

16.07.2019

Appellant in person present. Mr. Muhammad Jan learned Deputy District Attorney or the respondents present. Appellant seeks adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 16.09.2019 before D.B



(Hussain Shah)
Member



(M. Amin Khan Kundi)
Member

16.09.2019

Clerk to counsel for the appellant present. Addl: AG alongwith Mr. Attaullah, Assistant Secretary for respondents present. Clerk to counsel for the appellant seeks adjournment due to general strike of the bar. Adjourn. To come up for arguments on 04.11.2019 before D.B.



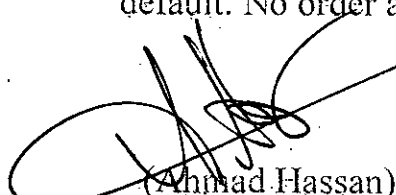
Member



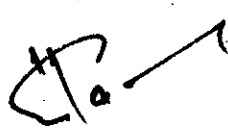
Member

04.11.2019

Nemo for the appellant. Mr. Zia Ullah learned DDA alongwith Muhammad Arif Superintendent present. Case called several times but none appeared on behalf of appellant. Consequently the present service appeal is hereby dismissed in default. No order as to costs. File be consigned to the record room.



(Ahmad Hassan)
Member



(Muhammad Hamid Mughal)
Member

ANNOUNCED.

04.11.2019

14.03.2019

Appellant in person present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Javed Iqbal, Assistant for the respondents present. Written reply on behalf of respondents not submitted. Learned Additional AG seeks adjournment. Adjourned. To come up for written reply/comments on 17.04.2019 before S.B.


(Muhammad Amin Khan Kundi)

Member

17.04.2019

Appellant in person and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Murad Ali Superintendent present. Written reply on behalf of respondents No.1 & 2. Learned AAG stated that the respondent No.3 relies upon the same. Adjourn. To come up for rejoinder/arguments on 22.05.2019 before D.B .



Member

22.05.2019

Appellant in person and Mr. Ziaullah, DDA alongwith Murad Ali, Superintendent for the respondents present.

Appellant requests for adjournment as his learned counsel has proceeded to perform Umra. Adjourned to 16.07.2019 for arguments before the D.B.



Member




Chairman

03.01.2019

Counsel for the appellant Hazrat Ghulam present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving as Naib Tehsildar in settlement operation but his name was not mentioned in the seniority list therefore, the appellant filed Service Appeal before this Tribunal which was disposed of through judgment dated 11.07.2018 with the direction to the departmental authority to examine the case of the appellant and decide the departmental appeal of the appellant within a period of two months from the date of receipt of judgment. It was further contended that departmental appeal of the appellant was again rejected by the departmental authority vide order dated 27.08.2018 hence, the present service appeal. It was further contended that similar placed officials namely Muhammad Umer Ali and Farman Ali Naib Tehsildars have been inducted in the seniority list but the respondent-department is reluctant to mention the name of the appellant in the seniority list therefore, the respondent is bound to mention the name of the appellant.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 14.03.2019 before S.B.

Appellant Deposited
Security & Process Fee



(Muhammad Amin Khan Kundi)
Member

The appeal of Mr. Hazrat Ghulam SNT Settlement Operation Chitral received today i.e. on 18.09.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copies of judgment dated 8.6.2010 passed in W.P No. 27/60/2009 and regularization order Dil Nawaz mentioned in para-8 of the memo of appeal (Annexure-F/I) are not attached with the appeal which may be placed on it.
- 2- Copy of seniority list dated 30.9.2010 mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 3- Annexures of the appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.
- 4- Page no. 10 to 13 and 21 of the appeal are illegible which may be replaced by legible/better one.

No. 1877 /S.T,

Dt. 19.9 /2018.


REGISTRAR 19/9/18
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Yaqub Khan Adv. Mardan.

Sir,

As per objection no 1 Aux F-1 is not available with appellant and objection no 2 regarding seniority list was not issued to the appellant due to non mentioning of the name of appellant. Moreover, other objections is removed and re-submitted please..

Yaqub Khan
Advocate

3/10/2018

Yaqub:



Before The Hon'able Service Tribunal of KPK at Peshawar

Appeal No. 1214 /2018

Hazrat GhulamAppellant
VERSUS
S.M.B.R & others Respondent

APPEAL
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Dated 10/09/2018

Appellant, 

Hazrat Ghulam OT

Yaqoob Khan

Trough counsel
Yaqoob Khan advocate High
Court at Distt: courts Mardan.

Before The Hon'able Service Tribunal of KPK at Peshawar

1

Appeal No. 1214 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1451

Dated 18-9-2018

Hazrat Ghulam SNT Settlement Operation Chitral R/o

Village Baizo Harkai Tehsil Katlang District |Mardan

.....Appellant

VERSUS

1. SMBR of KPK Peshawar
2. DLR of KPK Peshawar
3. Settlement Officer Settlement operation Chitral

..... Respondent

Filed to-day
Registrar
18/9/18

Appeal U/S-4 of KPK Service Tribunal Act 1974 against the order of respondent No.1 dated 27/08/2018 whereby, departmental appeal of the appellant for induction of the name of appellant in the seniority list of Naib Tehsildar in the Revenue side on the basis of regular Naib Tehsildar is dismissed, which is illegal, against law and facts.

Re-submitted to -day
and filed.

Registrar
3/10/18

Respectfully Sheweth;

Appellant humbly submits as under

1. That the appellant was appointed as patwari in the year 1990 vide order date 23/12/1990 in settlement operation Buno and due to winding up settlement operation Bunu, appellant was relieved from service and appellant was appointed as

settlement patwari in settlement operation chitral vide order dated 16/07/2002. The appellant was promoted to the post of Quanungo/ Girdawar on 11/06/2004, BPS-09 on contract basis. (Copy of orders are attached as Annex: "A").

2. That on 05/07/2006, appellant services were regularized as a qunango/ Girdawar and entry to this effect was made in the service book on the basis of order/ judgment dated 10/04/2006 of Peshawar High Court Peshawar and order of SMBR dated 05/07/2006. (Copy of judgments and service book are attached as Annex: "B").
3. That on 19/03/2007, appellant was promoted to the post of Naib Tehsildar, BPS-14 but again contract basis vide order dated 19/03/2007. (Copy of order is attached as Annex: "C")
4. That appellant approached before respondent No.1 for regularization of his service on 19/11/2008 and services of appellant were regularized as settlement Naib Tehsildar, BPS-14 vide order / judgment dated 19/11/2008. (Copy of judgment is attached as Annex: "D").
5. That on the recommendation of departmental promotion committee, appellant was promoted to the post of settlement Tehsildar, BPS-16 but on contract/ acting charge basis along with two other incumbents, namely Dil Nawaz and Muhammad Yaqoob vide order dated 11/06/2008 and posted on 16/04/2009. (Copy of orders are attached as Annex: "E").
6. That on 11/03/2009, appellant was transferred from settlement Tehsildar, Chitral to Tehsildar Mastuj on Revenue

Side vide order dated 11/03/2009. (Copy of order is attached as Annex: "F")

7. That on 16/04/2009 appellant was again transferred from Mawtuj to Tehsildar wari District Dir Upper and was posted on revenue side as Tehsildar Wari Distruct Upper Dir.
8. That Dil Nawas Khan settlement Tehsildar Chitral service was regularized through judgment of the Hon'able High Court on 08/06/2010 in W.P No.27/60 of 2009 and order of regularization of his services was ~~then~~ issued by the Department on 10/03/2004. (Copy of judgment and order is attached as Annex: "F").
9. That on 31/12/2009, seniority list was circulated through notification dated 30/09/2010 by respondent NO.1 and the name of the appellant was not mentioned being regular employee of respodnet's department, hence, appellant approached before respondent but in vain.
10. That on 13/10/2010, service of similarly placed employees namely Muhammad Umar, Farman Ali were regularized on revenue side but names of said official were not inducted in the seniority list of Naib Tehsildar, hence, they approached before this Hon'able court who accewpted appeals of appellants vide order/ judgment dated 09/10/2007 and 21/04/2010. (Copy of judgment are attached as Annex: "G").
11. That as and when appellant got knowledge about the seniority list of Naib Tehsildar on 30/06/2010, he submitted application on 14/12/2010 to issue him copy of said seniority list, which

was received from the office on 18/12/2010, so the appeal of the appellant is within time.

12. That from the aforesaid record and documents, it is quite clear that services of similarly placed co-employees were regularized on 01/05/2007 and 13/10/2010 so appellant also entitled for the same treatment.

13. That it was held by the Apex Supreme Court of Pakistan time and again in the judgments that if any employee is given some relief, the same shall be given to other co-employees too, similarly placed employees even not litigated for.

14. That by not giving the aforesaid relief already given to co-employees is tantamount to discrimination.

15. That appellant is serving the department on revenue side is required to be issued.

16. That appellant filed a representation for regularization of service and enlistment the name of appellant in the seniority list of Naib Tehsildar before the respondent No.1 but the same was filed without any reason, which is illegal, against law and facts. (Copy of order dated 02/08/2017 along with appeal are attached as Anex: "G")

17. That appellant approached before this Hon'able Tribunal through Service Appeal which was allowed and case was remanded back to the respondent No.1 with the direction to decide the case of the appellant and to decide the his departmental appeal with speaking order within a period of

two months of the receipt of this judgment vide order and judgment dated 11/07/2018. (Copy of order/ judgment vide dated 11/07/2018 is attached as Annex: "H").

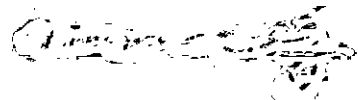
18. That appellant filed an application along with order/ judgment of this Hon'able court dated 11/07/2018 before the respondent No.1 but the same is rejected vide order/ judgment dated 27/08/2018, hence, appellant approach before this Hon'able court once again. (Copy of order/ judgment and application is attached as Anenx: "I").

19. That the appellant is entitled for enlistment as Naib Tehsildar in the seniority list of Naib Tehsildar on the basis of regular appointment as Naib Tehsildar on the following grounds.

GROUNDS

A. That appellant was appointed as Naib Tehsildar on regular basis vide order dated 19/03/2017 and appellant being appointed on regular basis as Naib Tehsildar BPS-14 is entitled for enlistment in the seniority list of Naib Tehsildar BPS-14 as per section 8 (4) of KPK Civil Servant Act 1973.

B. That similarly placed officials namely Muhammad Umar , Farman Ali are enlisted in seniority list of Naib Tehsildar and said order was passed on the basis of judgment of this Hon'able Tribunal dated 21/04/2010.



C. That on 19/11/2008, contract clause was deleted from order dated 19/03/2007 and services of appellant were regularized as settlement Naib Tehsildar, BPS-14 whereaftger, appellant

was transferred from settlement operation to revenue side Mastuj Tehsil Chitral and Tehsil Wari District Upper Dir.

- D. That on the recommendation of departmental promotion committee, appellant was promoted to the post of settlement Tehsildar, BPS-16 but on contract/ action charge basis along with two other incumbents namely Dil Nawaz and Muhammad Yaqoob.
- E. That on 11/03/2009, appellant was transferred from settlement Tehsildar, Chitral as Tehsildar Mastuj on revenue side.
- F. That on 14/06/2000 a peplalnt was again transferred from mastooj as Tehsildar Wari District Dir Upper and was posted on revenue side.
- G. That dil Nawas Khan settlement, Tehsildar, Chitral service was regularized through judgment of the Hon'able High Court on 08/06/2010 in W.P No.27/60/2009 and order regularization of his services was then issued by the department on 10/03/2004.
- H. That on 31/12/2009, seniority list was circulated through notification dated 30/09/2010 which did not contain the name of appellant.
- I. That on 13/10/2010, service of similarly placed employees namely Muhammad Umar, Farman Ali were regularized on revenue side but names of said official were not inducted in the seniority list of Naib Tehsildar, hence, they approached before this Hon'able court who accewpted appeals of

②

appellants vide order/ judgment dated 09/10/2007 and 21/04/2010.

- J. That from the aforesaid record and documents, it is quite clear that services of similarly placed co-employees were regularized on 01/05/2007 and 13/10/2010 so, appellant also entitled for the same treatment as per judgment of Apex Supreme Court of Pakistan 1996 SCMR 1185.
- K. That it was held by the Apex Supreme court of Pakistan time and again in the judgments that if any employee is given some relief, the same shall be given to other co-employees, similarly placed employees even not litigated for.
- L. That by not given the aforesaid relief already given to co-employees is tantamount to discrimination.
- M. That appellant is serving the department on revenue side induction name of appellant and only formal orders of his regularization is required to be issued.

It is, therefore, humbly prayed that on acceptance of this appeal, appellant's name may please be included in the seniority list of Naib Tehsildar (BPS-14) and service of appellant may please be regularized as Tehsildar (BPS-16) with all back benefit. Any other relief deemed fit may also be graciously awarded to appellant.

Dated 10/09/2018

Appellant, 

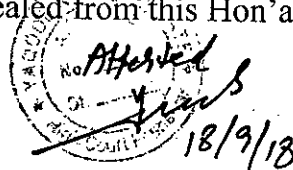
Yaquob
Hazrat Ghulam NT

Trough counsel


Yaquob
Yaquob Khan advocate High Court at Distt: courts Mardan.

