


FORM OF ORDER SHEET

Court of _____

Appeal No. 1499/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	20/09/2024	<p>The appeal of Mr. Akbar Ali presented today by Mr. Javed Iqbal Gulbela Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 30.09.2024. Parcha Peshi given to counsel for the appellant.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

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

Service Appeal No. 1499/2024

In matter of;

Akbar Ali

VERSUS

Registrar PHC & Others

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Dated: 18-09-2024

Through


Appellant

Javed Iqbal Gulbela
Advocate, Supreme Court,
Pakistan.

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

Service Appeal No. 1499/2024

In matter of;

Akbar Ali JUNIOR CLERK (BPS-11) District Judiciary, Peshawar.

..... Appellant

VERSUS

1. **The Registrar**, Peshawar High Court Peshawar.

2. **District & Sessions Judge**, Peshawar.

..... Respondents

Appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned Official Communication Letter No. 1967 Dated: 29-03-2024, wherein an Adverse Remarks has been recorded in the Annual Confidential Report (ACR) of the appellant for the year 2022, And Departmental Appeal No.07, having Endorsement No.2308 Dated: 16-04-2024, has not been decided, inspite of lapse of statutory period, hence the instant service appeal.

Respectfully Sheweth,

1. That the Appellant is naturally is a peaceful and law abiding citizen of Islamic Republic of Pakistan and hails from a respectable family
2. That after getting onto the rolls of this prestigious Department for many years, the Appellant have had pulled day & night to render his best in the service of the Department with utmost zest and professional gusto, which is crystal evident from the long-stretched service period of the Appellant spread over many years, that too without receiving any taint or blemish on the Appellant's service record, and currently performing his service in the Subordinate Judiciary, Peshawar as Junior

Clerk/Moharrir (BPS-11). **(Copy of the appointment order is annexed as "A")**

3. That Annual Confidential Report (ACR) vide was communicated to the appellant vide impugned official communication Letter No. 1967 Dated: 29-03-2024, wherein an impugned Adverse Remarks i.e. Part-IV(D): "Not yet fit Promotion", Pen Picture: "He is slow learner and not very punctual but try to learn. Adverse.", has been passed and inscribed in his ACR's 2022; which is incorrect, illegal and unlawful, therefore the impugned Adverse Remark & impugned Reference Letter are liable to be set aside. **(Copy of the impugned Official Communication Letter No. 1967 Dated: 29-03-2024 is Annexed as "B")**
4. That feeling aggrieved the appellant moved Departmental Appeal No.07, having Endorsement No.2308 Dated: 16-04-2024 against the impugned Official Communication Letter No. 1967 Dated: 29-03-2024 to respondent No.01, but the same has not been decided, inspite of lapse of statutory period. **(Copy of the Departmental Appeal No.07, having Endorsement No.2308 Dated: 16-04-2024 is annexed as "C")**
5. That feeling aggrieved from the acts of the Respondents and having no other efficacious remedy available elsewhere & forum to be addressed at, the Appellant approaches this Hon'ble Tribunals, upon the following grounds, inter alia:-

GROUND:

- A. That it is settled principle and rule of law that whilst any "Adverse Remarks" are being added or holds the chance of being added to the one's ACR, the person shall be intimated mandatorily with a Warning Letter or Counseling as per settled dictum by the several judgments of the Superior Courts on the subject, but in the case of the Appellant, unbothered from the situation, the Department did not communicate the same to the Appellant even after his ACR's was recorded and consigned to the record room.
- B. That under the mandate of Article 4 of the Constitution, no one should be treated otherwise than in accordance with law, but here the case is *volta-facie* and a totally different yardstick has been used to treat the Appellant.

