vacancy of the post of Stenographer was required to be filled in against this vacancy, in all 9 applications were received. Applications of Muhammad Nabi S/O sFazal Wahab , Gowhar Rahman S/O Juma Khan , Javid Iqbal S/O Rahman Zarin , Mian Zahid Ul Haq S/O Seraj Ul Haq were found ineligible . However they were allowed to take part in the test and interview proceedings subject to verification from the relevant Form"B" to know about the

reasons of their ineligibility. Amongst them, Mian Zahidul Haq did not opt to sit in the shorthand and typing test. Javid Iqbal was found lacking the prescribed qualification for the post, as he was not BA pass. The following candidates obtained highest marks in the written test and merit list thereof is maintained.

1).Bacha Rahman S/O Gran Khan

2).Umer Zeb S/O Nowsherwan

3). Muhammad Nabi S/O Fazal Wahab

All those who appeared in written test also under went the test of dictation, shorthand and typing as well, while special observation on speed, pickup and accuracy was adhered to. **Bacha Rahman S/O Gran Khan, Umer Zeb S/O Nowsherwan, Ihsanullah S/O Abdur Rauf and Javid Iqbal S/O Rahman Zarin** were considered on the basis of formula, four against the one. in cases more than four applications are received. Keeping in view overall performance of the participants, their academic qualification and experience, the name of Syed Iftikhar Ahmed S/O Syed Muhammad Idrees was unanimously recommended. Ihsanullah S/O Abdur Rauf has mentioned his address District Dir Lower in his application at serial No.16-B. Papers were checked and explanation was offered during the course of interview. It was confirmed that he bears domicile from District Dir Upper, having been prepared in the year 1998. He explained that at the time of submission of his application, he was serving in District Dir Lower in the prison Department at Timergara, and this address given in the application was his address of posting and not the address of domicile.

Although amongst the fresh candidates Bacha Rahman S/O Gran Khan topped the list. however on the parameter of 75% recruitment by promotion for this category Syed Ifikhar Ahmed took in edge over Bacha Rahman , specially the vacancy is only one.

Likewise the case of promotion from Junior Clerk to Senior Clerk was also considered . In this category only one promotion was due

STENOTYPIST BPS-12.

In this category two vacancies /posts were required to be filled in. In all 17 applications were received. 13 eligible and two ineligible candidates appeared in the written test and merit list thereof maintained. All them also participated in the test for shorthand and typing, but non of them qualified written test, shorthand and typing test. Therefore, they were not considered for appointment. These vacancies in the interest of service and department were left vacant.

KEY PUNCH OPERATOR BPS-10.

In all 56 applications were received in both establishments with the ration 31 and 25. Amongst them only 27 candidates turned up to participated in the written test, merit list whereof is maintained. Although only 14 of them secured 12 marks or above yet all of them were provided the opportunity of operating the machine and they also interviewed. It was a purely technical matter, therefore, expert services were required . Learned Secretary to His Lordship the Chief Justice Hon'ble Peshawar High Court Peshawar. Mr. Fakhar Zaman was kind enough to provide these services through nominee of Hon'ble High Court, learned Senior Civil Judge Malakand at Bakhela, Mr. Fazal Sattar Khan. Questions papers were provided through expert service mentioned to above and through, Mr. Kamran from Computer Branch Hon'ble Peshawar High Court Peshawar. All the candidates who appeared in the written test were put to practical operation of the device and thoroughly interviewed by Mr. Kamran expert in the field, under the supervision of the selection committee. Based on technical know how and skill is observed by Mr. Kamran, the expert and result of interview by the committee alongwith the expert, the

following names have been unanimously recommended by the Committee for recruitment based on the opinion of the expert:-

1. Sajjad Ahmed S/O Syed Ahmed Khan
2. Murtaza Muhsin Zaman S/O Muhammad Zaman
3. Muhammad Irshad S/O Sher Bahadar

JUNIOR CLERK BPS-5.

In this category eight (8) vacancies 5:3 from this establishment and that of the leaned Senior Civil Judge/Aala Illaqa Qazi Dir Upper required recruitments both by promotion and direct selection. First of all the case of promotion was considered. The formula set out by the Hon'ble High Court is that 30% recruitment shall be made by promotion. First Daftari and Record Lifter Matric with three years experience shall be considered for such promotion otherwise the promotion shall be worked out from Chowkidar , Naib Qasid and Sweeper with Matric qualification 5 years experience from the joint seniority list. We have Bacha Muhammad, Inayat Ullah Chowkidars, Khaista Qayum Naib Qasid and Faiz Ur Rahman Sweeper. But according to this seniority list Inayat Ullah Chowkidar is shown under Matric . Therefore, Naib Qasid and Sweeper were considered , but on scrutiny it was found that except Faiz Ur Rahman Sweeper and Naib Qasids were recruited in the year 2003 , or they were under Matric. As such they lacked three years experience and qualification . Interse comparison of two Chowkidars namely Bacha Muhammad and Inayat Ullah was made. Both of them were shown under Matric the seniority list but it was brought to the notice of the committee that Inayat Ullah has recently passed SSC exam. Upon scrutiny of service record it was leant that entry to this effect is made in his service book on his written request . Since he is the senior most having been appointed in the year 1998 , with clean service record and duly qualified was considered and then unanimously recommended for promotion. Therefore, on this post Inayat Ullah S/O Said Hassan is given promotion.