AFFIDAVIT

I, do hereby solemnly affirm and declare on oath that all the contents of the appeal mentioned above are true and correct to the best of my knowledge and belief and noting has been concealed from this Hon'able court.


18/9/18

Advocate


Hazrat Ghulam NT

Ann A 8

OFFICE OF THE
SETTLEMENT OFFICER, BANNU.

ISO. BNU.

Dated. 23/12/1990.

ANNEXURE "A"

C. O. No. 3530-35/ISO. BNU.

XXXXXXXX Mr Nazrat Ghulam s/o Said Ghulam r/o
village Badli Shikri tahsil Bahk district Mardan patwar
pana individual is hereby appointed as patwari (without charge)
on contract basis for a period of four months or on completion
of the current settlement operation in Bannu district which
ever is earlier.

The appointment of the above named patwari is
subject to the following terms and conditions:-

- i) On expiry/completion of the contract/project the services of the appointee shall stand terminated and shall not confer on them any right of absorption or regularization of their services.
- ii) His services are liable to termination without assigning any reason.
- iii) He will have no right to continue as patwari on the conclusion of settlement scheme in Bannu district.
- iv) He should produce health and age certificate from Medical Supdt. Distt: Head quarter hospital, Bannu.
- v) He should also produce a character certificate from the head of academic institution last ~~XXXXXXXXXX~~ attended.

SETTLEMENT OFFICER,
BANNU.

No. 3530-35/ISO. BNU.

Copy to:-

- 1. The Settlement Officer, Mardan, for information w/r to his memo No. 588/A/Mardan dated 19.12.1990.
- 2. The extra Asstt. Sectt. Officer, Bannu.
- 3. The Settlement Konsildar, Bannu. He is directed to check up the daily progress of the above named patwari and report with in 3 month. If his work is not satisfactory his service will be terminated.
- 4. The District Accounts Officer, Bannu.
- 5. The Sectt. office, Bannu.
- 6. Official concerned.

Accepted
 Accepted
 Yours
 Nazrat Ghulam
 Patwari
 Bannu District
 Mardan

SETTLEMENT OFFICER, BANNU.

~~A~~

11-6-04
⑨

OFFICE OF THE SETTLEMENT OFFICER, CHITRAL.

Dated Chitral the 11th June 2004.

ORDER.

No. 770 /ST-3/Vol:I. In pursuance of Director, Land Records, NWFP letter No. 1055/DLR/Settlement dated 23/4/2004, the following trained Patwaris are hereby appointed as field Kanango BPS-9 (2410-145-6760) on purely contract basis for the period of three years with effect from 1st June, 2004 in the best interest of the Public Service. Their services can be terminated without serving any advance notice.

- 1- Mr. Ahmad Ali Patwari.
- 2- Sabz Ali, Patwari.
- 3- Mr. Khalid Khan, Patwari.
- 4- Mr. Hazrat Ghulam Patwari.
- 5- Mr. Rasool Nawaz Patwari.

NOTE;- Their appointment will be subject to the following terms and conditions:-

- i. Their appointment is purely on temporary basis for the exigency of Settlement Operation and liable to be terminated without any notice or assigning any reason or on completion of Settlement Operation which ever is earlier.
- ii. They will sign contract agreement.
- iii. They are being placed for three months probation Period.

(GHELAN MUHAMMAD)
Settlement Officer,
Chitral.

No. 771-79 /ST-3/Vol:I

Copy forwarded to:-

1. The Senior Member, Board of Revenue, NWFP, Peshawar.
2. The Director Land Records, NWFP Peshawar, for information with reference to his letter No. 1055/Settle dated 23/4/2004.
3. The District Coordination Officer, Chitral.
4. The District Account Officer, Chitral.
5. The Officials concerned for compliance.

Settlement Officer,
Chitral.

(1) Khalid Khan
(2) Rasool Nawaz

Attested
Yusuf Khan
Advocate
Chitral

Attested
Yusuf Khan

4. No doubt for the absorption of the petitioners, Board of Revenue in its meeting held under the Chairman of the Settlement Officer Chitral recommended recruitment of 32 'Qanoongos' on contract basis for one year for settlement operation, Chitral on 20.3.2002. Petitioners No.1 and 4 were appointed as 'Naib Tehsildars' on contract basis for settlement operation in Chitral District with immediate effect vide letter dated 16.7.2002 whereas the remaining petitioners were appointed as Patwaries purely on contract basis for a period of 3 years with effect from 1.6.2004 vide letter dated 11.6.2004. Petitioners were made clear that their appointment was purely on temporary basis for exigency of settlement operation and was liable to be terminated without any notice or assigning any reason or on completion of settlement operation which ever is earlier.

5. The petitioners have been performing their services in accordance with their appointment letters but it so happened that the Provincial Government on 23.7.2005 issued notification No.PA/NWFP/Legis I/2005/20440, whereby Section 19 of the Civil Servants Act 1973 was amended. Amended Sub-section (2) is reproduced hereunder:-

"A person though selected for appointment in the in the prescribed manner to a service or post on or after the 1st day of July, 2001, till the commencement of the said Act, but appointed on contract basis, shall with effect from the commencement of the said Act, be deemed to have been appointed on regular basis. All such persons and the persons appointed on regular basis to a service or post in the prescribed manner after the commencement of the said Act shall, for all intents and purposes be civil

ATTESTED
 EXAMINER
 Government of NWFP

servant, except for the purpose of pension or gratuity. Such a civil servant shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by him towards the Contributory Provident Fund, alongwith the contributions made by Government to his account in the said Fund, in the prescribed manner:

Provided that in the event of death of such a civil servant, whether before or after retirement, his family shall be entitled to receive the said amount, if it has already not been received by such deceased civil servant".

6. The petitioners are entitled to avail the benefit of said notification and on receipt of said notification they should have applied to the competent authority for considering them to be regular employees but it appears that due to pendency of the writ petition in hand, they did not apply to the competent authority for their regularization.

7. We, therefore, direct the petitioners to apply to the competent authorities that under Section 19 Sub-section 2 of ~~Section~~ ^{Amended Section} dated 23.7.2005 their services should be deemed to be on regular basis and a proper order in this regard be issued and in case of their failure to obtain such an order they may approach the proper forum if aggrieved. The writ petition is disposed of in the above terms.

2568
Date of Presentation of Application 25/4/06
No. of Pages 1
Applying Fee 0
Fees Paid 0
Date of Preparation of Copy 25/4/06
Date of Delivery of Copy 25/4/06
Received by VVS

Please Issue
with Regularity
24/4

Announced
DL19.4.2006.

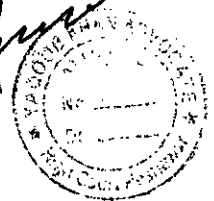
Sh. Pratik Chandra Ganeshi
Sh. Maheshwar Prasad - J

CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court Peshawar
Authorized under Section 10

ATTESTED
EXAMINER
Peshawar High Court

Attested
Sh. Ghulam Khan
Advocate,
Sh. Ghulam Khan

Attested
Sh. Ghulam Khan
Advocate,
Sh. Ghulam Khan



3 Dec 2004

Post regularized
order B B

S-07-06

(14)

(14)

**IN THE COURT OF MR GUL ZAR KHAN, SENIOR MEMBER
BOARD OF REVENUE NWFP**

CASE NO. 70,71,72,73,74/2006
DATE OF INSTITUTION:- 10.05.2006
DATE OF DECISION:- 05.07.2006

1. Muhammad Umar S/o Jamdar Khan R/o Takht Bhai.
 2. Harzat Ghulam S/o Said Ghulam R/o Kharkai, Mardan.
 3. Khalid Khan S/o Hayat Khan R/o Shah Bag, Mardan.
 4. Farman Ali S/o Abdul Khaliq R/o Gujarghari, Mardan
 5. Ahmad Ali S/o Bahadar Khan R/o Kandar, Mardan.
 6. Jamaludin S/o Shamsuddin R/o Laindkkavir, Tehsil Takhat Bhai, Mardan.
- Petitioners

VERSUS

1. Government of NWFP through Secretary, Board of Revenue, NWFP.
 2. Senior Member, Board of Revenue, NWFP.
 3. Chief Secretary, NWFP.
 4. Settlement Officer, Chitral.
 5. District Coordination officer, Chitral.
 6. Director land Record, NWFP, Peshawar.
 7. District Coordination Officer, Mardan.
- Respondents

ORDER
05.07.2006

My this single order will dispose off the above mentioned departmental representations filed by the petitioners for implementation of order/judgment dated 19.01.2006 of Peshawar High Court, Peshawar, wherein writ petition of the petitioners were disposed of with the direction to petitioners to apply to the competent authorities under section 19(2) amended section dated 23.07.2005 of Civil Servant Act, 1973 that their services should be deemed to be on regular basis and a proper order in this regard be issued and in case of failure to obtain such order they may approach the proper forum if aggrieved.

Facts of the case are that petitioners were initially appointed as Settlement Patwaris for Settlement Operation at Mardan in 1985. ON completion of settlement operation the applicants were transferred to Swabi in their own pay scale in the year 1995-96, for settlement operation and on completion of settlement operation at Swabi they were relieved from service on 31.05.2001. Subsequently, in the year 2002 S.No.1 & 4 were appointed as Naib Tehsildar on contract basis on the recommendation of Department Selection Committee. While S.No.2,3,5 & 6 were also appointed as Patwari in Settlement Operation Chitral. The applicants challenged the same in writ petition in Peshawar High Court Peshawar, that keeping in view of their previous service is settlement operation their appointment on contract basis be treated as on regular basis and declaration to that effect be issued.

Parties with their counsel present. Argument heard and record of the case perused.

The counsel for the applicants argued that applicants have served from the year 1985 and continued till 31.05.2001 in settlement operation, Mardan and received all benefits of regular employees and after rendering 16 years service against regular posts.

The counsel for the applicants further argued that the applicants were appointed on contract basis for Settlement Operation Chitral vide order dated 20.03.2002. Which is illegal against law and facts as well as section 19(2) of NWFP Civil Servant Act. 1973 and the writ petition of the applicants was disposed of by the Peshawar High Court Peshawar vide Judgment/order dated 19.04.2006. Counsel for petitioners stressed that the applicants are entitled for appointment as regular employee and all benefits permissible to regular employees in the light of their past service in settlement operation.

In the light of the arguments and order judgment of Peshawar High Court Peshawar dated 19.4.2006: appointment orders of the applicants are modified on regular basis instead of contract basis and are entitled to all benefits as that of regular employees. Copy of the said judgment /order should be sent to Secretary, Board of Revenue/Director Land record, NWFP and District Officer (Revenue & Estate) Collector Mardan/Chitral for compliance.

Announced
05.07.2006

Sd x x x x

Sd/-
(Gul Zar Khan)
Senior Member,
Board of Revenue, NWFP

Attested

[Signature]
District Officer
Mardan

Attested

[Signature]

| 17 | 10 | 11 | 12 | 13 | | 14 | 15 |
|---|--|---|--------|------------------------------------|---|--|--|
| | | | | Leave | | | |
| | | | | Nature and duration of leave taken | Allocation of period of leave on average pay upto four months for which leave salary is payable to another Government | | |
| Date of termination or appointment | Reason of termination (such as promotion, transfer, dismissal, etc.) | Signature of the head of the office or other attesting officer. | Period | Government to which payable | Signature of the head of the office or other attesting officer | Reference to any recorded punishment or censure, or reward or praise of the Government Servant | |
| | | | | | | | S.O. Chitral |
| S.O. Chitral | 30/05/04 | Annual Increment | | | | | |
| S.O. Chitral | 30/05/06 | Pay Revised | | | | | |
| S.O. Chitral | 30/11/05 | Annual Increment | | | | | Service verified from 1-12-04 to 30-11-05 from the office copies of pay bill etc maintained in this office & found correct |
| S.O. Chitral | 30/11/06 | Annual Increment | | | | | Service verified from 1-12-05 to 30-11-06 from the office copies of pay bill etc maintained in this office & found correct |
| Appointment of the official has been modified on regular basis instead of contract vid order/judgment of SMBR, NAFD dt: 2/7/2006. | | | | | | | |

Attested
 [Signature]
 Deputy District
 Advocate,
 North West Frontier Province

Attested
 [Signature]



(16)

(17)

| Name of post | Whether substan- tive or officiating and whether permanent or temporary. | If officiating state (i) substantive appointment, or (ii) whether service counts for pension under Art. 371 C.S.R. | Pay in substantive post | Additional Pay for officiating | Other allowment being under the term "Pay" | Date of Appointment | Signature of Government Servant |
|---------------------------|--|--|-------------------------------|--------------------------------------|--|---------------------------|------------------------------------|
| Field Kanungo BPS-9 | Regular | | 3265/- | | | 01-12-06 | |
| | | BPS-14 (3565-275-11815) | | | | | |
| Settlement N/Tehsildar | Contract | | 3565 | | | 20-03-07 | |
| | | | | | | | |
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Attested
 [Signature]
 Deputy Officer
 Advoca to,
 District Court, [Location]

(Better copy) 17-5-07
Aux C
(19)

**GOVERNMENT OF N.W.F.P.,
REVENUE & ESTATE DEPARTMENT**

Peshawar dated the 19/03/2007

OFFICE ORDER

No. _____ /Settle:/DLR/SA. With the approval of the Competent authority, Mr. Hazrat Ghulam, Settlement Kanungo, Chitral, is hereby promoted as Settlement Naib Tehsildar (BPS-14) on contract basis for Settlement Operation in District Chitral w.e.f. the date he assumes the charge.