- C. That the long-continued service of the Appellant, which depends on length of his service and equity, justifiably desires and requires that having rendered his prime youth and life in the services of the Respondents, the Appellant should not be exploited or hung in dark.
- D. That the impugned adverse remarks in ACR is unwarranted, illogical and against the Rules so therefore, not maintainable at all.
- E. That the Appellant have always upheld the professional confidence, the sanctity of the department with practically unanimous determination towards his personal professional work ethic and personal (moral) aptitude, just not only to receive admiration from his high ups about his professionalism, but the Appellant's believe in work has been steering him in every way (in & off duty) to bring home and won the reverence from the people of interaction and general public for the home department of the Appellant.
- F. That the finding of the respondents is against the natural justice i.e. Audi alteram Partem & Nemo Judex Causa sua; therefore the impugned Reference Letter No. 1967 Dated: 29-03-2024, are unwarranted, hence liable to be turn down.
- G. That the law and law courts of the land have always preferred and appreciated that rules are to be followed, and have always discouraged, depreciated, and deplored any variation from rules or its violation.
- H. Any other grounds will be raised at the time of arguments with kind permission of this Hon'ble tribunal.

It is therefore, most humbly prayed that on acceptance of the instant Service Appeal, the impugned Official Communication Letter No. 1967 Dated: 29-03-2024, wherein an Adverse Remarks has been recorded in the Annual Confidential Report (ACR) of the appellant for the year 2022 may graciously be set aside, And by doing so the impugned The Adverse Remarks in the ACR's of 2022 may kindly be the expunged, in the best interest of justice.

Any other relief not specifically asked for, may also be extended in favor of the Appellant.

Dated: 18-09-2024


Appellant

Through

Javed Iqbal Gulbela
Advocate, Supreme Court,
Pakistan,

&
Saghir Iqbal Gulbela
Advocate, High Court,
Peshawar

**Muhammad Arif
Mohmand**

&
Alamzeb Khan
Advocates, Peshawar

NOTE:-

No such like appeal for the same appellant, upon the same subject matter has earlier been filed by me, prior to the instant one, before this Hon^{ble} Tribunal.


Advocate

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

Service Appeal No. _____/2024

In matter of;

Akbar Ali

VERSUS

Registrar PHC & Others.

AFFIDAVIT

I, **Akbar Ali, JUNIOR CLERK (BPS-11) District Judiciary, Peshawar**, do hereby solemnly affirm & declare on oath that all contents of the instant service appeal are true & correct to the best of my knowledge and belief, and nothing has been kept concealed from this Hon'ble Tribunal.

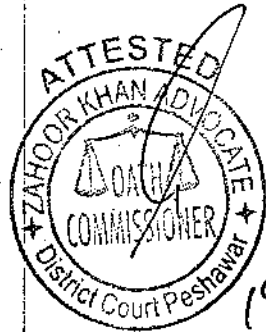
[Signature]

Deponent

17301-0403967-5
0315-9756334

Identified by:

Mr. Javed Iqbal Gulbela
Advocate Supreme Court,
Pakistan



19/09/24

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL PESHAWAR**

Service Appeal No. _____/2024

In matter of;

Akbar Ali

VERSUS

Registrar PHC & Others

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth,

1. That the appellant is filling the accompanying service appeal, the contents of which may graciously be considered as integral part of the instant petition.
2. That the appellant was sanguine for his departmental appeal, therefore the appellant waited for in hope of his personal hearing, due to which the delay of 32 days occur, as the same opportunity was extended by the respondents to other colleagues of the appellant, hence delay in filling the instant service appeal is liable to be condoned.
3. That non-filing of service appeal in time is neither intentional nor deliberative, but due to the above mentioned reason.
4. That it has been the consistent view of the Superior Courts that causes should be decided on merit rather than technicalities included limitation. The same is reported in 2004 PLC (CS) 1014 2003 PLC (CS) 769.

It is therefore, most humbly prayed that on acceptance of the instant application, the delay in the instant service appeal may kindly be condone in the interest of justice.

Dated: 18-09-2024


Appellant

Through

Javed Iqbal Gulbeta
Advocate, Supreme Court,
Pakistan.

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

Service Appeal No. _____/2024

In matter of;

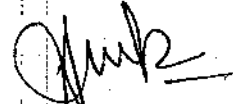
Akbar Ali

VERSUS

Registrar PHC & Others.