Likewise in the establishment of Senior Civil Judge /Aala Illaqa Qazi Dir Upper , the senior most candidates were considered on the parameter of fitness as well. Keeping in view the service record of these candidates interse Mr. Syed Sajjad Ali Shah S/O Syed Muhammad Noor Ali Shah was found senior cum fit for promotion and the committee unanimously recommended his name for promotion.

For direct recruitment in all 181 applications were received ,108 and 83 in each establishment. For the convenience, to save the time and to avoid any confusion, written test was organized jointly. Result of written test 48 candidates secured 12 or above marks. There was some confusion about the non-mention of names of certain candidates in the working paper. Therefore, they were allowed to appear in written test and separate merit list was maintained. Accordingly candidates who qualify written test as maintained in merit list "A" and "B" were further tested on the touch stone of typing capability with reference to speed. Thereafter all of them were thoroughly interviewed and another merit list with accumulative effect of written test, typing and interview was prepared, wherein the following eight (8) top position holders were considered fit and recommended for appointment:-

1. Shakeel Khan S/O Sher Bahadar
2. Shezada Fahad S/O Shad Muhammad
3. Jamil Ur Rahman S/O Said Maluk
4. Shafiullah S/O Muaziz Khan
5. Sultan Bakht S/O Jehan Bakht
6. sUmer Zeb S/O Nowsherwan
7. Shehzad Ur Rahman S/O Rahmat Karim
8. Hamid S/O Fazal Mahmood

May we mention that consequent upon promotion of Syed Sajjad Ali Shah from Junior Clerk to the post of Senior Clerk yet an other vacancy in the cadre of Junior Clerk was caused. In view of the prescribed formula of 30% and 70%, this vacancy was filled in through direct recruitment and as above. Further more, due to promotion of Inayat Ullah from the post of Chowkidar to the post of Junior Clerk, this caused vacancy was filled in through the appointment of Yaseen Syed S/O Hazrat Syed, who applied for the post of Naib Qasid, but there was only one vacancy in that particular scale

NAIB QASID BPS-1

Only one vacancy of Naib Qasid was vacant in this establishment for which 21 applications were received with regard to qualification and other grounds of suitability result of interview. Mr. Abdur Rahman S/O Samiul Haq was found fit for appointment and unanimously recommended by the committee. The next most suitable candidate Mr. Yaseed Syed, as mentioned to above was accordingly accommodated. Further more, special heed was given to the rule of percentage for appointment through direct recruitment and appointments by promotion. For the post of Stenotypist BPS-12 as mentioned above, the vacancies are left vacant. With regard to BPS 5 & 7, the two cases of promotion were considered and finalized accordingly, while the remaining vacancies are filled in through direct recruitment, but under the circumstances, in the event of difficulty, the guidance of Hon'ble High Court was requested for, and the office of the learned Member Inspection Team was kind enough to provide the esteemed guidance readily, specially in respect of confusion with regard to percentage and rules for promotion.

Submitted, pleas.



Fazal Sattar Khan
SCJ/AIQ Malakand
at Bathkela Nominee
of Hon'ble Peshawar
High Court Peshawar
(Member)

Pir Bakhsh Shah
Distt & Sessions Judge/
Zilla Qazi Dir Upper
(Chairman)



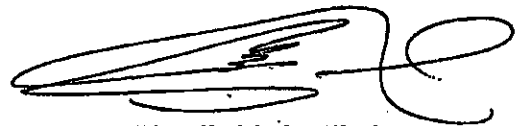
Aman Ullah Khan Sullk
Addl: Distt & Sessions Judge/
Izafi Zilla Qazi Wari
(Member)

No. 285-287 / Dir Upper

Dated 2/03/2005.

Copy forwarded to

1. The Hon'ble Registrar Peshawar High Court Peshawar for information, please.
2. The learned Members of Committee.



Pir Bakhsh Shah
Distt & Sessions Judge/
Zilla Qazi Dir Upper
(Chairman)

OFFICE ORDER:

In pursuance of the recommendations of the Departmental Promotion Committee and Departmental Selection Committee, vide its meeting dated 01/03/2005, the following promotions/selections and appointments are made in the in the interest of public service with immediate effect:-

