

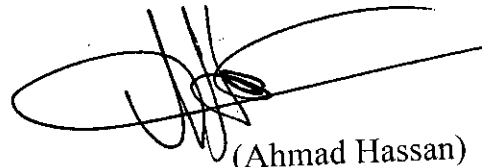
Order


25.01.2019

Counsels for the appellant present. Mr. Muhammad Jan, Deputy District Attorney alongwith Dr. Fakhar Alam, SMBR (respondent no.3) and Mr. Muhammad Arif, Supdt for respondents present. Arguments heard and record perused.

This appeal is also dismissed as per detailed judgment of today placed on file in connected service appeal No. 1130/2017²⁰¹⁸ titled "Jehanzeb -vs- The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar and two others." Parties are left to bear their own cost. File be consigned to the record room.

Announced:
25.01.2019


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

15.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 31.12.2018. Written reply not received.


Reader

31.12.2018

Appellant alongwith his counsel present. Mr. Muhammad Arif, Superintendent alongwith Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply on behalf of respondents submitted. The appeal is assigned to D.B-I for rejoinder and arguments for 02.01.2019.


Muhammad Amin Khan Kundi
Member

02.01.2019

Learned counsel for the appellant present. Rejoinder submitted.

The ad-interim relief of status-quo was issued vide order dated 03.10.2018 till the next date fixed as 23.10.2018. The ad-interim relief was not extended further. In the connected service appeals the ad-interim relief of status-quo was also not extended. As such the ad-interim relief in the shape of status-quo is no more in the field. Adjourn. To come up for arguments on 25.01.2019 before D.B.


Member


Member

08.10.2018

Counsel for the appellānt Mr. Rizwanullah,
Advocate present and heard.

Contends that that the impugned order dated 17.08.2018 is in clear violation of posting/transfer policy. Further contended ^{that} service appeals of other aggrieved person^s including appeal No. 1222/2018 already been admitted to full hearing and in most of the appeals the status quo has been granted.

Points raised need consideration. The appeal is admitted to full hearing, subject to all legal objections. The appellānt is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 23.10.2018 before S.B. Counsel for the appellānt also submitted an application for suspension of impugned order dated 17.08.2018. Notice of application be given to the respondents for reply/arguments on the date fixed, however, in the meanwhile status quo be maintained till the date fixed.

Appellant Deposited
Security & Process Fee

23-10-18


Chairman

*Due to retirement of Honorable Chairman
The Tribunal is non functional therefore
The case is adjourned to come up for the
Same on 15/10/18*

of alu
Reader

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1225 /2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	06/10/2018	<p>The appeal of Mr. Husnain Ahmad 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 6/10/18</p>
2-	6-10-2018	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>8.10.2018</u></p> <p style="text-align: right;"><i>[Signature]</i> MEMBER</p>

[Faint handwritten notes at the bottom of the page, possibly bleed-through from the reverse side.]

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

Service Appeal No. 1225 /2018

1. Hasnain Ahmad Tehsildar Puran, District Shangla.

APPELLANT

VERSUS

1. The Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar & others.

RESPONDENTS

INDEX

S.No	Particulars	Annexure	Pages #
1	Service Appeal & Affidavit	—	1-7
2	Copy of Notification dated 02-10-2017	A	8
3	Copy of notification dated 17-08-2018	B	9
4	Copy of departmental appeal dated 18-08-2018	C	10-12
5	Copy of rejection order dated 28-09-2018	D	13
6	Stay Application & Affidavit	—	14-15
7	Wakalatnama	—	—


Appellant

Through


Rizwanullah

Advocate High Court, Peshawar

Dated: 06-10-2018

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

Service Appeal No. 1225 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1461

Dated 06-10-2018

1. Hasnain Ahmad Tehsildar Puran, District Shangla.

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 Commissioner Malakand Division, Malakand.

