

20.08.2018

Counsel for the appellant and Mr. Kabirullah Khattak, AAG along with Mr. Atta Ullah Assistant Secretary for the respondents No. 2 and Mr. Bahadar Khan Assistant Litigation for the respondents No.5 present. Written reply not submitted. Requested for Adjournment. Adjourned. To come up for written reply/comments on 28.09.2018 before S.B.

*MA*  
(Muhammad Amin Kundi)  
Member

28.09.2018

Counsel for the appellant Mr. Rizwanullah, Advocate present. Mr. Kabirullah Khattak, Addl. AG for the respondents present and made a request for further time. To come up for written reply/comments on ~~09.11.2018~~ before S.B. ~~at camp court, Abbottabad as the same pertains to territorial limits of Hazara Division.~~ *(08-10-2018)*

*L*  
Chairman

08.10.2018

Counsel for the appellant Mr. Rizwanullah, Advocate present. Mr. Attaullah, Assistant Secretary alongwith Mr. Usman Ghani, District Attorney for the respondents present. The above named representative of the respondents ~~submitted written reply~~ To come up for ~~dejoinder/arguit~~ on 19.11.2018 before *D.B.*

*L*  
Chairman

19.11.2018

Appellant absent. Learned counsel for the appellant also absent. Application for withdrawal of the present service appeal is already available on file. ~~(as called but none appeared on behalf of appellant)~~ Consequently the present service appeal is hereby dismissed in default. No order as to costs. File be consigned to the record room.

Member

Member

ANNOUNCED


19.11.2018

19.11.2018

Appellant and learned counsel for the appellant absent. Application for withdrawal of the present service appeal is already available on file. Consequently the present service appeal is hereby dismissed as withdrawn. No order as to costs. File be consigned to the record room.

  
Member

  
Member

  
ANNOUNCED  
19.11.2018

22.05.2018

Counsel for the appellant Khalid Javed Ghazi present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Revenue Department as Registration Muharrir. It was further contended that the appellant was dismissed from service vide order dated 11.12.2017 on the allegation of inefficiency and misconduct. It was further contended that the appellant filed departmental appeal on 27.12.2017 which was not responded hence, the present service appeal on 23.04.2018. It was further contended that neither charge sheet nor statement of allegation was served upon the appellant. It was further contended that neither proper inquiry was conducted nor opportunity of hearing and defence was provided to the appellant therefore, the impugned order is illegal and liable to be set-aside.

The contention raised by the learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days thereafter notice be issued to the respondents for written reply/comments for 04.07.2018 before S.B.

Appellant Deposited  
Security & Process Fee

  
(Muhammad Amin Khan Kundi)  
Member

04.07.2018

Counsel for the appellant and Mr. Sardar Shaukat Hayat, Addl: AG alongwith Mr. Atta Ullah, Assistant Secretary for respondents No. 2 & Mr. Bahadar Khan, Assistant Litigation for the respondents No. 5 present. Written reply not submitted. Requested for further adjournment. Adjourned. To come up for written reply/comments on 20.08.2018 before S.B.

  
Member

Form-A  
FORM OF ORDERSHEET

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

Case No. 561/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	23/04/2018	<p>The appeal of MR. Khaled Javed Ghazi presented today by Mr. Rizwanullah Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 23/4/18</p>
2-	15/05/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>22/05/18.</u></p> <p style="text-align: right;"><i>[Signature]</i> MEMBER</p>

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

Service Appeal No. 561 /2018

1. Khalid Javed Ghazi (Ex-Registration Muharrir), HNo.CB-32 Choonakari,  
P.O Nawansher, Abbottabad.

**APPELLANT**

**VERSUS**

1. The Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar etc.

**RESPONDENTS**

**I N D E X**

S.No	Particulars	Annexure	Pages #
1	Service Appeal	—	13
2	Affidavit	—	14
3	Copy of appointment of inquiry officer	"A"	15
4	Copy of inquiry report	"B"	16-19
5	Copy of letter	"C"	20
6	Copy of charge sheet alongwith statement of allegations	"D"	21-22
7	Copy of inquiry report	"E"	23-29
8	Copy of show cause notice	"F"	30
9	Copy of reply to show cause notice	"G"	31
10	Copy of impugned order dated 11-12-2017	"H"	32
11	Copy of departmental appeal dated 27-12-2017	"I"	33-41
12	Wakalatnama	—	—

Through

Dated: 23/04/2018

Appellant

Rizwanullah  
M.A LL.B

Advocate High Court, Peshawar

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

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 305

Dated 23/4/2018

Service Appeal No. 561 /2018

1. Khalid Javed Ghazi (Ex-Registration Muharrir), HNo.CB-32  
Choonakari, P.O Nawansher, Abbottabad.

**APPELLANT**

**VERSUS**

1. The Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar.
2. The Senior Member Board of Revenue & Estate Department,  
Government of Khyber Pakhtunkhwa, Peshawar.
3. The Director Land Record/Inspector General of Registration, Board  
of Revenue Peshawar.
4. The Commissioner Hazara Division Hazara, Abbottabad.

**RESPONDENTS**

**APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL ACT, 1974 AGAINST THE  
IMPUGNED ORDER DATED 11-12-2017  
PASSED BY THE SENIOR MEMBER  
BOARD OF REVENUE & ESTATE  
DEPARTMENT (RESPONDENT NO.2)  
WHEREBY THE APPELLANT WAS  
AWARDED MAJOR PENALTY OF  
DISMISSAL FROM SERVICE.  
THE APPELLANT PREFERRED  
DEPARTMENTAL APPEAL WITH THE  
RESPONDENT NO.1 ON 27-12-2017 BUT  
THE SAME WAS NOT RESPONDED  
WITHIN THE STATUTORY PERIOD OF  
LAW.**

Filed to-day

Registrar

23/4/18

**Prayer in Appeal**

By accepting this appeal, the impugned order dated 11-12-2017 passed by the Senior Member Board of Revenue (respondent No.2) whereby the appellant was awarded major penalty of dismissal from service may very graciously be set aside and the appellant may kindly be re-instated in service with full back wages and benefits.

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

**Respectfully Sheweth,**

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

1. That the appellant was serving as Registration Muharrir (BPS-7) in the office of Sub-Registrar Abbottabad at the relevant time. He had 30 years unblemished service record to his credit.
2. That the Inspector of Stamps, Hazara Division Abbottabad, conducted internal audit of the office of Sub-Registrar, Abbottabad on 14<sup>th</sup> & 15<sup>th</sup> March 2016 and after finalization of the same, the following objections were raised:
  1. During the audit of several sale deeds of aforesaid mouzas, it had been observed with great concern that area of same No Khasra/Khasras owned by the same seller/sellers comprised of same amount was transferred/registered in the name of the same buyer/purchaser by splitting it in parts/pieces through subsequent sale deeds and later on registered on various dates. It is also worth mentioning here that



stamp papers were purchased by the same seller/purchaser on the same date and then detail of the area transferred was recorded in the stamp papers consisted of consecutive serial Nos. of sale deeds on the same date but registered on different dates intentionally. This implied that such practice was carried out just to pave the way for the purchaser/seller to evade WHT and to keep the amount below 3 million rupees by splitting area. Resultantly, it caused huge loss to the Government exchequer.

It was rather more convenient to transfer the area from same owner/seller in the name of same buyer/purchaser in one deed on the same date instead of registering it into various deeds on different dates. It was further noted that area of the houses was also splitted up.

Keeping in view the above, the Inspector of Stamps observed that an amount of Rs.16,90,000/- on account of WHT from purchaser and Rs.845,000/- from seller is recoverable in the light of detail given in the annexure (A) of said audit note.

2. It was alleged that WHT had not been collected from the seller on the amount more than 3 million in various mouzas. Therefore, WHT amounting to Rs.784,150/- was recoverable from the sellers. In the light of detail given in the annexure (B) of said order note.

3. That in the light of above audit objections, the Commissioner of Hazara Division Abbottabad (respondent No.4) , vide letter No.9084 dated 28-6-2016 appointed Additional Deputy Commissioner Mansehra as Inquiry Officer to conduct inquiry against the Sub-Registrar and officials concerned in order to dig out the truth.

(Copy of appointment of inquiry officer is appended as Annex-A)

4. That in compliance with the said order, the Inquiry Officer duly conducted fair and impartial inquiry and found the Sub-Registrar guilty of the allegations alone and the following recommendations were made therein:

**Recommendations:**

In light of the foregoing factual position, it is recommended that the recoverable amount of Rs.348,750/- as mentioned in Para-2 of above, may be recovered from the Sub-Registrar Abbottabad and appropriate action as deemed necessary may be taken against him for committing negligence to understand the relevant laws/rules being a responsible officer.

Moreover, it is recommended that the case may please be referred to the Commissioner Federal Board of Revenue, Hazara Division Abbottabad for further clarification as it involve monetary loss to the Government Exchequer.

(Copy of inquiry report is appended as Annex-B).

5. That the Commissioner Hazara Division Hazara, Abbottabad (respondent No.4) vide letter No.10108 dated 29-07-2016 forwarded the above report to the Senior Member Board of Revenue, Government of Khyber Pakhtunkhwa Peshawar for appropriate action in accordance with law.

**(Copy of letter is appended as Annex-C).**

6. That thereafter, the Director, Land Records/Inspector General Registrations Government of Khyber Pakhtunkhwa, Board of Revenue & Estate Department Peshawar (respondent No.3) initiated disciplinary action against Sub-Registrar and served him with a charge sheet alongwith statement of allegations and Tasleem Khan, Deputy Commissioner Haripur was appointed as Inquiry Officer to conduct regular inquiry against the said officer. This fact has been categorically admitted by the Inquiry Officer in the commencement of his report. During the course of inquiry, appellant was also summoned as witness and the Inquiry Officer cross examined him by putting questions but nothing favourable could be elicited from his mouth rather the appellant clarified that he was the custodian of record and after execution of registered deed, he had to enter the same into the relevant register (Book-1). He further clarified that "cuttings" in the stamp papers were made by the Treasury Office and the same were duly attested by the said office accordingly. He added that he had acted justly, fairly, honestly and in accordance with law. He further added that the Sub-Registrar was only competent in the matter who duly checked all the disputed registered deeds and found it correct in all respect and then executed the same.

**(Copy of charge sheet alongwith statement of allegations is appended as Annex-D)**

7. That the Inquiry Officer, after finalization of inquiry, held the Sub-Registrar as well as Registration Muharrir guilty of allegations and the following recommendations were made:

1. Since the charges levelled against Mr. Khalid Rafique then Sub-Registrar Abbottabad presently serving as Sub-Registrar Battagram have been proved to the extent that if the commercial/built-up property was not sold through piecemeal transaction and non-realization of WHT then the Govt. kitty would not sustain financial loss of Rs. 3319150/- as worked out by Inspector of Stamps, Commissioner office Abbottabad during the conduct of the audit of Sub-Registrar office Abbottabad, therefore Mr. Khalid Rafique the delinquent official may be held responsible for the loss caused to the Govt. exchequer due to negligence/malicious intent on his part as well as Registration Muharrir.
2. The seller/purchasers involved in the pin pointed Registration deeds transactions who have broken up the area willfully for evading the tax application as envisaged Notification bearing Notification No. Rev: ICVT/2014/14927-58 dated 14-07-2014 should also be proceeded against, so that they may not bear to exercise malpractice for their vested interest in future.
3. The Sub-Registrar who admitted the lapses due to non-comprehension of technicality of Section 236K for recovery and requested for respite in the terms of recovery of calculated amount of Rs. 3319150/- may be given a reasonable time for the purpose

alongwith Registration Muharrir and if they failed the losses may be made up from them in their personal capacity.

