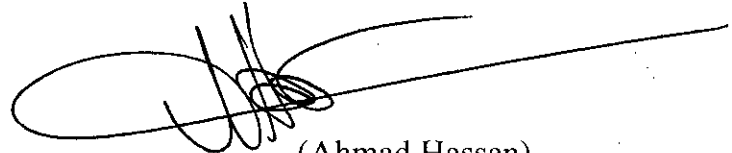


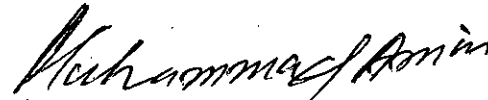
**Order**

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. 1130/2014<sup>2014</sup> 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

02.01.2019

Learned counsel for the appellant present. Mr. Muhammad Jan learned Deputy District Attorney alongwith Muhammad Arif Superintendent present.

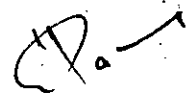
Learned counsel for the appellant complained that the SMBR (respondent No.3) is still prone to make appointments to the posts of Naib Tehsildars and Tehsildars on OPS/current charge basis.

It is but common knowledge and very unfortunate that the post of Naib Tehsildar and Tehsildar is considered as one of the great source of making speedy money and on other hand the hi-ups in the Revenue Department have adopted the policy of making appointments on these lucrative posts on OPS/current charge basis and have been acting like a silent spectator to the over all scenario.

It is also ironical that unscrupulous officials in the Revenue Department somehow succeeds in blocking the way of regular appointments on these lucrative posts by resorting to frivolous litigation. Some of these unscrupulous low rank officials are so influential that they enjoy the reputation of having subdued the bureaucracy.

This Tribunal observed that since the ad-interim relief of status-quo is no more in the field/vacated, the respondent department particularly the SMBR is directed to fill up the vacant posts of Naib Tehsildars and Tehsildars on regular basis in the prescribed manner and without any further delay. The SMBR is strictly directed to shun the appointments of Naib Tehsildars and Tehsildars on OPS/current charge basis in future. SMBR (respondent No.3) is directed to appear in person before this Tribunal on the next date fixed as 25.01.2019 to render proper assistance.

  
Member

  
Member

21.11.2018

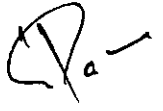
Since 21.11.2018 has been declared as public holiday on account of 12<sup>th</sup> Rabi ul Awal. Therefore, the case is adjourned. To come up on 28.12.2018.

  
Reader

28.12.2018

Learned counsel for the appellant present. Muhammad Arif Superintendent present and submitted parawise comments.

It is settled principle that a civil servant is vested with no right to question the order of his repatriation to the parent department hence the appellant is not found entitled to the extension of the ad-interim relief granted on 04.10.2018 till 25.10.2018. As such the ad-interim relief of status quo shall be deemed as vacated. It may also be mentioned that similar nature Service Appeal bearing No.1287/2018 has been dismissed by this Tribunal in limine. Moreover in another similar nature service appeal bearing No.1340/2018 filed by Mr. Malik Zahid; the ad-interim relief of status quo has also been vacated. The present case is a sheer example of the abuse of process of law. Adjournal. Learned counsel for the appellant requested for a short date. To come up for rejoinder/arguments on 02.01.2019 before D.B.

  
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

01.01.2019

Learned counsel for the appellant present. Rejoinder submitted.

The ad-interim relief of status-quo was issued vide order dated 05.10.2018 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

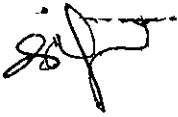
  
Member

05.10.2018

Counsel for the appellant Kifayatullah present. Preliminary arguments heard. It was contended by the learned counsel for the appellant that the appellant was transferred from the post of Senior Scale Stenographer, P.A Office North Waziristan Agency to the post of Tehsildar Land Acquisition (CCB) Abbottabad against the vacant post vide order dated 26.05.2017, he worked there for four months and then transferred to Tehsildar (CCB), Tank vide order dated 15.09.2017. It was further contended that just after one year vide impugned order dated 17.08.2018 the appellant <sup>was</sup> repatriated to his parent office from the post of Tehsildar (CCB) Tank against the transfer posting policy. Moreover, no notice was issued to the appellant before reversion/repatriated to his parent office therefore, the impugned order is illegal and liable to be set-aside.

The contention raised by the learned counsel for the appellant needs 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 23.10.2018 before S.B. Learned counsel for the appellant also submitted application for suspension of operation of impugned orders. Notice of the same be also issued to the respondents for the date fixed. In the meanwhile status-quo be maintained till the date fixed.

Appellant Deposited  
Security & Process Fee



*M Amin*  
(Muhammad Amin Khan Kundi)  
Member

22-10-18

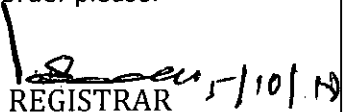
Due to retirement of Honorable Chairman  
the Tribunal is non functional therefore the  
case is adjourned to come up for the  
same on 15/11/2018

*Prabir*  
Reddy

Form- A  
FORM OF ORDER SHEET

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

Case No. 1222 /2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	05/10/2018	<p>The appeal of Mr. Kifayat Ullah Khan 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;"> REGISTRAR 5/10/18</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on _____.</p> <p style="text-align: right;">MEMBER</p>
2-		