RESPONDENTS

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
IMPUGNED NOTIFICATION DATED
17-08-2018 PASSED BY THE SENIOR
MEMBER BOARD OF REVENUE &
ESTATE DEPARTMENT (RESPONDENT
NO.2) WHEREBY THE APPELLANT
WAS REPATRIATED TO HIS
PARENT OFFICE AS ASSISTANT (B-16)
IN UTTER VIOLATION OF LAW
AGAINST WHICH THE APPELLANT
FILED DEPARTMENTAL APPEAL
WITH THE RESPONDENT NO.1 ON
18-08-2018 BUT THE SAME WAS
REJECTED ON 28-09-2018.**

Filed to-day

Registrar

6/10/18

Prayer in Appeal

By accepting this appeal, the impugned notifications dated 17-08-2018 & 28-09-2018 may very graciously be set aside and the appellant may kindly be restored against the post of Tehsildar Puran, District Shangla.

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 appointed as Assistant on 02-07-2004 in the office of Deputy Commissioner, District Tank. He has 14 years unblemished service record to his credit.
2. That the appellant being the most senior employee in his grade and cadre and therefore the Competent Authority (respondent No.2) was pleased to post him as Tehsildar, Puran, District Shangla on current charge basis vide notification No. Zulfiqar/20211-25 dated 02-10-2017. He assumed the charge of new assignment accordingly.

(Copy of notification is appended as Annex-A)

3. That the appellant was performing his duty with great zeal, zest and devotion but strangely he was repatriated to his parent office in capacity as Assistant (BPS-16) without any valid justification vide notification dated 17-08-2018.

(Copy of notification is appended as Annex-B)

4. That the appellant felt aggrieved by the said notification, filed a departmental appeal with respondent No.1 on 18-08-2018. But the same was rejected on 28-09-2018.

(Copies of departmental appeal and rejection order are appended as Annex-C & D)

5. 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 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 notifications are not sustainable in the eye of law.
- B. That the Competent Authority was under statutory obligation to have retained the appellant at Shangla till completion of his tenure as per Posting and Transfer Policy of Government of Khyber Pakhtunkhwa as well as law laid down by august Supreme Court of Pakistan in case reported in **PLD-2013-SC-195 (citation-h)**. The relevant citation is reproduced herein for facility of reference:

PLD-2013-SC-195(citation-h)

Civil Servants Act (LXXI of 1973)---

—Ss. 4 & 10—Constitution of Pakistan, Art. 184(3)—Tenure, posting and transfer of civil servants—Principles— When the ordinary tenure for a posting had been specified in the law or rules made thereunder, such tenure must be respected and could not be varied, except for compelling reasons, which should be recorded in writing and were judicially reviewable-

--Transfers of civil servants by political figures which were capricious and were based on considerations not in the public interest were not legally sustainable.

Therefore, the impugned notifications in respect of repatriation of the appellant are not sustainable in the eye of law.

- C. That the Competent Authority (respondent No.2) was under statutory obligation to have provided opportunity of personal hearing before passing the impugned notification but he failed to do so and blatantly violated the law laid down by august Supreme Court of Pakistan reported in PLD-2008-SC-412 (citation-a). The relevant citation is reproduced herein for facility of reference:

(a) Administration of justice--

----Natural justice, principles of---Opportunity of hearing--- Scope---Order adverse to interest of a person cannot be passed without providing him an opportunity of hearing--- Departure from such rule may render such order illegal.

Thus, the impugned notifications are liable to be set aside on this count alone.

- D. That when the appellant was posted as Tehsildar, Shangla, none of employee has challenged the said notifications before any legal forum and as such the same has attained finality in the eye of law. Therefore, the impugned notifications are bad in law.
- E. That the Competent Authority (respondent No.2) while posting the appellant as Tehsildar Shangla, candidly admitted that he

was the most deserved and eligible employee for the said post, thereafter, he was not justified to repatriate him without any lawful authority. Thus, the impugned notifications are not tenable under the law.