4. The Sub-Registrar and Registration Muharrir may also be proceeded against departmentally under the relevant grounds as laid down in E&D Rules, 2011, if they failed to recover the worked out financial loss within a period of three months. Moreover, Registration Muharrir whose prime duty is to scrutinize the paper with due care and diligence before putting up to the Sub-Register has shown laxity and negligence, therefore, is also recommended to be proceeded against as per law. He should also be posted out of District as he has availed the maximum time in District Abbottabad.

5. A special audit may also be held at all levels in the KPK to dig out such like malpractice to curb the menace by Govt. officials.

(Copy of inquiry report is appended as Annex-E).

8. That thereafter, the appellant was served with a show cause notice for inefficiency and misconduct. The appellant submitted reply and denied the allegations and also termed it as fallacious, malicious and misconceived. He clarified that he had acted in consonance with law.

(Copy of show notice and its reply are appended as Annex-F & G)

9. That the said reply was not deemed satisfactory and the appellant was awarded major penalty of dismissal from service by an order dated 11-12-2017 passed by the Senior Member Board of Revenue & Estate Department (respondent No.2).

(Copy of impugned order is appended as Annex-H).

10. That the appellant felt aggrieved by the said order, filed a departmental appeal with the Chief Secretary Khyber Pakhtunkhwa (respondent No.1) on 27-12-2017. But the same was not decided within the statutory period of law.

(Copy of departmental appeal is appended as Annex-I)

11. That the appellant now files this appeal before this Hon'ble Tribunal inter-alia on the following grounds within the statutory period of law.

### **GROUND OF APPEAL**

- A. That the respondents have not treated appellant in accordance with law, rules and policy on the subject and acted in violation of **Article 4 of the Constitution of Islamic Republic of Pakistan, 1973**. Therefore, the impugned order is not sustainable in the eye of law.
- B. That the Senior Member Board of Revenue (respondent No.2) was under statutory obligation to have considered the case of appellant in its true perspective and also in accordance with law. But he failed to do so and awarded him major penalty of dismissal from service in utter violation of law despite the fact that neither any charge sheet alongwith statement of allegations was served on the appellant nor any inquiry was

ordered to be conducted against him. So far as the above inquiry is concerned, it was ordered to be conducted against the Sub-Registrar alone as evident from the commencement of inquiry report. Moreover, the appellant was summoned in the said inquiry in capacity as witness and then held him guilty of the charges including the Sub-Registrar in utter disregard of **Article 10-A of the Constitution of Islamic Republic of Pakistan 1973**. In the so-called inquiry, neither any witness was examined in presence of appellant nor he was provided any opportunity of cross-examination. Similarly, he was also not given any chance to produce his defence in support of his version. Therefore, the findings of Inquiry Officer in respect of appellant are perverse and are not sustainable under the law. Thus, the impugned order based on such findings is also against the spirit of administration of justice.

C. That the Inquiry Officer was legally bound to have acted in accordance with the order of Competent Authority through which he was appointed to conduct inquiry against Sub-Registrar alone. But he has travelled beyond the parameter of the same and as such he has blatantly violated the order of Competent Authority by conducting inquiry against the witness (appellant) also, despite the fact that neither any order was passed in this respect nor the appellant was served with charge sheet alongwith statement of allegations. Moreover, no order whatsoever was passed to conduct joint inquiry in the matter. Therefore, the entire process conducted by the Inquiry Officer from top to bottom against the appellant is **Coram non-judice**.

D. That the principal accused (Sub-Registrar) was awarded lesser punishment of "compulsory retirement" whereas the appellant who was a low paid employee, holding the post of Registration Muharrir (BPS-7) was imposed harsh and extreme penalty without any fault on his part. This is a disparity and anomaly

and is also violation of **Article 25 of the Constitution of Islamic republic of Pakistan, 1973** which has unequivocally laid down that all citizens placed in similar circumstances are entitled to equal treatment and protection of law. The Hon'ble Supreme Court of Pakistan through various judgments has maintained that equal treatment is fundamental right of every citizen. Hence, this being a classic case of sheer injustice on the part of departmental authority and as such the impugned order is liable to be reversed on this count alone.

- E.** That the Director Land Records/Inspector General Registration, Government of Khyber Pakhtunkhwa Board of Revenue & Estate Department (respondent No.3), initiated disciplinary action against Khalid Rafique (Sub-Registrar) Abbottabad alone and served him with a charge sheet alongwith statement of allegations and inquiry was also ordered to be conducted against him as admitted by the Inquiry Officer in his report. Therefore, the impugned orders of both the employees were required to be passed by the said Authority. But these orders were passed by the Senior Member Board of Revenue (respondent No.2) who was not competent to do so. It is well settled law that when the basic order is illegal, void and without lawful authority, the entire superstructure built on it would fall on the ground automatically.
- F.** That the Additional Deputy Commissioner Mansehra (Inquiry Officer) has categorically admitted in his report dated 20-07-2016 that it is the sole responsibility of such authorities who had attested the mutations/registered deeds to have recovered all legitimate dues of Government from the parties. He placed reliance on Section 236-K of the Income Tax Ordinance, 2001 inserted through Finance Act, 2014 as well as letter No.REV:I/CVT/2014/4927-58 dated 14-07-2014. But the respondent No.2 has overlooked this important aspect of



the case without any cogent and valid justification and as such he has awarded major penalty to the appellant in utter violation of law.

- G.** That there is no bar in statute that a landlord cannot sell his land in pieces but it is his prerogative to sell his land either as whole or in parts, on one date or different dates. Thus, the Inspector of Stamps, has misinterpreted the provision of law. Hence, the impugned order is bad in law.
- H.** That the Appellate Authority (respondent No.1) was under statutory obligation to have decided the departmental appeal filed by appellant after application of mind with cogent reasons within reasonable time as per law laid down by august Supreme Court of Pakistan reported in 2011-SCMR-1 (citation-b). It would be advantageous to reproduce herein the relevant citation for facility of reference:-

**2011-SCMR-1(citation-b)**

**General Clauses Act (X of 1897)**

**—S. 24-A—Speaking order-Public  
functionaries are bound to decide  
cases of their subordinates after  
application of mind with cogent  
reasons within reasonable time.**

It is well settled law that the decision of august Supreme Court of Pakistan is binding on each and every organ of the state by virtue of Article 189 & 190 of the Constitution of Islamic Republic of Pakistan 1973. Reliance can be placed on the judgment of apex court reported in 1996-SCMR-284 (citation-c). The relevant citation is as under:

**1996-SCMR-284(citation-c)**  
**Constitution of Pakistan (1973)**

**---Arts. 189 & 190---Decision of Supreme Court---Binding, effect of--Extent--Law declared by Supreme Court would bind all Courts, Tribunals and bureaucratic set-up in Pakistan.**

But despite thereof, the Appellate Authority did not bother to adhere the above provision of Constitution as well as law laid down by august Supreme Court of Pakistan and failed to decide the departmental appeal. Therefore, the impugned order is liable to be set aside on this count alone.

- I. That the Inquiry Officer (Deputy Commissioner Haripur) has failed to observe the procedure of inquiry as the same was conducted in questionnaire form as evident from his report which practice had already been disapproved by the august Supreme Court of Pakistan in various judgments.
- J. That the impugned order was passed in mechanical manner and the same is perfunctory as well as non-speaking and also against the basic Principle of administration of justice. Therefore, the impugned order is not tenable under the law.
- K. That the findings of Inquiry Officer are based on conjectures and surmises and as such the impugned order is against the legal norms of justice.
- L. That the impugned order is suffering from legal infirmities and as such causing grave miscarriage of justice to the appellant.

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned order dated 11-12-2017 passed by the Senior Member Board of Revenue (respondent No.2) whereby the appellant was awarded major penalty of dismissal from service may very graciously

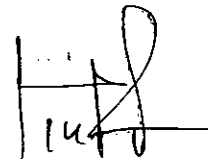
be set aside and the appellant may kindly be re-instated in service with full back wages and benefits.

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



Appellant

Through



**RIZWANULLAH**  
M.A. LL.B

**Advocate High Court, Peshawar**

Dated: 23-4-2018

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

Service Appeal No. \_\_\_\_\_/2018

1. Khalid Javed Ghazi (Ex-Registration Muharrir), HNo.CB-32 Choonakari,  
P.O Nawansher, Abbottabad.

**APPELLANT**

**VERSUS**

1. The Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar etc.

**RESPONDENTS**

**AFFIDAVIT**

I, Khalid Javed Ghazi (Ex-Registration Muharrir), HNo.CB-32 Choonakari, P.O Nawansher, Abbottabad, do hereby solemnly affirm and declare that the contents of the accompanied Service Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

DEPONENT

ATTESTED

13/01.09649467





Annex - A

OFFICE OF THE  
COMMISSIONER HAZARA DIVISION  
ABBOTTABAD

(33) A(15)

PH & FAX 0992-9310461-62

ACR/CHD/STAMP INS/ 9084

Dated Abbottabad: 28/06/2016

To

The Additional Deputy Commissioner,  
Mansehra.

Subject: INQUIRY AGAINST SUB REGISTRAR AND OFFICIALS  
CONCERNED ABBOTTABAD

Memo:

I am directed to refer to the subject cited above and to state that the Commissioner Hazara division has appointed you as an inquiry Officer against the subject delinquent Officer/Officials, being involved in the splitting up of transferred area in order to compensate purchasers/sellers intentionally and caused loss to the Government exchequer.

I am further directed to enclose herewith copy of relevant documents with the request to initiate inquiry and report may be furnished to this office within ten days positively, please.

WJ  
Secretary to Commissioner  
Hazara Division Abbottabad

Endst No. 9085

Copy forwarded to the PS to Commissioner Hazara Division.

WJ  
Secretary to Commissioner  
Hazara Division Abbottabad

<sup>8/c</sup>  
**ATTESTED**

WJ  
Appellant



**OFFICE OF THE  
ADDITIONAL DEPUTY COMMISSIONER, MANSEHRA**

No. 557 /ADC(M)

Dated: 20<sup>th</sup> July, 2016

To:

The Commissioner,  
Hazara Division,  
Abbottabad.

Subject:

ENQUIRY AGAINST SUB REGISTRAR AND  
OFFICIALS CONCERNED ABBOTTABAD

Kindly refer to your letter No. ACR/CHD/STAMP INS/9084, dated 28/06/2016 on the captioned subject vide which the undersigned was appointed as an Inquiry Officer to conduct the subject inquiry.

**I. ALLEGATIONS:**

The Inspector of Stamps, Hazara Division Abbottabad conducted inspection/ audit of the office of Sub Registrar Abbottabad on 14<sup>th</sup> and 15<sup>th</sup> March 2016. During the audit the Inspector of Stamps raised following objections:

1. During the audit of several sale deeds of aforesaid mouzas, it had been observed with great concern that area of same no Khasra/Khasras owned by the same seller/sellers comprised of same amount was transferred/registered in the name of same buyer/purchaser by splitting it in parts/pieces through subsequent sale deeds and later on registered on various dates. It is also worth mentioning here that stamp papers were purchased by the same seller/purchaser on the same date and then detail of the area transferred was recorded in the stamp papers consisted of consecutive serial Nos. of sale deeds on the same date but registered on different dates intentionally. This implied that such practice was carried out just to pave the way for the purchaser/sellers to evade WHT and to keep the amount below 3 million

*Secretary*  
*25/7/16*

*Inspector Stamps.*  
*[Signature]*  
*26/7*

**ATTESTED**  
*[Signature]*  
**Appellant**

*4279*  
*26-7-16*

37

17

rupees by splitting up area. Resultantly, it caused huge loss to the Government exchequer.

