

3.3.2015

Appellant with counsel and Addl. A.G with Mukhtiar Ali, Supdt. for the respondents present. Appellant submitted that the order dated 02.07.2013 has been restored by the Director Land Record vide his order No. 2886-94 dated 17.12.2014 and his grievance has been redressed departmentally. The appellant submitted an application for withdrawal of the appeal. Application is allowed and the appeal is dismissed as withdrawn. File be consigned to the record.

<u>ANNOUNCED</u> 03.3.2015.

**MEMBER** 

13.11.2014

Clerk to counsel for the appellant and Mr. Muhammad Jan, GP with Mukhtiar Ali, Supdt. for respondent No. 1 present. None is available on behalf of other respondents. The Tribunal is incomplete. To come up for the same on 1.1.2015.

1.1.2015

Clerk to counsel for the appellant and Mr. Muhammad Jan, GP with Mukhtiar Ali, Supdt. for the respondents present. The Tribunal is incomplete. To come up for the same on 03.03.2015.

Counsel for the appellant and Mr. Ziaullah, GP for the respondents present. Preliminary arguments heard and case file perused. Through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, the appellant has impugned order dated 11.07.2014 vide which the promotion order of the appellant to BPS-16 as District Kanungo was withdrawn Against the impugned order the appellant filed departmental appeal which was rejected/filed by the competent authority vide impugned order dated 23.01.2014, hence the present appeal on 06.02.2014.

Since the matter pertains to terms and conditions of service of the appellant, hence admit for regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 13.11.2014. Counsel for the appellant has also filed an application for suspending the operation orders dated 11.07.2013 and 23.01.2014. Notice of application should also be issued to the respondents for reply/arguments on 10.09.2014

Member

This case be put before the Final Bench 1 for further proceedings.

10.09.2014

18.08.2014

Counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Mukhtiar Ali, Supdt. for respondent No.1 present. None is available on behalf of other respondents. The learned Member is on leave. Case to come up as before on 13.11.2014.

20.05.2014

Clerk of counsel for the appellant and Mr. Ziaullah, GP for the respondents present. Clerk of counsel for the appellant requested for adjournment due to general strike of the Bar. To come up for preliminary hearing on 17.06.2014.

Member

17.06.2014

Junior to counsel for the appellant and Mr. Ziaullah, GP for the respondents present. Junior to counsel for the appellant requested for adjournment. Request accepted. To come up for preliminary hearing on 25.07.2014.

Member

25.07.2014

Clerk of counsel for the appellant and Mr. Ziaullah, GP for the respondents present. Clerk of counsel for the appellant requested for adjournment. Request accepted. To come up for preliminary hearing on 18.08.2014.

Member

Appellant with counsel present. Preliminary arguments partly heard and case file perused. Perusal of the case file reveals that through the instant appeal the appellant has challenged the validity of the impugned order dated 10.07.2013 vide which the promotion of the appellant as District Kanungo was held in abeyance on the pretaxt that an appeal is subjudice in the Services Tribunal, Peshawar and later-on vide impugned order dated 11.07.2013, the promotion order of the appellant was withdrawn. Since nothing on record is available to suggest that on what basis instant promotion of the appellant was withdrawn, Therefore, pre-admission notice be issued to the Government Pleader to assist the Tribunal. To come up for preliminary hearing on 22.04.2014.

Member

22.04.2014

Clerk of counsel for the appellant and Mr. Ziaullah, GP for the respondents present. Clerk of counsel for the appellant requested for adjournment due to general strike of the Bar. To come up for preliminary hearing as per order sheet dated 25.03.2014 on 20.05.2014.

Member

# Form- A FORM OF ORDER SHEET

Court of	
Case No	171/2014

_	Case No	171/2014
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	14/02/2014	The appeal of Mr. Faiz Muhammad resubmitted today by Mr. Muhammad Asif Youafzai Advocate may be entered in
		the Institution register and put up to the Worthy Chairman for preliminary hearing.
		REGISTRAR
<b>2</b> :	21-2-2014	This case is entrusted to Primary Bench for preliminary hearing to be put up there on
		CHAIRMAN
· · · · · · · · · · · · · · · · · · ·		
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The appeal of Mr. Faiz Muhammad DRA Distt. Buner received today i.e. on 06.02.2014 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

> Address of respondent No. 3 is incomplete which may be completed according to Khyber Pakhtunkhwa Service Tribunal rules 1974

KHYBER PAKHTUNKHWA PESHAWAR.

