BEFORE THE KHYBAR PAKHTUNKHWA SERVICE TRIBUNAL AT PESHAWAR

C.M No._____ of 2024

In

Service Appeal No. 1624 of 2023

Muhammad Ali VERSUS The Inspector General of Police etc.

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Applicants / respondents No.5 -11, 13 - 15 ,18-63

Through Counsel

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(1)

BEFORE THE KHYBAR PAKHTUNKHWA SERVICE TRIBUNAL AT PESHAWAR

C.M No._____ of 2024

In

Service Appeal No. 1624 of 2023

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 17909
Dated 13-11-24

Muhammad Ali **VERSUS** The Inspector General of Police etc.

SERVICE APPEAL

Application for dismissal of the above titled service appeal on the ground being non maintainable due to the judgment of Supreme court of Pakistan dated 02/11/2022, rendered in Civil appeals No.72 to 1178 and Civil petitions No.3789 to 3796, 2260-L to 2262-L and C.P. No. 3137-L of 2020.

Respectfully Sheweth:

1. *That the above titled Service appeal is pending before this Honourble Tribunal, which is fixed for hearing on*

2. *That the lis between the parties has already been decided and settled by the apex Supreme Court of Pakistan vide order / judgment dated* **02/11/2022** *mentioned in the titled of this application.(Copy of order / judgment dated* **2/11/2022** *is attached as* ***annexure A).***

3. *That further proceedings of the case will be the wastage of precious time of this Honourable court and both he parties.*

(2)

It is therefore, humbly prayed that on acceptance of this application the above titled service appeal may kindly be dismissed with cost.

Applicants / respondents No.5 -11, 13 - 15 ,18-63

Through Counsel

MUHAMMAD JAVAID KHAN
Advocate, Supreme Court of Pakistan

AFFIDAVIT

It is stated on oath that as per information provided by my clients, all the contents of this application are true and correct to the best of my knowledge and belief.

Applicants / respondents No.5 -11, 13 - 15 ,18-63

Through Counsel

MUHAMMAD JAVAID KHAN
Advocate, Supreme Court of Pakistan

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench-V:
Mr. Justice Syed Mansoor Ali Shah
Mrs. Justice Ayesha A. Malik

Civil Appeals No.1172 to 1178 of 2020
and
Civil Petitions No. 3789 to 3796, 2260-L to 2262-L and CP 3137-L of 2020
(Against the judgment dated 30.11.2018, passed by the Punjab Service Tribunal, Lahore in Appeals No.3780, 3779, 3852, 3778, 3425, 3851 of 2015, 3160/2014 & 214/2017)
and
C.M.Appeals No.23 & 33 of 2021
(Applications for impleadment in CA-1172 & 1178 of 2020 respectively)

Syed Hammad Nabi, etc. (In C.A. 1172 to 1178 of 2020
Shujaat Ali Babar, etc *(Appellants/Applicants in C.M. Appeal No.23 of 2021)*
Maqsood Ali, etc *(Appellants/Applicants in C.M. Appeal No.33 of 2021)*
Jaseem Ahmad *(in CP 3789/2020 to CP 3796/2020)*
Muhammad Imran Haider, etc (In CP 2260-L/2020)
Ibrar Ahmed Khan, etc. (In CP 2261-L/2020)
Muhammad Yaseen (In CP 2262-L/2020)
Muhammad Sarwar Awan (In CP 3137-L/2021)

.....Appellants/Petitioners

Versus

Inspector General of Police Punjab, Lahore, etc. (In all cases)

....Respondent(s)

For the appellant(s)/: Petitioner(s)	Mian Bilal Bashir, ASC. Syed R.H. Shah, AOR. Ch. Zulifqar Ali, ASC. (Through V.L. Lahore Registry) Mr. Maqbool Hussain Sh. ASC Mr. Talaat Farooq Sh. ASC. (Through V.L. Lahore Registry)
For the applicant(s): (In CMA 8616/2022)	Mr. Safdar Shaheen Pirzada, ASC.
For the respondent(s):	Mr. Muddasar Khalid Abbasi, ASC. Mr. Muhammad Ramzan Khan, ASC. Mr. M. Sharif Janjua, AOR. Mr. Kaleem Ilyas, ASC. Raja Muhammad Khan, ASC. Atta Muhammad-respondent-in-person
For the Govt. of Punjab:	Mr. Ashfaq Ahmad Kharral, Addl. A.G. a/w Kamran Adil, DIG (Legal) Sh. Asif, S.P. Amir Khalil Syed, S.P. Kashif Butt, A.D.
Date of hearing:	02.11.2022