It was rather more convenient to transfer the area from same owner/seller in the name of same buyer/purchaser in one deed on the same date instead of registering it into various deeds on different dates. It was further noted that area of the houses was also splitted up.

Keeping in view the above, the Inspector of Stamps observed that an amount of Rs.16,90,000/- on account of WHT from purchasers and Rs. 845,000/- from sellers is recoverable in the light of detail given in the annexure (A) of said Audit Note.

2. It was alleged that WHT had not been collected from the sellers on the amount more than three million in various mouzas. Therefore, WHT amounting to Rs.784,150 was recoverable from the sellers in the light of detail given in the annexure (B) of said Audit Note.

## II. RELEVANT LAW GOVERNING THE SAID CASE:

As per letter No.Rev:I/CVT/2014/4927-58, DATED 14/07/2014 from the Govt. of Khyber Pakhtunkhwa, Board of Revenue, Revenue & Estate Department, Peshawar a new Section-236K has been inserted in the Income Tax Ordinance 2001 by the Finance Act 2014 and the authorities attesting mutations and registering sale deeds have been made responsible of the following w.e.f. 01/07/2014:

- i. *1% WHT from purchaser/transferee of immovable property who is a filer of income tax i.e. a person who appears on active tax payer list published by Federal Board of Revenue or who carries a tax payer card and 2% from a new filer for transaction having a value of three million or more.*
- ii. *WHT imposed on seller of immovable property since 2012 have been revised. The rate of WHT for filer remains unchanged at 1/2% for filer while for non-filer WHT has been increased 1% of the value of property. The WHT is to be paid on computerized payment receipt prescribed by FBR and available at authorized banks.*

**ATTESTED**

*14*  
*Appellant*

III. FINDINGS:

- 1) Recovery of WHT @ 2% from purchasers and @ 1% from sellers amounting to Rs.16,90,000/- and Rs. 8,45,000/- respectively (as per list at Annexure-'A' of the Audit Note of the Inspector of Stamps, Hazara Division Abbottabad dated 14/03/2016) was not applicable as the amount of these transactions was less than Rs.3.0 million. As far as splitting of area is concerned, the Sub Registrar has no concern with it and has to attest the deeds presented to him after proper scrutiny of papers.
- 2) Perusal of relevant record and statement of Sub Registrar Abbottabad proves that the Sub Registrar concerned could not understand the context of Section 236-C and 236-K. According to him Section 236-K is WHT recoverable from the purchaser on the transactions having value of three million or more while Section 236-C is Capital Gain Tax recoverable from the seller on the transactions made within the period of two years. Because of this confusion/misunderstanding, the Sub Registrar could not recover WHT amounting to Rs.348,750/- from the sellers mentioned at Sr. No. 3, 4, 5, 6, 10, 12, 13 of the list at Annexure-'B' of the Audit Note of the Inspector of Stamps, Hazara Division Abbottabad dated 14/03/2016. Detail is as under:

Sr.#	Deed No.	Date	Value of land	WHT @ 1%
3	656	02-06-15	50,00,000/-	50,000/-
4	10	05-01-15	50,00,000/-	50,000/-
5	744	18-06-15	42,00,000/-	42,000/-
6	645	25-05-15	31,25,000/-	31,250/-
10	1222	02-12-15	33,00,000/-	33,000/-
12	831	24-07-15	52,50,000/-	52,500/-
13	938	25-08-15	90,00,000/-	90,000/-
Total:				348,750/-

While recovery of WHT amounting to Rs. 355,400/- from the sellers mentioned at Sr. No. 1, 2, 7, 8, 9, 11 of the said list was made by him and copies of bank deposit slips were produced by him which are placed in file. Detail is as under:

Sr.#	Deed No.	Date	Value of land	WHT @ 1%
1	217	13-02-15	68,00,000/-	68,000/-
2	442	06-04-15	45,00,000/-	45,000/-
7	996	10-09-15	50,00,000/-	50,000/-
8	1042	22-09-15	160,00,000/-	80,000/-*
9	911	17-08-15	32,40,000/-	32,400/-
11	1144	05-11-15	80,00,000/-	80,000/-
Total:				355,400/-

ATTESTED

*(Signature)*  
Appellant



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\*It is pertinent to mention that the seller at Sr. No.8 above deposited WHT @ 0.5% being filer of income tax as per relevant rules.

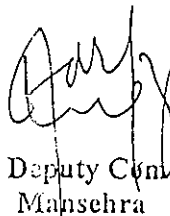
IV. RECOMMENDATIONS:

In light of the foregoing factual position, it is recommended that the recoverable amount of Rs. 348,750/- as mentioned in Para-2 above, may be recovered from the Sub Registrar Abbottabad and appropriate action as deemed necessary may be taken against him for committing negligence to understand the relevant laws/rules being a responsible officer.

Moreover, it is recommended that the case may please be referred to the Commissioner Federal Board of Revenue, Hazara Division Abbottabad for further clarification as it involve monetary loss to the Government Exchequer.

Complete file as received vide your letter under reference is returned with this report along with statement of Sub Registrar Abbottabad and documents produced by him.

Submitted please.



Additional Deputy Commissioner,  
Manshra

**ATTESTED**

*T<sub>2</sub>*  
*Appellant*

CONFIDENTIAL



OFFICE OF THE  
COMMISSIONER HAZARA DIVISION  
ABBOTTABAD

PH & FAX 0992-9310461-62

ACR/CHD/ 10108

Dated Abbottabad: 29/07/2016

10 Annex - C

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To

The Senior Member Board of Revenue,  
Government of Khyber Pakhtunkhwa,  
Peshawar.

Subject:

INQUIRY AGAINST SUB REGISTRAR AND STAFF CONCERNED  
ABBOTTABAD

Please refer to the captioned subject, the following facts are elaborated for clarification and necessary action.

Inspector Stamp Hazara Division Abbottabad carried out his Inspection/audit of the aforesaid office dated 14,15/03/2016 wherein, he highlighted the some grave irregularities that the purchasers/sellers split up the area of the same Houses/some Residential plots by purchasing the stamp papers of all Sale deeds on the same date, even recorded the detail of the transactions on the same date but later on registered in the name of same purchaser on various dates in connivance with the concerned officer/officials.

In his annotated Reply, Sub Registrar admitted that such trend is prevalent amongst Public and Sub Registrar is helpless in this regard to curb this practice. He further stated that to curb this trend of at large there is dire needs of legislation at GOVT; Level.

To probe the issues, Additional Deputy Commissioner Mansehra was deputed as an Enquiry Officer vide this office letter No. ACR/CHD/STAMP INS/9084 Dated 28/06/2016 for ascertainment of facts. Alpha and Omega of the enquiry report is as under.

"In the light of the foregoing factual position, it is recommended that the recoverable amount of Rs 348750/- may be recovered from Sub Registrar Abbottabad and appropriate action as deemed necessary may be taken against him for committing negligence to understand laws/rules being a responsible officer. Moreover, the case may please be referred to the Commissioner Federal Board of Revenue Hazara Division for further Clarification as it involves monetary loss to the Govt: Exchequer".

Keeping in view the foregoing facts, if Sub Registrar and his staff are helpless to protect the public interest, who is to check the tendency in the cases of taxes evasion. Role and responsibility of Sub Registrar may be defined with regards to safeguarding the public Exchequer and action for the causing loss to the Government Exchequer. Case file is forwarded for clarification and appropriate action as recommended by the Enquiry Officer.

ATTESTED

*T.D.*  
Appellant

Encd in post 209/2

*[Signature]*  
Commissioner  
Hazara Division, Abbottabad.

o/c

27/7/16



Annex-D (21)

GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT

Peshawa dated the 21/09/2016

CHARGE SHEET:

I, Saqib Raza Salman, Inspector General Registration Khyber Pakhtunkhwa, as Competent Authority hereby charged you Mr. Khalid Rafiq, Sub-Registrar as follows:-

That you while posted as Sub Registrar Abbottabad committed the following irregularities:-

1. During the audit by Inspector of Stamps, Hazara Division, it was observed with great concern that area of same no Khasra (s) owned by the same seller (s) comprised of same amount was registered in the name of same buyer/purchaser by splitting it in parts/pieces and Stamp Papers were purchased by the same seller/purchaser on the same date and then detail of the area transferred was recorded in the Stamp papers consisted of consecutive serial Nos. of sale deeds on the same date but registered on difference dates intentionally. This implied that such practice was carried out just to pave the way for the purchaser/sellers to evade WHT and to keep the amount below Ks.03 million by splitting up area, resultantly, it caused huge loss to the Government exchequer.
2. It was rather more convenient to transfer the area from same owner/seller in the name of same buyer/purchaser in one deed on the same date instead of registering it into various deeds on different dates, while the area of the houses was also splitted up.
3. It has been alleged that With Holding Tax has not been collected from the sellers on the amount more than three million in various mauzas, therefore, With Holding Tax amounting to Rs.784,350/- was recoverable, which had not been recovered as such caused huge loss to the Government Exchequer.

2. By reason of the above you appear to be guilty of misconduct under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 require penal as specified in Rule-4 of the rule ibid.

3. You are therefore required to submit your written reply in your defense within 15 days of the receipt of this charge sheet to the Enquiry Officer.

4. Your written defense if any should reach the Enquiry Officer, within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.

5. Intimate as to whether you desire to be heard in person or otherwise.

6. Statement of allegations is enclosed.

DIRECTOR LAND RECORDS/  
INSPECTOR GENERAL REGISTRATION

Mr. Khalid Rafiq,  
Sub Registrar Abbottabad,

**ATTESTED**

Appellant



GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT

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DISCIPLINARY ACTION

I, Saqib Raza Salman Inspector General of Registration Khyber Pakhtunkhwa as Competent Authority, am of the opinion that Mr. Khalid Rafiq, Sub Registrar Abbottabad has rendered himself liable to be proceeded against, as he committed the following acts/omission, within the meaning of Rules-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

- a) During the audit by Inspector of Stamps, Hazara Division, it was observed with great concern that area of same no Khasra (s) owned by the same seller (s) comprised of same amount was registered in the name of same buyer/purchaser by splitting it in parts/pieces and Stamp Papers were purchased by the same seller/purchaser on the same date and then detail of the area transferred was recorded in the Stamp papers consisted of consecutive serial Nos. of sale deeds on the same date but registered on difference dates intentionally. This implied that such practice was carried out just to pave the way for the purchaser/sellers to evade WHT and to keep the amount below Rs.03 million by splitting up area, resultantly, it caused huge loss to the Government exchequer.
- b) It was rather more convenient to transfer the area from same owner/seller in the name of same buyer/purchaser in one deed on the same date instead of registering it into various deeds on different dates, while the area of the houses was also splitted up.
- c) It has been alleged that With Holding Tax has not been collected from the sellers on the amount more than three million in various mauzas, therefore, With Holding Tax amounting to Rs.784,150/- was recoverable, which had not been recovered as such caused huge loss to the Government Exchequer.

2. For the purpose of inquiry against the said accused with reference to the above allegations, Mr. Tasleem Khan, Deputy Commissioner, Haripur is appointed as Enquiry Officer under Rule-10 (1) (a) of the rules ibid.

3. The Enquiry Officer/Enquiry Committee shall, in accordance with the provisions of the rules ibid provide reasonable opportunity of hearing to the accused, record its findings and made, within 15 days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the Deputy Commissioner, Abbottabad shall join the proceedings on the date, time and place fixed by the Enquiry Officer.