2. His appointment to the service shall be subject to the following terms and conditions:

- | | |
|---|---|
| i) Pay | Minimum of BPS-14 |
| ii) Annual increment | After completion of one year Service. |
| iii) Allowances | Conveyance, House rent, and Medical allowances as per Govt: Rules. |
| iv) Leave, TA/DA | As per Government Rules. |
| v) Contract period | Minimum 3 years (extendable on yearly performance) |
| vi) Notice period | 2 months notice or two months salary in lieu thereof. |
| vii) Benevolent Fund | Same facilities as admissible to Govt: Servant. |
| viii) Contributory Provident Fund | 5% of minimum of pay by the employee & 5% contribution by the Government. |
| xv) On completion of the project, service of the appointees shall stand terminated automatically. The appointment/ contract shall not confer any right of absorption elsewhere or regularization of service. The service is likely to be terminated without assigning any reason or prior notice. | |
| xvi) He shall join duty at his own expenses. | |

If the above terms and conditions are acceptable, then you shall report for arrival to the Settlement Officer, Chitral, immediately. The offer of appointment shall be deemed to have been cancelled if you fail to report for arrival within fifteen days from the date of issue of this order.

Sd/-
SENIOR MEMBER,
BOARD OF REVENUE, NWFP

Attested
Yousaf
Advocate,
Distt Court Mardaa

Attested
Yousaf
Distt Court Mardaa

Ann^c
20

**GOVERNMENT OF NWFP,
REVENUE & ESTATE DEPARTMENT.**

Peshawar dated the 9/03/2007.

OFFICE ORDER

No. _____ /Settle:/DLR/SA. With the approval of the Competent authority, Mr. Hazrat Ghulam, Settlement Kumbungo, Chitral, is hereby promoted as Settlement Naib Tehsildar (BPS-14) on contract basis for Settlement Operation in District Chitral w.e.f. the date he assumes the charge.

2 His appointment to the service shall be subject to the following terms and conditions:-

- i) Pay Minimum of BPS 14
- ii) Annual increment After completion of one year Service.
- iii) Allowances Conveyance, House rent, and Medical allowance as per Govt. Rules.
- iv) Leave; TA/DA As per Government rules.
- v) Contract period Minimum 3 years (extendable on yearly performance).
- vi) Notice period 2 months notice or two months salary in lieu thereof.
- vii) Benevolent Fund Same facilities as admissible to Govt. Servant.
- viii) Contributory Provident Fund 5% of minimum of pay by the employees & 5% contribution by the Government.
- xv) On completion of the project, service of the appointees shall stand terminated automatically. The appointment/contract shall not confer any right of absorption elsewhere or regularization of service. The service is likely to be terminated without assigning any reason or prior notice
- xvi) He shall join duty at his own expenses

you should report for arrival to the Settlement Officer, Chitral, immediately. The offer of appointment shall be deemed to have been cancelled if they fail to report for arrival within fifteen days from the date of issue of this order

Attested

Attested
years
Shahab Khan
Advocate
District Chitral

E 12

Amis

21

Case No. 212/2007.
Date of Institution: 18-10-2007
Date of Decision: 19-11-2008.

19-11-08

*med
order
of regularization*

Hazrat Ghulam Settlement Naib Tehsildar Circle Chitral. Settlement Operation Chitral. Appellant.

Versus

1. Settlement Officer, Settlement Operation, Chitral.
 2. Director Land Records, NWFP Peshawar.
- Respondents:

ORDER

This is a departmental appeal presented by Hazrat Ghulam Settlement Naib Tehsildar Chitral, against the order dated 19/03/07, whereby the appellant was promoted as Settlement Naib Tehsildar on contract basis in the Settlement Operation Chitral requesting for deletion of contract clause from the impugned order.

Facts of the case are that the appellant rendered service in Settlement Operation Mardan and Swabi and thereafter appointed in the Settlement Operation Chitral as Patwari on contract basis. He was appointed as Field Kanungo (BPS-09) vide order dated 11/06/2004. He, alongwith others, filed an appeal before Senior Member, Board of Revenue, NWFP, whereby their services were regularized in the Settlement Operation Chitral vide order dated 05/07/2006, which was accordingly implemented by making entries in their service books. The appellant was promoted as Settlement Naib Tehsildar on contract basis vide impugned order dated 19/03/2007. Hence the instant departmental appeal.

Appellant with counsel present. Arguments heard. The comments offered by Respondent No. 2 and case file perused. Since the previous service of the appellant has already been regularized by my predecessor-in-office vide judgment dated 05/07/2006, therefore, the plea of the appellant for deletion of contract clause is found genuine.

In light of the above, the appeal of the appellant is accepted. The contract clause be deleted from the impugned order and the service of appellant be regularized as Settlement Naib Tehsildar in the Settlement Operation Chitral.

ANNOUNCED.
19-11-2008

Attested
Yousaf

Attested
Yousaf Khan
Advocate
22222 Chitral Mardan

(AHSANULLAH KHAN)
SENIOR MEMBER,
BOARD OF REVENUE, NWFP.

Case to be tried
19/11/08
19/11/08



GOVERNMENT OF NWFP
REVENUE & ESTATE DEPARTMENT

Dated Peshawar the 16/04/2009

Ans E
22

ORDER

No. _____ /Admn:V/PF/(H) With the approval of the
Competent Authority, the following posting / transfer amongst Kanungo /
Tehsildar is hereby ordered with immediate effect.

| S.No | Name | From | To |
|------|---|--|--|
| 1. | Mr. Hazrat Ghulam Tehsildar (BPS - 16) | Tehsildar Mastuj | Tehsildar Wari District Dir Upper |
| 2. | Mr. Alamzeb Kanungo | Tehsildar Wari (Own Pay & Scale) | Reverted as Kanungo in District Upper Dir |

By Order of,
Senior Member
Board of Revenue NWFP

No. 9008-15 /Admn:V/PF/(H)

Copy to:-

1. Commissioner Malakand Division Saidu Sharif.
2. District Coordination Officers, Chitral, Dir Upper.
3. District Office (Revenue & Estate)/Collector Chitral, Dir Upper.
4. Private Secretary to Senior Member Board of Revenue NWFP
5. Official / Officer concerned.
6. Personal File.
7. Office Order File.

Assistant Secretary (Admn)
Board of Revenue NWFP

Attest
[Signature]

Attested
[Signature]

Attested
[Signature]

Basit Khan
Advocate,
Sindh Courts Marān



Attest
[Signature]



OFFICE OF THE
INSPECTOR
REGISTRATION, NWFP.

Registered on dated 11/6/2008

OFFICE ORDER

No. 6419 /Asstt. Settle: Consequent upon the recommendation of Departmental Promotion/Selection Committee the following Settlement Naib Tehsildars, Chitral are hereby promoted to the posts of Settlement Tehsildar (BPS-16) and Settlement Naib Tehsildar (BPS-14) in the Settlement Operation Chitral purely on contract and on acting charge basis as per terms and conditions specified in Contract policy with immediate effect:-

| S.No. | Name of the official | Post against which promoted |
|-------|-----------------------|------------------------------------|
| 1 | Mr. Dil Nawaz. | Settlement Tehsildar (BPS-16) |
| 2 ✓ | Mr. Muhaminad Yaqoob. | Settlement Tehsildar (BPS-16) |
| 3 | Mr. Hazrat Ghulam. | Settlement Tehsildar (BPS-16) |
| 4 | Syed Zahir Ali Shah. | Settlement Naib Tehsildar (BPS-14) |

They will remain on probation for a period of one year.

Sd/-

SENIOR MEMBER,
BOARD OF REVENUE, N.W.F.P.

Endst. No. 6420-27 /Asstt. Settlement.

Copy forwarded to the :-

- 1) Secretary, Board of Revenue, NWFP.
- 2) Settlement Officer, Chitral.
- 3) District Officer, (R&E), Chitral.
- 4) District Accounts Officer, Chitral.
- 5) Deputy Secretary-II, Board of Revenue, NWFP.
- 6) Assistant Secretary (Admin.) Board of Revenue, NWFP.
- 7) Official concerned.
- 8) Office order file.

Attested
Yousaf
Advocate
High Court Mardan

Attested
DIRECTOR LAND RECORDS,
NORTH WEST FRONTIER PROVINCE.

Anx F

~~Asstt: Settle~~

(26)



OFFICE OF THE
DIRECTOR LAND REVENUE & SETTLEMENT
GENERAL OF REGISTRATION

No. _____
Fuzdar dated 11/3/09

OFFICE ORDER

No. _____ /Asstt: Settle: _____ With the approval of Competent Authority the following posting / transfer amongst Settlement Tehsildars of Chitral is hereby ordered with immediate effect in the Public interest.

| S. No. | Name. | From | To | Remarks. |
|--------|----------------|---|---|-------------|
| 1 | Hazrat Ghulam. | Settlement Tehsildar, Chitral. | Tehsildar Mastuj. | |
| 2 | Muhammad Nawaz | Assistant Settlement Department, Chitral. | Settlement Tehsildar, Chitral in his own pay and Scale. | Vice No. 1. |

-sd-
SENIOR MEMBER,
BOARD OF REVENUE, NWFP.

No. 9634-40 / Asstt: Settle:

Copy forwarded to the: -

1. PS to Minister for Revenue, NWFP.
2. District Coordination Officer, Chitral.
3. District Officer (R&E), Chitral.
4. District Account Officers, Chitral.
5. Official concerned.
6. Office order file

SENIOR MEMBER,
BOARD OF REVENUE, NWFP.

Attested



GOVERNMENT OF NWFP
REVENUE & ESTATE DEPARTMENT

Dated Peshawar the 16/04/2009

(25)

ORDER

No. _____ /Admn:V/PF/(H) With the approval of the
Competent Authority, the following posting / transfer amongst Kanungo /
Tehsildar is hereby ordered with immediate effect.

| S.No | Name | From | To |
|------|---|-------------------------------------|--|
| 1. | Mr. Hazrat Ghulam Tehsildar (BPS - 16) | Tehsildar Mastuj | Tehsildar Wari District Dir Upper |
| 2. | Mr. Alamzeb Kanungo | Tehsildar Wari (Own Pay & Scale) | Reverted as Kanungo in District Upper Dir |

By Order of,
Senior Member
Board of Revenue NWFP

No. 9008-15 /Admn:V/PF/(H)

Copy to:-

1. Commissioner Malakand Division Saidu Sharif.
2. District Coordination Officers, Chitral, Dir Upper.
3. District Office (Revenue & Estate)/Collector Chitral, Dir Upper.
4. Private Secretary to Senior Member Board of Revenue NWFP
5. Official / Officer concerned.
6. Personal File.
7. Office Order File.

Assistant Secretary (Admn)
Board of Revenue NWFP



Handwritten initials/signature

Attested

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Anx. G.
~~Anx. F.~~



BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR.

Appeal No. 1313/2009

Date of institution - 01.07.2009
Date of decision - 21.04.2010

Muhammad Umar (Naib Tehsildar) Head Clerk (R) Mardan..(Appellant)

VERSUS

1. Government of NWFP through Secretary Revenue.
2. S.M.B.R NWFP Peshawar.(Respondents)

Appeal u/s 4 of NWFP Service Tribunals Act, 1974.

Mr. Amjad Ali, Advocate.....For appellant.
Mr. Sher Afgan Khattak A.A.G.....For Respondents.


MR. ABDUL JALIL.....MEMBER.
SYED MANZoor ALI SHAH.....MEMBER.

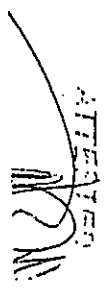
JUDGMENT.

ABDUL JALIL, MEMBER :- This appeal has been filed by the appellant u/s 4 of NWFP Service Tribunals Act, 1974.

2. Brief facts of the case are that the appellant is Naib Tehsildar but in the tentative seniority list circulated on 31.12.2006 and tentative seniority list of 6.2.2007 his name was not included in the seniority list dated 31.12.2006 at S. No. 108.

3. The appellant's name was regularly reflected in the final seniority list bearing No. 11591-11620/Admn:V/SL/NT dated 8.6.2007 at S. No. 108. The same was maintained in the final seniority list dated 2.10.2007 but astonishingly his name was missing in the final seniority list as it stood on 31.12.2008, dated 10.1.2009 which is illegal and against the law and facts. He preferred a departmental representation and his name was included in the seniority list at S. No. 101 instead of S. No. 48. The act of the respondents is illegal, against law and facts.