- F. That the Competent Authority (respondent No.2) was legally bound to have considered the case of appellant in its true perspective and also in accordance with law and to see whether the performance of the appellant was up to the mark or otherwise. But he took no pain to do so and overlooked this important aspect of the case without any cogent and valid reasons and repatriated him illegally. Hence, the impugned notifications are against the spirit of administration of justice.
- G. The Appellate Authority (respondent No.1) was legally bound to have applied his independent mind to the merit of the case by taking notice about the illegality and lapses committed by the Competent Authority (respondent No.2) as enumerated in earlier paras. But he failed to do so and rejected departmental appeal without any cogent reasons. Mere mentioning that “your departmental appeal dated 18-08-2018 has been examined and rejected by the Appellate Authority” will not fulfill the requirement of speaking order as envisaged in Section 24-A of the General Clauses Act, 1897 as well as law laid down by august Supreme Court of Pakistan reported in 2011-SCMR-1 (citation-b). The relevant citation of the judgment is reproduced herein for facility of reference:

2011-SCMR-1 (citation-b)
(b) General Clauses Act (X of 1897)

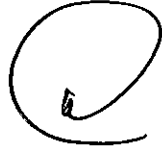
**---S.24-A---Speaking order-
Public functionaries are bound
to decide cases of their
subordinates after application
of mind with cogent reasons
within reasonable time.**

But despite thereof, the Appellate Authority (respondent No.1) has failed to do so and blatantly violated the above dictum of august Supreme Court of Pakistan. Therefore, the impugned notifications are not warranted under the law.

- H.** That the appellant was posted as Tehsildar in accordance with law and this notification has also been acted upon. Moreover, the appellant has served the respondent department in capacity as Tehsildar with effect from 2-11-2017 till date and as such it had taken legal effect and created valuable rights in his favour. Thus, the said notifications are bad in law.
- I.** That the impugned notifications are suffering from legal infirmities and as such caused grave miscarriage of justice to the appellant.
- J.** That the impugned notifications are against law, facts of the case and norms of natural justice. Therefore, the same are not tenable under the law.
- K.** That the respondent No. 1 & 2 passed the impugned notifications in mechanical manner and the same are perfunctory as well as non-speaking and also against the basic principle of administration of justice. Thus, the same are not warranted under the law.
- L.** That the appellant would like to seek the permission of this Hon'ble Tribunal to advance some more grounds at the time of arguments.

In view of the above narrated facts and grounds, the impugned notifications dated 17-08-2018 & 28-09-2018 may very graciously be set aside and the appellant may kindly be restored against the post of Tehsildar Puran, District Shangla.

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



Appellant

Through



RIZWANULLAH
M.A. LL.B

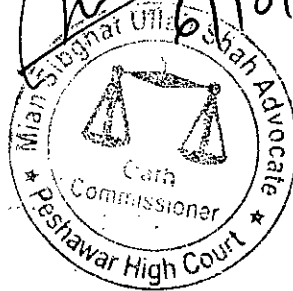
Advocate High Court, Peshawar.

Dated: 06/10/2018

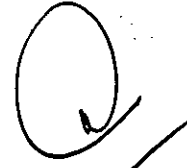
AFFIDAVIT

I, Hasnain Ahmad Tehsildar Puran, District Shangla, 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.

ATTESTED



06/10/2018



DEPONENT

Annex - A



GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT.

Dated Peshawar the 07 October, 2017.

NOTIFICATION:

No. Estt:V/Zulfiqar/_____ The following posting/transfer amongst Tehsildar/Naib Tehsildar is hereby ordered with immediate effect in public interest:-