Sl	NAME	FATHER NAME	RESIDENT OF	POST WITH BPS	POSTING
1.	Ifikhar Ahmed	S. Muhammad Idrees	Rehankot Dir	Stenographer BPS-15	Promoted and posted in the court of ADJ/ZQ Wari against the vacant post.
2.	Murtaza Muhsin Zaman	Muhammad Zaman	Dir	KPO BPS-10	Appointed and posted in the court of ADJ/ZQ Wari against the vacant post.
3.	Sajjad Ahmed	Said Ahmed Khan	Paraw Shah Dir	KPO BPS-10	Appointed and posted in the court of SCJ/AIQ Dir(U) against the vacant post.
4.	Muhammad Irshad	Sherbahadar	Dir	KPO BPS-10	Appointed and posted in the court of CJ/IQ Dir(U) against the vacant post.
5.	Syed Sajjad Ali Shah	Syed Muhammad Noor Ali Shah	Gunori	Senior Clerk BPS-7	On promotion posted as Record Keeper in the court of DSJ/ZQ Dir Upper.
6.	Bacha Rahman (posted in court of ADJ Wari)	Gran Khan	Wari	Senior Clerk BPS-7	Transferred and posted in the court of CJ/IQ Wari as Reader.
7.	Inayat Ullah	Said Hassan	Wari	Junior Clerk BPS-5	On promotion posted as Civil Muharir in the court of ADJ/ZQ Wari against the vacant post.
8.	Shakeel Khan	Sher Bahadar	Wari	Junior Clerk BPS-5	Promoted and posted as Muharir in the court of ADJ/ZQ Wari against the vacant post.
9.	Shafiqullah	Muazziz Khan	Dir	Junior Clerk BPS-5	Appointed and posted in the court of ADJ/ZQ Wari against the vacant post as criminal Muharir.
10.	Shezda Fahad	Shad Muhammad	Siu Naghu Dir	Junior Clerk BPS-5	Appointed and posted in the court of DSJ/ZQ Dir Upper against the vacant post as Record Clerk.
11.	Jamil Ul Rahman	Said Malik	Kuss Dir	Junior Clerk BPS-5	Appointed and posted in the court of CJ/IQ Sheringal against the vacant post as Muharir.
12.	Sultan Bakht	Jehan Bakht	Bibyaur	Junior Clerk BPS-5	Appointed and posted in the court of CJ/IQ Sheringal against the vacant post as Muharir.
13.	Umer Zeb	Nowshervan	Wari	Junior Clerk BPS-5	Appointed and posted in the court of SCJ/AIQ Dir Upper against the vacant post as Muharir.
14.	Shezad Ur Rahman	Rahmat Karim	Kuss Dir	Junior Clerk BPS-5	Appointed and posted in the court of DSJ/ZQ Dir Upper against the vacant post as Criminal Muharir.
15.	Hamid	Fazal Mahmood	Dir	Junior Clerk BPS-5	Appointed and posted in the court of CJ/IQ Dir Upper against the vacant post as Muharir.
16.	Abdur Rahman	Samit Haq	Dir	Naib Qasid BPS-1	Appointed and posted in the court of DSJ/ZQ Dir Upper against the vacant post.
16.	Yuseen Said	Hazrat Said	Rehankot	Chowkidar BPS-1	Appointed and posted in the court of CJ/IQ Wari against the vacant post.

NOTE:

All the appointees should report at the place of their respective posting within three days after the receipt of this order.

TERMS & CONDITIONS:-

1. Appointments at serial No.2 to 4 and 9 to 16 are temporary in nature and may be terminated any time without giving any notice/assigning any reasons.
2. Appointments at serial No.2 to 4 and 9 to 16 are subject to medical fitness.
3. Appointments at serial No.2 to 4 and 9 to 16 are subject to NWFP Govt Contract Policy and other Civil Servant Rules.

District & Sessions Judge/
Zilla Quzi Dir Upper

No 290-309 /DSJ/ZQ Upper Dir dated 4/3/2005.

Copy to:

1. The Hon'ble Registrar Peshawar High Court Peshawar
2. The Addl: District & Sessions Judge/IZafi Zilla Quzi Wari
3. The Senior Civil Judge/Aala Hlaqa Quzi Dir Upper and through him all the Civil Judges in District
4. The District Accounts Officer Dir Upper
5. Official concerned by name.

District & Sessions Judge/
Zilla Quzi Dir Upper

NKS 3

C

**OFFICE OF THE SENIOR CIVIL JUDGE (JUDICIAL)/AALA
ILLAQA QAZI, DIR UPPER**

**OBJECTION OF SHAFI ULLAH (SENIOR CLERK) OVER TENTATIVE
SENIORITY LIST OF SENIOR CLERKS FOR THE YEAR, 2021.**

REPORT

Shafi Ullah, senior clerk (objector) has questioned tentative seniority list of senior clerks for the year, 2021 to the extent of Shahzada Fahad, Jamil ur Rahman, Sultan Bakht and Hamid Khan (senior clerks/respondents). He alleges that he (objector) and respondents were recruited as junior clerks vide order No. 290-30/DSJ/ZQ, Dir Upper dated 04/03/2005. He (objector) was placed at serial No. 09 of appointment order while respondents at serial No. 10, 11, 12 and 15 (respectively) hence he is senior to them (respondents). He was placed junior to respondents in seniority list for the year, 2010 on the basis of age in violation of law and rules. According to him, respondents were promoted to the post of senior clerk vide order No. 231-04/DSJ/ZQ, Dir Upper dated 12/06/2010 while he was ignored without any reason. He was subsequently promoted to the post of senior clerk on 16/07/2018 hence he may be placed senior to them (respondents).