Accepted


ATTORNEY


(Handwritten marks and circled numbers 27)

Arguments heard and record perused.

The learned counsel for the appellant argued that the name of appellant is regularly reflected in the seniority lists from 2006 till 2008 and thus vested right has been accrued to the appellant.

Once right accrued and acted upon cannot be taken away as per principle of locus poenitentiae. No show cause notice has been given to the appellant which is mandatory under the law. He further argued that the respondents have admitted that they committed clerical mistake but the same has continued as the appellant has been placed at the tail of seniority instead of his earlier position.

The A.G.P argued that the appellant was appointed/regularized in the wake of Peshawar High Court's decision dated 19.4.2006.

He admitted that the appellant appears at S. No. 108 of the seniority list of regular Naib Tehsildars of the year 2006. His name appears at S. No. 101 as it stood on 31.12.2008. He was correctly placed at his proper position at S. No. 101 of the seniority list of Naib Tehsildars circulated on 20.6.2009.

In view of the above, the appeal is accepted with direction to the respondent department that the seniority of the appellant may be reckoned from the date of regular appointment in the Revenue Department as per judgment of the Peshawar High Court followed by the decision of SMBR dated 5.7.2006. The parties are, however, left to bear their own costs. File be consigned to the record.

ANNOUNCED.
21.04.2010.

sd/
(SYED MANZOOR ALI SHAH)
MEMBER.

sd/
(ABDUL JALIL)
MEMBER.

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24-5-10

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Attested
(Circular stamp)

1

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR

Appeal No. 371/2008

Date of Institution. .. 26.01.2008
Date of Decision .. 09.10.2008

Farman Ali S/O Abdul Khaliq R/O Gujar Ghari, ..
Mardan Naib Tehsildar, Chitral. (Appellant)

VERSUS

1. Senior Member Board of Revenue, NWFP Peshawar.
2. Executiver District Officer (Male) Schools & Literacy, Mardan. (Respondents)
3. Secretary Board of Revenue, Peshawar.

APPEAL AGAINST OFFICE ORDER/SENIORITY LIST NO. 20583-20687/ADMN:V/PF(SA)NT, DATED 2.10.2007 OF RESPONDENT NO.1 WHEREBY NAME OF APPELLANT WAS OMITTED FOR NO LEGAL REASON.

MR. SAADULLAH KHAN MARWAT,
Advocate

For appellant

MR. GHULAM MUSTAFA,
Addl. Government Pleader

For respondents.

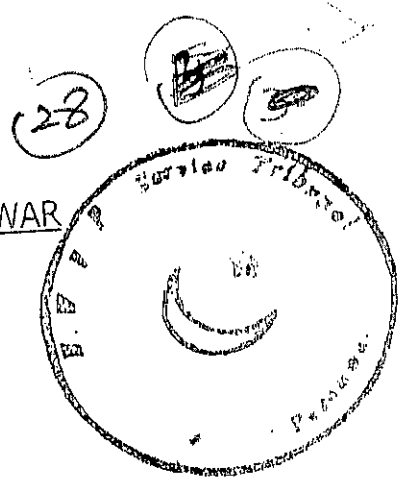
MR. MUHAMMAD HUMAYUN,
MR. NOOR-UL-HAQ,

MEMBER
MEMBER

JUDGMENT

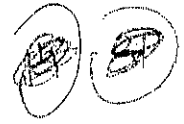
MUHAMMAD HUMAYUN, MEMBER.- This appeal has been filed by Farman Ali, under section 4 of the NWFP Service Tribunals Act, 1974, against the order dated 02.10.2007 of respondent No.1 whereby his name was omitted from the seniority list.

2. Brief facts of the case are that the appellant was appointed as PTC Teacher and served the department with devotion, as such till 01.10.1984. The appellant was appointed as Patwari on 12.1.1986 and was allowed annual increments. He was promoted to the post of Kanungo BPS-9 on 22.6.1995 on officiating basis and his services were placed at the disposal of Superintending Engineer, Ghazi Broth Hydro Power Project, Turbela. On 02.05.2001, appellant was repatriated to his parent department and was posted as Settlement



ATTESSED
EXAMINER
NWFP Service Tribunal
PESHAWAR

(29)



Kanungo Circle, Chani District Swabi on 5.5.2001, by Settlement Officer Mardan. On winding up of the Settlement Operation in May, 2001, 33 Patwaris/Field Kanungos were relieved of their duties w.e.f. 31.5.2001. The name of appellant is at S.No.29 of the order issued by the Deputy Commissioner/Settlement Officer. On 20.3.2002, meeting of Departmental Promotion Committee was held for selection of seven Naib Tehsildars for Settlement Operation in District Chitral. The name of appellant figures at S.No.1 of the list and on the recommendation of Departmental Selection Committee, order of appointment of Naib Tehsildar BPS-14 of appellant was issued on 16.7.2002 by respondent No.1. The appellant alongwith others filed Writ Petition before the Peshawar High Court with the prayer that the services of contract employees have been regularized on 23.7.2005 by amending Section 19 of the Civil Servant Act, 1973 as all contract employees appointed in prescribed manner to a service or post on or after the 1st day of July, 2001 be deemed to have been appointed on regular basis. They are for all intent and purposes be civil servants, except for the purpose of pension and gratuity. This writ petition was disposed of on 19.6.2006 with the direction to the appellant to approach the departmental authorities for the redressal of his grievance and in case his grievance has not been redressed departmentally, he might approach proper forum. The appellant alongwith others filed departmental representation before the SMBR which was decided on 5.7.2006 that appointment orders of the applicants are modified on regular basis instead of contract basis and are entitled to all benefits as that of regular employees. On 17.6.2006 the services of appellant were regularized as Naib Tehsildar w.e.f. 16.7.2002 by SMBR. On 2.10.2007 final seniority list as it stood on 31.12.2006 was issued by respondent No.1 but the said list did not contain the name of appellant. On 19.10.2007 appellant submitted departmental appeal before the authority, which elicited no response within the statutory period, hence the present appeal.

EXAMINER
 W.F. CIVIL JUDICIAL
 PESHAWAR
 17/10/07

3. Pre-admission notices were issued to the respondents. They filed their written replies and contested the appeal. Thereafter, the appeal was admitted to full hearing on 6.6.2008. The appellant also filed his rejoinder in rebuttal.

30 18

4. ✓ Arguments heard and record perused.

5. The learned counsel for the appellant argued that the Senior Member Board of Revenue NWFP in his order dated 5.7.2006 had modified the appointment order of the appellant making him entitled to all benefits like other regular employees. He referred to the office No. 6261-70/Admn.V/W.P NO. 64 M.Umer, dated 17.6.2006 wherein in pursuance of the judgment of Peshawar High Court dated 19.4.2006, passed in Writ Petition No. 64 of 2005 filed by Muhammad Umer and Farman Ali Settlement Naib Teshildar Chitral and in the light of Notification PA/NWFP/ Legis-I/2005-20440 dated 23.7.2005, their services as Naib Tehsildars were regularized w.e.f. their date of appointment in the settlement operation Chitral as under:-

| <u>S.No.</u> | <u>Name of Naib Tehsildar.</u> | <u>Date of appointment.</u> |
|--------------|--------------------------------|-----------------------------|
| 1. | Mr. Muhammad Umer | 16.07.2002 |
| 2. | Mr. Farman Ali | 16.07.2002 |

The learned counsel for the appellant also referred to the Notification dated 02.10.2007 which indicates the revised final seniority list of regular Naib Tehsildars BPS-14 as it stood on 31.12.2006. In the said final seniority list Mr. Muhammad Umar is placed at S.No. 108 at the bottom of the seniority list but surprisingly the name of appellant Mr. Farman Ali Naib Tehsildar has not been included in the said seniority list for no cogent reason.

6. The respondents contested the arguments with the contention that the appellant was a temporary employee appointed for settlement operation and the Revenue Department have got no concern to the posting/transfer and appointment of the appellant. However, the respondents i.e. Assistant Secretary, Board of Revenue could not justify/explain as to how Mr. Muhammad Umar was included in the seniority list and the appellant was left out. Although on the principles of consistency, equity and justice, the respondents were legally bound to include the name of the appellant in the seniority list.

EXAMINER
NWFP Service Tribunal
Peshawar

ATTESTED



Learned counsel for the petitioner argued that the judgment dated 09.10.2008 was passed by this Tribunal after due contest by the respondents wherein all legal and factual objections were raised and determined. It was also argued that the scrutiny committee did not approve the filing of appeal before the august Supreme Court of Pakistan. The Tribunal was further informed that to implement the judgment even name of the petitioner was enlisted in the seniority list in accordance with judgment of this Tribunal but the same was again deleted. Learned Addl. AG informed the Tribunal that no doubt the case of the petitioner was not found fit for appeal before the august Supreme Court of Pakistan by the scrutiny committee but the judgment is not binding as the same is based on an erroneous proposition of law. ~~Under~~ This Tribunal is not in a position to travel beyond the spirit of the judgment at this stage of the proceedings which was accepted by the respondents by not filing any appeal against the said judgment before the august Supreme Court of Pakistan and even by accepting the same by inserting the name of the petitioner in the seniority list as such it is concluded that the respondents would not implement the judgment of this Tribunal dated 09.10.2008 unless further coercive measures are resorted to. Therefore, salaries of the respondents are attached at the first instance. Addl. AG for respondents present. Notice shall also be served on the respondents as to why they shall not be confined to civil imprisonment. To come up for further proceedings on 29.07.2016.

Petitioner with counsel and Mr. Mukhtar Ali, Supdt. along with Addl. AG for the respondents present. The Tribunal was informed that the judgment could not be implemented as it will open a floodgate of litigation as the petitioner was an employee of a project.

32

Execution Petition No. 70/2013
Farman Ali vs S.M.B.R.

924-12-81
2013
2013

15.4.2016

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

33

Writ Petition No. 4769/2010

Hazrat Ghulam S/O Said Ghulam,
Tehsildar, Wari, Upper Dir. Petitioner

Versus

1. Senior Member, Board of Revenue, Peshawar.
2. Secretary, Board of Revenue, Peshawar.
3. Director Land Record K.P.K, Peshawar. Respondents

<=>⊕<=>⊕<=>⊕<=>⊕<=>


**WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN, 1973.**

<=>⊕<=>⊕<=>⊕<=>⊕<=>

Respectfully Sheweth:

1. That petitioner was appointed as Patwari in the year, 1990 and was promoted to the post of Qanungo/ Girdawar BPS-09 on 11.06.2004. (Copy as annex "A").
2. That on 05.07.2006, petitioner's services were regularized as a Qanungo/ Girdawar by respondent No.1. (Copy as annex "B").
3. That on 19.03.2007, petitioner was promoted to the post of Naib Tehsildar, BPS-14 but on contract basis for Settlement Operation. (Copy as annex "C").

2010
31.06.2010

Attested
Yusuf


Attested
Yusuf
Advocate,
Member Court No. 10

(35) ~~SP~~

Aux G-1

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

No. Estt:/P.F/Hazrat Ghulam/ 15729

Peshawar dated the 2 /08/2017

To

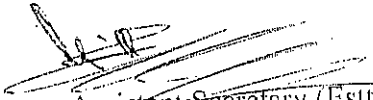
Mr. Hazrat Ghulam
Settlement Tehsildar (ACB) Chitral.

Through

Settlement Officer Chitral.

SUBJECT: APPEAL / REPRESENTATIVE FOR ENLISTMENT OF APPELLANT
IN THE SENIORITY LIST OF TEHSILDAR BPS - 16 PESHAWAR ON
THE BASIS OF JUDGMENT OF SERVICE TRIBUNAL DATED
21.04.2010 AND 09.04.2008 R/W REPORTED JUDGMENT OF APEX
SUPREME COURT OF PAKISTAN 1996 SCMR P - 1185.

Your Departmental appeal dated 23.05.2017 has been examined and filed by the
Competent Authority:


Assistant Secretary (Estt)

Attested



Before The Senior Member Board of Revenue of KPK at
Peshawar

36

Hazrat Ghulam Naib Tehsildar Wari Tehsil & District Dir.
..... Appellant

VERSUS


Assistant Secretary Board of Revenue, KPK Peshawar.
..... Respondent

Appeal/ Representation for enlistment of appellant
in the seniority list of Tehsildar BPS-16 KPK
Peshawar on the basis of judgment of Service
Tribunal dated 21/04/2010 and 09/04/2008 R/w
reported judgment of Apex Supreme Court of
Pakistan 1996 SCMR P-1185.

Respectfully sheweth;

1. That the appellant was appointed as Patwari in the year 1990 and was promoted to the post of Quango/ Girdawar on 11/06/2004. BPS-09.
2. That on 05/07/2006, petitioner services were regularized as a quango/ Girdawar and entry to the to this effect was made in the Service Book.
3. That on 19/03/2007, appellant was promoted to the post of Naib Tehsildar, BPS-14 but on contract basis for settlement operation.