S.No	Name of official.	From	To
1.	Mr. Muhammad Ayub	Tehsildar Lachi	Reader to SMBR against the vacant post.
2.	Mr. Ishaq Zai	Tehsildar (CCB) Puran.	Tehsildar (CCB) Lachi vice No.1.
3.	Mr. Zulfiqar	Naib Tehsildar Land Acquisition, Peshawar.	Tehsildar (CCB), Shabqadar against the vacant post.
4. ✓	Mr. Hasnain Ahmad.	Assistant, office of the Dy: Commissioner, Tank.	Tehsildar (CCB) Puran vice No.2.
5.	Mr. Tariq Ali	Assistant, office of the Dy: Commissioner, Chitral.	Tehsildar (CCB) Booni against vacant post.
6.	Mr. Jehanzeb Khan.	Naib Tehsildar(CCB), Land Acusiition, Charsadda	Repatriated to his original post and station.
7.	Mr. Mustanir Shah,	Naib Tehsildar (CCB), Mulko.	Naib Tehsildar(CCB), Land Acquisition, Charsadda, vice No.6
8.	Mr. Fazal-e Dayan	Kanungo of Charsadda District.	Naib Tehsildar (CCB) Dargai against the vacant post.
9.	Mr. Naseer Abbas.	Naib Tehsildar (CCB), Hangu.	Naib Tehsildar (CCB), Khawazakhela, against the vacant post.
10.	Mr. Sher Bahadar	Reader to Commissioner, Bannu.	Services placed at the disposal of FATA Secretariat.

By Order of Senior Member

No. Estt:V/Zulfiqar/ 20211-25

Copy forwarded to the:-

1. Commissioners of the respective Divisions.
2. Deputy Commissioners of the respective districts.
3. Deputy Secretary (Law & Orders), FATA Secretariat Peshawar.
4. District Accounts Officers of the respective districts.
5. Officials concerned.
6. Personal Files.

Attest

Appellant

Assistant Secretary (Estt:)

Annex - B

(15)

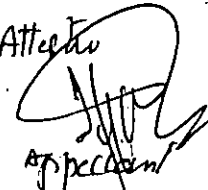
GOVERNMENT OF KHYBER PAKHTUNKHWA
DEPARTMENT OF PUBLIC WORKS
REVENUE & LOCAL DEVELOPMENT

Peshawar dated the 1/10/2012

NOTIFICATION

Notwithstanding the fact that consequent upon completion of settlement/Personal training of newly promoted regular Tehsildars/Naib Tehsildars the Competent Authority is pleased to repatriate the services of the following Assistants/Senior Scale Stenographers and Junior Scale Stenographers temporarily posted on Current Charge Basis on long term arrangement as Tehsildars/Naib Tehsildars, to their parent offices with immediate effect.

S#	Name & Designation	Present posting	Remarks
1	Mr. Husnain Ahmad, Assistant	Tehsildar (C/B) Panna	Repatriated to his parent office
2	Mr. Ahmad Ali, Assistant	Tehsildar (C/B) Guppa	Repatriated to his parent office
3	Mr. Atiqur Rehman, Assistant	Tehsildar (C/B) Dera	Repatriated to his parent office
4	Mr. Tariq Ahmad, Assistant	Tehsildar (C/B) Nowat	Repatriated to his parent office
5	Mr. Muhammad Younus, Assistant	Tehsildar (C/B) Jamrugh	Repatriated to his parent office
6	Mr. Arifullah, Assistant	Tehsildar (C/B) Samarugh	Repatriated to his parent office
7	Mr. Muhammad Hyan, Assistant	Tehsildar (C/B) Laili Mian	Repatriated to his parent office
8	Mr. Saraf Ali, Assistant	Tehsildar (C/B) Pir Hunza	Repatriated to his parent office
9	Mr. Tariq Aziz, Assistant	Naib Tehsildar (C/B) Miran Shah	Repatriated to his parent office
10	Mr. Sarazeb, Assistant	Tehsildar (C/B) Mianwali	Repatriated to his parent office
11	Mr. Kifayatullah, SSS	Tehsildar (C/B) Tank	Repatriated to his parent office
12	Mr. Zaid Khan, Assistant	Tehsildar (C/B) WAPDA Abbottabad	Repatriated to his parent office
13	Mr. Khalid Azmat, Assistant	Tehsildar (C/B) Takk-e-Nasrat	Repatriated to his parent office
14	Mr. Faizullah Senior Scribe Stenographer	Tehsildar (C/B) Thal	Repatriated to his parent office
15	Mr. Feroz Khan, Assistant	Tehsildar (C/B) Mirali	Repatriated to his parent office
16	Mr. Malik Zaid, Assistant	Tehsildar (C/B) Hannu	Repatriated to his parent office
17	Mr. Nabilullah, Junior Scribe Stenographer	Canal N.T (C/B) Peshawar	Repatriated to his parent office