  
DIRECTOR LAND RECORDS /  
INSPECTOR GENERAL REGISTRATION

ATTESTED

  
Appellant

OFFICE OF THE DEPUTY COMMISSIONER, HARIPUR.INQUIRY REPORT:

The Director, Land Records/Inspector General Registrations, Govt. of Khyber Pakhtunkhwa, Board of Revenue & Estate Department, Peshawar as competent authority initiated disciplinary proceedings under Rule-3 of KPK E&D Rules-2011 against Mr. Khalid Rafiq, Sub-Registrar, Abbottabad and conveyed him the list of allegations which are as under:-

- During the audit by Inspector of Stamps, Hazara Division, it was observed with great concern that area of same no Khasra (s) owned by the same seller (s) comprised of same amount was registered in the name of same buyer/purchaser by splitting it in parts/pieces and Stamp Papers were purchased by the same seller/purchaser on the same date and then detail of the area transferred was recorded in the Stamp papers consisted of consecutive serial Nos. of sale deeds on the same date but registered on different dates intentionally. This implied that such practice was carried out just to pave the way for the purchaser/sellers to evade WHT and to keep the amount below Rs. 03 million by splitting up area, resultantly, it caused huge loss to the Government Exchequer.
- It was rather more convenient to transfer the area from same owner/seller in the name of same buyer/purchaser in one deed on the same date instead of registering it into various deeds on different dates, while the area of the houses was also splitted up.
- It has been alleged that With Holding Tax has not been collected from the sellers on the amount more than three million in various mauzas, therefore, With Holding Tax amounting to Rs. 784,150/- was recoverable, which had not been recovered as such caused huge loss to the Government Exchequer.

The Director, Land Records/Inspector General Registration vide his letter No. LR-IV/P.F Khalid Rafiq/7141-42 dated 21.09.2016 has conveyed the undersigned charge sheet alongwith statement of allegations for serving upon Mr. Khalid Rafiq, Sub-Registrar, Abbottabad (accused person). In the said reference, the order of the competent authority was also conveyed to the undersigned wherein, DC Haripur was appointed as Inquiry Officer to investigate the charge / conduct inquiry under the provisions of the E&D Rules-2011 and submission of findings / recommendations / report within a period of 15 days.

In compliance with the order of the competent authority, the undersigned in the capacity of Inquiry Officer summoned Mr. Khalid Rafiq, Sub-Registrar, Abbottabad, Registration Muharrir and Patwaris of concerned mauza who issued Fard of the relevant immovable property alongwith record for 07.10.2016, who appeared on various dates but due to the pre-occupation of the undersigned, inquiry proceedings could not be held. The dealing staff of the office of DC Haripur on his direction gave them dates. Ultimately, made a request to the Director, Land Records/Inspector General Registration, Govt. of Khyber Pakhtunkhwa, Board of Revenue & Estate Department, Peshawar vide letter No. 11556-58/HCR/DC (H) dated 14.10.2016 for entrusting the said inquiry to any other suitable officer from District Abbottabad. Vide letter No. LR-IV/PF/Khalid Rafiq/SR/7629-31 dated 10.11.2016, it was conveyed that the competent authority did not accede to request of the undersigned and re-assigned the subject inquiry.

Inquiry Proceedings:

The undersigned summoned Sub-Registrar, Mr. Khalid Rafiq presently working in District Battagram (accused person), Registration Muharrir working in the office of Sub-Registrar, Abbottabad, Patwaris concerned and Inspector of Stamps, Commissioner Office, Hazara Division, Abbottabad on 29.11.2016 and recorded the statements of the concerned officials which are illustrated as under: -

1. Statement of Hafiz Waqar Ahmed, Inspector of Stamps, Hazara Division, Abbottabad:

The undersigned made the questions which were answered by the said officials. Detail is as under:

Q1: When did you carry out the inspection of office of Sub-Registrar, Abbottabad and which deficiencies / irregularities were found/observed during audit/inspection?

A: I, Hafiz Waqar Ahmed, Inspector of Stamps, Hazara Division, Abbottabad inspected the said office on 14-15/03/2016. Book-1/2ab maintained in the office of Sub-

ATTESTED

Appellant

(21)

Registrar, Abbottabad and checked the registered deeds pertaining to Mauza Urban area Abbottabad, Jhangi Nawanshehr Shamali-I, Morkalan, Qasba Abbottabad, Mirpur-II and Nawanshehr Shamali-II.

Deficiencies/Observations: Attached as Annexure-A, duly supported by relevant registration deeds/fards.

Q2: Did the Provincial Government issue any Notification regarding With Holding Tax? Is there any Notification issued by the Government applicable upon Sub-Registrars regarding With Holding Tax? If so, are you in a position to understand that in real sense? Moreover, what is the difference between With Holding and Capital Gain Tax?

A: Yes. The Provincial Government had communicated vide Notification No. Rev: ICVT/2014/14927-58 dated 14.07.2014 that Federal Board of Revenue had added a new Section 236K in the Income Tax Ordinance-2001. Copy of Notification produced is placed as Annexure-B which is also reproduced as under effective from 01.07.2014:

- i. 1% (WHT) from purchaser/transferee of immovable property who is a filer of income tax i.e. a person whose name appears on active payer list published by Federal Board of Revenue or who carries a tax payer card and 2% from a new filer for transaction having a value of three million or more.
- ii. WHT imposed on seller of immovable property since 2012 have been revised. The rate of WHT for filer remains unchanged at ½ % for filer while for non-filer WHT has been increased 1% of the value of the property. The WHT is to be paid on computerized payment receipt prescribed by FBR and available at authorized Banks.

The Deputy Commissioners / Collectors / Registrars in KPK were requested accordingly to direct all Tehsildars and Sub-Registrars to ensure that the purchasers and transferees produce computerized payment receipt before they attested mutation/registered sale transfer deed.

While differentiating between WHT and CGT, he stated that CGT is recovered under Section 236C which is applicable on the seller who sells his/their properties within the period of 2 years of the transaction of the same property and whereas, WHT is recovered under Section 236K.

Q3: Is he in a position to identify the registration deeds made by Sub-Registrar, Abbottabad whose value in integrated position goes beyond 3 million if not sold in piecemeal transactions having same buyers / sellers?

A: He has pointed out 13 such sale deeds in which With Holding Tax amounting to Rs. 7,84,150/- is recoverable from sellers and during audit, office of the Sub-Registrar could not produce deposit slips of the said transactions. Detail is available at Annexure-C.

Q4: The amount of Rs. 7,84,150/- as reflected in the statement of allegation communicated to accused Sub-Registrar shown as recoverable, identify the basis on which the said default has been worked out?

A: As per Notification mentioned while answering question No. 2 ibid Para (ii). The seller is liable to pay the WHT @ ½% in case of filer and 1% of the value of the property in case of non-filer. The office of the Sub-Registrar failed to produce the relevant Challans or Fards.

Q5: Except above 13 pointed out registries, would he be in a position to highlight more such registration deeds where flagrant disregard to charging the WHT has been made by Sub-Registrar/staff?

A: Deed numbers 893 dated 10.08.2015, 901 dated 12.08.2015, 923 dated 19.08.2015 and 939 dated 25.08.2015 Mauza Urban Area Abbottabad through which 5 Marla built up house was transferred by the same seller / purchaser while splitting the area for evading the WHT. Detail available at Serial No. 1 of the Annexure-A, according to which the WHT is recoverable. He further stated that all stamp papers were purchased on same date i.e. 10.08.2015 and which were got written from the same petitioner writer on the same date which were subsequently attested in different dates. Specifically, cutting/tempering on the first page of the deed No. 901 was noted and similarly, at the overleaf of the first page of the said deed, tempering in date was made i.e. from 10.08.2015 to 12.08.2015 which is a step to evade from the tax deposit through various tactics / malpractices. Similarly, vide deeds No. 83 dated 22.01.2016, 109 dated 27.01.2016 and 132 dated 02.02.2016, Mr. Rashid Saleem

ATTESTED

Appellant

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Khan sold 4.50 Marla area through split-up method with ulterior motives / objectives as indicated in Annexure-A. According to his statement, 30 registration deeds, have been registered by Sub-Registrar in violation of Notification referred above as observed during the audit. Detail is available in Annexure-A above.

Q6: What action has been taken by the department on the observation raised by him? Moreover, did he present the relevant record before the Additional Deputy Commissioner, Mansehra/Inquiry Officer pertaining to the subject inquiry?

A: The worthy Commissioner, Hazara Division, Abbottabad referred the audit paras / observations to ADC Mansehra for inquiry. While responding the para, Sub-Registrar, Abbottabad stated in categorical terms that a general trend has been development to sell the built-up/commercial property in piecemeal transactions for which a proper legislation is required to be made by the competent forum. Inquiry conducted by ADC Mansehra, the correspondence made by Commissioner Office with reference to the matter is available at Annexure-D. ADC Mansehra did not call him for inquiry. The same nature paras have been raised by the external audit team while conducting the audit of Sub-Registrar Abbottabad and Tehsildar Swabi.

2. Statement of Mr. Khalid Rafiq, the then Sub-Registrar, Abbottabad presently posted at Sub-Registrar, Battagram (accused person):

Q1: Can you specify registration deeds which have been made on the basis of piecemeal transactions by the same purchaser/seller for evading the WHT @ 2% new filer and 1% filer during the period you served recently as Sub-Registrar, Abbottabad to cause financial loss to Government Exchequer?

A: ADC Mansehra has already conducted an inquiry regarding the subject issue. He produced a copy of inquiry report bearing No. 557/ADC(M) dated 20.07.2016, no financial loss caused to the Government Exchequer due to his this act. As per routine, Sub-Registrar attests registration deeds on daily basis.

Q2: You have attested 30 registration deeds as a Sub-Registrar, Abbottabad pertaining to various mauzas such as Abbottabad Urban Area, Jhangi, Nawashehr Shamali-I wherein the same sellers/purchasers were involved through piecemeal transactions from evading the WHT, due to which the Government instructions / Notifications provisions were violated. Moreover, you have attested registration deeds by breaking 5 Marla built-up house with the division of 1.25 Marla in favour of the same purchaser/seller at the cost of 25,00000/- each through registration deeds No. 893 dated 10.08.2015, No. 901 dated 12.08.2015, No. 923 dated 19.08.2015 and No. 939 dated 25.08.2015, which if sold as a whole through one transaction, its cost comes to Rs. 1,0000000/- which is the flagrant / blatant violation of the Section-236K for providing unlawful gain to Mr. Adam Khan Jadoon (Purchaser). Despite availability of Notification No. Rev: ICVT/2014/14927-58 dated 14.07.2014, can you clear your position with regard to the observations raised in the question?

A: It is not in his domain to bar the same seller/purchaser for producing the integrated registration deeds for attestation, it is the sole will of seller/purchaser either to produce registration deeds of the same Khasra no/area in integrated form or dis-integrated position, as law does not bar this transaction. It is the right of the seller/purchaser to frame the body of the registration deed either in integrated form or otherwise. It is not the part of his duty and the allegation leveled is baseless.

Q3: Was the WHT as specified in the Notification applicable on the alleged registration deeds?

A: Since, the value of attested deed (each) is less than 3 million therefore, the provision of said Notification with regard to charging the WHT is not applicable.