Objection petition, so filed, was marked to undersigned for further proceedings according to law. It was registered. Respondents were put on notice. They appeared and contested objection by filing written replies. Parties were heard and record perused.


Akbar Ali Moamind
Senior Civil Judge (Judicial)/JM/AIQ
Dir Upper

07/3/2022

(6)

Available record transpires that eight (08) vacancies of junior clerks were lying vacant in the establishment of District & Sessions Judge, Dir Upper back in the year, 2004. Applications to posts were invited through publication in daily "Mashriq" and daily "AAJ". 108 candidates applied for the posts who were subjected to written test. 48 out of total strength secured 12 and above marks and were subjected to typing test followed by interview by the Department Selection Committee (DSC). The following 08 top position holders were considered fit and recommended for appointment as **Junior Clerks (BPS-05)** on 04/03/2005:-

- (1) Shakeel Khan s/o Sher Bahadar
- (2) Shahzada Fahad s/o Shad Muhammad
- (3) Jamil ur Rahman s/o Said Maluk
- (4) Shafi Ullah s/o Muaziz Khan
- (5) Sultan Bakht s/o Jehan Bakht
- (6) Umar Zeb s/o Nowsherwan
- (7) Shehzad ur Rahman s/o Rahmat Karim


Akbar Ali Mo(8) and
Senior Civil Judge (Judicial)/JIA/AIO

Dir Upper


07/3/2022

Hamid s/o Fazal Mehmood

Minutes of the meeting (referred to above) were followed by an appointment order/office order bearing No. 290-309/DSJ/ZQ, Upper Dir dated 04/03/2005 wherein Shafi Ullah (objector) was placed senior to Shahzada Fahad and Jamil ur Rahman (respondents No.1 & 2) though he was junior to them in order of merit assigned by the Departmental Selection Committee. Objector was placed junior to Shakeel Khan, Jamil ur Rahman (respondent No.2), Shahzada Fahad (respondent No.2) and even Sultan Bakht (respondent No.3) in seniority list for the year, 2004.

①

This entry continued till 2010 when in the meanwhile, a Departmental Promotion Committee (DPC) was constituted for promotion of five junior clerks to the post of senior clerk. Initially, working paper dated 28/04/2010 was prepared for promotion of junior clerks which included name of objector (Shafi Ullah) at serial No. 05 however another working paper dated 12/06/2010 was issued wherein name of objector was replaced with name of Hamid Khan (respondent No. 04). Junior clerks Inayat Ullah, Jamil ur Rahman (respondent No.2), Shahzada Fahad (respondent No.1), Sultan Bakht (respondent No.3) and Hamid Khan (respondent No.4) were considered on the basis of seniority cum-fitness and were found fit for promotion to the post of senior clerk (BPS-09) vide minutes of the meeting of Departmental Promotion Committee bearing No. 229-04/DSJ/ZQ, Dir Upper dated 12/06/2010. Objector was thus placed junior to respondents in seniority list for the year, 2010. He was promoted to the post of senior clerk on the recommendations of


 Akbar Ali, Departmental Promotion Committee dated 14/12/2018 bearing No. 463-
 Senior Civil Judge (Judicial)/JM/AIO
 Dir Upper 66/4/ZQ/DSJ, Dir Upper. He is aggrieved of the seniority of respondents
 07/3/2022
 with ground reflected in objection petition.

Admittedly, objector was placed at serial No.4 of merit list assigned by Departmental Selection Committee in its minutes dated 04-03-2005. It shows that he was junior to Shakeel Khan, Shahzada Fahad (respondent No.1) and Jamil ur Rahman (respondent No.2) but was placed senior to them (respondents No.1 & 2) in appointment letter No. 290-309/DSJ/ZQ, Upper Dir dated 04/03/2005. Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 provides that the appointing

(8)

authority shall cause a seniority list of the members for the time being of such service, cadre or post to be prepared and seniority on initial appointment shall be determined as may be prescribed. Rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 deals with procedure of inter-se seniority of civil servants and states that seniority inter-se of civil servants appointed to a service, cadre or post shall be determined in the case of persons appointed by initial recruitment, in accordance with the merit assigned by the commission or as the case may be, the Departmental Selection Committee. Objector has been appointed by initial recruitment to the post of junior clerk after a written test and interview and he has been placed at serial No. 04 of the merit list by the Departmental Selection Committee. Names of Shahzada Fahad (respondent No.1) and Jamil ur Rahman (respondent No.2) appear at serial No. 2 and 3 of the merit list. Entire service record of parties is attached herewith as to how objector was placed senior to Shahzada Fahad and Jamil-ur-Rahman in appointment letter thus entry in appointment order to the extent of objector appears to be a clerical mistake.