(4)

(10)

JUDGMENT

Syed Mansoor Ali Shah, J.- There are three sets of police officers before us: (i) Appellants (Hammad Nabi and others); (ii) Respondents (Atta Muhammad and others); (iii) Impleaders through applications (CMAs) (Jaseem Ahmad, Shujaat Ali Babar and others).

2. *Appellants* belong to a batch of direct Sub-Inspectors ("SI") who were selected in BS-14 through the Punjab Public Service Commission ("Commission") in October, 1997. The order of appointment of Hammad Nabi (appellant) was issued in Multan Region on 30-10-1997. He was subjected to probation[1] for three years and after successful completion of probationary courses[2] (A, B, C and D), he was confirmed in the same rank i.e., Sub-Inspector with effect from 28.11.2000 by DIG/Multan vide order dated 29.11.2000. By this time, this Court in *Qayyum Nawaz*[3] held that the date of confirmation is the same as the date of appointment. The Inspector General of Police ("IGP") in order to implement *Qayyum Nawaz* issued circular dated 10-03-2004 that stated that date of appointment and confirmation shall be the same. In consequence thereof, Hammad Nabi was confirmed as SI from the date of his appointment i.e. 30-10-1997 vide order dated 07-04-2004 passed by the DIG/Multan. In addition, Hammad Nabi was admitted to Seniority List F (that is maintained for the promotion to the post of Inspectors)[4] with effect from 21-11-2002 and was also promoted to the rank of Inspector with effect from 07-01-2003 vide order dated 14-01-2005. The officer was kept at Seniority List F and his name was notified in the List regularly. Before the implementation of the impugned judgement of Punjab Service Tribunal ("Tribunal"), the Seniority List of Inspectors was displayed on 07-02-2019 showing Hammad Nabi at Seniority No. 281 of the Seniority List F. However, after the implementation of the impugned judgement of the Tribunal, the Seniority List F notified on 13-03-2020 placed the Appellant at Seniority No. 323. This relegation of Hammad Nabi from Seniority No. 281 to Seniority No. 323 is a result of the implementation of impugned judgement of the Tribunal which is under challenge before us. Accordingly, the Appellant has prayed to set aside the impugned judgment dated 30-11-2018 passed by the Tribunal.

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[1] Rule 12.8 of the Police Rules, 1934.
[2] Rule 19.25 of the Police Rules, 1934.
[3] 1999 SCMR 1594.
[4] Rule 13.15 of the Police Rules, 1934

3. *Respondent* Atta Muhammad, alongwith other officers arrayed as respondents, belongs to a batch of officers which were selected as direct Assistant Sub-Inspectors (ASIs) in BS-9 by the Commission on 10-11-1993. He was assigned to the Punjab Constabulary (PC), a reserve police unit within the Punjab Police that was treated at par with a Range for legal purposes. The officer was subjected to three years probationary period[5] and after successful completion of his training courses (A, B, C and D)[6], he was confirmed on 16-03-1999 and his name was placed on Seniority List E maintained by DIG/Commandant/Range/Regional Police Officer with effect from 18-11-1996. Later on, due to administrative arrangements within the Punjab Police, the officer was assigned to Rawalpindi Range/Region by the IGP vide order dated 13-08-2002. He was promoted as an Officiating Sub-Inspector in Rawalpindi Range/Region on 27-08-2003. Atta Muhammad obtained his revised confirmation with effect from 10-11-1993 (his date of appointment) as a result of implementation of *Qayyum Nawaz (supra)*. Thereafter, he agitated that he stood senior to the promotee ASI Muhammad Arshad (who had by now reached to the rank of Inspector). His argument was that he was senior to Muhammad Arshad due to his date of appointment/confirmation which was 10-11-1993 as compared to the date of appointment/confirmation of Muhammad Arshad on 13-11-1993. The legal requirements of three years probationary period and completion of training courses (A, B, C and D) for direct ASIs was not appreciated by any fora while comparing cases of Atta Muhammad and Muhammad Arshad. His claim on the basis of Muhammad Arshad was accepted and his standing on List E was revised with effect from 01-02-1996. Based on this revision of his standing at List E, he was granted revised promotion to the rank of SI with effect from 22-12-1996 by the Commandant PC on 07-08-2006. He was admitted to Seniority List E with effect from 21-11-2002 and promoted to the rank of Inspector with effect from 07-01-2003. As a result, whereas before implementation of impugned judgement, he was not listed on Seniority List and was treated as a SI, after implementation of the impugned judgement of the Tribunal, he was placed at Seniority No. 241 of the Seniority List of Inspectors dated 13-03-2020. Amongst the *Impleaders* some support the case of the Appellants while the others support the case of the Respondents. The Comparative Table hereunder gives a tabular representation of the