AFFIDAVIT

I, **Akbar Ali, JUNIOR CLERK (BPS-11) District Judiciary, Peshawar**, do hereby solemnly affirm & declare on oath that all contents of the instant application are true & correct to the best of my knowledge and belief, and nothing has been kept concealed from this Hon'ble Tribunal.



Deponent

17301-0403967-5

Identified by:

Mr. Javed Iqbal Gurbela
Advocate Supreme Court,
Pakistan



19/09/24

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

Service Appeal No. _____/2024

In matter of;

Akbar Ali

VERSUS

Registrar PHC & Others

ADDRESSES OF PARTIES

APPELLANT


Akbar Ali, JUNIOR CLERK (BPS-11) District Judiciary,
Peshawar.

ADDRESSES OF RESPONDENTS

1. **The Registrar**, Peshawar High Court Peshawar.

2. **District & Session Judge**, Peshawar.

Dated: 18-09-2024



Appellant

Through

Javed Iqbal Gulbela
Advocate, Supreme Court,
Pakistan.



DISTRICT JUDICIARY, KHYBER PAKHTUNKHWA, PESHAWAR

Ph: 091-9210099 Fax: 091-9212419
eMail: scPeshawar@yahoo.com
web: SessionsCourtPeshawar.gov.pk

No. 9086-92
Dated Peshawar 21/11/2017

Ann^u A

OFFICE ORDER

On the recommendations of Departmental Selection Committee dated 21st November, 2017, the Competent Authority is pleased to order the appointment on temporary basis of the following candidate against vacant posts of Junior Clerk (BPS-11) under the quota for son/daughter/widow of deceased employees, as mentioned in Rule-10(4) of Khyber Pakhtunkhwa Civil Servants (Appointments, Promotion & Transfer) Rules, 1989 and Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) Notification No. SO(R-VI) E&AD/1-3/2015 dated 19/04/2016, with effect from the date of assumption of charge of the post, subject to medical fitness & antecedents verification through quarters concerned:

S/No	Name	Father's Name
1.	Mr. Akbar Ali	Late Niaz Ali

2. His appointment to the service shall be subject to the following terms and conditions:

- i. He will be governed by the Khyber Pakhtunkhwa Civil Servants Act, 1973 and Pakhtunkhwa Government Servants (Appointment, Promotion & Transfer) Rules, 1989.
- ii. He will be allowed the minimum pay of BPS-11 plus other allowances as admissible under the rules.
- iii. He will be governed by such rules and instructions relating to leave, T.A, and Medical Attendance as may be prescribed from time to time.
- iv. He will be on probation initially for a period of two years extendable up to three years.
- v. He will be eligible for continuance and eventual confirmation in the post on satisfactory completion of his probationary period, subject to availability of permanent post and completion of prescribed training, if any.
- vi. His services shall be liable to be dispensed with at any time without any notice and assigning any reason before the expiry

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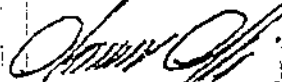
انوار علی خان
صوبہ شمالی
پشاور

of the period of probation/extended period of probation, if, his work or conduct during this period is not found satisfactory. In the event of termination from service, fourteen days notice or in lieu thereof, fourteen days pay will be paid by the Govt. In case of resignation, he will give one month notice to competent authority or in lieu thereof, one month pay shall be forfeited to the Govt. The resignation shall, however, be subject to the acceptance by the Competent Authority.

vi. He will be governed by the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 & the NWFP Government Servants Conduct Rules, 1987 and any other instructions which may issue by the Competent Authority from time to time.

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

4. He shall joint duty at his own expenses.



[ANWAR ALI KHAN]
District & Sessions Judge
Chairman DSC, Peshawar

Endorsement No. 84 (FA) 9086-92 Dated Peshawar the 21/11/2017

Copy forwarded to:

1. The Registrar, Peshawar High Court, Peshawar.
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. Mr. Shah Wali Ullah Hamid Hashmi, ASJ-X, Peshawar.
4. Syed Sadiq Shah, Director (B&A), PHC, Peshawar.

} for information

5. The Budget & Account Assistant, Sessions Court, Peshawar.
6. The ACC, Sessions Court, Peshawar.
7. The appointee by name.