4. That on 19/11/2008, contract clause was deleted from order dated 19/03/2007 and services of appellant were regularized as settlement Naib Tehsildar, B-14.
5. That on the recommendation of Departmental promotion committee, appellant was promoted to the post of settlement Tehsildar, BPS-16 but on contract/acting charge basis along with two other incumbents, namely DII Nawaz and Muhammad Yaqoob.
6. That on 11/03/2009, appellant was transferred from settlement Tehsildar, Chitral to Tehsildar Masrooj on Revenue Side being regular Tehsildar.
7. That on 14/06/2000 appellant was again transferred from Masrooj as Tehsildar Wari District Upper Dir and was posted on revenue side.
8. That DII Nawaz Khan settlement, Tehsildar, Chitral service was regularized through judgment of the Hon'ble High Court on 08/06/2010 in W.P. No. 2760/2009 and order of regularization of his services was then issued by the Department on 10/03/2004.
9. That on 31/12/2009, seniority list was circulated through notification dated 30/09/2010, which did not contain the name of appellant.

10. That on 13/10/2010, service of similarly placed employees, ⁽³⁸⁾ 

namely Muhammad yaqoob were regularized on Revenue side w.e.f 11/06/2010; while services of Muhammad Umar were already regularized by the department as such.

11. That as and when appellant came to know about the seniority list on 30/06/2010, he submitted application on 14/12/2010 to supply him a copy which was received from the office on 18/12/2010.

12. That from the aforesaid record and documents, it is quite clear that services of similarly placed co-employees were regularized on 01/05/2007 and 13/10/2010 so appellant also desired the same treatment.

13. That it was held by the Apex Supreme Court of Pakistan time and again in the judgments that if any employee is given some relief, the same shall be given to other. Similarly placed employees, even not litigated for the same.

14. That by not giving the aforesaid relief already given to co-employees is tantamount to discrimination.

15. That appellant is serving in the revenue side KPK Peshawar on regular basis and only formal orders of his regularization is required to be issued.

16. That appellant filed a representation for regularization of service and enlistment in the list of Naib Tehsildar KPK Peshawar but the same was filed without any reason, which

is illegal, against law and facts. (Copy of appeal and order dated 07/02 2017 are attached).

17. That appellant is serving as a Tehsildar BPS-16 in settlement operation Chital on regular basis, hence appellant is entitle for enlistment in the list of Tehsildar BPS-16 being regular Tehsildar BPS-16 of KPK Peshawar.

It is, therefore, humbly prayed that on acceptance of the instant appeal representation, the service of the appellant be regularized on Revenue side since 11/06/2008 as a regular Tehsildar BPS-16 and the name of appellant may please be enlistment in the seniority list of Tehsildar BPS-16 of KPK Peshawar with all back benefits. Any other relief deemed fit may also be graciously awarded.

Dated 23/05/2017

Appellant

Hazrat Ghulam

Through

Yaqub Khan advocate
High Court at Distt
Courts Mardan.

Attested

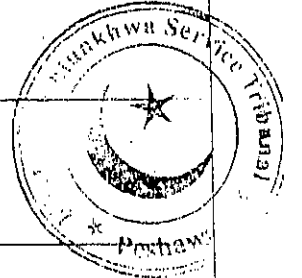
AFFIDAVIT

That the contents of the application are true and correct to the best of my knowledge and belief.

Deponent

Attested

Anz H
740



3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 874/2016

Date of Institution ... 21.08.2017
Date of Decision ... 11.07.2018

Hazrat Ghulam Naib Tehsildar Settlement Operation Chitral
resident of Village Harkai Tehsil Katlang District Mardan.

Appellant

Versus

1. SMBR Khyber Pakhtunkhwa Peshawar.
2. DLR Khyber Pakhtunkhwa Peshawar.
3. Settlement Officer, Settlement Operation Chitral.

Respondents

Muhammad Hamid Mughal-----Member

Muhammad Amin Kundi-----Member

11.07.2018

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: Appellant

with counsel present. Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Javed Iqbal Senior Clerk for the respondents present.

2. The appellant has filed the present service appeal u/s 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974 against the order dated 02.08.2017 whereby the representation of the appellant for induction of his name in the seniority list of Naib Tehsildars, was dismissed.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

3. Learned counsel for the appellant argued that vide order dated 19.11.2008 the services of the appellant were regularized as Settlement Naib Tehsildar (BS-14); that the appellant was also promoted to the post of Settlement Tehsildar (BS-16) on Contract/Acting Charge Basis; that the services of Mr. Dil Nawaz and some other co-employees/similarly placed persons were regularized; that on 31.12.2009 seniority list was circulated which did not contain the name of appellant; that the appellant filed representation for regularization of his service and enlistment of his name in the seniority list of Naib Tehsildars but the same was filed/regretted without assigning any reason.

4. As against that learned Deputy District Attorney strenuously opposed the present-service appeal and argued that the service appeal bearing No.1033/2014 of Mr. Dil Nawaz has already been dismissed by this Tribunal vide judgment dated 11.08.2017.

5. Arguments heard. File perused.

6. Perusal of impugned order dated 02.08.2017 would show that departmental authority/Khyber Pakhtunkhwa Board of Revenue (Revenue & Estate Department) has filed/regretted the appeal/representation of the appellant without assigning any reason.

In the stated circumstances this Tribunal is of the considered view to remit the case of the appellant to the departmental authority with the direction to examine the case of the appellant and to decide his departmental appeal/representation with speaking order within a period of two (02) months of the receipt of this judgment. The

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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present appeal is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

Announced
11.07.2018

Sd/- M. Hamid Nughal
Member

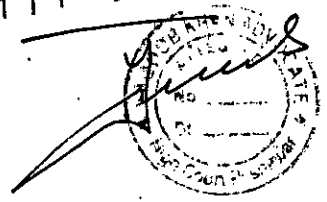
Sd/- M. Amin Kund
Member

Certified to be true copy

Chief Justice
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 23-07-2018
 Number of Words 1200
 Copying Fee 8-0
 Urgent 2-0
 Total 10-0
 Name of Applicant M. Amin Kund
 Date of Completion of Copy 23-07-2018
 Date of Delivery of Copy 23-07-2018

Attested



Before The Service Tribunal KPK Peshawar

(43)

(43)

Appeal No. 874 /2017

Hazrat Ghulam Naib Tehsildar Settlement operation Chitral R/o
Village Harkai Tehsil Katlang District Mardan.

..... Appellant

VERSUS

1. SMBR KPK Peshawar
2. DLR KPK Peshawar
3. Settlement Officer, Settlement Operation Chitral... Respondents

Appeal Under Section 4 of KPK Service Tribunal
1974, against order of respondent NO.1 dated
02/08/2017, whereby representation for induction
of name of appellant in seniority list of Naib
Tehsildar is dismissed, which is illegal, against law
and facts.

Respectfully sheweth;

1. that the appellant was appointed as Patwari in the year
1990 ~~and~~ vide order dated 23/12/1990 in settlement
operation bunnue and due to winding up settlement
Operation Bunu, appellant was relieved from service
and appellant was appointed as settlement patwari in
settlement operation Chitral. The appellant was promoted
to the post of Quanungo/ Girdawar on 11/06/2004, BPS-
09on contract basis. (Copy of orders are attached as
annex: "A").

(44)

(2)

2. That on 05/07/2006, appellant services were regularized as a quango/ Girdawar and entry ~~to the~~ to this effect was made in the Service Book vide order / judgment dated 10/04/2006 of Peshawar High Court Peshawar and order of SMBR dated 05/07/2006. (Copy of judgments and service book are attached as Annex: "B").

3. That on 19/03/2007, appellant was promoted to the post of Naib Tehsildar, BPS-14 but on contract basis for settlement operation chitral vide order dated 19/03/2007. (Copy of order is attached as Annex: "C").

4. That appellant approached before respondent NO.1 for regularize of his service ~~and~~ on 19/11/2008, contract clause was deleted from order dated 19/03/2007 and services of appellant were regularized as settlement Naib Tehsildar, BPS-14 vide order/ judgment dated 19/11/2008. (Copy of judgment is attached as Annex: "D").

5. That on the recommendation of Departmental promotion committee, appellant was promoted to the post of settlement Tehsildar, BPS-16 but on contract/ acting charge basis along with two other incumbents, namely Dil Nawaz and Muhammad Yaqoob vide order dated 11/06/2008 and posted on 16/04/2009. (Copy of orders are attached as Annex: "E").

6. That on 11/03/2009, appellant was transferred from settlement Tehsildar, Chitral as Tehsildar Mastuj on Revenue Side. (Copy of order is attached as Annex F)

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7. That on 14/06/2000 appellant was again transferred from Mastooj as Tehsildar Wari Distict Dir Upper and was posted on revenue side.

8. That Dil Nawaz Khan settlement, Tehsildar, Chitral service was regularized through judgment of the Hon'able High Court on 08/06/2010 in W.P No. 2760/2009 and order of regularization of his services was then issued by the Department on 10/03/2004. (Copy of judgment and order is attached as Annex: "F").

9. That on 31/12/2009, seniority list was circulated through notification dated 30/09/2010, which did not contain the name of appellant.

10. That on 13/10/2010, service of similarly placed employees, namely Muhammad yaqoob were regularized on Revenue side w.e.f 11/06/2010, while services of Muhammad Umar were already regularized by the department as such.

11. That as and when appellant came to know about the seniority list on 30/06/2010, he submitted application on 14/12/2010 to supply him a copy which was received from the office on 18/12/2010.

12. That from the aforesaid record and documents, it is quite clear that services of similarly placed co-employees were regularized on 01/05/2007 and 13/10/2010 so appellant also deserves the same treatment.

13. That ~~is~~ was held by the Apex Supreme Court of Pakistan time and again in the judgments that if any employee is given some relief, the same shall be given to other co-employees, similarly placed employees, even not litigated for.

14. That by not giving the aforesaid relief already given to co-employees is tantamount to discrimination.

15. That appellant is serving the department on Revenue side in the department and only formal orders of his regularization is required to be issued.

16. That appellant filed a representation for regularization of service and enlistment the name of appellant in the seniority list of Naib Tehsildar before the respondent nO.1 but the same was filed without any reason, which is illegal, against law and facts. Copy of order dated 02/08/2017, along with appeal are attached as annex: "G").

17. That appellant is serving as a Tehsildar BPS-16 in settlement operation Chitral on regular basis hence appellant is entitle for enlistment in the list of Tehsildar BPS-16 being regular Tehsildar BPS-16 of KPK, Peshawar.

18. That the appellant is entitled for enlistment as Naib Tehsildar in the seniority list of Naib Tehsildar on the basis of regular appointment as Naib Tehsildar on the following grounds.

(47) (B)

GROUND:

- A. That appellant was appointed as Naib Tehsildar on regular basis vide order dated 19/03/2017 and appellant being appointed on regular basis as Naib Tehsildar BPS-14 is entitled for enlistment in the seniority list of Naib Tehsildar BPS-14 as per section 8 (4) of KPK Civil Servant Act 1973.
- B. That similarly placed officials namely Muhammad Umar, Farman Ali are enlisted in seniority list of Naib Tehsildar and said order was passed on the basis judgment of this Hon'able Tribunal dated 21/04/2010. (Copy of judgment is attached as Annex: "H").
- C. That on 19/11/2008, contract clause was deleted from order dated 19/03/2007 and services of appellant were regularized as settlement Naib Tehsildar, B-14.
- D. That on the recommendation of Departmental promotion committee, appellant was promoted to the post of settlement Tehsildar, BPS-16 but on contract/ acting charge basis along with two other incumbents, namely Dil Nawaz and Muhammad Yaqoob.
- E. That on 11/03/2009, appellant was transferred from settlement ehsildar, Chitral as Tehsildar Mastuj on Revenue Side.

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F. That on 14/06/2000 appellant was again transferred from Mastooj as Tehsildar Wari Distict Dir Upper and was posted on revenue side.

G. That Dil Nawaz Khan settlement, Tehsildar, Chitral service was regularized through judgment of the Hon'able High Court on 08/06/2010 in W.P No. 2760/2009 and order of regularization of his services was then issued by the Department on 10/03/2004.

H. That on 31/12/2009, seniority list was circulated through notification dated 30/09/2010, which did not contain the name of appellant.)

I. That on 13/10/2010, service of similarly placed employees, namely Muhammad yaqoob were regularized on Revenue side w.e.f 11/06/2010, while services of Muhammad Umar were already regularized by the department as such.

J. That as and when appellant came to know about the seniority list on 30/06/2010, he submitted application on 14/12/2010 to supply him a copy which was received from the office on 18/12/2010.

K. That from the aforesaid record and documents, it is quite clear that services of similarly placed co-employees were regularized on 01/05/2007 and

13/10/2010 so appellant also deserves the same treatment.

L. That it was held by the Apex Supreme Court of Pakistan time and again in the judgments that if any employee is given some relief, the same shall be given to other co-employees, similarly placed employees, even not litigated for.

M. That by not giving the aforesaid relief already given to co-employees is tantamount to discrimination.

N. That appellant is serving the department on Revenue side in the department and only formal orders of his regularization is required to be issued.

It is, therefore, humbly prayed that on acceptance of the instant appeal, appellant's name may please be included in the seniority list of Naib Tehsildar (BPS-14) and service of appellant may please be regularized as Tehsildar (BPS-16) with all back benefit. Any other relief deemed fit may also be graciously awarded.