[5] Rule 12.8 of Police Rules, 1934.
[6] Rule 19.25 of Police Rules, 1934

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service record of the parties for better understanding the dispute in hand.

COMPARATIVE TABLE

PARTIES TO LITIGATION:	Date of appoint-ment as ASI	Initial Date of confirm ation as ASI	Revised date of confirm ation as ASI	Date of appoint ment as SI	Initial Date of Promot-ion as SI	Revised promot-ion as SI	Initial date of confir-mation as SI	Revised date of confir-mation as SI
1	2	3	4	5	6	7	8	9
Hammad Nabi etc, (Group-a)	-	-	-	30.10.97	-		28.11.00	30.10.97
Atta Muhammad etc, (Group-b)	10.11.93	18.11.96	10.11.93	-	27.08.03	22.12.96	27.08.03	22.12.96
Jaseem Ahmad (Group-c)	30.09.90	11.03.96	30.09.90	-	25.09.01	25.09.01	25.09.01	25.09.01
Shujaat Ali Babar Etc (Group-d)	08.06.88	01.07.93	08.06.88	-	01.04.99	-	01.04.99	01.04.99

4. We have heard the learned counsel for the parties and Mr. Kamran Adil, DIG (Legal) at some length and have carefully gone through the case law[7] cited at the bar, as well as, the Police Rules, 1934 ("Police Rules") and Police Order, 2002. The question before us is the mode of determination of seniority of a police officer holding the post of Inspector in the Punjab Police under the Police Rules. The answer to the said question is clearly provided under Rule 12.2(3) of the Police Rules, which is reproduced hereunder for convenience:

> 12.2. Seniority and probation. - (1) The seniority of Assistant Superintendents of Police is regulated by the orders passed from time to time by the Secretary of State and the Central Government.
>
> No Probationary Assistant Superintendent of Police shall be permanently appointed as an Assistant Superintendent of Police until he has passed the prescribed departmental examinations.
>
> A Probationary Assistant Superintendent of Police who does not qualify by passing these examinations within two years, or at the first examination after two years, from the date of his joining the service, will be removed from Government service; provided that the Provincial Government shall have power to relax this rule in special cases, when the Probationary Assistant Superintendent of Police is likely to make a good police officer.
>
> (2) The rules governing the probation and seniority of Deputy Superintendents of Police are contained in Appendix 12.1.
>
> (3). All appointments of enrolled police officers are on probation according to the rules in this chapter applicable to each rank.

[7] 2015 SCMR 456; 1996 SCMR 1297; PLD 1985 SC 159; 1999 SCMR 1594 & 2016 SCMR 1254

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> Seniority in the case of upper subordinates[8], will be reckoned in the first instance from date of first appointment, officers promoted from a lower rank being considered senior to persons appointed direct on the same date, and the seniority of officers appointed direct on the same date being reckoned according to age. Seniority shall, however, be finally settled by dates of confirmation, the seniority *inter se* of several officers confirmed on the same date being that allotted to them on first appointment. Provided that any officer whose promotion or confirmation is delayed by reason of his being on deputation outside his range or district shall, on being promoted or confirmed, regain the seniority which he originally held vis-à-vis any officers promoted or confirmed before him during his deputation.
>
> The seniority of lower subordinates shall be reckoned from dates of appointment, subject to the conditions of rule 12-24 and provided that a promoted officer shall rank senior to an officer appointed direct to the same rank on the same date.
>
> *(emphasis supplied)*