} for information & necessary action



District & Sessions Judge
Chairman DSC, Peshawar



- 11 -

Am B

DISTRICT JUDICIARY, KHYBER PAKHTUNKHWA, PESHAWAR

Ph#091-9210099 Fax#091-9212419
eMail: scPeshawar@yahoo.com
web: SessionsCourtPeshawar.gov.pk

No. 1967
Dated Peshawar 29/03/24

To

Mr. Akbar Ali, Junior Clerk
Sessions court, Peshawar

(Confidential)


Subject: **COMMUNICATION OF ADVERSE REMARKS**

Memo:

The following adverse remarks, recorded in your ACR for the year 2022, are communicated to you for information.

Part-IV (d): "Not yet fit promotion"

Pen Picture: "He is slow learner and not very punctual but try to learn. Adverse."


[ASHFAQ ULLAH]
District & Sessions Judge,
Peshawar.

- 12 -

Am → Cⁿ



The
PESHAWAR HIGH COURT
Peshawar

All communications should be addressed to the Registrar Peshawar High Court, Peshawar and not to any official by name.	
Exch:	9210149-58
Off:	9210186
Fax:	9210170
www.peshawarhighcourt.gov.pk info@peshawarhighcourt.gov.pk phcphs@gmail.com	

No. 4173 /Admn
To,

Dated 16/05 /2024

**The District & Sessions Judge
Peshawar.**

Subject: DEPARTMENTAL APPEAL NO. 07/2024
Akbar Ali...Vs...D&SJ, Peshawar.
Dear Sir,

With reference to your endorsement No. 2308 dated 16.04.2024, you are requested to furnish your comments in the matter, please.

Yours Sincerely

(Signature)
(MAMREZ KHAN KHALIL)
 ADDITIONAL REGISTRAR (ADMN)

To,

The Worthy Puisne Judge,
Honorable Peshawar High Court, Peshawar.
Through Registrar, Peshawar High Court, Peshawar.
(Appellate Authority)

Subject: Representation against the impugned order no. 1967 dated: 29-03-2024 of the learned District & Sessions, Judge, Peshawar whereby the appellant's acr has been recorded as "adverse".

Respectfully sheweth,

With high reverence, due deference and utmost obeisance, the Appellant very humbly solicits the instant Representation to your good-self office, to the following effect:

1. That the Appellant is a naturally born bona-fide citizen of Islamic Republic of Pakistan and hails from a respectable family and currently is performing his service in the Subordinate Judiciary, Peshawar as Junior Clerk/Moharrir in BPS-11. (Copy of the Appointment Order is annexed here as Annexure "A")
2. That after getting onto the rolls of this prestigious department, the Appellant have had pulled day & night to render his best in the service of the department with utmost zest and professional gusto, which is crystal evident from the long-stretched service period of the Appellant spread over years without receiving any taint or blemish on the Appellant's service record.
3. That the Appellant has have always upheld the professional confidence, the sanctity of the department with practically unanimous determination towards his personal professional work ethic and personal (moral) aptitude, just not only to receive admiration from his high ups about his professionalism but the Appellant's believe in work has been steering him in every way (in & off duty) to bring home and won the reverence from the people of interaction and general public for the home department of the Appellant.
4. That the Appellant's faith in his work and the commitment to the social cause aligned with the vision of the department does not liberate the Appellant to go off-track in anyway, which is why the Appellant had been successful to put excellent stats and marvelous track on his every evaluation, assessment, and record, till the instant stimulus, whereby certain allegations of misconduct on part of the Appellant were alleged against him.
5. That the leveled misconduct was in regard to absence from the duty without leave application or intimation which the Appellant had regarded with

on communication of his Annual Confidential Report (ACR) vide Reference Letter No. 1967 Dated: 029-03-2024 in respect of which the Appellant was made subject to adverse remarks upon his work aptitude and professional behavior and he has been rendered as "not fit for promotion". (Copy of the ACR is Annexed here as Annexure "B")