Mr. M. Asif Yousafzai Adv. Pesh.

14/02/14 Box objection semonel from
le Submitted for

### BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO.	17	71	/2014.

Faiz Muhammad.

VS

Revenue Deptt:

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**APPELLANT** 

FAIZ MUHAMMAD

THROUGH:

M.ASÍF YOUSAFZA

ADVOCATE.

### BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO	1	$\mathcal{L}$	/2014.

148

Faiz Muhammad, DRA,

Distt: Buner......Appellant.

#### **VERSUS**

- 1- The SMBR, KPK Peshawar.
- 2- The Director Land Record, KPK Peshawar.
- 3- The Commissioner, Malakana Division Swat.
- 4- The D.C Buner......Respondents.

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT 1974 AGAINST THE ORDER DATED. 23.1.2014 WHEREBY THE DEPARTMENTAL APPEAL AGAINST THE ORDERS DATED. 10.7.2013 & 11.7.2013 HAS BEEN FILED/REJECTED FOR NO GOOD GROUNDS.

PRAYER:

That on acceptance of this appeal, the order dated. 23.1.2014 may be set-aside along with the directions to the respondents to restore the promotion order dated. 2.7.2013 of the appellant by withdrawing the orders dated. 10.7.2013 & 11.7.2013 with all back & consequential benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of appellant.

R.SHEWETH.

Ac-summance to-day

That the appellant was appointed as Patwari in BPS-5 after observing proper procedure of departmental selection



committee and its recommendations vide order dated. 23.1.2007. Copy of the order is attached as Annexure – A.

- 2) That the appellant was promoted as Kanongo (BPS-09) by a competent DPC vide order dated. 10.8.2009. Copy of the order is attached as Annexure B.
- That the appellant along with two other colleagues were promoted as DK (BPS-14) by the competent DPC vide order dated. 2.7.20 and since then the appellant has been performing his duties as DRA in Buner till date. Copies of order and duty certificate are attached as Annexure C&D.
- 4) That at the back of appellant, without any prior notice or information to appellant, the respondent No.2 first held in abeyance the promotion order on 10.7.2013 and then withdrew the promotion order of appellant on 11.7.2013 without any notice to appellant. Copies of the orders are attached as Annexure E&F.
- 5) That as the appellant came to know about the held in abeyance and withdrawal orders, he forth with applied for provision of the said orders on 13.1.2014 and the same were provided to appellant on his application. Copy of the application is attached as Annexure G.
- That after obtaining the copies of the orders, the appellant submitted departmental appeal on 15.1.2014 but the same has been filed/rejected for no good grounds on 23.1.2014. Hence the present appeal on the following grounds amongst the others. Copies of appeal and rejection order are attached as Annexure H&I.

#### **GROUNDS:**

A) That the order dated. 23.1.2014 as well as orders dated. 10.7.2013 & 11.7.2013, are against the law, facts, norms of justice and material on record, therefore, not tenable and liable to be set-aside.



- B) That the appellant has been condemned unheard as no prior chance of hearing or defence, has been provided to appellant. Thus the principles of Audi Alteram Partem are violated due to which the all impugned orders are nullity in the eyes of law.
- C) That the orders have been passed after the proper recommendations of the competent DPC, therefore, the respondent no.2 was having no legal authority to hold in abeyance or withdraw the promotion order, especially when the order was notified on 2.7.2013.
- D) That the order dated. 2.7.2013 has been acted upon and the appellant is still performing his duty as DRA Buner till date. Thus valuable rights have been created in favour of appellant and the same can not be taken back under the principles of LOCUS POENTENTIAE.
- E) That after the promotion order passed on 2.7.2013, the respondent no.2 became FUNCTUS OFFICIO, thus the orders dated. 10.7.2013 & 11.7.2013 are not sustainable and liable to be set-aside.
- F) That the appellant has not been treated according to law and rules and has been condemned unheard through out.
- G) That there is no stay order of any for a against the promotion order of appellant which could be based to hold in abeyance or withdraw the promotion order of appellant. Thus the respondent no.2 has acted in an arbitrary manner.
- H) That even the final rejection order is a non-speaking order, containing no reasons which is the violation of section 24-A of the \general Clauses Act 1856.
- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

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POD

AIZ-MOHAMMAD

THROUGH:

M.AŠÍF YOUSÁFZAI

ADVOCATE.