Rule 12.2(3) provides that in the *first instance* the seniority of the upper subordinates shall be reckoned from date of first appointment, officers promoted from a lower rank being considered senior to persons appointed direct on the same date, and the seniority of officers appointed direct on the same date being reckoned according to age. The sub-Rule further provides that *seniority shall be finally settled by dates of confirmation*, the seniority *inter se* of several officers confirmed on the same date being that allotted to them on first appointment. Rule 12.2(3) provides for two stages for determining the seniority, one is prior to the probationary period and is to be reckoned from the first appointment and the final seniority is settled from the date of confirmation which is once the period of probation is successfully completed.[9] Period of probation is important as the officers have to undergo various courses (A,B,C & D)[10] and qualify the same. Once police officer has successfully undergone the said courses he stands confirmed at the end of the probationary period. The seniority is once again settled, this being the final seniority from the date of confirmation. The above rule is, therefore, very clear that final seniority list of Inspectors will be reckoned from the date of confirmation of the officers and not from the date of appointment.

5. The Appellants in this case had a probationary period of three years while the probationary period of the Respondents was two

[8] Inspectors, Sub-Inspectors (SIs) & Assistant Sub-Inspectors (ASIs) - See Rule 19.25 of the Police Rules, 1934.
[9] See Rule 12. 8 and 13.18 of the Police Rules, 1934
[10] See Rule 19.25 ibid.

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years[11] and their dates of confirmation are different. It is submitted that the clarity of the said Rule has been muddled over the years due an earlier pronouncement of this Court in *Qayyum Nawaz*.[12] We have gone through *Qayyum Nawaz* and find that it is a leave-refusing order (described as a judgment), which has neither decided any question of law nor enunciated any principle of law in terms of Article 189 of the Constitution. Such leave-refusing orders do not constitute binding precedents.[13] The impression that a leave-refusing order endorses the statements of law made in the impugned orders and thus enhances the status of those statements as that of the apex court is fallacious. This impression is based on inference drawn from the leave-refusing orders, while 'a case is only an authority for what it actually decides' and cannot be cited as a precedent for a proposition that may be inferred from it.[14] The judgment of the Tribunal in *Qayyum Nawaz* totally ignores Rule 12.2(3) of the Rules as well as the earlier pronouncement of this Court in *Mushtaq Warriach*[15] which underlines the difference between the date of appointment and the date of confirmation. Therefore, reliance on *Qayyum Nawaz* to hold that there is no difference between the date of appointment and date of confirmation under the Police Rules is absolutely misconceived and strongly dispelled.

6. The impugned judgment of the Tribunal before us also relies on *Qayyum Nawaz* when the said judgement does not pass as a precedent and settles no principle of law. The impugned judgement has misread Rule 12.2(3) and has ignored its substantive part which clearly deals with the formulation of the final seniority list which is to be settled from the date of confirmation of the Police Officers. The Tribunal through the impugned judgement has without any justification dismissed from consideration *M. Yousaf*[16] which holds that seniority must be determined in accordance with the rules. For these reasons the impugned judgment is not sustainable.

7. It is also underlined that much water has flown under the bridge since *Qayyum Nawaz*. This Court has put an end to out of turn promotions in *Contempt Proceedings Against the Chief Secretary, Sindh*

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[11] See Rule 12.18 ibid
[12] 1999 SCMR 1594.
[13] Muhammad Salman v. Naveed Anjum 2021 SCMR 1675; Tariq Badr v. NBP 2013 SCMR 314.
[14] Quinn v. Leathem 1901 AC 495; Trustees of the Port of Karachi v. Muhammad Saleem 1994 SCMR 2213; SHCBA v. Federation PLD 2009 SC 879 per Ch. Ijaz Ahmad, J.; Khairpur Textile Mills v. NBP 2003 CLD 326.
[15] PLD 1985 SC 159
[16] Muhammed Yousaf & others v. Abdul Rashid & others, 1996 SCMR 1297

and others[17] followed by *Ali Azhar Khan Baluch*[18]. The practice of ante-dated confirmations and promotions have been put down in *Raza Safdar Kazmi*[19] and delay in confirmations after the probationary period have been regulated in *Gul Hasan Jatoi*[20].