Dated 11/08/2017

Appellant *[Signature]*

Hazrat Ghulam


Through

[Signature]
Yaqoob Khan advocate
High Court at Distt:
Courts Mardan.

AFFIDAVIT

That the contents of the application are true and correct to the best of my knowledge and belief.

Deponent *[Signature]*

Attested *[Signature]*


(50)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA.

Service appeal No.874 of 2017

Hazrat Ghulam
Settlement Naib Tehsildar Chitral R/O
Village Harkai Tehsil Katlang District Mardan

(Appellant)

VERSUS

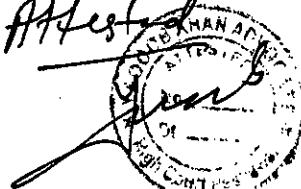
1. Senior Member, Board of Revenue, Khyber Pakhtunkhwa
2. Director Land Records, Khyber Pakhtunkhwa.
3. Settlement Officer, Chitral

(Respondents)

Joint para wise comments on behalf of respondents No. 1, 2 and 3 entitle case No.874 of 2017 Hazrat Ghulam versus Senior Member, Board of Revenue, Khyber Pakhtunkhwa and others, are as under:-

Respectfully shewith:

1. Correct. The appellant was appointed as Settlement Patwari BPS-05 in Banu in 1990. In 2002 the appellant was appointed as Patwari in Chitral Settlement, later on he was promoted as Field Kanungo BPS-09 in Settlement Operation, Chitral.
2. The service of the appellant along with others, were regularized in the light of the Judgment of Peshawar High Court by the then Senior Member, BOR.
3. Correct. The appellant was the promoted as Settlement Naib Tehsildar BPS-14 on contract basis in 2007.
4. Correct. The service of the appellant as Settlement Naib Tehsildar was regularized in 2008 by Senior Member Board of Revenue.
5. Correct. The appellant along with others were promoted to the post of Settlement Tehsildar BPS-16 on contract on acting charge basis in 2008.
6. Correct. On 11.03.2009, the appellant was transfered and posted as Tehsildar Mastuj on Revenue side.

Attested


- (57)
7. Correct. The appellant was again transferred from Mastuj and posted as Tehsildar Wari Upper Dir in 2010.
 8. Pertains to records.
 9. Pertains to records.
 10. Pertains to records.
 11. Legal matter.
 12. Legal matter.
 13. Comments as in para 11 and 12.
 14. No Comments.
 15. Legal matter.
 16. Pertains to records.
 17. Correct. The appellant is serving as Settlement Tehsildar BPS-16 in Settlement Operation District Chitral.
 18. Legal matter.

Grounds

- A. Pertains to records.
- B. As in Para A.
- C. Correct. The service of the appellant as Settlement Naib Tehsildar was regularized in 2008 by Senior Member Board of Revenue.
- D. Correct. The appellant along with others were promoted to the post of Settlement Tehsildar BPS-16 on contract basis in 2008.
- E. Correct. The appellant was transferred from Settlement and posted as Tehsildar Mastuj in 2010.
- F. Correct. The appellant was again transferred from Mastuj and posted in Wari upper Dir.
- G. Pertains to records.
- H. As in para G.
- I. Pertains to records.
- J. Pertains to records.

K. Pertains to records.

L. Legal matter.

M. Legal matter.

N. Legal Matter.

(52)


Senior Member Board of Revenue

KPK

Director Land Records

KPK


Settlement Officer Central

Attested
yes


(Better Copy)

Ann I

BEFORE THE SENIOR MEMBER BOARD OF REVENUE KHYBER PAKHTUNKHWA

(53)

Hazrat Ghulam Settlement Tehsildar(ACB). Appellant.
VERSUS.

Senior Member Board of Revenue and Others. Respondent.

ORDER:-


This is a Departmental appeal filed by Hazrat Ghulam Settlement Tehsildar (ACB) against the order dated 07.02.2017 where by his Departmental appeal for inclusion his name in the seniority list of regular Naib Tehsildar on revenue side was rejected.

Fact of the case are that Mr. Hazrat Ghulam was appointed as Settlement Patwari in Chitral Settlement on 23.12.1990. He was further promoted as Settlement Kanungo and then Settlement Naib Tehsildar on 19.03.2007. He worked in settlement operation Chitral w.e.f. 16.07.2002 till date. He submitted an application on 12.11.2016 for inclusion of his name in the seniority list of regular Naib Tehsildar on revenue side which was processed and filed by the competent Authority on the grounds that settlement is a Project, whose employees cannot be included in the seniority list on revenue side, against which he filed appeal before the service Tribunal which has been remitted with the direction to "examine the case of the appellant and to decide his departmental appeal/representation with speaking order within a period of two(02) months of the receipt of this judgment.

Perusal of available record reveals that land settlement is a project and its employees are working on contract basis and Civil Servant Act is not applicable to project employees. In the instant case the appellant is an employee of settlement operation Chitral which was launched in the year 2002. Whereafter completion time of the operation was extended, on different occasions and presently the Provincial Government has not further extended operation and secondly. Settlement and Revenue are two different streams, having separate job description, authority and separate Service Rules. Neither there is any provision in Settlement Service Rules nor in Revenue Service Rules for merger of Settlement employee on Revenue side, therefore the appeal having no legal grounds is rejected.

ANNOUNCED
27/08/2018

Sd/-
Dr. Fakhre Alam
Senior Member.

Attested
Yaqub


Aux 4

BEFORE THE SENIOR MEMBER BOARD OF REVENUE KHYBER PAKHTUNKHWA:

53

Hazrat Ghulam Settlement Tehsildar (ACB).....Appellant

Versus

Senior Member Board of Revenue and others.....Respondent

ORDER.

This is a Departmental appeal filed by Mr. Hazrat Ghulam Settlement Tehsildar (ACB) against the order dated 07.02.2017 whereby his Departmental appeal for inclusion his name in the seniority list of regular Naib Tehsildar on revenue side was rejected.

Fact of the case are that Mr. Hazrat Ghulam was appointed as Settlement Patwari in Chitral Settlement on 23.12.1990. He was further promoted as Settlement Kanungo and then Settlement Naib Tehsildar on 19.03.2007 He worked in Settlement operation Chitral w.e.f 16.07.2002 till date. He submitted an application on 12.11.2016 for inclusion of his name in the seniority list of regular Naib Tehsildar on revenue side which was processed and filed by the Competent Authority on the grounds that settlement is a project, whose employees cannot be included in the seniority list on revenue side. against which he filed appeal before the Service Tribunal which has been remitted with the direction to "examine the case of the appellant and to decide his departmental appeal/representation with speaking order within a period of two (02) months of the receipt of this judgment".

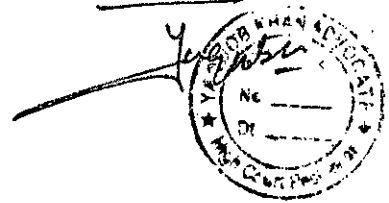
Refusal of available record reveals that land settlement is a project and its employees are working on contract basis and Civil Servant Act is not applicable to project employees. In the instant case the appellant is an employee of Settlement Operation Chitral which was launched in the year 2002, whereafter completion time of the operation was extended on different occasions and presently the Provincial Government has not further extended. operation and secondly, Settlement and Revenue are two different streams, having separate job description, authority and separate Service Rules. Neither there is any provision in Settlement Service Rules nor in Revenue Service Rules for merger of settlement employee on Revenue side. therefore the appeal having no legal ground is rejected.

M. F. Alam

Dr. Fakhre Alam
Senior Member

ANNOUNCED /
27/08/2018

Attested



BEFORE THE SMBR KPK PESHAWAR

(54)

Hazrat Ghulam Tehsildar VERSUS BOR KPK Peshawar

SERVICE APPEAL

D/Appeal/Representation for induction of the name of applicant in the seniority list of N/Tehsildar in the revenue department on the basis of regular N/Tehsildar as per judgment of worthy SMBR KPK Peshawar dated 19-11-2008, judgment of Peshawar High Court Peshawar dated 08-06-2010, coupled with the judgment of honourable service Tribunal dated 21-04-2010 and 09-10-2008 in true letter and ~~spirit~~ *spirit*.

Respectfully Sheweth,

The petitioner humbly submit as under.

1. That appellant was appointed as Patwari Halqa in settlement operation Bannu vide order dated 23/12/1990 and due to winding up settlement operation in Banuu, appellant was relived and adjusted as a Patwari Halqa in settlement operation Chitral vide order dated 16/07/2002 on contract basis, for which appellant alongwith other similarly placed officials namely Muhammad Umar and Farman Ali Tehsildars revenue KPK Peshawar vide W.P. No. 64/05 which was allowed vide order / judgment dated 19/04/2006 which is accepted by worthy SMBR KPK Peshawar vide judgment dated 05/07/2006 (Annex-A) and service of appellant is regularized.
2. That appellant was promoted as Qanungo (BPS-9) vide order dated 11/06/2006 and appellant was promoted as N/Tehsildar (BPS-14) vide order dated 19/03/2007 after

(55)

completion of all codal formalities i.e DPC meeting and completion of all promotion working paper but again on contract basis, for which appellant filed an appeal before worthy SMBR KPK Peshawar, which was allowed vide order / judgment dated 19-11-2008 (Annex-B)

3. That appellant was transferred from SNT Chitral to revenue side Mastuj vide order 11-03-2009 and again transferred from revenue Mastuj to revenue side wari Dir vide order dated 14-06-2009 as per N/Tehsildar (Annex-C) and completed 4 years service as revenue N/Tehsildar with entire satisfaction of his superior.

4. That BOR circulated seniority list of N/Tehsildar KPK Peshawar on 01-12-2010, names of appellant as well as other 2 officials namely Muhammad Umer and Farman Ali N/Tehsildar were not inducted in the said seniority list, for which appellant filed appeal before this honourable court, while other 2 N/Tehsildar namely Muhammad Umer and Farman Ali filed appeal before the honourable service tribunal, which was allowed vide order / judgment dated 09-10-2008 and 21-04-2010 (Annex-D), while appeal of appellant was still under proceeding before service tribunal which is allowed vide order / judgment dated 11/07/2018, with direction that appellant be consider as other officials namely Muhammad Umer and Farman Ali Tehsildar, Who's names are already inducted in the N/Tehsildar seniority list vide order dated ^{15/4/2016} ----- on the basis of judgment of service tribunal dated 09/10/2008 and 21-04-2010. So, the appellant is also same treatment as per reported judgment of Apex Supreme Court of Pakistan 1996 SMBR 1185 (Annex-E).

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It is therefore humbly requested that the name of appellant may please be inducted in the N/Tehsildar seniority list of revenue KPK Peshawar on the basis of regular N/Tehsildar as per judgment of Peshawar High Court Peshawar dated 19-04-2006, SMBR KPK Peshawar dated 05/07/2006 and 19/11/2008, judgment of service tribunal dated 09/10/2008 and 21/04/2010 with the back benefit. Any other relief deemed fit may also be graciously awarded.

Dated: 27-07-2018



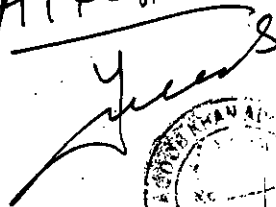
Applicant

Through

Yaqoob Kahn Advocate

High Court Peshawar

Attested



[1996]

Hameed Akhtar Niazi v. Secretary, Establishment Division.
(Ajmal Mian, J)

1996 S C M R 1185

[Supreme Court of Pakistan]

Before Ajmal Mian, Saiduzzaman Siddiqui and
Mukhtar Ahmad Junejo, JJ

HAMEED AKHTAR NIAZI---Appellant

versus

THE SECRETARY, ESTABLISHMENT DIVISION, GOVERNMENT OF
PAKISTAN and others---Respondents

Civil Appeal No.345 of 1987, decided on 24th April, 1996.

(On appeal from the judgment dated 11-12-1986 of the Federal Service
Tribunal, Islamabad, passed in Appeal No. 124(L) of 1980).