Attested

Assistant Secretary

By order of
Senior Member

No. P.W./P. 1730321/430

Copy forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. All Divisional Commissioners in Khyber Pakhtunkhwa.
3. Deputy Commissioners of the respective districts.
4. District Accounts Officers of the respective districts.
5. Officials concerned.
6. Office order file.


Assistant Secretary (P.W.)

Attested

Appointed

To

The Worthy Chief Secretary
Khyber Pakhtunkhwa, Peshawar

Subject: **DEPARTMENTAL APPEAL AGAINST THE
IMPUGNED NOTIFICATION ESTT: 1/P/30393-43
430, DATED 17.08.2018 WHEREBY THE
APPELLANT HAS ILLEGALLY BEEN
REPATRIATED TO PARENT DEPARTMENT**

Respected Sir,

1. That the appellant is performing his duties as Tehsildar on current charge basis Tehsildar Pawan Shangle.
2. That the appellant is being subjected to persistent acts of discrimination on continuous basis and turned to be into shuttle cock as without observing the normal tenure of posting and transfer, the appellant is transferred and posted again and again.
3. That this was the case of appellant who had been initially transferred and posted vide order No. Estt-V/Zulfikar 20211-25, dated 02/10/2017 and lastly to the present place of posting vide order dated / . (Copies of the transfer and posting orders are annexed).
4. That this was the background that yet, another herein impugned notification Estt: 1/P,1/30393-430, Dated 17.08.2018 was illegally issued whereby the appellant was repatriated to his present department in an illegal discriminatory, void and unwarranted manner. (Copies of the impugned office order is annexed).
5. That before passing on the grounds of the instant appeal, it is pertinent to mention that the appellant holding the substantive pay scale of Assistant BPS-16 but having the ability and potential, otherwise eligible as well, have been transferred and posted as Tehsildar on CCB wherein his rights are protected and governed by rule 9 of the Transfer Promotional and Appointment Rules 1989.

Attested
Appellant

Secretary
Khyber Pakhtunkhwa

T

(11)

Grounds

- A. That persistent orders of transfer and posting any Civil Servant / Government servant is always hazardous and injurious to the potential and capabilities of the such civil servant / Government servant and has always been depreciated and discouraged by the Superior Courts, being always held as violation to fundamental rights and not solely to the service rights.
- B. That the impugned transfer and posting order are highly discriminatory ones and at the same time the repatriating the appellatant to his parent department without any rem and reason and without observing the law on subject while all the blue eyed ones were posted and transferred to their favorites places of posting and were left in field is highly discriminatory and void and amount to falling of the bolt from the blue upon the appellatant.
- C. That without going into minute details ~~it~~ would be suffice to mention here that persons who are holding same positions of responsibility on current charge basis to other field offices instead of repatriating all the officials working on CCB to the parent department and thus only the appellatant was subject to unfettered discrimination an even only on this score the impugned office order is void and illegal.
- D. That the normal tenure of transfer and posting can only be allowed to be left in rare and exceptional cases and that to in a defined public interest. But here the appellatant has repeatedly been transferred and repatriated for no reasons, which is certainly not a good omen.
- E. That posting and transferring any Civil Servant / Government on current charge basis is a defined mechanism of service law and procedure is detailed in ESta Code while the accrued rights, accrued thereupon, are fully protected under the same code whose details are provided under rule 9 of Transfer, Promotion and Appointment Rules 1989, But here that situation is volte-face and the appellatant is repatriated to parent department without any justification and the same tantamount to violation of only service law.
- F. That no one can condemned unheard, nor any one can be condemned for no wrong.

