CHIEF JUSTICE PESHAWAR HIGH COURT

To,

The Hon'ble Chief Justice Supreme Court/
Chairman Judicial Commission of Pakistan.
Islamabad

Subject: - **CONCERN REGARDING NON-CONSIDERATION FOR ELEVATION FROM KHYBER PAKHTUNKHWA TO THE SUPREME COURT.**

Hon'ble Sir,

Assalam o Alaikum

I hope this letter finds you in good health and high spirits.

I am writing to your Lordship with a heavy heart and a sense of disillusionment in relation to *prima facie* arbitrariness, discrimination and favouritism in the appointment of judges in the Supreme Court of Pakistan. It is with utmost respect for your esteemed position and the principles of fairness and meritocracy that our judicial system purports to uphold, that I bring this matter to your attention.

There were four vacancies in the Supreme Court but only one vacancy was filled by appointing my brother Hon'ble Judge, Mr Justice Naeem Akhtar Afghan of Balochistan High Court the then Chief Justice, Balochistan High Court. It was a profound disappointment when I learnt that only one judge and that too from your own province, was appointed in the Supreme Court despite the fact that there were four vacancies. I am genuinely happy for my brother Mr. Justice Naeem Akhtar Afghan but why my candidacy was not considered notwithstanding my seniority, eligibility and availability of vacancies in the Supreme Court? I am the second senior most Chief Justice among the Chief Justices of all High Courts in Pakistan. I am also a member of the Judicial Commission of Pakistan (JCP) and Supreme Judicial Council of Pakistan. I had legitimate expectation that my candidature would be at least included in the list for consideration to be appointed as a Judge of the Supreme Court of Pakistan. Had I not been found fit to be appointed as

Kismat Khan Ziri

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Judge of Supreme Court after due process by the Judicial Commission of Pakistan, I would have happily accepted the JCP's decision.

Given the large backlog, I thought that your Lordship would be keen, rather feel obligated to fill the vacancies immediately especially when the countrymen feel deprived of speedy justice. The taxpayers, who pay for our salaries, expect that vacancies are filled immediately so that the court may operate at full strength and dispense justice. There is a duty to act diligently. This decision of solitary appointment has left me perplexed and seeking genuine answers. I have been thinking about possible reasons for not filling the vacancies but no logical and persuasive reason could come to mind.

I have been serving religiously for thirty-one years now, a tenure marked by unwavering commitment, dedication, and a plethora of contributions that I believe not only served our beloved community but also upheld the highest standards of our judicial system. Throughout my service, I have endeavoured to embody the virtues of integrity, impartiality, and a steadfast commitment to justice, principles I believed would naturally pave the way for recognition and career advancement based on merit. I have been deciding high-profile cases amidst peculiar law and order situation and political turmoil in our motherland wherein my commitment to uphold the rule of law and supremacy of constitution has been unshakable and unyielding.

My dedication to serve the masses and uproot injustice in each and every form, whatsoever, has been a source of personal pride and a testament to my commitment to the values, we hold dear in our profession. Similarly, it is yet a distinction that, while referring to my 31 years' judicial career wherein, I can safely hold my integrity before Almighty Allah that I have only performed to the best of my conscious, within the legal premise and without any fear or favour. It is against this backdrop of dedication, performance, and contribution to our judiciary that I find the decision to even not consider my candidacy for elevation not only surprising but deeply concerning. Let me quote here some of your inspiring words you wrote in your letter to the then Chief Justice of Pakistan, Mr Justice Umar Ata Bandial, in July 2022:

Kismat Khan Zimri
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"All appointments must be made in accordance with the Constitution, on the basis of predetermined and non-discriminatory criteria. And above all without any impression of favouritism".

You also wrote a note in which you stated, *"Not to act arbitrarily and [...] arrogance (takabbur) and ego (anaa) is abhorred by Almighty Allah".*

"The CJ further discriminates by excluding for his kind consideration Chief Justice and Judges from the Balochistan High Court and the Chief Justice and Judges from the Islamabad High Court".

I appreciate that decisions of appointing judges in the superior courts are complex and multifaceted, involving considerations that may not always be apparent to all. Nevertheless, in the spirit of transparency, the norms of fairness, and the continued trust in our judicial system, I take the honour to question as to what prompted the solitary elevation of my brother Justice Naeem Akhtar Afghan when three vacancies were and are still vacant where as none other was considered.

It is also mind-boggling that presently, there are three Hon'ble Judges in the Supreme Court of Pakistan from Balochistan whereas from the Khyber Pakhtunkhwa, there are only two Hon'ble Judges therefore, while comparing the two provinces on any analogy whatsoever, desirably there would be one more vacancy for the province of Khyber Pakhtunkhwa. It seems that allocation of seats of Hon'ble Judges in Supreme Court is out of proportion giving rise to a genuine discontentment in provinces especially Khyber Pakhtunkhwa which, in size as well as in terms of portfolio of cases, has enormously swelled after merger of the erstwhile FATA.

Yasmat Khan Zimri

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Unfortunately, I lack the personal connections that often play a role in such elevations. This lack of advocacy or lobbying on my behalf should not be a deterrent to recognizing the merit and the commitment that I have demonstrated towards upholding justice. And it is with this faith that I am constrained by my conscience to pen down the facts before your lordship, the Hon'ble Judges and my Supreme Institution before I lay off the robes. It isn't a far cry as I am deeply contented within my heart and whatever is destined for me by Allah the almighty shall be a blessing.

Hon'ble Sir, my intention in writing this letter is not to challenge the decision made per se, but it is definitely to seek clarity and assurance that the principles of merit, fairness, and equality of opportunity are being upheld in our esteemed institution. I am confident that your Lordship would not hold it against me as you have been vocal in raising voice against arbitrariness, discrimination and favouritism through letters one of which I have cited above. I am fully committed to my constitutional duty, with the hope that my efforts and contributions will be recognized and rewarded by Allah Almighty in this world and thereafter, Insha'Allah.

Yours sincerely,

Justice Mohammad Ibrahim Khan,
Chief Justice, Peshawar High Court

Copy to:-

Mr. Justice Syed Mansoor Ali Shah, Senior Puisne Judge Supreme Court of Pakistan.
Mr. Justice Munib Akhtar, Judge Supreme Court of Pakistan.
Mr. Justice Yahya Afridi, Judge Supreme Court of Pakistan.
Mr. Justice Amin-Ud-Din Khan, Judge Supreme Court of Pakistan.

01/04/24.

Justice Mohammad Ibrahim Khan,
Chief Justice, Peshawar High Court

Kismat Khan Zimri
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