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

Service Appeal No. 1222 /2018

1. Kifayatullah Khan Tehsildar, District Tank.

**APPELLANT**

**VERSUS**

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

**RESPONDENTS**

**INDEX**

S.No	Particulars	Annexure	Pages #
1	Service Appeal & Affidavit	-	1-8
2	Copy of commendation certificates	A & B	9-10
3	Copy of notification dated 26-05-2017	C	11
4	Copy of charge assumption dated 29-05-2017	D	12
5	Copy of notification dated 15-09-2017	E	13
6	Copy of office order dated 17-10-2017	F	14
7	Copy of notification dated 17-08-2018.	G	15
8	Copy of departmental appeal dated 18-08-2018	H	16-18
9	Copy of rejection order dated 28-09-2018	I	19
10	Stay Application & Affidavit	-	20-21
11	Wakalatnama	-	-

  
Appellant

Through

Dated: 05-10-2018

  
Rizwanullah

Advocate High Court, Peshawar

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

Service Appeal No. 1222 /2018

1. Kifayatullah Khan Tehsildar, District Tank.

**APPELLANT**

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1456

Dated 05/10/2018

**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 D.I.Khan, Division, D.I.Khan.

**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 DEPARTMENT AS SENIOR  
SCALE STENOGRAPHER 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  
5/10/18.



● **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 District Tank.**

**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 joined the respondent department in capacity as Junior Scale Stenographer (BPS-12) in the year 1992 and rose up to the post of Senior Scale Stenographer (BPS-16) in the year 2015. He has 26 years unblemished service record to his credit. He was awarded various commendation certificates by the Commissioner D.I.Khan Division, D.I.Khan as well as Deputy Commissioner Tank in recognition of his meritorious services and outstanding performance.

**(Commendation certificates are appended as Annex- A & B)**

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, Land Acquisition Abbottabad on current charge basis vide notification No. I/PF/G.Ghazi/11088-11110 dated 26-05-2017. He assumed the charge of new assignment on 29-05-2017

**(Copies of notification and charge assumption report are appended as Annex-C & D)**

3. That the appellant worked there for about four months and he was transferred to District Tank as Tehsildar vide notification No.19469-64 dated 15-09-2017 passed by the Senior Member Board of Revenue (respondent No.2). The appellant was also authorized to look after the responsibilities of the office of Assistant Commissioner Tank in addition to his own routine duties till the arrival of regular Assistant Commissioner Tank vide order No. 4673/BC dated 17-10-2017.

**(Copies of notification and office order are appended as Annex-E & F)**

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

**(Copy of notification is appended as Annex-G)**

5. 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-H & I)**

6. 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 Abbottabad 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, Abbottabad and Tank, 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 Abbottabad and Tank, 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 08-08-2018 has been examined and rejected by the Appellate Authority" will not fulfill the requirement of speaking order as envisaged in Section 24A 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)**

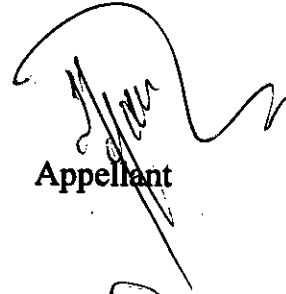
**----S.-24-A---Speaking order-  
Public functionaries are bound  
to decide cases of their  
subordinates after application  
of mind with cogent reasons  
within reasonable time.**

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 26-05-2017 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.

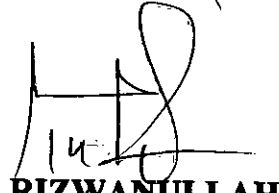
In view of the above narrated facts and grounds, the impugned notifications dated 17-08-2018 & 28-09-2018 may very graciously be set aside and the appellant may kindly be restored against the post of Tehsildar District Tank.

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



Appellant

Through



**RIZWANULLAH**

**M.A. LL.B**

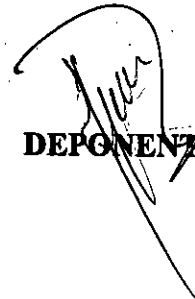
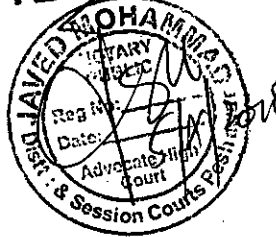
**Advocate High Court, Peshawar.**

Dated: 05/10/2018

**AFFIDAVIT**

I, Kifayatullah Khan Tehsildar District, Tank, 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**



**DEPONENT**



OFFICE OF THE  
**COMMISSIONER**  
 DIKHAN DIVISION DIKHAN  
 Phone No. 0266-9280331  
 Fax No. 0266-9280332  
 commissioner.dikhan@yahoo.com  
 Secretarytocommissionerdik@gmail.com



Annex-A (9)

No. 533 /Rev:

Dated DIKhan the 15/1/2017

To

The Tehsildar  
 Tank

Subject: - APPRECIATION

I am directed to refer to the Progress Review meeting dated. 08.01.2018 and to convey the appreciation of the Commissioner DIKhan Division regarding your good performance in Disposal of Revenue Court Cases.

Please keep it up in future too.