Attested
Appellatant

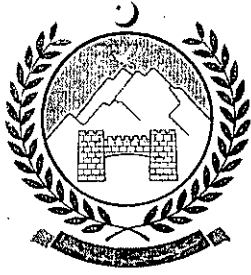
G. That from every angle and perspective the impugned transfer and posting orders are illegal, discriminations, void, unwarranted, vexatious, unlawful and is liable to be cancelled and set aside.

It is, therefore, most humbly requested that on acceptance of the instant departmental appeal, the impugned order notification Estt: 1/P/1/30393-430, Dated 17.08.2018 of the office of Senior Member Board of Revenue may graciously be cancelled and if the same is not feasible in the circumstances then the same impugned notification and office order may graciously be modified to the extent of the appellant and his name be struck off / deleted from the list of transferred Tehsildar and be left at his place of serving / posting and even if the same is not feasible then the appellant be posted and transferred in the same capacity of Tehsildar on Current Charge basis likewise others of the impugned transfer and posting order.;

Date\18.08.2018

Alleged
Appellant

[Signature]
Appellant
Hasnain Ahmad
Tehsildar (CCB)



GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

No. Estt:I/PF/Hasnain Ahmad/ 33508

Peshawar dated the 28/09/2018

To

Mr. Hasnain Ahmad,
Assistant Office of Deputy Commissioner Tank.

SUBJECT: **DEPARTMENTAL APPEAL AGAINST THE IMPUGNED
NOTIFICATION ESTT:I/PT/30393-430 DATED 17.08.2018
WHEREBY THE APPELLANT HAS BEEN REPATRIATED TO
PARENT DEPARTMENT.**

Your departmental appeal dated 18.08.2018 has been examined and rejected by the appellate authority.

Attested
Appellant

Assistant Secretary (Estt)

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

Service Appeal No. _____/2018

1. Hasnain Ahmad Tehsildar Puran, District Shangla.

APPLICANT / APPELLANT

VERSUS

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

RESPONDENTS

**APPLICATION FOR SUSPENDING
THE OPERATION OF THE IMPUGNED
NOTIFICATIONS DATED 17-08-2018 &
28-09-2018 TO THE EXTENT OF
APPLICANT/APPELLANT PASSED BY
THE RESPONDENT NO. 1 & 2 TILL
THE DISPOSAL OF MAIN APPEAL.**

Respectfully Sheweth:-

1. That the applicant/appellant has filed service appeal along with this application in which no date has been fixed so far.
2. That the facts enumerated and grounds taken in the body of service appeal may kindly be considered as an integral part of this application, which make out an excellent prima facie case in favour of the appellant.
3. That the applicant/appellant being deserved and eligible employee as Tehsildar was repatriated in utter violation of law as enumerated in the memorandum of appeal.

5. That the applicant/appellant has got a good prima facie case and is sanguine about its successes.

7. That in case the operation of the impugned notifications are not suspended, the very purpose of appeal would be defeated and it would become infructuous as well.

In view of the above narrated facts and grounds, the impugned notifications dated 17-08-2018 & 28-09-2018 may very graciously be set aside and the applicant/appellant may kindly be restored against the post of Tehsildar Puran, District Shangla.

Appellant/Applicant

Through

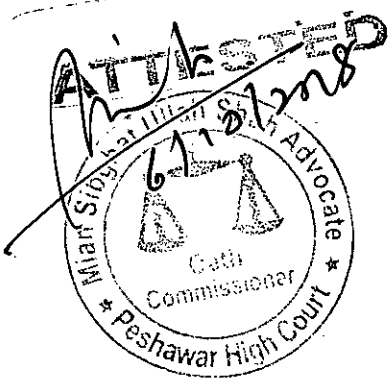
Dated: 06-10-2018

Rizwanullah
M.A. LL.B

Advocate High Court, Peshawar

AFFIDAVIT

I, Hasnain Ahmad Tehsildar Puran, District Shangla, do hereby solemnly affirm and declare that the contents of the accompanied Stay Application are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.



DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1225/2018.

Hasnain Ahmad Assistant the then Tehsildar (CCB).

VERSUS

Senior Member Board of Revenue and others.

PRELIMINARY OBJECTIONS.

1. That the appellant has got no cause of action.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the Appellant has been estopped by his own conduct to file the appeal.
4. That the appeal is time barred.
5. That the appeal is not maintainable in its present form.

PARAWISE COMMENTS OF RESPONDENT NO. 1,2&3 ARE AS UNDER.

1. No comments. Pertains to record.
2. No comments. Pertains to record.
3. Incorrect. The appellant is basically Assistant of the office of Deputy Commissioner Tank who was posted as Tehsildar (CCB) due to non-availability of regular Tehsildar for smooth running of official business. Consequent upon the Departmental Promotion Committee meetings, the newly promoted Tehsildars were placed on Revenue / Settlement Training and upon completion of the prescribed training, they have been posted out and the appellant alongwith others (CCB) Tehsildars have been repatriated to their original post and offices. Posting of an official on Current Charge Base cannot create right of out of turn promotion, however their case will be placed before the Departmental Promotion Committee for promotion as Tehsildars as and when vacancies occur in their share on their own turn after fulfillment required conditions.
4. Correct to the extent that his departmental appeal was rejected by the appellate authority.
5. Incorrect. Appeal of the appellant is not maintainable.

GROUND.

- A. Incorrect. The appellant has been treated in accordance with law.
- B. Incorrect. The appellant is not regular Tehsildar, therefore the question of completion of tenure does not arise.

- C. Incorrect. Order dated 17.08.2018 was issued with the approval of Competent Authority.
- D. Incorrect. Order dated 17.08.2018 is according to law.
- E. Incorrect. As in para-3 of the facts the appellant is not regular Tehsildar. He was repatriated to his original post of Assistant on 17.08.2018.
- F. As in para-3 of the facts.
- G. Incorrect. The appellate authority after going through the facts have rightly rejected appeal of the appellant.
- H. Incorrect. The appellant is basically Assistant. He was temporarily posted as Tehsildar (CCB) for smooth running of official business due to non availability of regular Tehsildar.
- I. Incorrect. The notification dated 17.08.2018 is according to law/rules.
- J. As in para-I.
- K. As in para-H & I.
- L. The respondent will also submit additional grounds at the time of arguments.

It is requested that the appeal may be dismissed.



Respondent No. 1, 2 & 3

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

Service Appeal No. _____/2018

1. Hasnain Ahmad Tehsildar Puran, District Shangla.

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 Commissioner Malakand Division, Malakand.

RESPONDENTS

**REJOINDER ON BEHALF OF
APPELLANT IN THE ABOVE
CAPTIONED APPEAL**

RESPECTFULLY SHEWETH,

PRELIMINARY OBJECTIONS

- 1-5. All the preliminary objections raised by the respondents are incorrect, baseless and not in accordance with law and rules rather the respondents are estopped by their own conduct to raise any objection.

ON FACTS

1. Para-1 of reply is incorrect as the respondents were legally bound to have examined the record and clarified the position of appellant. But they failed to do so and beat around the bush. Thus, Para is deemed as admitted by the respondents.
2. Same reply as enumerated in Para-1 above.

3. In reply to Para-3 it is stated that the appellant being the most senior employee of his cadre and grade and therefore, the Competent Authority (respondent No. 2) was kind enough to post him as Tehsildar, Puran, District Shangla on current charge basis vide Notification dated 02-10-2017. He assumed the charge of said post accordingly. He was performing his duty with great zeal, zest and devotion but strangely he was repatriated to his parent office in capacity as Assistant (BPS-16) in utter violation of law. The Authority was legally bound to have considered him for regular promotion being deserved and eligible employee. But he was deprived of his due right of promotion illegally despite the fact that the appellant had legitimate expectancy to gain such promotion. Besides, the name of newly selected employees who completed settlement training have not been disclosed to justify the stance of the respondents. It is well settled law that mere oral and general assertion is not sufficient to justify the stance of any party unless proved through cogent and reliable evidence including documentary proof. Thus, the impugned Notifications/Orders are against the spirit of administration of justice.
4. Para-4 needs no comments as the respondents admitted it as correct.
5. Incorrect as the appellant has a good prima-facie case to invoke the jurisdiction of this Hon'ble Tribunal for relief.