Akbar Ali
Senior Civil Judge (Judicial) JJA/AIQ

Dir JJA
07/3/2022

Respondents have admittedly been promoted to the post of senior clerk by the Department Promotion Committee (DPC) in the year, 2010 while objector in the year, 2018. It is a matter of record that objector was not considered by the Committee for promotion in the year 2010. Similarly, no remarks or observations were recorded by the Committee about his non fitness, fault or demerit. Undersigned has perused annual confidential reports (ACRs) of objector for the years,

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2008 to 2010 wherein he has been held fit for promotion. Since objector was neither considered with respondents for promotion to the higher post in 2010 nor was anything discussed in minutes of the meeting of Departmental Promotion Committee dated 12/06/2010 that he is not fit for promotion or was ever superseded on merits by his juniors hence his case is covered by Explanation II and III of Rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. Said Explanations are reproduced below for ready reference:-

Explanation-II:- If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted the person promoted first shall rank senior to the person promoted subsequently; provided that junior person shall not be deemed to have superseded a senior person if the case of the senior person is deferred for the time being for want of certain information or for incompleteness of record or for any other reason not attributing to his fault or demerit.

Akbar Ali Mohmand
Senior Civil Judge (Judicial)
Dir Upper

07/3/2022


Explanation-III:- A junior person shall be deemed to have superseded a senior person only if both the junior and the senior persons were considered for the higher post and the junior person was appointed in preference to the senior person.

Objector has not been considered for promotion in the year 2010 without any fault or demerit on his part or any reason to disqualify him

10

for promotion thus he cannot be treated to have been superseded by his juniors. He has been promoted to the same rank (senior clerk) as such he is entitled to retain his original seniority assigned to him by the Departmental Selection Committee vide minutes dated 04/03/2005. In this way, he is senior to Sultan Bakht (respondent No.3) and Hamid Khan (respondent No.4) but is junior to Shahzada Fahad (respondent No.1) and Jamil ur Rahman (respondent No.2).

It is, therefore, recommended/suggested that seniority of objector along with respondents may be re-fixed as per order of merit assigned by the Departmental Selection Committee vide minutes dated 04/03/2005. Shehzada Fahad (respondent No.01) may be placed senior followed by Jamil ur Rahman (respondent No.02), Shafi Ullah (objector), Sultan Bakht (respondent No.03) and Hamid Khan (respondent No.04), if agreed, please.


Akbar Ali Mohmand
Senior Civil Judge (J)/AIQ
Dir Upper

07/3/2022
Akbar Ali Mohmand
Senior Civil Judge (Judicial)/JM/AIQ
Dir Upper

ANZ

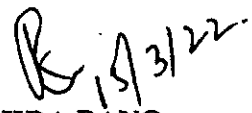
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(W)

(D)

In the court of
RASHIDA BANO
DISTRICT JUDGE/ZILLA QAZI
DIR UPPER

Shafi Ullah---versus--- Shahzada Fahad etc.

Serial No. and Date of order of proceedings	Order or other Proceedings with Signature of Judge or Magistrate & that of parties or counsel when necessary.
1.	2.
ORDER 15/03/2021	<ol style="list-style-type: none">1. Report and record received from the office of learned Senior Civil Judge (Judicial)/AIQ, Dir Upper.2. On careful scrutiny of the report submitted by the learned Judge, the undersigned hereby agree with the findings and observations made therein. Therefore, the fresh/final seniority list of the officials concerned, may be issued accordingly.3. File be consigned to record room after its necessary completion and compilation. <p style="text-align: right;"> RASHIDA BANO District Judge/Zilla Qazi Dir Upper</p>

2010

(E)

MINUTE OF THE MEETING OF DEPARTMENTAL PROMOTION COMMITTEE
DATE 12/06/2010.

In continuation of letter No. 1588-97/B&A dated 15/03/2010 with reference to all correspondence on the subject matter and pursuant to letter No. PHC/Admn (DSC-DPS)/23/10299/Admn dated 05/06/2010 of the Hon'ble Peshawar High Court Peshawar, working paper was prepared and the following Departmental Promotion Committee was constituted for promotion of the ministerial staff against the vacant posts in the sessions Division Dir Upper. The committee comprised of the following members.

COMMITTEE:-

1. **Khalil Khan Khalil**
District & Sessions Judge/ Zilla Qazi Dir Upper.....(Chairman).
2. **Asad Hameed Khan Bangash.**
Addl: Member Inspection Team-III.
Nominee of the Peshawar High Court Peshawar.....(Member)
3. **Abdul Baseer**
Senior Civil Judge Dir Upper(Member)

DETAILS OF VACANCIES

S//	Vacant/BPS	No.of Vacancies	Establishment
1	Senior Clerk BPS -9	5	District & Sessions Judge/Zilla Qazi
2	Junior Clerk BPS -7	1	-do-
3	Daftari BPS -2	1	-do-

DEPARTMENTAL PROMOTION COMMITTEE PROCEEDINGS:-

SENIOR CLERK BPS -7.

There were five sanctioned vacancies of Senior Clerks BPS -9, vide letter No. 1588-97/B&A dated 15/03/2010 of the Hon'ble Peshawar High Court, Peshawar. These vacancies were required to be filled in through promotion. In this context the case of five senior most Junior Clerks was considered on the basis of seniority cum fitness. The cases of the following officials were put up before the promotion committee, they were found fit for promotion to the posts of Senior clerks BPS-9: -

1. Mr. Inayat Ullah, Junior Clerk BPS-7.
2. Mr. Jamil Ur Rahman, Junior Clerk BPS-7
3. Mr. Shahzada Fahad, Junior Clerk BPS-7.
4. Mr. Sultan Bakht, Junior Clerk BPS-7.
5. Mr. Hameed Khan, Junior Clerk BPS-7

JUNIOR CLERK BPS -7.