8. It is best if the Police force is allowed to be regulated by its statutory framework i.e. the Police Order, 2002 and the Police Rules which provide a complete code of internal governance. Disputes, if any, amongst the police officers must first be resolved by the Inspector General of Police or his representatives. Only in case of any legal interpretation or blatant abuse of the process provided under the Police Order or Rules should the courts interfere in the working of the Police force so that the force can maintain its functioning, autonomy, independence and efficiency which is essential for Police which is charged with the onerous responsibility of maintaining law and order and with the onerous obligation to protect the life and property of the citizens of this country. More than any other organization, it is imperative that the Police must function as a rule based organization which is fully autonomous and independent in regulating its internal governance. Strong and smart Police force requires *organizational justice* firmly entrenched in the institution so that its officers are assured that they work for an institution that firmly stands for rules, fairness, transparency and efficiency. This upholds the morale of the police officers, especially junior police officers who are required to undertake dangerous and strenuous assignments on a daily basis and also uplifts the institution by making it more vibrant and progressive.

9. The importance of *organizational justice* cannot be undermined. It focuses on how employees judge the behavior of the organization and how this behavior is related to employees' attitudes and behaviors regarding the organization. The employees are sensitive to decisions made on a day-to-day basis by their employers, both on the small and large scale, and will judge these decisions as unfair or fair. Decisions judged as unfair, lead to workplace deviance. Employees also believe procedures are fair when they are consistent, accurate, ethical, and lack bias[21] . Organizational justice is concerned with all matters of workplace behaviour, from treatment by superiors to pay, access to

[17] 2013 SCMR 1752
[18] 2015 SCMR 456
[19] Judgment of the Punjab Service Tribunal dated 15.08.2006, passed in Appeal No. 239/2006, which was upheld by the Supreme Court vide order dated 29.01.2008, passed in Civil Appeals No.2017 to 2031 of 2006 *(erroneously mentioned as 2007 on the order)* and other connected matters.
[20] 2016 SCMR 1254
[21] *Dr. Annette Towler*, The benefits of organizational justice and practical ways how to improve it, CQNet.

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training and gender equality[22]. Ensuring organizational justice should be a priority for any organization – it can reduce the incidence of workplace deviance, absence, disengagement and counterproductive workplace behaviours and also encourage positive attributes like trust and progressive communication.[23]

10. Organizational justice is necessary for the police officers to perform their duties with complete commitment, dedication and fidelity, because they must perceive that the institution is fair and just towards them[24]. Police officers who have such perceptions of fairness would demonstrate less cynicism towards the job and are also likely to have a more amiable attitude towards the public[25]. Uncertainty in the promotion structure and delay in promotions weakens such perceptions of serving police officers, resulting in inefficiency, likelihood of misconduct and low morale, thereby, also adversely impacting the trust of the public in the police[26]. Therefore, for an efficient and effective police force, it is necessary to ensure the provision of organizational justice in the police as an institution, especially with regards to career progression and promotion. As such, there must be no ambiguity in the promotion structure and any grievance with regards to career progression/promotion must be redressed expeditiously under the law. Organizational justice, therefore, stands firmly on the constitutional values and fundamental rights ensured to any person under the Constitution[27]. The constitutional principle of social and economic justice read with due process and right to dignity, non-discrimination and right to a carry out a lawful profession and the right to livelihood are basic ingredients of organizational justice.

11. Given the primacy of Police in the criminal justice system, organization justice must be ensured in the Police service. The issues of posting, transfer and seniority must be settled within the department strictly in accordance with the Rules and only matters requiring legal interpretation may come up before the Courts. Several junior officers approaching the courts for redressal of their grievance reflects poorly on the internal governance of the Police department when the elaborate Police Rules and the Police Order provide for such eventualities in detail.