Q4: Cutting / tampering is being seen on the front page of the registration deed No. 901 dated 12.08.2015 and the date overleaf of the same stamp paper has been changed from 10.08.2015 to 12.08.2015. No marginal note given on the stamp deed. Similarly, deed No. 747 dated 19.06.2015 was issued in the name of Mst. Farhat Rizvi w/o Mr. Tahir Saleem Khan and another deed No. 748 dated 19.06.2015 was also issued in the name of Mst. Farhat Rizvi w/o Mr. Tahir Saleem Khan but later on through cutting process in deed No. 748, name of Nayab Saleem Khan D/O Mr. Tahir Saleem Khan has been added for evading the tax. Similarly, another deed No. 761 and 762 even dated 26.06.2015 which were obtained in the name of Mst. Farhat Rizvi w/o Mr. Tahir Saleem Khan but later on through cutting, name of

ATTESTED

Appellant

(26)

Nayab Saleem Khan was added. Deed No. 763 and No 764 even dated 26.06.2015 were obtained in the name of Mr. Tahir Saleem Khan s/o Muhabbat Khan r/o Jhangi Syedan. These stamp papers were purchased to make piecemeal transaction of the same Khasra no/built-up property (Kothi) from the same seller for breaking the sealing of 3 million for evading the tax application. What do you want to say about it?

A: The sale / purchase of stamp papers is not concerned with the Sub-Registrar office. The seller himself purchases the stamp papers from the Treasury whose value is beyond Rs. 10,000/-. His office has no knowledge of it. Petitioner writer / Wasiqa Navees reduce the registration deed. Which is not linked with the office of Sub-Registrar. The written registration deed is presented before Sub-Registrar of Ice through himself (seller) or his rep. alongwith witnesses for attestation of the same. The Registration Muharrir scrutinizes the same including Government tax, stamp paper checking and its validity which is 120 days but he could not produce relevant law. On the basis of scrutiny made by his staff, the Sub-Registrar attests the registration deeds after his due satisfaction. Rest challans pertaining to the transactions involving taxes etc are prepared by Registry Muharrir. Buyer / his rep. deposit the same in the relevant head of account in National Bank. Under Rule 135 of Registration Act-1908, Sub-Registrar is bound to attest the registration there and then. He provided the relevant copy of rule/Judgment of Supreme Court.

Q5: Is Registration Muharrir not bound to give his observations regarding cutting/tampering made in the stamp deed?

✓ A: He stated that the cutting made in stamp paper of at Serial No. 526 dated 10.06.2015 pertain to Treasury. The cutting made at the overleaf of registry No. 764 dated 26.06.2015 is relevant to Treasury.

Q6: On what basis the Sub-Registrar attest the registration of Agricultural Land or built-up property? Do you consult the relevant revenue papers? Has any valuation table issued by the District Collector regarding Cantt area or mauzas? Do you consult the revenue record/valuation table before making the registration of above narrated registration deeds?

A: As Sub-Registrar, he is bound to follow the valuation table issued by the District Collector and Fards before attesting the registration deeds.

Q7: Did you check the Fards issued by Patwari pertaining to the above mentioned registration deeds? Did you take to count the kind of land and built-up property etc? What was the cost of the land according to evaluation table and how you satisfied yourself before making the attestation of registration deeds?

A: Registration Muharrir being the custodian of valuation table / record consult/match the value of land and records his written note to the effect that cost of stamp duty etc. (He could not produce the copy of valuation table).

Q8: If you consolidate the registration deeds into one deed then the Government Tax will have to be paid by the buyer as per Government Notification but you did not care to consolidate resultantly, issue created and he have been charged as indicated in the statement of allegation. What you say about it?

✓ A: It is not the mandate of Sub-Registrar to direct the parties to produce one registration deed, it is their headache.

Q9: As a Sub-Registrar, what are your duties / responsibilities to be taken in view before attesting the registration deeds? Will you keep regard of SOPs/directions/orders?

A: Sub-Registrar satisfies himself before registration that the parties are same and the cost of stamp papers is not less than the rate fixed by the District Collector in valuation table. Other instructions of the Provincial Government are also taken in view before making the attestation.

Q10: What you will say about the allegation leveled against you in para-1 (c) of the statement of allegations regarding causing of financial loss to the Government kitty due to attestation of registration deeds in piecemeal?

A: In this connection, he submitted that he appeared before ADC Mansehra in the subject inquiry and submitted his written reply. No violation has been made by him in charging of levied taxes in the shape of CGT.

Q11: You have attested 13 registration deeds but you did not charge the due WHT, if so, can you produce the challans under which the due amount of WHT stands deposited?

ATTESTED

Appellant



(27) (8)

A: I have collected the due WHT upon all the 13 registration deeds as pointed out by the Inspector Stamps. He produced a file comprising 135 pages indicating that the WHT was received as per Notification provision and could not be realized taxes where not chargeable on the basis of beyond 2 years period which is enclosed as Annex-D.

✓ Q12: Did you receive Rs. 7,84,150/- from the purchasers at the prescribed rates specified in 236K?

A: He could not receive / deposit Rs. 7,84,150/- for which one month's time be given to recover the same.

Q13: Why did you attest registration deed No. 893 dated 10.08.2015, No. 901 dated 12.08.2015, No. 923 dated 19.08.2015 and No. 930 dated 25.08.2015 mauza Abbottabad Urban 5 Marla built-up house transferred in piecemeal transactions @ 25, 00,000/- in various dates, as a result, Rs. 3,00,000/- sustained loss to Government?

✓ A: I have attested the registration deeds in routine as per rule. However, the financial loss caused to the Government Exchequer can be recovered if one month time is given to him.

Q14: The Government Exchequer suffered a total financial loss as appeared in the examination of your record by the Inspector Stamps is Rs. 33,19,150/-. What is your stance?

A: The registration deeds have been attested in various dates having value less than 3 million each therefore, WHT was not applicable to be charged as per provision of Notification (236K). However, the tax which according to the Notification is chargeable, the same will be deposited.

Q15: The Deputy Director, Audit while conducting the audit of your office raised the same observations on the pattern of one raised by Inspector Stamps in the year 2015-16. He raised audit observations in the shape of audit para of the property sold through split-up mechanism as discussed supra. Your stance?

A: He is bound to recover the amount from the seller/purchaser under the rules and deposit the same in to the Government kitty.

3. Statement of Mr. Khalid Javed Ghazi, Registration Muharrir office of Sub-Registrar, Abbottabad:

Q1: When any document is presented for attestation to Sub-Registrar and initially as Registry Muharrir, what is his responsibility to the extent of writing the wording of document in the same sense in Book-1?

A: Correct. It is his responsibility. It is also his responsibility to check the stamp duty as to whether the same is in accordance with the prevailing policy of the Government. Unless, a "Fard" is produce by the relevant parties, attestation of the same is not made. The parties who come to him, their record (Fard) is checked by him and those who directly present the same to Sub-Registrar, their record is checked by Sub-Registrar.

Q2: A perusal of the available record transpired that cutting/tampering have been made on the front / overleaf of stamp deeds. Did he observe the same and brought to the notice of Sub-Registrar?

A: Sub-Registrar, Mr. Khalid Rafique is in a position to answer the same in a befitting manner.

Q3: Why did you not check the identified registration deeds before presenting to Sub-Registrar that the parties have purchased stamp papers in piecemeal transactions which ultimately, caused the tremendous financial loss to the Treasury? Did you ever bring such discrepancy into the knowledge of Sub-Registrar?

A: The required amount is deposited into Government kitty by the parties and they just submit their respective challans which are usually put up to Sub-Registrar. Further, part of the question relates to Sub-Registrar.

Q4: While making entries in Book-1 of the same Khasra numbers and parties / same area, he should have noted that the parties are playing foul game to trap the Government. Why did he conceal the facts to Sub-Registrar? What is his role in this regard?

A: His duty is only to enter the registration deed in the Book-1, rest pertain to Sub-Registrar.

ATTESTED

4. Joint Statement of Muhammad Asif Patwari Halqa Nawashehr Shamali-I and Mehboob Patwari Halqa Jhangi:

Q1: When a person comes to them for obtaining Fard for sale/purchase of property, what he/they mention in the Fard for guidance of Sub-Registrar Office?

A: They issue Fard from the Zairi-Kar (زیر کار) Jamabandi mentioning therein Khasra No and other detail regarding land or built-up property.

Q2: In mauza Jhangi, Sub-Registrar Office, Abbottabad attested 10 registration deeds. Did they issue Fard for each registration deed?

A: I was posted on 01.11.2015 as Patwari Halqa Jhangi. A Fard pertaining to the property comprising various Khasra numbers measuring 5Kanal-17Marlas was issued. He produced Fard.

Q3: Whether they incorporate about the owners in Fard that when he got the status of owner mentioning therein the time period specifically?

A: Specification is made by marking with red /black writing on the relevant Fard.

Q4: In the Fard, there is mention of Ghair Mumkin Kothi, whether it exists physically on spot?

A: Yes.

FINDINGS

1. Inspector Stamps Commissioner Office, Abbottabad has carried out inspection of Sub Registrar Office, Abbottabad while keeping in view the provisions contained in Notification No. Rev:ICVT/2014/14927-58 dated 14.07.2014 from the Government of Khyber Pakhtunkhwa, Board of Revenue, Peshawar. It has been observed that while making the attestation of registration deeds as reflected in Annexure-A, the provisions of the said notification with regard to the charging of 2% WHT from a new filler and 1% from a filler have been flagrantly disregarded by Sub Registrar / Registry Muharrir. Resultantly Government exchequer sustained a financial loss of Rs.3319150/-.
2. 30 Registration Deeds as reflected in Annexure-A by the same seller / purchaser for the same area have been made in piece meal transactions with the connivance of Sub Registrar, Registry Muharrir and relevant Parties for evading the tax deposit in term of WHT.
3. Necessary cuttings made in stamp deeds indicate their malafide intention and ulterior motive/object as evident from the statements recorded.
4. The tax evasion attempt has been made by the Government officials / parties despite availability of relevant record pertaining to the levying of WHT at the ratio fixed by the Government just to cause financial loss to Govt. kitty.
5. The intent of the notification was/is to generate revenue by imposing withholding tax (WHT) to spend the same for the welfare of country public but in the instant case the parties/relevant officials while using fraudulent approach/technique for causing loss to Govt. kitty have sold out the area into disintegrated portions, resultantly the WHT limit could not be applied on the sale/purchase transactions of 30 registrations deeds.
6. The area has been subdivided intentionally by evading the WHT application by the parties as well, the tax paying status with regard to the charge of WHT at the ratio of 1% or 2% needs to be assessed through the office of Federal Board of Revenue (FBR).

RECOMMENDATIONS

1. Since the charges leveled against Mr. Khalid Rafique then Sub Registrar Abbottabad presently serving as Sub Registrar Batgaram have been proved to the extent that if the commercial/built-up property was not sold through piece meal transactions and non realization of WHT then the Govt. kitty would not sustain financial loss of Rs.3319150/- as worked out by Inspector of Stamps, Commissioner Office Abbottabad during the conduct of the audit of Sub Registrar Office Abbottabad, therefore Mr. Khalid Rafique the delinquent

ATTESTED

Appellant

official may be held responsible for the loss caused to the Govt. exchequer due to negligence/malicious intent on his part as well as Registration Moharrir. ✓

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The seller/purchasers involved in the pin pointed registration deeds transactions who have broken up the area willfully for evading the tax application as envisaged notification bearing Notification No. Rev:ICVT/2014/14927-58 dated 14.07.2014 should also be proceeded against, so that they may not dare to exercise malpractice for their vested interests in future.