Secretary to Commissioner  
 DIKhan Division, DIKhan

No. 533/35 /Rev:

- Copy to:-
1. Deputy Commissioner DIKhan with the request to place copy in the personal file of the official.
  2. PS to Commissioner DIKhan Division

Secretary to Commissioner  
 DIKhan Division, DIKhan

Attested  
 Appreciation



10  
Annex B

# OFFICE OF THE DEPUTY COMMISSIONER TANK




## CERTIFICATE

*It is certified that Mr Kijayut Ullah Tehsildar Tank (BPS-16) has been performed Excellent job during General Elections 2018 in reporting assessment of missing facilities in Polling Stations , Installation of CCTV Cameras at most Sensitive Polling Stations in there respective jurisdictions.*

*This Certificate is Awarded to him for his Excellent Performance .*

Attested  
  
Appellavit

  
Issuing Authority  
dated: 29/8/2018

GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT  
Dated Peshawar dated the 26 May, 2017

**NOTIFICATION:**

No. Estt:/G.Ghazi Naib Tehsildar is hereby ordered with immediate effect in public interest:-

S.No	Name of official.	From	To
1.	Mr Gul Ghazi Khan	Tehsildar Dargai	Services placed at disposal of FATA Secretariat.
2.	Mr. Muhammad Dawood	Inspector Stamps(CCB), Kohat	District Kamungo Peshawar
3.	Mr. Muhammad Younas,	Assistant, Board of Revenue, Peshawar.	Tehsildar/Recovery Officer(CCB), PESCO, Peshawar Circle.
4.	Mr. Shafqat Ihsan.	Assistant, Board of Revenue, Peshawar	Tehsildar/Recovery Officer(CCB), PESCO, Khyber Circle.
5.	Mr. Hkhar-ur-Din	District Kamungo Peshawar	Canal Naib Tehsildar Charsadda against the vacant post.
6.	Mr. Jehanzeb	Naib Tehsildar Dargai	Naib Tehsildar Charsadda Shangla.
7.	Mr. Inayat-ur-Rehman	Settlement Naib Tehsildar(CCB), Nowshera	Naib Tehsildar (CCB), Dargai.
8. ✓	Mr. Kifayatullah	Senior Scale Stenographer, PA Office N.W. Agency	Tehsildar Land Acquisition(CCB) Abbottabad against the vacant post
9.	Mr. Nawab Ali.	Senior Clerk, office of the Deputy Commissioner, Swat	Naib Tehsildar(CCB) Khadu Khel against the vacant post.
10.	Mr. Nabi-Ullah.	Junior Scale Stenographer, Commissioner's Office, Peshawar.	Canal Naib Tehsildar, (CCB)Peshawar, against the vacant post.
11.	Mr. Mehmood Shah,	Naib Tehsildar, awaiting posting in BOR.	Naib Tehsildar, PDA Peshawar, against the vacant post.

By Order of  
Senior Member

No. Estt:/PF/G.Ghazi/11088-11110

Copy forwarded to the:-

1. Additional Chief Secretary FATA, FATA Secretariat, Peshawar.
2. Commissioners of the respective Divisions.
3. Director General, Peshawar Development Authority, Peshawar.
4. Political Agent, N.W. Agency.
5. Deputy Commissioners of the respective districts.
6. Director Land Records Khyber Pakhtunkhwa.
7. Settlement Officer, Nowshera.
8. Section Officer(L&O), FATA Secretariat, Peshawar w/r to his letter No.FSA.&O/37-Transn/1368 dated 22-5-2017
9. District Accounts Officers of the respective districts.
10. Officials concerned.
11. Personal Files.

Attested  
J. M. Khan  
J. M. Khan

Assistant Secretary (Estt.)

CHARGE ASSUMPTION REPORT.

Annex-D

(12)

In compliance with the Senior Member Board of Revenue & State Department Khyber Pakhtunkhwa notification bearing No.Estt-1/PF/G.Ghazi/11068-11110 dated 26.5.2017, I hereby assumed the charge of the post of Tehsildar Land Acquisition Abbottabad today on 29.05/2017 (F/N).




Kifayatullah  
Tehsildar Land Acquisition  
Abbottabad.

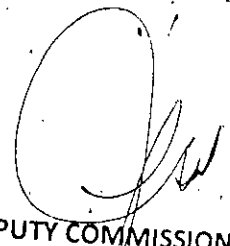
No. 1084-A / Acq:

Dated Abbottabad the/ 29.05 /2017

Copy of the charge assumption report is submitted:-

1. Commissioner, Hazara Division, Abbottabad.
2. Commissioner, Banu Division.
3. Director Land Record, Khyber Pakhtunkhwa.
4. Political Agent, NWA Miranshah.
5. Additional Deputy Commissioner, Abbottabad.
6. Assistant Commissioner, Abbottabad.
- ✓ 7. District Accounts Officer, Abbottabad.
8. Agency Accounts Officer, Miranshah.

Attest  
  
Appreciate



DEPUTY COMMISSIONER  
ABBOTTABAD.

Annex - E

13



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

Dated Peshawar the 15 September, 2017.

NOTIFICATION:

No. Estt: I/M. Shafiq/\_\_\_\_\_. The following posting/transfer amongst Tehsildars is hereby ordered with immediate effect in public interest:-

S.No	Name of official.	From	To
1.	Mr. Afsar Khan	Tehsildar (CCB) Kabal	Report to Board Revenue.
2.	Mr. Abdul Hadi	Tehsildar Booni.	Tehsildar Kabal vice No.
3.	Mr. Kifay atullah	Tehsildar (CCB), Land Acquisition Abbottabad.	Tehsildar (CCB), Tank.
4.	Mr. Mujahid Ali	Tehsildar Tank	Tehsildar Kandia Kohistan
5.	Mr. Abdul Qadeer	Tehsildar Kandia Kohistan	Tehsildar
6.	Sheikhi Muhammad Jamil.	Tehsildar (CCB) Irrigation DIKhan.	Reader to Commission DIKhan.

No. Estt I/M Shafiq/ 19469-64

By Order of Senior Member

Copy forwarded to the:-

1. Commissioners of the respective Divisions.
2. Deputy Commissioners of the respective districts.
3. District Accounts Officers of the respective districts.
4. Officials concerned.