(3)

### BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL	NO	/2014.	
	:		
	•		
Faiz Muhammad.	V	S	Revenue Deptt:

APPLICATION FOR SUSPENDING THE OPERATION ORDERS DATED. 10.7.2013, 11.7.2013 AND 23.1.2014 TILL THE DISPOSAL OF MAIN APPEAL.

#### R.SHEWETH.

- 1- That the appellant has filed an appeal along with this application in which no date is fixed so far.
- 2- That the appellant has a good prima facie case and is hopeful for its success.
- 3- That the orders have been passed at the back of appellant without any prior notice to him. Thus the order dated. 10.7.13 and 11.7.13 are void illegal ab-initio.
- 4- That the grounds of main appeal may also be considered as integral part of this application.
- 5- That the appellant is still performing his duties in BPS-14 as DRA Buner, therefore it would be just and fair to suspend the orders dated. 10.7.13 and 11.7.13 till the disposal of main appeal.

It is therefore most humbly prayed that the order dated. 10.7.13 and 11.7.13 along with the rejection order dated. 23.1.14 may be suspended till the disposal of main appeal.

Any other remedy which this august Tribunal deems fit that may also be awarded in favour of appellant.

APPELLANT

FAIZ MUHAMMAD

THROUGH:

M.ASIF YOUSAFZAI ADVOCATE.

### **AFFIDAVIT.**

It is affirmed that the contents of this application are true and correct.

WHALL AND VOCA THE RESIDENCE OF THE SHARE OF

DEPONENT.

/1/16/DK. Dated Daggar the 23/1/2007. OFFICE ORDER. Consequent upon the recommendation of the Departmental: Selection/Promotion Committee held on 16-1-2007, Mr.Faiz Mohammad Khan. Son of Amir Akbar Khan resident of village Bajkata Tehsil Daggar, District Buner. is hereby appointed as patwari BPS-5, on regular basis against the vacant post. He: will remain on probation for a period of one year. He will produce Health and age Certificate from the MS DHQ Hospital Daggar. In case of resignation he will give one month prior notice or his one month salary will be forfeited to the Government. DISTRICT OFFICER, REVENUE AND ESTATE BUNER. Copy forwarded to: The Secretary Board of Revenue NWFP, Peshawar. The Director Land Records NWFP Peshawar. The District Coordination Officer, Buner. The Assit: Coordination Officer Buner The Dy: District Officer Revenue & Estate Buner. The District Accounts Officer Buner. 7. Bill Clerk Local. S. · Official concerned for strict compliance. Personal File. DISTRICT OFFICER, REVENUE AND ESTATE BUNER

DEIZETTA

51/11/12	O BOLE
Circar	

in pursuance of decision taken in

Malakand Dated the 10 108/2009

WHINTAN A AND ESTATE DISTRICT AND ANAMAD DISLINGL ORIGER FEARING OPERICE OF THE

(BPS-05) are hereby promoted to the post of Kanungo (BPS-09) with it: mediate effect :the Departmental Promotion A Selection Committee meeting the redowing Patwaris **DOINDKIMKD** 

Mr. Faiz Muhammad on regular basis.

Mr. Muhammad Chufran on acting charge basis.

Collector, Malak ad at Saththela. District Officer (R&E.)

15 4 - 1 FI DONDKIMKD.

Copy for historiation to ceessary action is forward nothernoling of

District Coordination Ciffeer, Malakand.

Secretary, Board of Revenue, NWFP.

District Accounts Officer, Malaleands

Office order file. Official concerned.

Personal file.

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Collector, Mahakand at Batkhela. V(ASSI) 1007 (R.Q.E.)

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### GOVERNMENT OF KHYBER PAKITUNKHWA DIRECTORATE OF LAND RECORDS

Peshawar dated the 02/07/2013

OFFICE ORDER.

No. LR-V/DLR/DK / In terms of Rules - 4 & 5 of the West Pakistan Kanungo Service (Northern Zone) Rules-1962 and on the recommendation of Departmental Promotion/Selection Committee meeting held on 27/05/2013, the following Kanungos are promoted as District Kanungos (BPS-14) as noted against each their names duly recommended:-

S.No.	Name of officials	Decision / recommendation	Remarks.
1	Syed Imran Ali Shah, Kanungo (P <sup>o</sup> S-11) Chitral	Promoted as District Kanungo (BPS-14), on Acting Charge Basis	Posted as District Kanungo Chitral against the vacant post.
2	Mr. Faiz Muhammad, Kanungo (BPS-11) working as NT Shangla	Promoted as District Kanungo (BPS-14) on regular basis	His posting order will be issued later on.
3	Mr. Muhammad Daud, Kanungo (BPS-11) working as District Kanungo (BPS-14) on Acting Charge Basis.	regularized as District Kanungo (BPS-14).	His posting order will be issued later on.