ON GROUNDS

- A. Incorrect and that of appeal is correct.
- B. Incorrect and that of appeal is correct.
- C. Para-C is incorrect. Order in question was passed in utter violation of law.
- D. Incorrect. Order dated 17-08-2018 was not passed in consonance with law.
- E. Incorrect. Detail reply offered in Para-3 of the facts above.

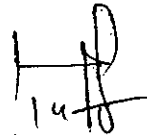
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- I. Incorrect as the Notification in question was passed against the spirit of law.
- J. Incorrect and that of appeal is correct.
- K. Same reply as offered in Para-H and I.
- L. Arguments are restricted to positions taken in pleadings.

It is therefore, respectfully prayed that while considering the above rejoinder, the appeal may kindly be accepted with special costs.



Appellant

Through



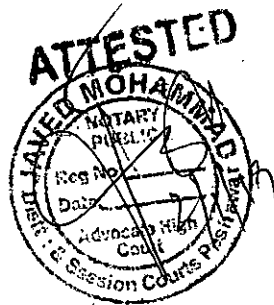
Rizwanullah
M.A. LL.B

Advocate High Court, Peshawar.

Dated: 02-01-2019

AFFIDAVIT

I, Hasnain Ahmad Tehsildar Puran, District Shangla, do hereby solemnly affirm and declare that the contents of the Re-joinder are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.



DEPONENT

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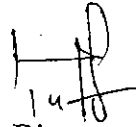
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Appellant

Through



Rizwanullah
M.A. LL.B

Advocate High Court, Peshawar.

Dated: 02-01-2019

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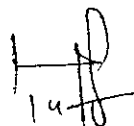
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Appellant

Through



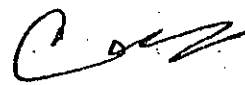
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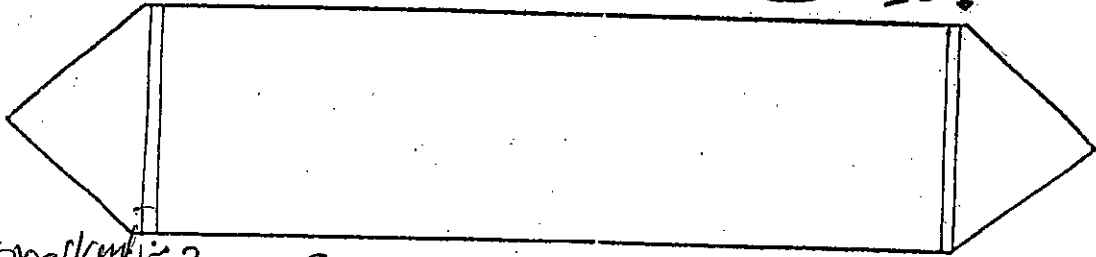
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DEPONENT

Before the Honble Chairperson KPK
Service Tribunal, Peshawar
بعدالت



Appellant 2

بنام

Service Appeal

Hasmain Ahmad

VS

Chief Secretary & Others

باعث تخریر آنکہ

موزعہ
مقدمہ
دعویٰ
جرم

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کارروائی متعلقہ
آج مقام ~~Peshawar~~ کیلئے ~~Regnumullah Adv~~

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یا ایک طرفہ یا اپیل کی برادگی 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 کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے دہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

المرقوم 5 ماہ اکتوبر 2018

العبد _____ واه العبد _____

Attest & accept
کے لئے منظور ہے۔
14/10/18

بجاء

بمقام

Appellant