*Attest*  
*[Signature]*  
*Applicant*

*[Signature]*  
Assistant Secretary (Estt.)

Annex-F

14



OFFICE OF THE  
DEPUTY COMMISSIONER,  
DISTRICT TANK  
Ph# 0963-511326 Fax# 0963-510300

No. 4673 /BC

Dated Tank The 17 /10/2017.

OFFICE ORDER.

Mr.Kifayat Ullah Tehsildar Tank is hereby authorized to look after the responsibilities of the office the Assistant Commissioner Tank in addition to his own routine duties in public interest and till the arrival of regular Assistant Commissioner Tank.

No. 4674 /BC

DEPUTY COMMISSIONER  
DISTRICT TANK

Copy to the:-

- 1- Commissioner DIKhan Division Dikan.
- 2- Additional Deputy Commissioner Tank.
- 3- Tehsildar Tank for compliance.

DEPUTY COMMISSIONER  
DISTRICT TANK

Attested  
  
Approver

GOVERNMENT OF KHYBER PAKHTUNKHWA  
 BOARD OF REVENUE  
 REVENUE & CHIEF EXECUTIVE OFFICE

Resolution dated the 1/11/2017

NOTIFICATION

No. F-50/DP/17-180193-430  
 Consequent upon completion of settlement/extension training of newly promoted regular Tehsildar/Naib Tehsildar, the competent Authority is pleased to repatriate the services of the following Assistant/Senior Scale Stenographers and Junior Scale Stenographer temporarily posted on Current Charge Basis as stop gap arrangement as Tehsildar/Naib Tehsildar, to their parent offices with immediate effect.

Sr	Name & Designation	Present posting	Remarks
1	Mr. Hasnain Ahmad, Assistant	Tehsildar (C/C) Panna	Repatriated to his parent office
2	Mr. Ahmad Ali Assistant	Tehsildar (C/C) Gappa	Repatriated to his parent office
3	Mr. Atiqur Rehman, Assistant	Tehsildar (C/C) Dera	Repatriated to his parent office
4	Mr. Tariq Ahmad, Assistant	Tehsildar (C/C) Dera	Repatriated to his parent office
5	Mr. Muhammad Younus, Assistant	Tehsildar (C/C) Lurgana	Repatriated to his parent office
6	Mr. Arifullah, Assistant	Tehsildar (C/C) Sumarbagh	Repatriated to his parent office
7	Mr. Muhammad Hyas, Assistant	Tehsildar (C/C) Lala Marand	Repatriated to his parent office
8	Mr. Sami Ali, Assistant	Tehsildar (C/C) Lal Hunn	Repatriated to his parent office
9	Mr. Tariq Aziz, Assistant	Naib Tehsildar (C/C) Miranshah	Repatriated to his parent office
10	Mr. Samzeel, Assistant	Tehsildar (C/C) Abawal	Repatriated to his parent office
11	Mr. Kibyatullah, SSS	Tehsildar (C/C) Tank	Repatriated to his parent office
12	Mr. Zardad Khan, Assistant	Tehsildar (C/C) WAPDA Abbottabad	Repatriated to his parent office
13	Mr. Khalid Azmat, Assistant	Tehsildar Takt-e-Nasrati	Repatriated to his parent office
14	Mr. Faizullah Senior Scale Stenographer	Tehsildar (C/C) Thal	Repatriated to his parent office
15	Mr. Feroz Khan, Assistant	Tehsildar (C/C) Mirali	Repatriated to his parent office
16	Mr. Malik Zaid, Assistant	Tehsildar (C/C) Banna	Repatriated to his parent office
17	Mr. Nabilullah, Junior Scale Stenographer	Canal N/F (C/C) Peshawar	Repatriated to his parent office

Attested  
  
 Assistant Secretary

By order of  
 Senior Member

No. F-50/DP/17-180193-430

- 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 (I & II)

Annex-H

16

PS/O & Kh. Peshawar, Pakhtunkhwa  
Dary No. 8326 (ul)  
Date 31-8-18

To

The Worthy Chief Secretary  
Khyber Pakhtunkhwa, Peshawar.

Subject: DEPARTMENT APPEAL AGAINST THE IMPUGNED NOTIFICATION ESTT: 1/P/30393-430, DATED 17.08.2018 WHERE BY THE APPEALANT HAS ILLIGLY BEEN REPATRIATED TO THE PARENT DEPARTMENT

Respected Sir,

1. That the appellant is performing his duties as Tehsildar on current charge basis as Tehsildar Tank District vide Senior Member Board of Revenue KPK order No. Estt/1/PF/Ghazi/11088-11110 dated 26/05/2018 on the recommendation of Commissioner Bannu Division Bannu vide his letter 117/PO/Estab-17, dated 13.2.2017.
2. That the appellant is being subjected is 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: 1/PF/Ghazi/111080-11110, dated 26.5.2017 and lastly to the present place of posting vide order No. 19469-64 dated 15.9.2017. (Copies of the transfer and posting order are annexed).
4. That this was the background that yet, another herein impugned notification No. 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 Senior Scale Stenographer 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.

Attest  
  
Appellant

Grounds


- A. That persistent orders of transfer and posting any Civil 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 appellant 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 in field is highly discriminatory and void and amount to falling of the bolt from the blue upon the appellant.
- C. That without going into minute details in 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 appellant was subject to unfettered discrimination and even only on this score the impugned office order is void and illegal.
- D. That the normal tenure of transfer and posting can be allowed to be left in rare and exceptional cases and that to in a defined public interest. But here the appellant has repeatedly been transferred and repatriated for no reasons, which is certainly not 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 appellant 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.
- 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.