3. The Sub Registrar who admitted the lapses due to non comprehension of technicality of Section 236K for recovery and requested for respite in the terms of recovery of calculated amount of Rs.3319150/- may be given a reasonable time for the purpose alongwith Registration Moharrir and if they fail the losses may be made up from them in their personal capacity.
4. The Sub Registrar and Registration Moharrir may also be proceeded against departmentally under the relevant grounds as laid down in E&D Rules 2011, if they fail to recover the worked out financial loss within a period of three months. Moreover Registration Moharrir whose prime duty is to scrutinize the papers with due care and diligence before putting up to Sub Registrar has shown laxity and negligence, therefore is also recommended to be proceeded against as per law. He should also be posted out of district as he has availed the maximum time in district Abbottabad.
5. A special audit may also be held at all levels in the KPK to dig out such like mal practices to curb the menace by Govt. Officials.

Submitted please.

Encl: (as above).

**ATTESTED**

*[Signature]*  
Appellant

*[Signature]*  
Deputy Commissioner  
Haripur

SHOW CAUSE NOTICE

I, Zafar Iqbal Senior Member Board of Revenue Khyber Pakhtunkhwa, as competent authority, under Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011, do hereby serve you Mr. Khalid Javed Ghazi Registration Muharrir in the office of Sub Registrar Abbottabad, as follow:-

1. (i) that consequent upon the completion of inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing vide communication dated 29.11.2016; and
- (ii) on going through the findings and recommendations of the inquiry officer, the material on record and other connected papers including your defence before the inquiry officer.

I am satisfied that you have committed the following acts / omissions in rule 3 of the said rules:

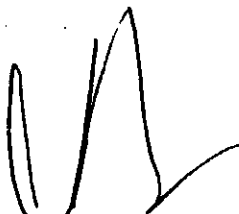
- (a) inefficiency
- (b) misconduct

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of \_\_\_\_\_ under Rule-4 of the said Rules.

3. You are, thereof, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimated whether you desire to be heard in person.

4. If no reply to this notice is received within seven (07) days or not more than fifteen (15) days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

5. A copy of the findings of the inquiry officer is enclosed.

  
Senior Member  
Board of Revenue

Khalid Javed Ghazi,  
Registration Muharrir,  
office of the Sub Registrar Abbottabad,

ضاری لیا  
انڈیا رکی سی کال لوزہ ٹیب  
ستو کا زیڈ ا ۲۰۲۰ ع صرف ۱۵/۱۰/۲۰۱۷  
دز عدول سکول یو  
31/10/2017

ATTESTED  
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Appellant

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

جواب شکوہ کارکنان

مذکورہ بیان خالد جاوید غازی صاحب کی طرف سے پیش کیا گیا ہے۔ اس میں کہا گیا ہے کہ وہ اپنے سابق  
مقام پر کام کرتے ہوئے سب سے زیادہ محنت اور وقت دیا اور اس کے باوجود وہ اس وقت تک اس کا کوئی  
توہین آمیز لکھی نہیں لکھی گئی۔ اس کے علاوہ اس کے پاس اس کے متعلق کوئی شکایت نہیں ہے۔

لہذا اس پر کوئی کارروائی نہیں کی جائے گی۔

بی بی بی بی بی

خالد جاوید غازی صاحب کی طرف سے  
31/10/2017

ATTESTED

Appellant



GOVERNMENT OF KHYBER PAKHTUNKHWA  
DIRECTORATE OF LAND RECORDS  
REVENUE AND ESTATE DEPARTMENT

Annex-H

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Dated Peshawar the 11/12/2017

ORDER

No. LR-IV/P.F/Khalid Rafiq/S.R/ 280 WHEREAS, Mr. Khalid Javed Ghazi, Registration Muharrir office of the Sub Registrar Abbottabad, was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 for charges mentioned in the Show Cause Notice dated 16.10.2017.

AND WHEREAS; Mr. Tasleem Khan Deputy Commissioner Haripur, was appointed Inquiry Officer to probe into the charges levelled against the said official and to submit findings/recommendations.

AND WHEREAS the Inquiry Officer, after having examined the charges and evidence produced before him and statement of accused official, submitted his findings/report, whereby the charges levelled against the accused official stand proved.

AND WHEREAS; I, Zafar Iqbal, Senior Member Board of Revenue after having examined the charges, evidence produced, statement of accused official, findings of Inquiry Officer and after personal hearing of the accused, concur with the findings and recommendations of the Inquiry Officer.

NOW THEREFORE, I, as Competent Authority in exercise of powers under Rules-14(5)(ii) read with 4(b) (iv) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules-2011, impose penalty of dismissal from service on Mr. Khalid Javed Ghazi Registration Muharrir office of the Sub Registrar Abbottabad.

SENIOR MEMBER  
BOARD OF REVENUE

End: No. LR-IV/P.F/Khalid Rafiq/S.R/

Copy of the above is forward to the:-

1. Accountant General, Khyber Pakhtunkhwa.
2. Secretary-I, Board of Revenue.
3. Deputy Commissioner / District Registrar, Abbottabad for necessary action.
4. District Accounts Officer, Abbottabad for necessary action.
5. PS to Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
6. Bill Assistant, DLR Office, Khyber Pakhtunkhwa.
7. Sub Registrar, Abbottabad for necessary action.
8. Accused concerned.
9. Personal file.
10. Office order file.

ATTESTED

Appellant

DIRECTOR LAND RECORDS  
KHYBER PAKHTUNKHWA

PS/C.S Khyber Pakhtunkhwa

Diary No. 9125 WEJ

Date. 27-12-17 27/12/17

To

THE WORTHY CHIEF SECRETARY,  
GOVERNMENT OF KHYBER PAKHTUNKHWA, PESHAWAR. Annex-I

Subject:- DEPARTMENTAL APPEAL AGAINST THE ORDER DATED 11-12-2017 PASSED BY THE SENIOR MEMBER BOARD OF REVENUE, GOVERNMENT OF KHYBER PAKHTUNKHWA, DIRECTORATE OF LAND RECORDS REVENUE AND ESTATE DEPARTMENT PESHAWAR WHEREBY THE APPELLANT WAS AWARDED MAJOR PENALTY OF DISMISSAL FROM SERVICE.

PRAYER IN APPEAL

By accepting this appeal, the impugned order No.280 dated 11-12-2017 passed by the Senior Member Board of Revenue, Government of Khyber Pakhtunkhwa, Directorate of Land Records Revenue and Estate Department Peshawar may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

RESPECTED SIR,

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

1. That the appellant was serving as Registration Muharrir (BPS-7) in the office of Sub-Registrar Abbottabad at the relevant time. He had 30 years unblemished service record to his credit.
2. That the Inspector of Stamps, Hazara Division Abbottabad, conducted internal audit of the office of Sub-Registrar, Abbottabad on 14<sup>th</sup> & 15<sup>th</sup> of March 2016 and after finalization of the same, the following objections were raised:

1. During the audit of several sale deeds of aforesaid mouzas, it had been observed with great concern that area of same No Khasra/Khasras owned by the same seller/sellers comprised of same amount was transferred/registered in the name of the same buyer/purchaser by splitting it in parts/pieces through subsequent sale

ATTESTED

1/2  
Appellant

deeds and later on registered on various dates. It is also worth mentioning here that stamp papers were purchased by the same seller/purchaser on the same date and then detail of the area transferred was recorded in the stamp papers consisted of consecutive serial Nos. of sale deeds on the same date but registered on different dates intentionally. This implied that such practice was carried out just to pave the way for the purchaser/seller to evade WHT and to keep the amount below 3 million rupees by splitting area. Resultantly, it caused huge loss to the Government exchequer.

It was rather more convenient to transfer the area from same owner/seller in the name of same buyer/purchaser in one deed on the same date instead of registering it into various deeds on different dates. It was further noted that area of the houses was also splitted up.

Keeping in view the above, the Inspector of Stamps observed that an amount of Rs.16,90,000/- on account of WHT from purchaser and Rs.845,000/- from seller is recoverable in the light of detail given in the annexure (A) of said audit note.

2. It was alleged that WHT had not been collected from the seller on the amount more than 3 million in various mouzas. Therefore, WHT amounting to Rs.784,150/- was recoverable from the sellers. In the light of detail given in the annexure (B) of said order note.
3. That in the light of above audit objections, the Commissioner of Hazara Division Abbottabad, vide letter No.9084 dated 28-6-2016 appointed Additional Deputy Commissioner Mansehra as Inquiry Officer to conduct inquiry against the Sub-Registrar and officials concerned in order to dig out the truth.

ATTESTED

  
Appellant



(Copy of appointment of inquiry officer is appended as Annex-A)

4. That in compliance with the said order, the Inquiry Officer duly conducted fair and impartial inquiry and found the Sub-Registrar guilty of the allegations alone and the following recommendations were made therein:

**Recommendations:**

In light of the foregoing factual position, it is recommended that the recoverable amount of Rs.348,750/- as mentioned in Para-2 of above, may be recovered from the Sub-Registrar Abbottabad and appropriate action as deemed necessary may be taken against him for committing negligence to understand the relevant law/rules being a responsible officer.

Moreover, it is recommended that the case may please be referred to the Commissioner Federal Board of Revenue, Hazara Division Abbottabad for further clarification as it involve monetary loss to the Government Exchequer.

(Copy of inquiry report is appended as Annex-B).

5. That the Commissioner Hazara Division, Hazara, Abbottabad vide letter No.10108 dated 29-07-2016 forwarded the above report to the Senior Member Board of Revenue, Government of Khyber Pakhtunkhwa Peshawar for appropriate action in accordance with law.

(Copy of letter is appended as Annex-C).

6. That thereafter, the Director, Land Records/Inspector General Registrations, Government of Khyber Pakhtunkhwa, Board of Revenue & Estate Department, Peshawar initiated disciplinary action against Sub-Registrar and served him with a charge sheet alongwith statement of allegations and Tasleem Khan, Deputy Commissioner Haripur was appointed as Inquiry Officer to conduct regular inquiry

**ATTESTED**

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Appellant

against the said officer. This fact has been categorically admitted by the Inquiry Officer in the commencement of his report. During the course of inquiry, appellant was also summoned as witness and the Inquiry Officer cross examined him by putting questions but nothing favourable could be elicited from his mouth rather the appellant clarified that he was the custodian of record and after execution of registered deed, he had to enter the same into the relevant register (Book-1). He further clarified that "cuttings" in the stamp papers were made by the Treasury Office and the same were duly attested by the said office accordingly. He added that he had acted justly, fairly, honestly and in accordance with law. He further added that the Sub-Registrar was only competent in the matter who duly checked all the disputed registered deeds and found it correct in all respect and then executed the same.

7. That the Inquiry Officer, after finalization of inquiry, held the Sub-Registrar as well as Registration Muharrir guilty of allegations and the following recommendations were made:

1. Since the charges levelled against Mr. Khalid Rafique then Sub-Registrar Abbottabad presently serving as Sub-Registrar Battagram have been proved to the extent that if the commercial/built-up property was not sold through piecemeal transaction and non-realization of WHT then the Govt. kitty would not sustain financial loss of Rs. 3319150/- as worked out by Inspector of Stamps, Commissioner office Abbottabad during the conduct of the audit of Sub-Registrar office Abbottabad, therefore Mr. Khalid Rafique the delinquent official may be held responsible for the loss caused to the Govt. exchequer due to negligence/malicious intent on his part as well as Registration Muharrir.