As Five Junior clerks were promoted to the post of Senior Clerks BPS -9, their seats were vacated with One sanctioned post of Junior Clerk/ Muharir the total number of seats became 6. Out of six vacant posts one post of Junior Clerk BPS-7 was to be filled in by promotion and the remaining five posts through direct recruitment.

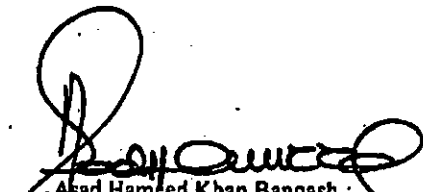
Mr. Latifullah Daftari BPS -2 was found fit for promotion to the post of Junior Clerk BPS-7

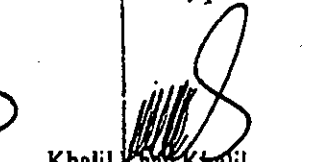
DAFTARI - BPS -2.


The post of Daftari BPS -2 fell vacant due to the promotion of Mr. Latifullah Daftari BPS -2. According to the formula the post of Daftari BPS -2 was required to be filled in from the Chowkidar, Naib Qasid and Sweeper subject to the required criteria.

Mr. Zakirullah Naib Qasid BPS-1 was found fit for promotion to the post of Daftari BPS -2.

Submitted, please.


Asad Hameed Khan Bangash
AMIT-III
Nominee of the Hon'ble
Peshawar High Court Peshawar
(Member).

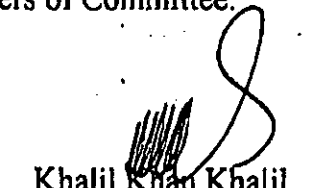

Khalil Khan Khalil
District & Sessions Judge/
Zilla Qazi Dir Upper
(CHAIRMAN)


Abdul Baseer
Senior Civil Judge
Dir Upper
(Member)

No. 229-04 /DSJ/ZQ Dir Upper 12-06 /2010

Copy forwarded to:

1. The Hon'ble Registrar Peshawar High Court Peshawar.
2. The Learned Members of Committee.


Khalil Khan Khalil
District & Sessions Judge/
Zilla Qazi Dir Upper
(CHAIRMAN)

20/10

SENIORITY LIST OF THE JUNIOR CLERKS SESSIONS DIVISION DIR UPPER FOR THE YEAR 2010.

S#	Name of official	Father name	Date of birth	Initial appointment as	Dated of initial appointment	Joining the present cadre	Present post	BPS	Qualification
				Chowkidar	12/09/1981	5/3/2005	Junior Clerk	7	Matric
1	Inayat Ullah	Syed Hassan	2/2/1977	Chowkidar	12/09/1981	5/3/2005	Junior Clerk	7	Matric
2	Jamil Ur Rahman	Said Malook	15/4/1975	Junior Clerk	4/3/2005	5/3/2005	--do--	7	BA
3	Shahzada Fahad	Shad Muhammad	12/4/1983	Junior Clerk	4/3/2005	5/3/2005	--do--	7	FSc
4	Sultan Bakht	Jehan Bakht	15/6/1984	Junior Clerk	4/3/2005	5/3/2005	--do--	7	FSc
5	Shafiullah	Muazaz Khan	15/10/1984	Junior Clerk	4/3/2005	5/3/2005	--do--	7	FSc
6	Hamid Khan	Fazal Mahmood	16/7/1980	Naib Qasid	26/8/2003	9/03/2005	--do--	7	BA
7	Rafiuddin	Muhammad Rafiq	5/2/1971	Naib Qasid	28/8/2003	13/11/2006	--do--	7	BA
8	Muhammad Ilyas	Muhammad Sardar	10/7/1980	Naib Qasid	28/8/2003	13/11/2006	--do--	7	MA
9	Muhammad Islam	Shah Nasim Khan	14/2/1974	Junior Clerk	4/3/2005	13/11/2006	--do--	7	BA
10	Muhammad Javid	Mubarak Jan	15/1/1978	Junior Clerk	13/11/2006	15/11/2006	--do--	7	BA
11	Mubarak Zeb	Noor Hamid Jan	1/3/1977	Sweeper	28/8/2003	11/7/2008	--do--	7	BA
12	Kifayat Ullah	Hazrat Yousaf	1/3/1977	Process Server	4/3/2005	14/7/2008	--do--	7	FA
13	Ikram Ud Din	Fazal Rahim	10/6/1977	Chowkidar	2/9/2003	14/7/2008	--do--	7	BA
14	Majeed Ullah	Jehan Zeb	3/5/1978	Process Server	26/8/2003	14/7/2008	--do--	7	B.A.
15	Khalil Ur Rahman	Nawroz Khan	11/1/1980	Process Server	10/11/2000	14/7/2008	--do--	7	Matric
16	Said Rahman	Muhammad Amir	10/2/1984	Junior Clerk	11/7/2008	14/7/2008	--do--	7	BA
17	Tahir Jamal	Muht Jan Jamal	1/2/1983	Junior Clerk	10/10/2008	11/10/2008	--do--	7	BA
18	Saeed Khan	Baz Mir	25/11/1983	Naib Qasid	26/8/2003	11/10/2008	--do--	7	BA
19	Ifikhar Ahmad	Khaista Muht	12/3/1982	Junior Clerk	31/1/2009	2/2/2009	--do--	7	BA

Circulated to all concerned to file objection if any within fifteen days.