DIRECTOR LAND RECORDS KIEYBER PAKTETONKHWA

Endst: No. LR-V/DLR/DK

Copy forwarded to the:-

- 1) Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 2) Assistant to Commissioner, Hazara Division, Abbottabad.
- 3) Deputy Commissioners, Abbottabad, Chitral, Buner, Shangla & Toor Ghar.
- d) District Accounts Officers, Abbottabad, Chitral, Buner, Shangla & Toor Ghar.
- 5) Private Secretary to Senior Member, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
- 6) Officials concerned.
- 7) Office order file.

DIRECTOR LAND RECORDS
KHYBER PAKHTUNKHWA

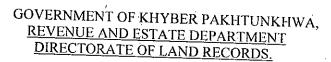
Khybe

### CERTIFICATE



Certified that Mr. Faiz Mohammad Khan working as a Distract Ravence Accountant at Daggar Buner till Dated 04/02/2014.

Tahsildar Daggar Buner



Peshawar dated the <u>10</u>/07/2013.

OFFICE ORDER.

Consequent upon the recommendation of Commissioner, Hazara Division vide letter No.4/9-Estab: 10371-72, dated, 19/11/2012 and District Officer (R&E), Buner and Chitral, M/S Muhammad Daud, Faiz Muhammad and Syed Imran Ali Shah were promoted as District Kanungos vide order dated 02/07/2013.

Whereas, it has been brought into the notice of the competent authority that an appeal is subjudice in the Service Tribunal, Peshawar, therefore the promotion order dated 02/07/2013 is hereby held in abeyance till further orders.

> DIRECTOK LAND RECORDS, KHYBER PAKHTUNKHWA

Endst: No. 4254-58/PA.

Copy for information and necessary action is forwarded to the :-

1) The Commissioner, Hazara Division, Abbottabad.

2) The Deputy Commissioners, Abbottabad. Buner and Chitral.

3) District Accounts Officers. Abbottabad. Buner and Chitral

4) The Private Secretary to Senior Member, Board of Revenue, KPK.

5) Officials concerned.. Albert

DIRECTOR LAND RECORDS, KHYBER PAK**A**TUNKHWA

DIRECTORATE OF LAND RECORDS, KHYBER PAKHTUNKHWA

Peshawar dated the \_\_\_\_\_/ 07 / 2013

OFFICE ORDER

No. 19/1P.A.

In partial modification of this office order bearing No.

4253/P.A., dated, 10/07/2013, the ward held in abeyance may be treated as withdrawn.

Director Land Records Khyber Pakhtunkhwa

No. 192-200 IP.A.

Copy forwarded to the:

- 1. Commissioner, Hazara Division Abbottabad.
- 2. Deputy Commissioners, Abbottabad, Buner, Malakand & Chitral.
- 3. District Accounts Officers, Abbottabad, Buner, Malakand & Chitral.
- 4. Secretary-I, Board of Revenue Khyber Pakhtunkhwa.

Melech

5. Officials concerned.

Director Land Redords, Khyber Pakhtunkhwa

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تدمن في فالركم إلى الله ولا ود منا المير فيو كوا سياور درفورسد عراد عف مكني لفولدت 2 yi ma cirije ! de Tio المن المرادر المن ملى في الملاء ملى في الموس الورس الورس المال ال كعند ومنه عن . كم باك ميراني لأك بام كو مفدة لتولد على تينى دُنه على عدد ورما يا طوم الله و منوساً 

9

The Director Land Record

Khyber Pakhtunkhwa Peshawar

Proper channel.

Subject:

APPLEAL AGAINST ORDER DATED: 10-07-2013, FURTHER

MODIFIED ON 11-07-2013.

Sir,

It is to state that I along with others two officials were promoted as District kanongo (BPS-14) after proper recommendations of DPC on 02-07-2013, sice then till date, I have been performing my duties as such

I, few days before, came to know about the order dated: 10-07-2013 which was further modified on 11-07-2013, these orders were never communicated to me till date, However I obtained the copy through an application dated: 13-01-2014 The said orders are not sustainable on the following grounds.