6. That not even in the wildest dreams and stormiest days, the Appellant could have ever saw it coming that the what the Appellant have had been practicing and preaching religiously for the good length of service, would render him questionable and liable to explanation i.e., professional behavior & commitment to his duty, but what strangest woe!
7. That what caused the much adversity was that the neither the Appellant's appearance was sought for the explanation, nor any findings or material evidence were recorded even in the ACR from which the Appellant could have drawn his analogies of what went wrong on his part. But, simply with the lift of the pen, the presumptions were named as conclusions in the ACR of the Appellant.
8. That pursuant to consequences, from the above-mentioned saga, the Appellant have had been punished in the shape of non-consideration for promotion whereas the entire career of the Appellant portrayed zeal & zest when finally, it was the time to benefit from the same, every effort and struggle on part of the Appellant have gone down the hill.
9. That in the given circumstances whereby the Appellant had been punished for no sake of his own and all his fatigue over the past years have only met the dust, the Appellant solicits a revised ACR by preferring the instant departmental appeal.
10. That even proper no charge-sheet or statement of allegations has ever been served upon the Appellant, hence mandatory instruments of law are missing in case of the Appellant.
11. That even no proper inquiry was conducted, nor was any show-cause notice or final show cause notice ever served upon the Appellant.
12. That no opportunity of personal hearing was ever granted to the Appellant nor was ever heard in person.
13. That the Appellant benignly solicits for the revision and expunction of the "Adverse" from the ACR of the Appellant for the year 2022.
14. That besides the above-mentioned circumstances caused, the Appellant hereby affirms and requests to have faith in him.

15. Upon acceptance of the Appellant's moved gesture, he will procure the best display of his duties with due diligence, care and mindfulness and will take extra measures to eradicate any chance of misconduct on his part, in future and afterwards.

It is therefore most humbly prayed that on acceptance of the instant Departmental Appeal, the adverse remarks recorded in the Annual Confidential Report (ACR) for the year 2022, communicated to the appellant vide Reference Letter No. 1967 Dated: 029-03-2024 of the Learned District & Sessions, Judge, and Peshawar, may gracious be expunged,

The Appellant also beseeches and implores for personal hearing as well.

DATED: 05-04-2024



APPELLANT

AKBAR ALI

JUNIOR CLERK (BPS-11)

District Judiciary, Khyber
Pakhtunkhwa, Peshawar.

وکالت نامہ

بعدالت: KP Service Tribunal, Pesh.

اکبر علی نام رجسٹرڈ PHC

منجانب اپیلنٹ دعویٰ مروس ایل

تاریخ 18-9-24

باعت حریز آنکہ مقدمہ مندرجہ بالا عنوان اپنی طرف سے واسطے پیروی و جواب دہی

مقام سید گور۔ کیلے جاویدا اقبال گل بیکم ایڈوکیٹ سپریم کورٹ آف پاکستان

کو بدیں شرط وکیل مقرر کیا ہے۔ کہ میں ہر پیشی کا کوڈ یا بزرگیہ مختار خاص رو برو عدالت حاضر ہوتا ہوں گا۔ اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر و ملت کرونگا، اگر پیشی پر من مظهر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہونگے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کی کسی اور جگہ یا پکھری کے مقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہونگے۔ اگر مقدمہ علاوہ صدر مقام پکھری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے پیچھے پیش ہونے پر من مظهر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہونگے۔ مجھے کوکل پرواختہ صاحب موصوف مثل کردہ ذات خود منظور و قبول ہوگا۔ اور صاحب کو عرضی دعویٰ و جواب دعویٰ اور درخواست جرائے ڈگری و نظر ثانی اپیل و گرائی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کے روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد وراثی و راضی نامہ فیصلہ پر خلاف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یا طرفہ درخواست حکم امتناعی یا قرتی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادائیگی علیحدہ مختار نہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزوی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کے ہر امر وہی اور ویسے ہی اختیارات حاصل ہونگے جیسے کے صاحب موصوف کو حاصل ہیں۔ اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا۔ اور صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کرونگا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ دیا کہ سند ہے۔

مورخہ 18-9-24 مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

Accepted by:

AKU

23-6-84

Alay

2

Akbar Ali (Junior Clerk)