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[22] It is originally derived from equity theory, which suggests individuals make judgements on fairness based on the amount they give (input) compared to the amount they get back (output).
[23] HRZone .com
[24] Volkov, M. "The Importance of Organizational Justice, Corruption, Crime & Compliance", 2015.
[25] Wolfe, Scott E., Justin Nix, & Justin T. Picken. "The Measurement of Organizational Justice Matters: A Research Note", July 16, 2020.
[26] Weimer, C. "How would Organizational Justice Shape Police Officer's Attitudes in the Workplace?", 2019.
[27] Constitution of the Islamic Republic of Pakistan, 1973.

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We are sanguine that in future the Police department will take charge of its internal governance strictly in accordance with law and will restore a Rule-based approach in addressing the grievances of the police officers so that courts are not unduly burdened.

12. In this background, all the parties before us are in agreement that their seniority be worked out according to Rule 12.2(3) of the Police Rules and submit that the competent authority be directed to follow the said Rule in letter and spirit and make necessary amendments in the seniority list of the police officers before us. We, therefore, direct the IGP to constitute a committee to look into the question of seniority of the parties before us in terms of Rule 12.2(3) and in the light of this judgement. The said committee shall also address the grievance(s) of other Police Officers, if any, who are not before us but belong to the same batch of officers as the parties before us.

13. It is also noted that the Inspector General of Police, Punjab ("IGP") enjoys administrative powers over the Police organization under Article 10 of the Police Order, 2022 read with Rule 12.1 of the Police Rules, therefore, he is under an obligation to exercise his legal powers within the organization to ensure that the police officers are dealt with in accordance with law within the statutory timelines. In case there is any unexplained delay in following the timeline the concerned Police Officers be held accountable and any action taken or penalty imposed upon them be duly reflected in their performance evaluation reports. The IGP may also consider constituting a standing committee headed by an Additional Inspector General of Police or any appropriate officer to regularly address the concerns of junior police officers with respect to their inter se seniority, so that a police officer feels empowered that there is organizational justice in his organization. This will lead to developing a more robust, efficient and strong police force in the country.

14. For the above reasons, the impugned judgment is set aside and the listed appeals are allowed in the above terms. The connected listed Civil Petitions are also converted into appeals and allowed in the same terms.

Judge

Islamabad,
2nd November, 2022.
Approved for reporting
Sadaqat

Judge

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BEFORE THE KHYBAR PAKHTUNKHWA SERVICE TRIBUNAL AT PESHAWAR

C.M No._____ of 2024

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Applicants / respondents No.5 -11, 13 - 15 ,18-63

Through Counsel

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(1)

BEFORE THE KHYBAR PAKHTUNKHWA SERVICE TRIBUNAL AT PESHAWAR

C.M No._____ of 2024

In

Service Appeal No. 1624 of 2023

Muhammad Ali **VERSUS** *The Inspector General of Police etc.*

SERVICE APPEAL

Application for considering the comments submitted by the official respondents No.1 to 4, for applicants / respondents No. 5 -11, 13 - 15 ,18-63.

Respectfully Sheweth:

1. *That the above titled Service appeal is pending before this Honourble Tribunal, which is fixed for hearing on*

2. *That the comments submitted by the respondents No.1 to 4 may also be considered on behalf of the applicants / respondents No. 5 - 11, 13 - 15 ,18-63.*

It is therefore, humbly prayed that on acceptance of this application an order as prayed for may kindly be passed please.

Applicants / respondents No.5 -11, 13 - 15 ,18-63

Through Counsel

MUHAMMAD JAVAID KHAN

Advocate, Supreme Court of Pakistan

BEFORE THE KHYBAR PAKHTUNKHWA SERVICE TRIBUNAL AT PESHAWAR

C.M No._____ of 2024

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Service Appeal No. 1624 of 2023

Muhammad Ali **VERSUS** *The Inspector General of Police etc.*

AFFIDAVIT

I, Mr. MUHAMMAD JAVAID KHAN Advocate, Supreme Court of Pakistan, do solemnly affirm on oath that according to the information provided by my client, the contents of accompanying application are true and correct.

Applicants / respondents No.5 -11, 13 - 15 ,18-63

Through Counsel

MUHAMMAD JAVAID KHAN

Advocate, Supreme Court of Pakistan