Per Ajmal Mian, J.; Saiduzzaman Siddiqui, J. agreeing---

(a) Civil Servants Act (LXXI of 1973)---

---S. 8(4)---Constitution of Pakistan (1973), Art. 212(3)---Establishment
Secretary's D.O. Letter No.2/4/75-AVI, dated 2-10-1975---Seniority---Merger
of four occupational groups of civil servants---Leave to appeal was granted to
consider the questions as to whether the seniority list of 1979 was properly
prepared in accordance with law and what was the effect of the reliance from the
Government side in the Supreme Court in another appeal on the list of 1976;
whether when preparing the list of 1979, S. 8(4) of the Civil Servants Act, 1973
and other related provisions of law had been kept in view; whether a civil
servant could be allowed to count his seniority in a post from a date earlier than
the one of his actual regular continuous officiation in that post; if not whether
the fact that the respondents in appeal belonged to the different civil services of
Pakistan would make any difference; whether one uniform principle of seniority
would apply to all members of the Secretariat Group or the officers joining the
Group from different sources/cadres would have to be treated differently; if so,
whether such treatment with or without the support of statutory rules or
directions would not be in contravention of the relevant provisions of Civil
Servants Act, 1973 and in that context what was the effect of the abolition of
C.S.P. Cadre; whether the eligibility of civil servant for appointment to a
selection post conferred any right of seniority in that post and cadre without
issuance of a formal promotion/appointment order in accordance with the
prescribed procedure and whether in that context a civil servant belonging to ex-
C.S.P. Cadre was entitled to automatic promotion to the post of Deputy
Secretary after he had completed eight years of service but without the
requirement of being actually selected/promoted or appointed; and what was the

1185
Aux J
(S7)
(S8)

Mukhtar
Junejo

effect of the Supreme Court judgment in Khizar Haider Malik ad others v. Muhammad Rafiq Malik and another 1987 SCMR 78 on the case. [p. 1187] A

(b) Civil Servants Act, (LXXI of 1973)---

---Ss. 8 & 23---Seniority---Merger of C.S.P and P.S.P cadres and creation of APUG---Seniority of such an officer, who was working in province or elsewhere, could not be distorted/disturbed to his detriment on account of the merger of said groups and creation of APUG and junior of such civil servant could not be made senior to him nor a junior to his junior could be made senior to him but this has to be done within the framework of the rules of reorganization of services---If the case of any civil servant does not fall within the ambit of said reorganisation rules, S. 23 of the Civil Servants Act, 1973 can be pressed into service by the President of Pakistan to oblivate the inequitable and unjust result arising out of the merger of the two cadres in respect of seniority of any of the civil servants. [p. 1193] B

ESTACODE, 1989 Edn., pp.1014, 1096 and 1097 ref.

(c) Service Tribunals Act (LXX of 1973)---

---S. 4---Constitution of Pakistan (1973), Art.212---Appeal to Service Tribunal or Supreme Court---Effect---If the Service Tribunal or Supreme Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal/Supreme Court be extended to other civil servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum. [p. 1193] C

Per Mulhtar Ahmad Junejo, J.---

(d) Service Tribunals Act (LXX of 1973)---

---S. 4---Appeal to Service Tribunal, scope and extent. [p. 1194] D

M. Bilal, Senior Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record for Appellant.

Raja Muhammad Bashir, Deputy Attorney-General and Ch. Akhtar Ali, Advocate-on-Record for Respondents.

Dates of hearing: 7th and 8th April, 1996.

JUDGMENT

AJMAL MIAN, J.---This is an appeal with the leave of this Court against the judgment dated 11-12-1986 passed by the Federal Service Tribunal,

196] Hameed Akhtar Niazi v. Secretary, Establishment Division.
(Ajmal Mian, J)

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amabad, hereinafter referred to as the Tribunal, passed in Appeal No. 124(L) 1980 filed by the appellant, praying for the following reliefs:--

"16. In view of the above, the appellant (who was eventually promoted with effect from 28-8-1980) humbly prays that this honourable Tribunal may kindly direct the respondent No.1 to proceed in accordance with law and to declare him to have been promoted before the ineligible and junior officers promoted in August, 1979 and February and May, 1980. It is further prayed that full salary and all other benefits may also kindly be allowed to the appellant from the date on which he would have been promoted if his name had been put up for the consideration of the C.S.B. according to his seniority. Cost may also graciously be allowed."

dismissing the same for the reasons recorded in Appeal No. 116(R) of 1981, filed by one M. Ramizul Haq.

2. Leave to appeal was granted to consider inter alia the following questions:--

- (a) Whether the seniority list of 1979 was properly prepared in accordance with law and what is the effect of the reliance from the Government side in the Supreme Court in another appeal on the list of 1976?
- (b) Whether when preparing the list of 1979, section 8(4) of the Civil Servants Act, 1973 and other related provisions of law, have been kept in view?
- (c) Whether a civil servant can be allowed to count his seniority in a post from a date earlier than the one of his actual regular continuous officiation in that post; if not, whether the fact that the respondents belonged to the defunct Civil Service of Pakistan will make any difference?
- (d) Whether one uniform principle of seniority will apply to all members of the Secretariat Group or the officers joining the Group from different source/cadres would have to be treated differently; if so, whether such treatment whether with or without the support of statutory rules or directions would not be in contravention of the relevant provisions of the Civil Servants Act, 1973, and in this context what is that effect of the abolition of the C.S.P. Cadre? and
- (e) Whether the eligibility of a civil servant for appointment to a selection post confers any right of seniority in that post and cadre, without issuance of a formal promotion/appointment order in accordance with the prescribed procedure and whether in this context a civil servant belonging to ex-C.S.P cadre is entitled to automatic promotion to the post of Deputy Secretary after he completes eight years of service but

without the aforementioned requirement of being actually selected/promoted or appointed? and

- (f) What is the effect on this case of the judgment of this Court in Khizar Haider Malik and others v. Muhammad Rafiq Malik and another 1987 SCMR 78.?

3. It may be observed that the order of granting leave was recalled on 10-2-1992, but upon review, the same was set aside through an order dated 14-2-1994 and thereby the aforesaid leave granting order was restored.

4. The brief facts are that the appellant joined Pakistan Military Lands and Cantonments Service on the basis of the results of competitive examination held in June, 1960. It is the case of the appellant that in 1967, he proceeded to U.S.A. on study leave and obtained a Master's Degree in Public Administration from the Maxwell School of Public Affairs and Citizenship, Syracuse University. It is also his case that in June/July, 1972, the Planning Division recommended him for promotion to the post of Deputy Secretary to the Government of Pakistan. It is his further case that pending approval of the Establishment Division, Planning Division promoted him as Deputy Secretary by an order dated 9-8-1972. The above order reads as follows:--

"OFFICE ORDER

It has been decided that Mr. Hameed Akhtar Niazi, PML & CS will look after the work of Deputy Secretary (Administration) with immediate effect. He will be designated as Officer on Special Duty (Administration).

Mr. Zafar Iqbal is posted as Deputy Secretary, Programming."

It has also been averred by the appellant that he was promoted as Deputy Secretary on regular basis on 9-4-1973 and posted in the Establishment Division.

5. It seems that in August, 1973, C.S.P. and P.S.P. cadres were merged into All Pakistan Unified Grades, hereinafter referred to as APUG. It further seems that after the aforesaid merger, four occupational groups were created, namely, Tribal Areas Group, District Management Group, Secretariat Group and Police Group. The appellant opted for the Secretariat Group. It is the case of the appellant that the Gradation List of Deputy Secretaries i.e. of the Secretariat Group was prepared in accordance with the provision of section 8(4) of the Civil Servants Act, 1973, hereinafter referred to as the Act, which provides that "Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post". According to the appellant, the above Gradation List was circulated in June, 1976, wherein the appellant's name appeared at Serial No. 69. However, the appellant learnt in August, 1979, that civil servants belonging to erstwhile Civil Service of

Pakistan (C.S.P.), whose names appeared much below the appellant in the aforesaid Gradation Lists of 1976; were being promoted to the rank of Joint Secretary (Grade-20) and his name had not been put up for promotion to the General Selection Board for consideration. He first made efforts to get redress from the department, but eventually, he filed the aforementioned service appeal in the Tribunal, which was dismissed as stated above. After that he filed a petition for leave to appeal in this Court, which was granted to consider the above questions.

6. It may be pertinent to observe that in the above appeal, besides the Federation, 14 civil servants were arrayed as respondents. It may further be observed that, in addition to the above respondents, 7 other civil servants were impleaded pursuant to an application dated 4-1-1988. Dr. Sh. Aleem Mehmood was impleaded as a respondent (respondent No. 23 in the present appeal) on his own application, whereas the applications of Muhammad Aslam and Tariq Juncjo for being impleaded, remained pending till today. However, they were heard. One, Malik Zahoor Akhtar, has also appeared though he had not filed any application for getting himself impleaded in the aforesaid appeal.

7. Be that as it may, in support of the above appeal, Mr. M. Bilal, learned Sr. A.S.C. for the appellant, has vehemently contended that after the merger of the two cadres, namely, C.S.P. and P.S.P. and creation of APUG, the Gradation List of the Deputy Secretaries prepared in 1976 could not have been disturbed and that certain civil servants could not have been given seniority over the appellant from a date prior to their regular appointments as the Deputy Secretaries in the above cadre. To reinforce the above submission, reliance has been placed by him inter alia on section 8(4) of the Act and para. 8 of ESTACODE, 1989 Edition, under the caption "Secretariat Group" at Serial No. 19 incorporated on the authority of O.M.No.2/2/75-ACR, dated 12-4-1976.

The aforementioned newly added respondent supports Mr. Bilal's contention.

On the other hand, Mr. Raja Muhammad Bashir, learned Deputy Attorney-General, has contended that seniority inter se of the civil servants belonging to C.S.P. cadre obtaining prior to its merger could not have been distorted to the detriment of any of the above civil servants and, therefore, if C.S.P. officers, who were not actually posted as Deputy Secretaries but were deputed to various Provinces on account of public exigencies, could not have been made junior to civil servants who were junior to them prior to the merger of aforesaid two cadres and who were working as Deputy Secretaries and were senior inter alia to the appellant.

8. It appears that the Tribunal proceeded on the premises as urged by

learned Deputy Attorney-General. It may be advantageous to reproduce the relevant portion of the impugned judgment, which reads as follows:--

"It appears that the question of seniority was not examined when persons not being Members of the Service were appointed to APUG with the approval of the President vide Notification No.1/1/73-ARC, dated 14-9-1973. Nevertheless, the seniority lists were prepared of the Deputy Secretaries and Joint Secretaries, etc. and they included only those officers of the former C.S.P. who at the relevant time were serving against these posts. At that time, the Rule for appointment of the Deputy Secretaries was that a C.S.P. Officer who had completed 8 years' service could be appointed as Deputy Secretary. No doubt, subsequently by Office Memo. No.3/7/74-AR.II, dated the 20th May, 1974, 12 years period was provided for Grade-19 and for horizontal movement of Grade-18 Officers to the post of Deputy Secretary vide para. 3 of Office Memo. No. 2/2/75-ARC, dated 21-2-1975, but this deviation in the length of service is immaterial as far as C.S.P. Officers are concerned. Their names already existed as Members of C.S.P. and subsequently of APUG. Their seniority was to be changed in accordance with some principle and not by making any rule affecting their vested right. All Rules made under the Civil Servants Act or the Civil Servants Ordinance have to be construed with prospective operation and not with retrospective operation. All those Rules which affect the former Officers of the C.S.P. have to be applied for the situations existing after the enactment of the Civil Servants Ordinance, 1973, and the Rules made thereunder. The seniority of the C.S.P. Officers in APUG could not, therefore, be distorted. Any seniority to which a Member of the Cadre was entitled before the constitution of Secretariat Group, could not be affected by the provisions of section 8(4) of the Civil Servants Act, 1973. In other words, the seniority of such a person cannot be destroyed by any subsequent change in the principles of seniority. By making a provision in the relevant Officer Memorandum that seniority shall count from the date when an officer becomes Deputy Secretary or is promoted to Grade-19, whichever is earlier, the distortion in the seniority of other Federal Services was removed, but in case of C.S.P. Officers this formula could not work as there was no scale comparable to Grade-19 (Junior Administrative Grade) and the C.S.P. Officers used to be promoted to the Joint Secretary's grade from Senior C.S.P. Scale which is comparable with Grade-18, and the post of Deputy Secretary was never a promotion post in the cadre. Thus, in our opinion, if after the coming into force of the Civil Servants Act, an officer of former C.S.P. who was senior to his colleagues working as Deputy Secretary in the Secretariat, but an officer who was working in the Province or elsewhere would, when brought to the Secretariat later, retain his

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seniority vis-a-vis his own colleagues. In other words, if an officer of the former C.S.P. is appointed as Deputy Secretary in the Secretariat Sub-Group, within APUG, he would count his seniority from the date he completes 8 years of service if any of his colleagues junior to him had already been promoted. It is this principle which the Establishment Division has applied and we think that this is a proper course by which the distortion in the seniority can be removed."

9. In this regard, it may be pertinent to refer to page 1014 of the ESTACODE, 1989 Edition, in which under the caption "Reorganisation of APUG in to four Occupational Groups Seniority of members of the Group" at Serial No.17 has provided as under on the basis of Establishment Secretary's D.O. Letter No.2/4/75-AVI, dated 2-10-1975:--

"Sl. No.17:

Kindly refer to Establishment Secretary's Circular D.O. Nos.5/1/73-ARC, dated the 7th September, 1973, 2/2/73-AVI, dated the 26th November, 1973, and 2/1/74-AVI, dated the 29th May, 1974, alongwith which the combined seniority lists of officers of All-Pakistan Unified Grades in various grades were circulated.