(E)

OFFICE ORDER

In pursuance of the recommendations of the Departmental Promotion Committee, vide its meeting dated 12/06/2010, the following promotions are hereby made in the interest of public service with immediate effect:-

S#	Name	Designation with BPS	Promoted
1	Inayat Ullah	Junior Clerk BPS -7	Promoted to the post of Senior Clerk BPS -9
2	Jamil Ur Rahman	Junior Clerk BPS -7	Promoted to the post of Senior Clerk BPS -9
3	Shahzada Fahad	Junior Clerk BPS -7	Promoted to the post of Senior Clerk BPS -9
4	Sultan Bakht	Junior Clerk BPS -7	Promoted to the post of Senior Clerk BPS -9
5	Hameed Khan	Junior Clerk BPS -7	Promoted to the post of Senior Clerk BPS -9
6	Latif Ullah	Daftari BPS -2	Promoted to the post of Junior Clerk BPS -7
7	Zakir Ullah	Naib Qasid BPS -2	Promoted to the post of Daftari BPS-2

- s d -
District & Sessions Judge/
Zilla Qazi Dir Upper

No. 231-04 /DSJ/ZQ Dir Upper 12-06- /2010

Copy forwarded to:

1. The Hon'ble Registrar Peshawar High Court Peshawar.
2. The Addl: District & Sessions Judge/Izafi Zilla Qazi Wari.
3. The Senior Civil Judge/ Aala Illaqa Qazi Dir Upper.
4. The District Accounts Officer Dir Upper.
5. The Official Concerned.


District & Sessions Judge/
Zilla Qazi Dir Upper

⑨

Form "C" (Revised)
Assistant and Clerk

GOVERNMENT OF N.W.F.P
JUDICIAL DEPARTMENT

Confidential Report 2007

02-06-08 to 10/11/08, 2008

1. Name: Shafiullah

2. Designation: Junior Clerk - Bps. No. 7

3. Branch in which implied during the year with period

4. Observation of office produce e.g.

- i. Referencing and paging of notes and copy correspondence *Below average*
- ii. Keeping files and papers in tidy condition *Below average.*
- iii. Prompt as accuracy in disposing of work *Below average.*

5. Observations as.

- i. Intelligence. *Average.*
- ii. Knowledge of Procedure and Regulations *Average.*
- iii. Punctuality *Below average.*
- iv. Co-operation with other staff *Average.*
- v. Amenability to discipline *Below average.*
- vi. Skill in drafting *Average.*

6. Integrity _____

- i. Incorruptible _____
- ii. Reported to be corrupt _____
- iii. Believed to be corrupt because of _____
 - a. Monition considerations _____
 - b. Other considerations _____

Knowledge of work and duty as Member of the
person reported upon is average.

Fitness for promotion not fit for special promotion.

General Remarks The person/servant reported upon
has been found showing laxity in performance
of duty assigned to him.

Dated: _____

Reporting Officer Signature: _____

Name (in BLOCK letters): UBAIDULLAH.

Designation: C.S./I. M/T. Bari Kharwal.

General Remarks by higher Officers

I do not agree with R.O. He is
a very good officer who has
his job & he is also fit
for promotion.

Dated: _____

Reporting Officer Signature: _____

Name (in BLOCK letters): Muhammad Aslam Khan

Designation: D.S. 8129 D.H. 104.

WORKING PAPER FOR PROMOTION

Name of the Establishment

District & Sessions Judge / Zilla Qazi Dir Upper

Promotion to the post of Senior Clerk BPS 9 Number of Vacancies: Five (5)

To be filled in from amongst Junior Clerk BPS-7

Date: 28/04/2010

S.No	Names in order of seniority of all the holders of the posts from amongst whom the subject posts to be filled in	Present post held	Present post held since	Date of joining the service	First appointment as	Typing speed	Qualification (division)				Performance			
							Matric	FA	BA	Other	Ave	Good	W. Good	Absent
1	Inayatullah	Junior Clerk	5/3/2005	13 9/1998	Chowkidar		✓					Good		
2	Jamil Ur Rahmaan	Junior Clerk	5/3/2005	5 3/2005	Junior Clerk			✓				Good		
3	Shahzada Fahad	Junior Clerk	5/3/2005	3 3/2005	Junior Clerk		✓					Good		
4	Sultan Bakht	Junior Clerk	5/3/2005	5 3/2005	Junior Clerk		✓			✓		Good		
5	Shaukhat	Junior Clerk	5/3/2005	5 3/2005	Junior Clerk		✓					Good		

Prepared By:

Checked by:

District & Sessions Judge /
Zilla Qazi Dir Upper

(H)

WORKING PAPER FOR PROMOTION

Name of the Establishment District & Sessions Judge/ Zilla Qazi Dir Upper

Promotion to the post of Senior Clerk BPS-9 Number of Vacancies: Five (5)

To be filled in from amongst Junior Clerk BPS-7

Date: 12/06/2010

S.No	Names in (order seniority) of all the holders of the posts from amongst whom the subject post is to be filled in	Present post held	Present post held since	Date of joining the service	First appointment as	Typing speed	Qualification (division)				Performance Evaluation								
											2007			2008			2009		
							Matric	FA	BA	Other	Ave	Good	V. Good	Ave	Good	V. Good	Ave	Good	Go
1	Inayatullah	Junior Clerk	5/3/2005	12/9/1998	Chowkidar	√					√				√				
2	Jamil Ur Rahman	Junior Clerk	5/3/2005	5/3/2005	Junior Clerk			√			√		√			√			
3	Shahzada Fahad	Junior Clerk	5/3/2005	5/3/2005	Junior Clerk		√			√			√			√			
4	Sultan Bakht	Junior Clerk	5/3/2005	5/3/2005	Junior Clerk		√			√			√			√			
5	Hamid Khan	Junior Clerk	9/3/2005	26/8/2003	Nazib Qasid		√			√				√			√		

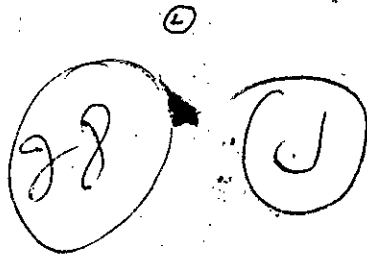
Prepared By:

Checked by:


 District & Sessions Judge/
 Zilla Qazi Dir Upper

(H)

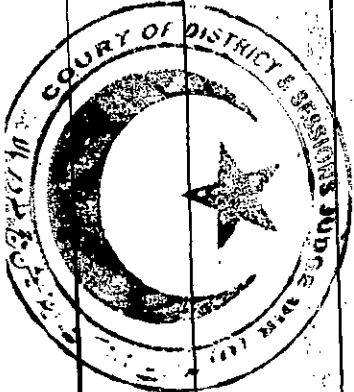
In the court of
SUMBAL NASEER
DISTRICT & SESSIONS JUDGE/ZQ,
DIR UPPER

(2)


Shafi Ullah ---versus--- Shazada Fahad etc.

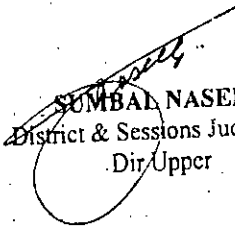
REVIEW PETITION


Serial No. and Date of order of proceedings	Order of other Proceedings with Signature of Judge or Magistrate & that of parties or counsel when necessary.
<p>OR <u>01</u> 14/04/2022</p>	<p style="text-align: center;">2.</p> <ol style="list-style-type: none"> 1. Petitioner filed the instant review petition, today, be entered into the relevant register. 2. Perusal of the record would transpire that, vide order dated 15/03/2022, my learned predecessor in office has passed an order on the basis of which, the report submitted by the learned Senior Civil Judge (J), Dir Upper was acceded to and directions of fresh/final seniority list were also issued. 3. The petitioner has now filed the instant review petition, however, the respondents have preferred an appeal against the final order dated 15/03/2022, therefore; this court lacks jurisdiction to entertain the same, and hence, he is directed to approach the proper forum for rederssal of his grievances. 4. This review petition is disposed of accordingly. 5. File be consigned to record room after its necessary completion and compilation.



ATTESTED

12-8-2022


SUMBAL NASEER
 District & Sessions Judge/ZQ,
 Dir Upper

No.	644
Date:	12-8-2022
Name:	M. J. Qureshi
Work:	348
Fee:	6
Signature:	
Date of:	12-8-22
Date of Delivery:	12-8-22

Office of the

DISTRICT & SESSIONS JUDGE/ ZILLA QAZI DIR UPPER

Office # 0944-880721

Fax# 0944-880721

Email:dc_diru@yahoo.com

AUTHORITY LETTER

In compliance with letter bearing No. 1263/Admn dated 23.02.2024 of the august Peshawar High Court, Peshawar, Mr. Tooti Rahman, Superintendent BPS-17, District Judiciary Dir Upper is hereby nominated to pursue and represent the respondents No.1&2 on each and every date of hearing in Service Appeal No. 1352 of 2022 titled Shafiullah vs District & Sessions Judge Dir Upper & others before the Khyber Pakhtunkhwa Service Tribunal Peshawar.


FAZAL SATTAR

**District & Sessions Judge/ZQ
Dir Upper**

No. 121-22/4 /DSJ/ZQ Dir Upper dated 05.03 /2024

Copy forwarded for information to:

1. The Registrar, Peshawar High Court, Peshawar.
2. The Registrar KP Service Tribunal, Peshawar.


**District & Sessions Judge/ZQ
Dir Upper**

Fazal Sattar Khan