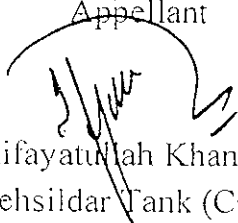
*Atcharya*  
*Appellate*



It is, therefore, most humbly requested that on acceptance of the instant departmental appeal, the impugned order notification No. Estt: 1/P/1/30393-430, Dated 17.08.2018 of the office of Senior Member 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 notified to the extent of the appellant and his name be struck off/deleted from the list of transferred Tehsildars 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 bases likewise other of the impugned transfer and posting order.;

Dated 18.08.2018

Attest  
  
Appellant

Appellant  
  
Kifayatullah Khan  
Tehsildar Tank (CCB)

Annex-I (19)



GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT

No. Estt: I/PF/Kifayatullah/ 33510

Peshawar dated the 28/09/2018

To

Mr. Kifayatullah,  
Senior Scale Stenographer,  
Office of Deputy Commissioner,  
North Waziristan (Tribal).

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.

Allesho  
Appellant

Assistant Secretary (Estt)

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

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

1. Kifayatullah Khan Tehsildar District Tank.

**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 District Tank.

Appellant/Applicant

Through



**Rizwanullah**  
M.A. LL.B

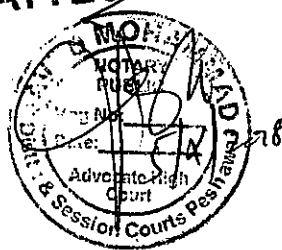
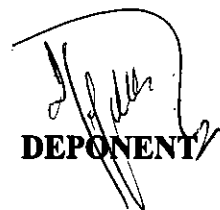
**Advocate High Court, Peshawar**

Dated: 06-10-2018

**AFFIDAVIT**

I, Kifayatullah Khan Tehsildar District, Tank, 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.

ATTESTED

DEPONENT

Service Appeal No. 1200/2018

Kifayatullah Khan Tehsildar (CCB) District Tank.

**VERSUS**

Senior Member Board of Revenue and others.

**PRELIMINARY OBJECTIONS.**

1. That the appellant has got no cause of action or locus standi.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the Appellant has been stopped 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.
6. That Repatriation to his parent post / department does not violate terms and condition of a civil servant.

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

1. No comments. Pertains to record.
2. Correct to the extent that the appellant was posted as Tehsildar (CCB) due to non availability of regular Tehsildar, which does not create right of regular promotion or to remain on a post of other cadre.
3. No comments pertain to record.
4. Incorrect. The appellant is Senior Scale Stenographer which is a separate cadre. Beside, he is the junior most and his case will be placed before the Departmental Promotion Committee for promotion as Tehsildar on his own turn, he is not entitled to be posted on the post.
5. Correct to the extent that appeal of the appellant has rejected by the appellate authority on 28.09.2018.
6. Incorrect. Appeal of the appellant is not maintainable.

**GROUNDS.**

- A. Incorrect. The appellant has been treated in accordance with law/rules.
- B. Incorrect. Posting / transfer is part of service and can any time be made by the Competent Authority.
- C. Incorrect. No discrimination has been done with the appellant. Further he has not been subjected to any disciplinary proceedings so there is no need of any personal hearing.
- D. Incorrect. Posting on CCB or OPS does not create any right of regular position / posting.
- E. As in D above.
- F. Incorrect. The appellant will be considered for promotion as Tehsildar on the basis of his seniority as and when vacancies occur in their share.
- G. Incorrect. The appellant is the junior most Assistant. His case for regular promotion will be placed before the Departmental Promotion Committee on his own turn for consideration.
- H. As in para-4 of the facts.
- I. Incorrect. All the proceedings have been carried out according to law.
- J. Incorrect. The notification dated 17.08.2018 is according to law/rules.
- K. The respondent will also seek permission to submit additional grounds at the time of arguments.

Therefore based upon the above it is humbly prayed that the appeal of the appellant may kindly be dismissed as it carries no ground.



Respondent No. 1, 2 & 3

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

Service Appeal No. 1222/2018

1. Kifayatullah Khan Tehsildar (CCB), District Tank. **APPELLANT**

**VERSUS**

1. The Chief Secretary Government of Khyber Pakhtukhwa, Peshawar.
2. The Senior Member Board of Revenue and Estate Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. The Commissioner DIKhan Division DIKhan.

**RESPONDENT**

**PRELIMINARY OBJECTION.**

1. That the appellant has got no cause of action or locus standi.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has been stopped 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.
6. That Repatriation to his parent post/ department does not violate terms and condition of a civil servant.

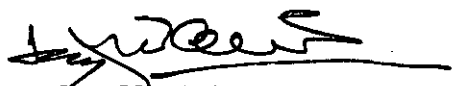
**PARAWISE COMMENTS OF RESPONDENTs NO.1, 2, 3 ARE AS UNDER.**

1. No comments pertain to record.
2. Correct to the extent that the appellant was posted as tehsildar (CCB) due to non availability of regular Tehsildar, which does not create right of regular promotion or to remain on a post of other cadre.
3. No comments pertain to record.
4. Incorrect. The appellant is Senior Scale Stenographer which is a separate cadre. Besides, he is the junior most and his case will be placed before the Departmental Promotion Committee for Promotion as Tehsildar on his own turn, he is not entitled to be posted on the post.
5. Correct to the extent that appeal of the appellant has rejected by the appellate authority on 28-09-2018.
6. Incorrect. Appeal of the appellant is not maintainable.