**ATTESTED**

*1/2*  
*Appellant*

2. The seller/purchaser involved in the pin pointed Registration deeds transactions who have broken up the area willfully for evading the tax application as envisaged Notification bearing Notification No. Rev: 1CVT/2014/14927-58 dated 14-07-2014 should also be proceeded against, so that they may not bear to exercise malpractice for their vested interest in future.
3. The Sub-Registrar who admitted the lapses due to non-comprehension of technicality of Section 236K for recovery and requested for respite in the terms of recovery of calculated amount of Rs. 3319150/- may be given a reasonable time for the purpose alongwith Registration Muharrir and if they failed the losses may be made up from them in their personal capacity.
4. The Sub-Registrar and Registration Muharrir may also be proceeded against departmentally under the relevant grounds as laid down in E&D Rules, 2011, if they failed to recover the worked out financial loss within a period of three months. Moreover, Registration Muharrir whose prime duty is to scrutinize the paper with due care and diligence before putting up to the Sub-Register has shown laxity and negligence, therefore, is also recommended to be proceeded against as per law. He should also be posted out of District as he has availed the maximum time in District Abbottabad.
5. A special audit may also be held at all levels in the KPK to dig out such like malpractice to curb the menace by Govt. officials.

**ATTESTED**

1/2  
Appellant

(Copy of inquiry report is appended as Annex-D).

8. That thereafter, the appellant was served with a show cause notice for inefficiency and misconduct. The appellant submitted reply and denied the allegations and also termed it as fallacious, malicious and misconceived. He clarified that he had acted in consonance with law.
9. That the said reply was not deemed satisfactory and the appellant was awarded major penalty of dismissal from service by an order dated 11-12-2017 passed by the Senior Member Board of Revenue & Estate Department.

(Copy of impugned order is appended as Annex-E).

That the appellant now assails the impugned order before the Hon'ble Appellant Authority inter-alia on the following grounds:

#### GROUNDS OF APPEAL

- A. That Competent Authority has not treated appellant in accordance with law, rules and policy on the subject and acted in violation of **Article 4 of the Constitution of Islamic Republic of Pakistan, 1973**. Therefore, the impugned order is not sustainable in the eye of law.
- B. That the worthy Senior Member Board of Revenue was under statutory obligation to have considered the case of appellant in its true perspective and also in accordance with law. But he failed to do so and awarded him major penalty of dismissal from service in utter violation of law despite the fact that neither any charge sheet alongwith statement of allegations was served on the appellant nor any inquiry was ordered to be conducted against him. So far as the above inquiry is concerned, it was ordered to be conducted against the Sub-Registrar alone as evident from the commencement of inquiry report. Moreover, the appellant was summoned in the said inquiry in capacity as witness and then held him guilty of the charges including the Sub-Registrar in utter disregard of **Article 10-A of the Constitution of Islamic Republic of Pakistan 1973**. In the so-called

ATTESTED

1/2  
Appellant

inquiry, neither any witness was examined in presence of appellant nor he was provided any opportunity of cross-examination. Similarly, he was also not given any chance to produce his defence in support of his version. Therefore, the findings of Inquiry Officer in respect of appellant are perverse and are not sustainable under the law. Thus, the impugned order based on such findings is also against the spirit of administration of justice.

C. That the Inquiry Officer was legally bound to have acted in accordance with the order of Competent Authority through which he was appointed to conduct inquiry against Sub-Registrar alone. But he has travelled beyond the parameter of the same and as such he has blatantly violated the order of Competent Authority by conducting inquiry against the witness (appellant) also, despite the fact that neither any order was passed in this respect nor the appellant was served with charge sheet alongwith statement of allegations. Moreover, no order whatsoever was passed to conduct joint inquiry in the matter. Therefore, the entire process conducted by the Inquiry Officer from top to bottom against the appellant is **Coram non-judice**.

D. That the principal accused (Sub-Registrar) was awarded lesser punishment of "compulsory retirement" whereas the appellant who was a low paid employee, holding the post of Registration Muharrir (BPS-7) was imposed harsh and extreme penalty without any fault on his part. This is a disparity and anomaly and is also violation of **Article 25 of the Constitution of Islamic republic of Pakistan, 1973** which has unequivocally laid down that all citizens placed in similar circumstances are entitled to equal treatment and protection of law. The Hon'ble Supreme Court of Pakistan through various judgments has maintained that equal treatment is fundamental right of every citizen. Hence, this being a classic case of sheer injustice on the part of departmental authority and as such the impugned order is liable to be reversed on this count alone.

ATTESTED

1/2  
Appellant

E. That the Director, Land Records/Inspector General Registration, Government of Khyber Pakhtunkhwa Board of Revenue & Estate Department, initiated disciplinary action against Khalid Rafique (Sub-Registrar) Abbottabad alone and served him with a charge sheet alongwith statement of allegations and inquiry was also ordered to be conducted against him as admitted by the Inquiry Officer in his report. Therefore, the impugned orders of both the employees were required to be passed by the said Authority. But these orders were passed by the Senior Member Board of Revenue who was not competent to do so. It is well settled law that when the basic order is illegal, void and without lawful authority, the entire superstructure built on it would fall on the ground automatically.

(Copy of charge sheet is appended as Annex-F).

- F. That the Additional Deputy Commissioner Mansehra (Inquiry Officer) has categorically admitted in his report dated 20-07-2016 that it is the sole responsibility of such authorities who had attested the mutations/registered deeds to have recovered all legitimate dues of Government from the parties. He placed reliance on Section 236-K of the Income Tax Ordinance, 2001 inserted through Finance Act, 2014 as well as letter No.REV:I/CVT/2014/4927-58 dated 14-07-2014. But the Competent Authority has overlooked this important aspect of the case without any cogent and valid justification and as such he has awarded major penalty to the appellant in utter violation of law.
- G. That there is no bar in statute that a landlord cannot sell his land in pieces but it is his prerogative to sell his land either as whole or in parts, on one date or different dates. Thus, the Inspector of Stamps, has misinterpreted the provision of law. Hence, the impugned order is bad in law.

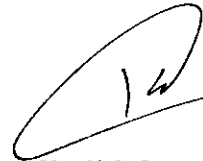
**ATTESTED**

*[Signature]*  
Appellant

- H. That the Inquiry Officer (Deputy Commissioner Haripur) has failed to observe the procedure of inquiry as the same was conducted in questionnaire form as evident from his report which practice had already been disapproved by the august Supreme Court of Pakistan in various judgments.
- I. That the impugned order was passed in mechanical manner and the same is perfunctory as well as non-speaking and also against the basic Principle of administration of justice. Therefore, the impugned order is not tenable under the law.
- J. That the findings of Inquiry Officer are based on conjectures and surmises and as such the impugned order is against the legal norms of justice.
- K. That the impugned order is suffering from legal infirmities and as such causing grave miscarriage of justice to the appellant.

In view of the above narrated facts and grounds, it is, therefore, humbly prayed that the impugned order No.280 dated 11-12-2017 passed by the Senior Member Board of Revenue, Government of Khyber Pakhtunkhwa, Directorate of Land Records Revenue and Estate Department Peshawar may very graciously be set aside and the appellant may kindly be reinstated in service with full back wages and benefits.

Yours obediently,



Khalid Javed Ghazi  
(Ex-Registration Muharrir),  
HNo.CB-32 Choonakari,  
P.O Nawansher, Abbottabad.

Dated: 26-12-2017

ATTESTED



Appellant

Before the Honble Chairmen KPK بعد الت

Service Tribunal

(Appellant) 2018

بنام Khalid Javed Cihazli

VS

Chief Secretary & others

باعث تحریر آنکہ

موزخہ  
مقدمہ  
دعوی  
جرم

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ  
آن مقام Peshawar کیلئے Peshawar

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز  
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی  
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لانا اپنے بجائے تقرر کا اختیار  
ہوگا۔ اور صاحب مقرر شدہ کو کبھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ  
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جہانہ التوائے مقدمہ کے سبب سے وہ ہوگا۔  
کوئی تارتخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی  
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

المرقوم ۵۰ ماہ April 2018

وہ الب مقام (Peshawar only) کے لئے منظور ہے۔  
All cases accepted.



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

**Service Appeal No.561/2018**

Khalid Javed Ghazi (Ex-Registration Moharrir) H.No.CB-32 Choonakari, P.O Nawansher,  
Abbottabad.....Appellant

VERSUS

- 1) The Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar.
- 2) The Senior Member, Board of Revenue & Estate Department Government of Khyber Pakhtunkhwa, Peshawar.
- 3) The Director Land Records/Inspector General of Registration, Board of Revenue, Peshawar.
- 4) The Commissioner, Hazara Division, Abbottabad..... Respondents

**PRELIMINARY OBJECTIONS.**

1. That the appeal is not maintainable in its present form.
2. That the appellant has got no locus standi.
3. That the appellant did not come to this court with clean hands.
4. That the appellant has no cause of action to file the instant appeal.
5. That the instant appeal is bad for misjoinder and non-joinder of necessary parties.

Parawise reply is as under:-

- 1) Correct to the extent that the appellant was posted in the office of Sub Registrar Abbottabad to serve as Registration Moharrir but snap complaints were pouring against him.
- 2) Correct to the extent that the Competent Authority has posted Stamp Inspector one each Divisional Headquarter for the purpose to carry out inspections in their respective Division and point out variation if any. As such the Stamp Inspector carried out inspection of the office of Sub Registrar Abbottabad and pin pointed losses to Government Exchequer. In pursuance to which fact finding as well as under E&D Rules inquiries were conducted wherein the appellant was held responsible for the losses to Govt: Exchequer hence proceeded against under E&D Rules.
- 3) Correct to the extent that in order to probe into the matter and fix responsibility, an inquiry (fact finding) was ordered through Additional Deputy Commissioner, Mansehra by Commissioner Hazara Division vide No.9084 dated 28.06.2016.
- 4) Incorrect. Both Sub Registrar as well as Registration Moharrir (the appellant) were held responsible in the E&D proceedings by the Enquiry Officer (Mr. Tasleem Khan, Deputy Commissioner, Haripur) with the recommendation to the effect that both they may be proceeded against departmentally under the relevant grounds as laid down in E&D Rules 2011, if they fail to recover the worked out financial loss within a period of three months. Moreover, Registration Moharrir whose prime duty is to scrutinize the papers with due care and diligence before putting up to Sub Registrar has shown laxity and negligence, therefore is also recommended to be proceeded against as per law.
- 5) The appellant has misleading. In facts, it was fact finding enquiry on the basis of which an enquiry under E&D Rules was ordered, wherein the appellant was held responsible and was recommended for proceedings against E&D Rules, as such the appellant was proceeded accordingly in light of provision of E&D Rules, 2011.
- 6) As per para-5 above.
- 7) Correct to the extent that the Enquiry Officer (Deputy Commissioner, Haripur) after having examined and perusal of relevant records, recommended that both Sub Registrar and Registration Moharrir may be proceeded against under E&D Rules as such action was initiated accordingly for the losses to Govt: kitty in light of the recommendation of Enquiry Officer.
- 8) Correct to the extent that when enquiry report was received wherein he was held responsible, therefore, show cause notice as required under Section-7 of the E&D Rules was issued, which is a part of disciplinary proceedings.
- 9) Correct to the extent that on submission unsatisfactory reply, the appellant was awarded major

penalty as required under Section-4 of the E&D Rules as due to his negligence & inefficiency, the Govt: kitty sustained loss of Rs.348,750/-


10) Incorrect. The departmental appeal is under process with appellant authority and would be decided in due course of time, thereafter, he may seek remedy from Competent Court of Law.


11) The appellant was estopped to come to this Court as his departmental appeal is being decided.