2. In the meantime, the All-Pakistan Unified Grades has been organised into four Occupational Groups---the Secretariat Group, the District Management Group, the Police Group and the Tribal Areas Group. The rules and procedures etc. governing the administration of each of these Groups have already been issued and sent to you vide the Establishment Division's Office Memoranda No.2/2/75-ARC, dated 21st February, 1975 (Secretariat Group) No.2/2/74-ARC, dated 23rd February, 1974 (District Management Group), No.3/2/75-ARC, dated 31st May, 1975 (Police Group) and D.O. No.1/6/73-ARC, dated 20th October, 1973 (Tribal Areas Group). Consequently the seniority lists have now been drawn up separately in respect of each Group.

3. As already indicated, each group will henceforth be managed under the respective rules quoted above. A member of a particular Group will be governed by prospects of promotion and advancement available within the Group. While entry into other Groups by horizontal movement is possible with the approval of Central Selection Board, there will be no automatic mobility from one Group to the other. In other words, officers shown in any particular Group will now belong to that Group once for all unless specifically selected and approved for movement to another Group.

4. You may now kindly inform the officers under your administrative control accordingly. Officers shown in the Secretariat Group but belonging originally to some other Group may let this Division know finally as to whether they would like to remain in the Secretariat Group

or go back to their parent Group. Option once exercised will be final. Such option should reach us not later than 31st October, 1975. Failure to exercise option by that date will be presumed to be an option for the Group where the name appears presently.

5. In the meantime, these lists may be treated as provisional and in case there are any omissions or discrepancies, these may please be communicated to us immediately for rectification."

10. Reference may also be made to paras. 3 and 8 of the ESTACODE, 1989 Edition, at pages 1096 and 1097 thereof under the caption "Secretariat Group" at Serial No. 19 and which read as under:--

Para. 3 of the ESTACODE: 3. Deputy Secretary.--Appointment to the post of Deputy Secretary will be made in accordance with the following methods:--

- (i) By promotion of Grade-18 Officers of Office Management Group and the Secretariat Group on the recommendations of the Central Selection Board.
- (ii) By horizontal movement from other Occupational Groups of Grade 19 Officers who have been recommended by the Ministries/Divisions, Departments or Provincial Governments and have been found fit by the Central Selection Board.
- (iii) By direct appointment on the recommendations of the Federal Public Service Commission of persons possessing such qualifications and experience etc., as may be prescribed.

Para. 8 of the ESTACODE: 8. Deputy Secretary.--Seniority would be determined from the date of continuous regular officiation as Deputy Secretary, or in a post in Grade-19, whichever is earlier."

11. We may observe that in the present case, section 8(4) of the Act is relevant as it will be covered by the rules framed for regulating APUG. It is evident from afore-quoted para. 4 of ESTACODE, 1989 Edition, at page 1014 that after the creation of Secretariat Group, the civil servants were given the option to opt the above Group or any other Group by 31-10-1975. Whereas above quoted para. 3 of the ESTACODE at page 1096 under the caption "Secretariat Group" at Serial No. 19, indicates as to how the appointment to the post of Deputy Secretary will be made i.e. by promotion of Grade-18 Officers by horizontal movement and by direct appointment on the recommendation of the Federal Public Service Commission.

12. It may further be noticed that para. 8 of the above ESTACODE at page 1097 provides that seniority would be determined from the date of continuous regular officiation as Deputy Secretary or in a post in Grade-19, whichever is earlier.

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13. The Tribunal has not taken into consideration that above relevant provisions of the ESTACODE while dilating upon the controversy, in issue: It should have decided, whether the respondents had exercised the options in terms of aforesaid para. 4 of the above ESTACODE at page 1014, by 31-10-1975 and whether the seniority list was prepared as per aforesaid para. 8 of the ESTACODE, i.e. from the date of continuous regular officiation as Deputy Secretary or in a post in Grade-19, whichever is earlier.

14. There is no doubt that the seniority of an officer, who is working in a Province or elsewhere, cannot be distorted/disturbed to his detriment on account of the merger of above two cadres of C.S.P. and P.S.P. and creation of APUG. His junior cannot be made senior to him nor a junior to his junior can be made senior to him. But, this is to be done within the framework of the rules of reorganisation as given in the above ESTACODE. If the case of any civil servant does not fall within the ambit of the above rules, section 23 of the Act can be pressed into service by the President to oblivate the inequitable and unjust result arising out of the above reorganisation in respect of seniority of any of the civil servants.

15. It was also contended by Mr. Raja Muhammad Bashir, learned Deputy Attorney-General, that since that appellant has already been promoted to Grade-20, the above appeal has become infructuous. However, this contention was refuted by Mr. Bilal and it was urged by him that the appellant is entitled to get his seniority restored according to the rules.

16. In our view, it will be just and proper to remand the case to the Tribunal with the direction to re-examine the above case after notice to the affected persons and to decide the same afresh in the light of above observations. We may observe that if the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum.

17. The above appeal stands disposed of in the above terms, with no order as to costs.

(Sd.)

Ajmal Mian, J.

(Sd.)

Saiduzzaman Siddiqui, J.

MUKHATAR AHMAD JUNEJO, J.--My learned brother Ajmal Mian, J. was kind enough to send me draft of the judgment proposed to be delivered by

him. Hameed Akhtar Appeal No. 345 of 1987 (Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan etc.) With due respects to my learned brother, I am unable to agree with him that this matter be remanded to the Federal Service Tribunal with some directions including the direction to re-decide the case.

The facts of the case have already been given by my learned brother and they need not be reiterated. In the context of the facts given in para. 4 of the draft judgment, appellant Hameed Akhtar Niazi filed his appeal before the Federal Service Tribunal under section 4 of the Service Tribunals Act with prayer in the following words:--

"In view of the above the appellant who was eventually promoted with effect from 28-8-1980 humbly prays that this Honourable Tribunal may kindly direct the respondent No. 1 to proceed in accordance with law and to declare him to have been promoted before the ineligible and junior officers promoted in August, 1979 and February and May, 1980. It is further prayed that full salary and all other benefits may also kindly be allowed to the appellant from the date on which he would have been promoted if his name had been put up for the consideration of the C.B.S. according to his seniority. Cost may also graciously be allowed."

Perusal of the prayer shows that the appellant seeks his promotion from a date earlier than the dates of promotion of certain officers termed by him to be ineligible and junior. According to section 4 of the Service Tribunals Act, a civil servant can invoke jurisdiction of the Tribunal in respect of any of his terms and conditions of service. However, no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade, vide clause (b) of the proviso to section 4 of the said Act. By asking the Tribunal to direct his promotion on a date earlier than the promotion of ineligible and junior officers, the appellant wanted the Tribunal to determine him to be fit for promotion and to determine the other officers to be ineligible for promotion by labelling them as ineligible. As regards the claim for salary and monetary benefits, the same is again based on the presumptive promotion of the appellant. Since the main relief of promotion cannot be given to the appellant by the Tribunal, the consequential relief can also not be given to him.

In my humble view appellant's appeal before the Federal Service Tribunal was not maintainable and it required to be rejected. In my humble view this appeal merits dismissal.

(Sd.)

Mukhtar Ahmad Junejo, J.

بعدالت کرونگر ٹریبونل پشاور

کورٹ فیس

20 منجانب والا

18/9/2018

بنام: S.M.B.R. وغیرہ

حکومتِ حلام

ریسل

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب ذہی وکل کاروائی متعلقہ آن مقام پشاور سے لے لے **لیقویان ایلوکیٹ** مقرر کر کے اقرار کیا جاتا ہے کہ صاحب منوصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب ذہی اور اقبال دعویٰ اور بصورت ڈگری کرانے اجراء اور وصولی چیک لاد پید اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق ذراں پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری ایک طرفہ یا اپیل کی برآمد ہوگی اور منسوخ دائر کرنے کی اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مذکور کے عمل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اسکا ساختہ برداشت منظور و قبول ہوگا اور دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا ادکالت نامہ لکھ دیا کہ سند ہے۔

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الرتوم

بد گواہ شہادہ العبد

کے لئے منظور ہے۔

پشاور

بمقام:

Attested & Accepted

Yousuf

Khyber Pakhtunkhwa Service Tribunal Peshawar.

Service Appeal No.1214 of 2018.

Hazrat Ghulam s/o Said Ghulam, SNT Settlement Operation Chitral resident of Village Baizo
Harkai Katlang District Mardan.....Appellant.

VERSUS

- 1) SMBR of KPK Peshawar.
- 2) DLR of KPK Peshawar.
- 3) Settlement Officer Settlement Operation Chitral.....Respondents.

Preliminary objections.

1. The appellant has got no cause of action.
2. That the appellant has not come with clean hands to this Hon'able court.
3. The appellant has not legal grounds in support of his appeal.
4. That the appeal is bad on account of mis-joinder and non-joinder of necessary parties.

Parawise joint Comments on behalf of Respondents are as under :-

1. Correct to the extent that in order to run the settlement operation in District Bannu, qualified candidates including the appellant were appointed as Settlement Patwaris purely on contract basis vide order dated 23.12.1990. Although the appellant was not relieved, however, was appointed as Settlement Patwari afresh in the Settlement Operation Chitral purely on contract basis vide order dated 16.07.2002 and consequently was promoted as Settlement Kanungo on the same analogy.
2. Incorrect. In light of Judgment dated 19.04.2006, the appeal of the appellant was accepted by the Court of Respondent No.1 by modifying his services on regular basis in the Settlement Operation Chitral.
3. Correct to the extent that in order to fill up the vacancies, the appellant alongwith 6 others were promoted as Settlement Naib Tehsildars subject to condition that services of the appellant shall stand terminated automatically. The contract appointment shall not confer any right of absorption elsewhere or regularization of service. His services are likely to be terminated without assigning any reason or prior notice vide order dated 19.03.2007. Besides, Settlement is a project and is being going to be winded up on 30.06.2019, hence the appellant has got no right to be regularized.
4. Correct to the extent that the appeal of the appellant was accepted by the predecessor of Respondent No.1 by deleting the cause of "contract" and regularizing the services of the appellant as Settlement Naib Tehsildar in the Settlement Operation vide Judgment dated 19.11.2008. Since the services of the appellant were regularized in the Settlement Operation, therefore, he has got no right to claim regular service in Revenue Side as explained in preceding Para.
5. Since some posts of Settlement Tehsildars in the Settlement Operation Chitral were lying vacant due to which the official business of Settlement were affecting, therefore, in order to achieve goals of settlement, the Settlement Naib Tehsildars including the appellant were appointed as Settlement Tehsildar on Acting Charge Basis vide order dated 11.06.2008.
6. No comments. Pertains to record.

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7. No comments. As per para-6 above.
8. No comments. Pertains to record.
9. Incorrect. Since the appellant is employee of Settlement, therefore his name can be included in the seniority list of Naib Tehsildar on Revenue Side.
10. Since in compliance to the directions of Hon'able Peshawar High Court Peshawar judgment, services of Muhammad Umer and Farman Ali were already regularized on Revenue Side, therefore, their names were included in seniority list of Naib Tehsildar on Revenue side, while, the name of the appellant could not be included being employee of Settlement Operation.
11. No comments.
12. Incorrect. As per Para-10 above.
13. No comments. Pertains to record.
14. Incorrect. No legal right of the appellant is violated as all employees are treated strictly in accordance with the provisions of Rules/Policy.
15. Incorrect. The appellant is presently serving as Settlement Tehsildar Chitral on Settlement Side and not on Revenue Side.
16. Incorrect. As per Para-10 above.
17. No comments. As per Para-3 above.
18. No comments. Pertains to record.
19. Incorrect. As per Para-10 above.


GROUNDS.


- A. Incorrect. The appellant was appointed purely on contract basis in the Settlement Operation and not on Revenue Side, therefore his name can not be included in the seniority list of Naib Tehsildar of Revenue Department.
- B. Since in compliance to the directions of Hon'able Peshawar High Court Peshawar judgment, services of Muhammad Umer and Farman Ali were already regularized on Revenue Side, therefore, their names were included in seniority list of Naib Tehsildar on Revenue side, while, the name of the appellant can not be included being employee of Settlement Operation.
- C. Correct to the extent that the service of the appellant were regularized in the Settlement Operation and not on Revenue Side, therefore his name can not be included in the seniority list.
- D. As per Para-3 and A of the fact and ground.
- E. No comments.
- F. No comments.

A handwritten signature in black ink, appearing to be 'M. Umer', is written over the text of item F.

- G. The services of Mr. Dil Nawaz were also regularized in the Settlement Operation as such was treated as per Project Policy being project employee. Consequently, the appellant would also be treated in the analogy of the incumbent if directed by the court.
- H. This para is the repetition of preceding paras, hence no comments.
- I. This para is also the repetition of the preceding para, hence no comments.
- J. As per Para-10 of the facts.
- K. As per Para-14 of the facts.
- L. Incorrect. All the employees are treated in accordance with the provisions of Laws/Rules and no legal right of any employee is violated nor discriminated.
- M. Incorrect. Since the appellant is not serving in Revenue Department on regular basis, therefore, issuance of his formal orders can not be considered at this stage.

Keeping in view the foregoing grounds, since the appeal of the appellant is baseless and no legal aspects may be dismissed.


Director Land Records,
Khyber Pakhtunkhwa.
(Respondent No.2)


Senior Member,
Board of Revenue, Khyber Pakhtunkhwa.
(Respondent No.1)