**GROUND.**

- A. Incorrect. The appellant has been treated in accordance with law/ rules.
- B. Incorrect. Posting/ transfer is part of service and can any time be made by the Competent Authority.
- C. Incorrect. No Discrimination has been done with the appellant. Further he has not been subjected to any disciplinary proceedings so there is no need of any personal hearing.
- D. Incorrect. Posting on CCB or OPS does not create any right of regular position/ posting.
- E. As in D above.
- F. Incorrect. The appellant will be considered for promotion as Tehsildar on the basis of his seniority as and when vacancies occur in their share.
- G. Incorrect. The appellant is the junior most assistant. His case for regular promotion will be placed before the Departmental Promotion Committee on his own turn for consideration.
- H. As in para-4 of the facts.
- I. Incorrect. All the proceedings have been carried out according to law.
- J. Incorrect. The notification dated 17-08-2018 is according to law/ rules.
- K. The respondent will also seek permission to submit additional grounds at the time of arguments.

Therefore based upon the above it is humbly prayed that the appeal of the appellant may kindly be dismissed as it carries no ground.

  
Respondent No. 1, 2 & 3



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

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

1. Kifayatullah Khan Tehsildar, District Tank.

**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 D.I.Khan, Division, D.I.Khan.

**RESPONDENTS**

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

**RESPECTFULLY SHEWETH,**

**PRELIMINARY OBJECTIONS**

- 1-6. 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. In reply to Para-2 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, Land Acquisition, Abbottabad on current charge basis vide

Notification No. I/PF/G.Ghazi/11088-1110 dated 26-05-2017. He assumed the charge of said post accordingly. He worked there for a period of four months and was transferred to District Tank as Tehsildar vide Notification No. 19469-64 dated 15-09-2017 passed by the Senior Member Board of Revenue (Respondent No. 2). The appellant was also authorized to look after responsibility of the office of Assistant Commissioner Tank in addition to his own routine duties till the arrival of regular Assistant Commissioner, Tank vide order No. 4673/BC dated 17-10-2017. 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. Moreover, the name of newly selectees who completed their Settlement training have not been disclosed for the reasons best known to the respondents.

3. Same reply as enumerated in Para-1 above.
4. Para-4 is incorrect and misconceived as the respondents failed to append any document/material to prove that the appellant was the most junior employee of the cadre. 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.
5. Para-5 needs no comments as the respondents admitted it as correct.
6. 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 as the appellant was not treated in accordance with the mandate of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 which contemplates that it is the inalienable right of

every citizen to be treated in accordance with law. The appellant was not provided any opportunity before passing the impugned Order and as such the Authority has blatantly violated the law laid down by august Supreme Court of Pakistan in various judgments.

- D. Incorrect. Detail reply offered in Para-2 of the facts above.
- E. Incorrect and that of appeal is correct.
- F. Para-F is incorrect and that of appeal is correct.
- G. Incorrect and detail reply furnished in Para-2 of the facts above.
- H. Incorrect and that of appeal is correct.
- I. Incorrect as the proceedings in question have been taken in utter violation of law.
- J. Incorrect as the Notification in question was passed against the spirit of Law and Rules.
- K. 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.

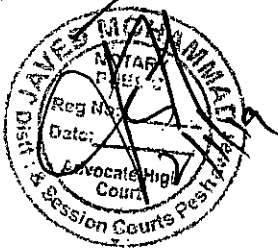
Through

Appellant

Rizwanullah  
M.A. LL.B

Advocate High Court, Peshawar.

ATTESTED Dated: 02-01-2019



**AFFIDAVIT**

I, Kifayatullah Khan Tehsildar District, Tank, 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

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

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

1. Kifayatullah Khan Tehsildar, District Tank.

**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 D.I.Khan, Division, D.I.Khan.

**RESPONDENTS**

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APPELLANT IN THE ABOVE  
CAPTIONED APPEAL**

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Notification No. I/PF/G.Ghazi/11088-1110 dated 26-05-2017. He assumed the charge of said post accordingly. He worked there for a period of four months and was transferred to District Tank as Tehsildar vide Notification No. 19469-64 dated 15-09-2017 passed by the Senior Member Board of Revenue (Respondent No. 2). The appellant was also authorized to look after responsibility of the office of Assistant Commissioner Tank in addition to his own routine duties till the arrival of regular Assistant Commissioner, Tank vide order No. 4673/BC dated 17-10-2017. 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. Moreover, the name of newly selectees who completed their Settlement training have not been disclosed for the reasons best known to the respondents.

3. Same reply as enumerated in Para-1 above.
4. Para-4 is incorrect and misconceived as the respondents failed to append any document/material to prove that the appellant was the most junior employee of the cadre. 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.
5. Para-5 needs no comments as the respondents admitted it as correct.
6. 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 as the appellant was not treated in accordance with the mandate of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 which contemplates that it is the inalienable right of

every citizen to be treated in accordance with law. The appellant was not provided any opportunity before passing the impugned Order and as such the Authority has blatantly violated the law laid down by august Supreme Court of Pakistan in various judgments.

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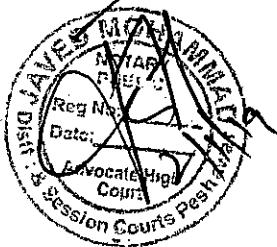
Through

Appellant

Rizwanullah  
M.A. LL.B

Advocate High Court, Peshawar.