- The promotion order was passed after proper DPS, through the DPC's approval cannot be withdraw or rescinded by Director Land Record or other high up.
- The seniority issue, which has been made a base for the impugned order though subjudice, but there is no stay or restrain order from the Tribunal to undo my promotion.
- Since the order dated: 02-07-2013 has fully acted upon which create valuable rights in my favour, therefore under the principles of "Locus poenetentiae". The said order can not be held in abeyance or withdraw.
- The abeyance and withdrawal order has been passed without a chance of defense to me which amount to condemnation unheard and the same is not sustainable in the eyes of Law.

### GOVERNMENT OF KHYBER PAKHTUNKHWA DIRECTORATE OF LAND RECORDS BOARD OF REVENUE.

No.LR-IV/DK\_\_\_Z

Peshawar dated the 3 /01/2014.

To,

Mr. Faiz Muhammad, District Revenue Accountant, Buner.

SUBJECT: - <u>APPEAL AGAINST ORDER DATED 10/07/2013</u>, <u>FURTHER MODIFIED ON 11/07/013</u>.

Memo:-

Reference your presentation/appeal dated 15/01/2014 on the subject noted above. Your case has been examined and filed.

DIRECTOR LAND RECORDS Ph # 091-9210057

From:		
To	<u> </u>	· · · · · · · · · · · · · · · · · · ·
		<u> </u>
Subject:		
Memo:		

### **VAKALAT NAMA**



NO.\_\_\_\_\_/20

IN THE COURT	OF <u>Service</u>	Tribunal	leska	war
		• .		
Fair	Mehamma	2		(Appellant)
				(Petitioner) (Plaintiff)
2		VERSUS		
_ Ke	venue Dep	ў:		_ (Respondent) (Defendant)
I/Wé, Fair	K Mohamma	ed (ap	pellani	)
appear, plead, act Counsel/Advocate	nt and constitute M, compromise, withd in the above noted to engage/appoint ar	raw or refer to matter, withou	arbitration for it any liability f	r me/us as my/our for his default and
sums and amounts The Advocate/Cou	said Advocate to de payable or deposite nsel is also at liber any fee left unpaid o	d on my/our acty to leave m	ccount in the al ly/our case at	oove noted matter. any stage of the
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Dated	/20		The	
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M. ASIF YOUSAFZAI Advocate.

**OFFICE:** 

Room # FR-8, 4<sup>th</sup> Floor,

Bilour Plaza, Peshawar,

Cantt: Peshawar

Cell: (0333-9103240)

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

Peshawar dated the

OFFICE ORDER. .

No. DLR/ 2886 - 94 dated 02/07/2013 is hereby restored.

This office order bearing Endst: No. 4236-47

DIRECTOR LAND RECORDS KHYBER PAKHTUNKHWA

Endst:No. & Date of even.

Copy forwarded to the:-

- 1) Registrar, Peshawar High Court Peshawar with reference to their order sheet dated 13/12/2013 passed in wirt petition No.3118-P/2013.
- 2) Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 3) Commissioners concerned.
- 4) Deputy Commissioners concerned.
- 5) District Accounts Officers concerned.
- 6) Private Secretary to Senior Member, Board of Revenue, Khyber Pakhtunkhwa. .
- 7) Officials concerned. -
- S) Office order file.

DIRECTOR LAND RECORDS KHYBER PAKHTUNKHWA



## OFFICE OF THE COMMISSIONER MALAKAND DIVISION SAIDU SHARIF SWAT

Dated 20 /02/2015

### OFFICE ORDER

No. 16 12/18/Estt: In supersession of this office order No. 334/2/18/Estt; dated 09.02.2015, Memo: No.450/2/18/Estt; dated 19.02.2015 and on the recommendation of the Political Agent, Bajaur, the following posting transfers amongst PTs and PNTs in Bajaur Agency is hereby ordered with immediate effect in the public interest:-

s.No	Name & Designation	From	То
	Mr. Faiz Muhammad,	PT Chamarkand	PNT Salarzai
	Kanungo (BPS-11)	(OPS)	(OPS)
2	Mr. Saz Muhammad, Naib	PNT:Salarzai	PT. Chamarkand
•	Tehsildar (BPS-14)		

By order
Commissioner Malakand Division

### No 462-66 12/18/Estt:

Copy forwarded to:-

- 1. The Political Agent, Bajaur.
- 2. The Section Officer, (Law & Order) Department, FATA Secretariat, Peshawar.
- 3. The Agency Accounts Officers, Bajaur.
- 4. The officers concerned for compliance.
- 5. Office Order File.

SECRETARY TO COMMISSIONER

Ph# 0946-9240458