### GROUND OF APPEAL

- A. Incorrect. The appellant was treated in accordance with the provisions of Rules/Law and no legal right of the appellant has been violated.
- B. Incorrect. After receiving fact finding enquiry report from Commissioner, Hazara Division, a regular enquiry against the officer/official of the office of Sub Registrar, Abbottabad was order as required under E&D Rules. Since the appellant was also held responsible for inefficiency and misconduct cause losses of Rs.345,750/- to Govt: Kitty, therefore, he was issued show cause notice as per Section-7 of the E&D Rules, 2011 and was also given adequate opportunity of personal hearing as well as cross examination, but failed to defend his case towards losses to Govt: Exchequer, therefore was awarded major penalty by the Competent Authority.
- C. In correct. As per Para-B of the grounds.
- D. Incorrect. Since the Sub Registrar was going to retire in this year, therefore, he was compulsory retired, while the appellant has years for retirement as such keeping in view of his inefficiency and misconduct causes losses to Govt: Kitty, therefore, the competent authority awarded major penalty of dismissal from service. Besides, all the accused were treated equally in accordance with the provision of rules/law and no legal right of any one is violated.
- E. Incorrect. Enquiry was ordered against all Registration staff of Abbottabad. The Enquiry Officer (Deputy Commissioner, Haripur) after having examined all relevant documents, giving adequate opportunity of personal hearing and cross examination, held the appellant responsible for the losses to Govt: Exchequer, therefore was proceeded against under E&D Rules. As regard passing of order, it was inadvertently signed by Respondent No.2. however, all the accused were treated equally in accordance with rules/law.
- F. Incorrect. Misconceived. After having examined the case in depth and perusal of relevant documents/enquiries reports, the competent authority deemed it fit, hence, penalty was awarded to the appellant in light of rules/law.
- G. Incorrect and misconceived. A land can not be sold in pieces in one date/day. The seller/purchaser with maneuvering Registration Staff of Abbottabad, broken up the area willfully for evading the Govt: taxes as envisaged in Notification bearing No.Rev:I/CVT/2014/14927-58, dated 14.07.2014 as such the accused were proceeded against under E&D Rules so that the other Registration Staff may not bear to exercise malpractice for their vested interest in future.
- H. Correct to the extent that due to taking over charge by Care Taking Govt: and transfer of Appellate Authority, the departmental appeal is under process and is being decided.
- I. Incorrect. All codal formalities were fulfilled by the Inquiry Officer. The appellant was given adequate opportunity for cross examination and personal hearing.
- J. Incorrect. The appellant was treated as per Law/Rules.
- K. Incorrect. As per Para-J of the Grounds.
- L. Incorrect. As per Para-I of the grounds.

Since the appeal is baseless and having no legal footing/grounds in the eye of law, may very kindly be dismissed.

  
Director Land Records/  
Inspector General of Registration,  
Khyber Pakhtunkhwa  
(Respondent No.3)

  
Senior Member,  
Board of Revenue,  
Khyber Pakhtunkhwa.  
(Respondent No.2)

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

**Service Appeal No.561/2018**

Khalid Javed Ghazi (Ex-Registration Moharrir) H.No.CB-32 Choonakari, P.O Nawansher,  
Abbottabad.....Appellant

VERSUS

- 1) The Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar.
- 2) The Senior Member, Board of Revenue & Estate Department Government of Khyber Pakhtunkhwa, Peshawar.
- 3) The Director Land Records/Inspector General of Registration, Board of Revenue, Peshawar.
- 4) The Commissioner, Hazara Division, Abbottabad..... Respondents

**PRELIMINARY OBJECTIONS.**

1. That the appeal is not maintainable in its present form.
2. That the appellant has got no locus standi.
3. That the appellant did not come to this court with clean hands.
4. That the appellant has no cause of action to file the instant appeal.
5. That the instant appeal is bad for misjoinder and non-joinder of necessary parties.

Parawise reply is as under:-

- 1) Correct to the extent that the appellant was posted in the office of Sub Registrar Abbottabad to serve as Registration Moharrir but snap complaints were pouring against him.
- 2) Correct to the extent that the Competent Authority has posted Stamp Inspector one each Divisional Headquarter for the purpose to carry out inspections in their respective Division and point out variation if any. As such the Stamp Inspector carried out inspection of the office of Sub Registrar Abbottabad and pin pointed losses to Government Exchequer. In pursuance to which fact finding as well as under E&D Rules inquiries were conducted wherein the appellant was held responsible for the losses to Govt: Exchequer hence proceeded against under E&D Rules.
- 3) Correct to the extent that in order to probe into the matter and fix responsibility, an inquiry (fact finding) was ordered through Additional Deputy Commissioner, Mansehra by Commissioner Hazara Division vide No.9084 dated 28.06.2016.
- 4) Incorrect. Both Sub Registrar as well as Registration Moharrir (the appellant) were held responsible in the E&D proceedings by the Enquiry Officer (Mr. Tasleem Khan, Deputy Commissioner, Haripur) with the recommendation to the effect that both they may be proceeded against departmentally under the relevant grounds as laid down in E&D Rules 2011, if they fail to recover the worked out financial loss within a period of three months. Moreover, Registration Moharrir whose prime duty is to scrutinize the papers with due care and diligence before putting up to Sub Registrar has shown laxity and negligence, therefore is also recommended to be proceeded against as per law.
- 5) The appellant has misleading. In facts, it was fact finding enquiry on the basis of which an enquiry under E&D Rules was ordered, wherein the appellant was held responsible and was recommended for proceedings against E&D Rules, as such the appellant was proceeded accordingly in light of provision of E&D Rules, 2011.
- 6) As per para-5 above.
- 7) Correct to the extent that the Enquiry Officer (Deputy Commissioner, Haripur) after having examined and perusal of relevant records, recommended that both Sub Registrar and Registration Moharrir may be proceeded against under E&D Rules as such action was initiated accordingly for the losses to Govt: kitty in light of the recommendation of Enquiry Officer.
- 8) Correct to the extent that when enquiry report was received wherein he was held responsible, therefore, show cause notice as required under Section-7 of the E&D Rules was issued, which is a part of disciplinary proceedings.
- 9) Correct to the extent that on submission unsatisfactory reply, the appellant was awarded major

penalty as required under Section-4 of the E&D Rules as due to his negligence & inefficiency, the Govt: kitty sustained loss of Rs.348,750/-.

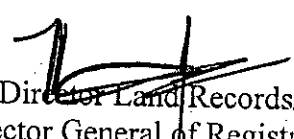
10) Incorrect. The departmental appeal is under process with appellat authority and would be decided in due course of time, thereafter, he may seek remedy from Competent Court of Law.


11) The appellat was estopped to come to this Court as his departmental appeal is being decided.

### GROUND OF APPEAL

- A. Incorrect. The appellat was treated in accordance with the provisions of Rules/Law and no legal right of the appellat has been violated.
- B. Incorrect. After receiving fact finding enquiry report from Commissioner, Hazara Division, a regular enquiry against the officer/official of the office of Sub Registrar, Abbottabad was order as required under E&D Rules. Since the appellat was also held responsible for inefficiency and misconduct cause losses of Rs.345,750/- to Govt: Kitty, therefore, he was issued show cause notice as per Section-7 of the E&D Rules,2011 and was also given adequate opportunity of personal hearing as well as cross examination, but failed to defend his case towards losses to Govt: Exchequer, therefore was awarded major penalty by the Competent Authority.
- C. In correct. As per Para-B of the grounds.
- D. Incorrect. Since the Sub Registrar was going to retire in this year, therefore, he was compulsory retired, while the appellat has years for retirement as such keeping in view of his inefficiency and misconduct causes losses to Govt: Kitty, therefore, the competent authority awarded major penalty of dismissal from service. Besides, all the accused were treated equally in accordance with the provision of rules/law and no legal right of any one is violated.
- E. Incorrect. Enquiry was ordered against all Registration staff of Abbottabad. The Enquiry Officer (Deputy Commissioner, Haripur) after having examined all relevant documents, giving adequate opportunity of personal hearing and cross examination, held the appellat responsible for the losses to Govt: Exchequer, therefore was proceeded against under E&D Rules. As regard passing of order, it was inadvertently signed by Respondent No.2. however, all the accused were treated equally in accordance with rules/law.
- F. Incorrect. Misconceived. After having examined the case in depth and perusal of relevant documents/enquiries reports, the competent authority deemed it fit, hence, penalty was awarded to the appellat in light of rules/law.
- G. Incorrect and misconceived. A land can not be sold in pieces in one date/day. The seller/purchaser with maneuvering Registration Staff of Abbottabad, broken up the area willfully for evading the Govt: taxes as envisaged in Notification bearing No.Rev:I/CVT/2014/14927-58, dated 14.07.2014 as such the accused were proceeded against under E&D Rules so that the other Registration Staff may not bear to exercise malpractice for their vested interest in future.
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- K. Incorrect. As per Para-J of the Grounds.
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Since the appeal is baseless and having no legal footing/grounds in the eye of law, may very kindly be dismissed.

  
Director Land Records/  
Inspector General of Registration,  
Khyber Pakhtunkhwa  
(Respondent No.3)

  
Senior Member,  
Board of Revenue,  
Khyber Pakhtunkhwa.  
(Respondent No.2)

BEFORE THE HON'BLE CHAIRMAN KPK SERVICE TRIBUNAL

Service Appeal No. 561/2018

19-11-18  
with down  
Diary No. 2073/

Khalid Javed Ghazi

-VS-

Chief Secretary etc

31/10/18

Khyber Pakhtunkhwa  
Service Tribunal

Subject:- APPLICATION FOR WITHDRAWAL OF ABOVE  
CAPTIONED APPEAL.

Diary No. 2073

~~31/10/2018~~

Respectfully Sheweth:

1. That the appellant was serving as Registration Moharrir, Abbottabad at the relevant time. He was awarded major penalty of dismissal from service. He submitted departmental appeal before the Chief Secretary Khyber Pakhtunkhwa which was accepted and the impugned order was set-aside vide order dated 20/6/2018 (Copy annexure-A). As the appellate authority has given me relief, therefore I do not pursue the above captioned appeal.

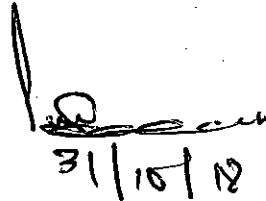
In view of the above, it is, therefore requested that the above captioned appeal may kindly be withdrawn.

put up to the court  
along with relevant appeal.

Appellant



(Khalid Javed Ghazi)

  
31/10/18.


Registrar  
Khyber Pakhtunkhwa  
Service Tribunal.  
Peshawar

Reader

16. The Note was earlier returned to the Administrative Department for clarification of observations at Paras 12-13 ante. In response, Board of Revenue has clarified the observations vide Para-14 ante.


17. The Chief Secretary, Khyber Pakhtunkhwa being appellate authority under Rule-17(2) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. (Annex-J), may set aside the penalty imposed and order formal inquiry in the instant case under Rule-5(b) of the ibid Rules.

Dy No. 66  
FTS/REVD: 1237  
Date: 21-6-2018  
Govt. of Khyber Pakhtunkhwa

  
(Arshad Majeed)  
Secretary Establishment  
6 June, 2018

18. ~~Chief Secretary, Khyber Pakhtunkhwa~~

As per Para 17/N.

  
20/6/18  
CHIEF SECRETARY  
Govt. Of Khyber Pakhtunkhwa

19.

~~SM/BR~~

~~DLR~~

~~HL-IV~~

~~Abstract~~

~~26-07-18~~

~~21/6~~

Supervisor  
Incharge of  
R.H.

P's / Secy (E) & AD C.A.C.S Khyber Pakhtunkhwa  
Diary No. 397 No. 2383  
Dated 8-6-18 Date 7-6-2018