ATTESTED Dated: 02-01-2019



**AFFIDAVIT**

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DEPONENT

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

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

1. Kifayatullah Khan Tehsildar, District Tank.

**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 D.L.Khan, Division, D.I.Khan.

**RESPONDENTS**

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

**RESPECTFULLY SHEWETH,**

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Notification No. I/PF/G.Ghazi/11088-1110 dated 26-05-2017. He assumed the charge of said post accordingly. He worked there for a period of four months and was transferred to District Tank as Tehsildar vide Notification No. 19469-64 dated 15-09-2017 passed by the Senior Member Board of Revenue (Respondent No. 2). The appellant was also authorized to look after responsibility of the office of Assistant Commissioner Tank in addition to his own routine duties till the arrival of regular Assistant Commissioner, Tank vide order No. 4673/BC dated 17-10-2017. 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. Moreover, the name of newly selectees who completed their Settlement training have not been disclosed for the reasons best known to the respondents.

3. Same reply as enumerated in Para-1 above.
4. Para-4 is incorrect and misconceived as the respondents failed to append any document/material to prove that the appellant was the most junior employee of the cadre. 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.
5. Para-5 needs no comments as the respondents admitted it as correct.
6. 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 as the appellant was not treated in accordance with the mandate of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 which contemplates that it is the inalienable right of

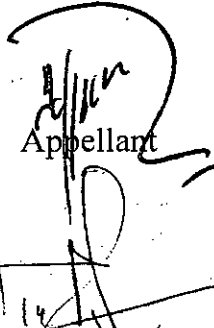


every citizen to be treated in accordance with law. The appellant was not provided any opportunity before passing the impugned Order and as such the Authority has blatantly violated the law laid down by august Supreme Court of Pakistan in various judgments.

- D. Incorrect. Detail reply offered in Para-2 of the facts above.
- E. Incorrect and that of appeal is correct.
- F. Para-F is incorrect and that of appeal is correct.
- G. Incorrect and detail reply furnished in Para-2 of the facts above.
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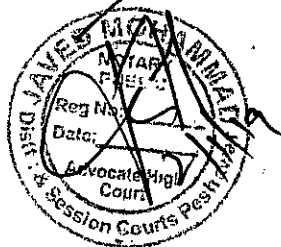
It is therefore, respectfully prayed that while considering the above rejoinder, the appeal may kindly be accepted with special costs.

Through

  
Appellant


**Rizwanullah**  
M.A. LL.B  
Advocate High Court, Peshawar.

**ATTESTED** Dated: 02-01-2019



**AFFIDAVIT**

I, Kifayatullah Khan Tehsildar District, Tank, 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

Service Appeal No. 1209/2018

Kifayatullah Khan Tehsildar (CCB) District Tank.

**VERSUS**

Senior Member Board of Revenue and others.

**PRELIMINARY OBJECTIONS.**

1. That the appellant has got no cause of action or locus standi.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the Appellant has been stopped 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.
6. That Repatriation to his parent post / department does not violate terms and condition of a civil servant.

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

1. No comments. Pertains to record.
2. Correct to the extent that the appellant was posted as Tehsildar (CCB) due to non availability of regular Tehsildar, which does not create right of regular promotion or to remain on a post of other cadre.
3. No comments pertain to record.
4. Incorrect. The appellant is Senior Scale Stenographer which is a separate cadre. Beside, he is the junior most and his case will be placed before the Departmental Promotion Committee for promotion as Tehsildar on his own turn, he is not entitled to be posted on the post.
5. Correct to the extent that appeal of the appellant has rejected by the appellate authority on 28.09.2018.
6. Incorrect. Appeal of the appellant is not maintainable.

GROUND.

- A. Incorrect. The appellant has been treated in accordance with law/rules.
- B. Incorrect. Posting / transfer is part of service and can any time be made by the Competent Authority.
- C. Incorrect. No discrimination has been done with the appellant. Further he has not been subjected to any disciplinary proceedings so there is no need of any personal hearing.
- D. Incorrect. Posting on CCB or OPS does not create any right of regular position / posting.
- E. As in D above.
- F. Incorrect. The appellant will be considered for promotion as Tehsildar on the basis of his seniority as and when vacancies occur in their share.
- G. Incorrect. The appellant is the junior most Assistant. His case for regular promotion will be placed before the Departmental Promotion Committee on his own turn for consideration.
- H. As in para-4 of the facts.
- I. Incorrect. All the proceedings have been carried out according to law.
- J. Incorrect. The notification dated 17.08.2018 is according to law/rules.
- K. The respondent will also seek permission to submit additional grounds at the time of arguments.

Therefore based upon the above it is humbly prayed that the appeal of the appellant may kindly be dismissed as it carries no ground.



Respondent No. 1, 2 & 3

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

Service Appeal No: 1222/2018

1. Kifayatullah Khan Tehsildar (CCB), District Tank. **APPELLANT**

**VERSUS**

1. The Chief Secretary Government of Khyber Pakhtukhwa, Peshawar.
2. The Senior Member Board of Revenue and Estate Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. The Commissioner DIKhan Division DIKhan.

**RESPONDENT**

**PRELIMINARY OBJECTION.**

1. That the appellant has got no cause of action or locus standi.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has been stopped 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.
6. That Repatriation to his parent post/ department does not violate terms and condition of a civil servant.


**PARAWISE COMMENTS OF RESPONDENTS NO.1, 2, 3 ARE AS UNDER.**

1. No comments pertain to record.
2. Correct to the extent that the appellant was posted as tehsildar (CCB) due to non availability of regular Tehsildar, which does not create right of regular promotion or to remain on a post of other cadre.
3. No comments pertain to record.
4. Incorrect. The appellant is Senior Scale Stenographer which is a separate cadre. Besides, he is the junior most and his case will be placed before the Departmental Promotion Committee for Promotion as Tehsildar on his own turn, he is not entitled to be posted on the post.
5. Correct to the extent that appeal of the appellant has rejected by the appellate authority on 28-09-2018.
6. Incorrect. Appeal of the appellant is not maintainable.

**GROUNDS.**

- A. Incorrect. The appellant has been treated in accordance with law/ rules.
- B. Incorrect: Posting/ transfer is part of service and can any time be made by the Competent Authority.
- C. Incorrect. No Discrimination has been done with the appellant. Further he has not been subjected to any disciplinary proceedings so there is no need of any personal hearing.
- D. Incorrect. Posting on CCB or OPS does not create any right of regular position/ posting.
- E. As in D above.
- F. Incorrect. The appellant will be considered for promotion as Tehsildar on the basis of his seniority as and when vacancies occur in their share.
- G. Incorrect. The appellant is the junior most assistant. His case for regular promotion will be placed before the Departmental Promotion Committee on his own turn for consideration.
- H. As in para-4 of the facts.
- I. Incorrect. All the proceedings have been carried out according to law.
- J. Incorrect. The notification dated 17-08-2018 is according to law/ rules.
- K. The respondent will also seek permission to submit additional grounds at the time of arguments.

Therefore based upon the above it is humbly prayed that the appeal of the appellant may kindly be dismissed as it carries no ground.

  
Respondent No. 1, 2 & 3

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

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

1. Kifayatullah Khan Tehsildar, District Tank.

**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 D.I.Khan, Division, D.I.Khan.

**RESPONDENTS**

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

**RESPECTFULLY SHEWETH,**

**PRELIMINARY OBJECTIONS**

- 1-6. 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. In reply to Para-2 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, Land Acquisition, Abbottabad on current charge basis vide

Notification No. I/PF/G.Ghazi/11088-1110 dated 26-05-2017. He assumed the charge of said post accordingly. He worked there for a period of four months and was transferred to District Tank as Tehsildar vide Notification No. 19469-64 dated 15-09-2017 passed by the Senior Member Board of Revenue (Respondent No. 2). The appellant was also authorized to look after responsibility of the office of Assistant Commissioner Tank in addition to his own routine duties till the arrival of regular Assistant Commissioner, Tank vide order No. 4673/BC dated 17-10-2017. 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. Moreover, the name of newly selectees who completed their Settlement training have not been disclosed for the reasons best known to the respondents.

3. Same reply as enumerated in Para-1 above.
4. Para-4 is incorrect and misconceived as the respondents failed to append any document/material to prove that the appellant was the most junior employee of the cadre. 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.
5. Para-5 needs no comments as the respondents admitted it as correct.
6. 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 as the appellant was not treated in accordance with the mandate of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 which contemplates that it is the inalienable right of

every citizen to be treated in accordance with law. The appellant was not provided any opportunity before passing the impugned Order and as such the Authority has blatantly violated the law laid down by august Supreme Court of Pakistan in various judgments.

- D. Incorrect. Detail reply offered in Para-2 of the facts above.
- E. Incorrect and that of appeal is correct.
- F. Para-F is incorrect and that of appeal is correct.
- G. Incorrect and detail reply furnished in Para-2 of the facts above.
- H. Incorrect and that of appeal is correct.
- I. Incorrect as the proceedings in question have been taken in utter violation of law.
- J. Incorrect as the Notification in question was passed against the spirit of Law and Rules.
- K. 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.

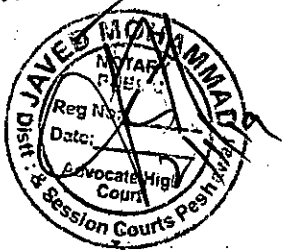
Through

Appellant

Rizwanullah  
M.A. LL.B

Advocate High Court, Peshawar.

**ATTESTED** Dated: 02-01-2019



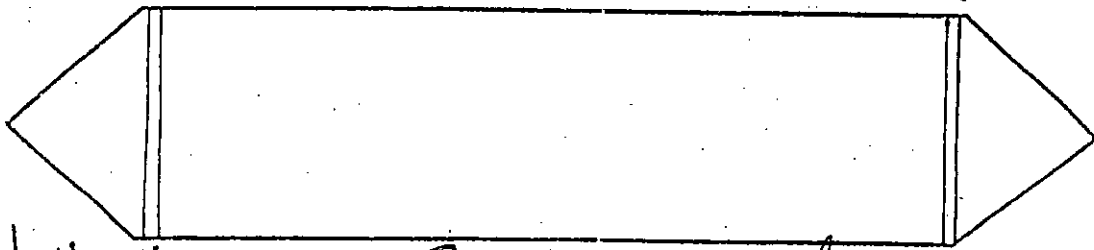
**AFFIDAVIT**

I, Kifayatullah Khan Tehsildar District, Tank, 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



Before the Honorable Chairperson  
KPK Service Tribunal, Peshawar  
بعدالت



2 مخدوم ایڈوکیٹ  
بنام

Service Appeal

Kifayatullah Khan

vs

Chief Secretary & Others  
باعث تحریراً

موزعہ

مقدمہ

دعویٰ

جرم

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کارروائی متعلقہ  
آن مقام ~~Peshawar~~ کیلئے ~~Peshawar~~ مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز  
دکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور صولی 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 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 باختیارات حاصل ہوں گے اور اس کا ساختہ  
پر واختہ 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 لکھ دیا کہ مندر ہے۔

ماہ اکتوبر 2018

4

المرقوم

Attached receipt  
[Signature]

کے لئے منظور ہے۔

بمقام