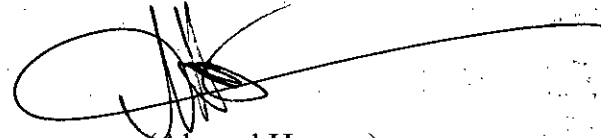



Order

09.05.2019 Counsel for the appellant present. Mr. Ziaullah, DDA alongwith Mr. Muhammad Arif, Supdt and Mr. Muhammad Iqbal, Assistant for respondents present. Arguments heard and record perused.

This appeal is also accepted as per detailed judgment of today placed on file in service appeal No. 1161/2018 titled "Mohammad Taj -vs- The Govt: of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar and two others." Parties are left to bear their own cost. File be consigned to the record room.

Announced:
09.05.2019


(Ahmad Hassan)
Member


(Hamid Farooq Durrani)
Chairman

13.03.2019

Mr. Rizwanullah, Advocate for appellant and Mr. Ziaullah, DDA alongwith Muhammad Arif, Superintendent and Muhammad Iqbal, Assistant for the respondents present.

Learned counsel for the appellant almost concluded the arguments when learned DDA stated that the record pertaining to departmental proceedings against the appellant, more particularly, the enquiry report and statements recorded in its course, shall be necessary for just conclusion of the matter in hand. He, therefore, seeks time to produce the relevant record. Adjourned to 29.04.2019 before this D.B.

The requisite record shall positively be produced with spare copies for the consumption of the appellant on the next date.


Member


Chairman

29.04.2019

Counsel for the appellant and Mr. Ziaullah, DDA alongwith Mr. Muhammad Arif, Supdt and Mr. Muhammad Iqbal, Assistant. for respondents present.

The representative of the respondents has provided copies of documents noted in order sheet dated 13.03.2019 which are placed on record. A complete copy of the submitted documents has also been provided to the learned counsel for the appellant. To come up for arguments on 09.05.2019 before D.B.


Member


Chairman

18.12.2018


Learned counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General alongwith Muhammad Iqbal Assistant present. Written reply submitted on behalf of respondents No.4. To come up for rejoinder if any and arguments on 24.01.2019 before D.B. -/



Member

24.01.2019

Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney alongwith Mr. Muhammad Iqbal Assistant as representative for the respondents present. Learned counsel for the appellant submitted rejoinder which is placed on file, and stated that similar connected appeals are fixed for hearing on 25.01.2019. Adjourned. To come up for arguments alongwith connected appeals.



Member



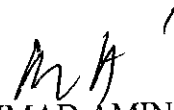
Member

25.01.2019

Counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant alongwith Mr. Muhammad Arif, Superintendent for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 13.03.2019 for arguments before D.B.



(AHMAD HASSAN)
MEMBER



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER



02-10-2018

Counsel for the appellant Farrukh Mehmood present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Revenue Department as Patwari and during service he was imposed major penalty of removal from service vide order dated 13.08.2018 on the allegation that he had entered inheritance mutation wrongly. It was further contended that the appellant filed departmental appeal on 17.08.2018 which was rejected on 17.09.2018 hence the present service appeal within time. It was further contended that though inquiry was conducted but neither any witness was examined in the presence of the appellant nor opportunity of cross examination was provided to the appellant nor he was provided opportunity of personal hearing and defence therefore, the impugned order is illegal and liable to be set-aside.

Appellant Deposited
Security & Process Fee

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days thereafter, notice be issued to the respondents for written reply/comments for 16.11.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member

16-11-2018

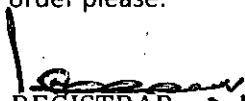

The learned Chairman has not yet assumed the charge. Therefore, the case is adjourned. To come up on 18.12.2018. Written reply received on behalf of respondents No.1, 2 & 3 by Mr. Javid Assistant and placed on file.


READER

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1179/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	24/09/2018	<p>The appeal of Mr. Farrukh Mehmood presented today by Mr. Rizwanullah Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 24/9/18</p>
2-	25-9-18	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>02-10-2018</u></p> <p style="text-align: right;"> CHAIRMAN</p>

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

Service Appeal No. 1179 /2018

1. Farrukh Mehmood Ex-Patwari, Halqa Laberkot, District Mansehra.

APPELLANT

VERSUS


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

RESPONDENTS

INDEX

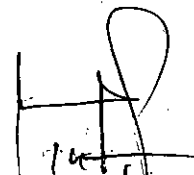
S.No	Particulars	Annexure	Pages #
1	Service Appeal	-	1-12
2	Affidavit	-	13
3	Copy of Roznamcha-e-Waqiati	A	14
4	Copy of inheritance mutation	B	15
5	Copy of revised mutation	C	16
6	Copy of inquiry report of Anti-corruption	D	17-19
7	Copy of inquiry report	E	20-24
8	Copy of charge sheet and statement of allegation	F	25-26
9	Copy of reply to charge sheet	G	27-28
10	Copy of inquiry report	H	29-31
11	Copy of show cause notice	I	32
12	Copy of impugned order dated 13-08-2018	J	33
13	Copy of departmental appeal dated 17-08-2018	K	34-35

14	Copy of rejection order dated 17-09-2018	L	36
15	Copy of order of lesser penalty	M	37
16	Wakalatnama		


Appellant

Through

Dated: 24-09-2018


Rizwanullah
Advocate High Court, Peshawar

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

Service Appeal No. 1179 /2018

Khyber Pakhtunkhwa
Service Tribunal

1. Farrukh Mehmood Ex-Patwari, Halqa Laberkot, District Mansehra, District No. 1465

Dated 24/9/2018

APPELLANT

VERSUS

1. The Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar.
2. The Senior Member Board of Revenue & Estate Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. The Commissioner Hazara Division, Hazara Abbottabad.
4. The Deputy Commissioner, District Mansehra.

RESPONDENTS

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
IMPUGNED ORDER DATED 13-08-2018
PASSED BY THE SENIOR MEMBER
BOARD OF REVENUE & ESTATE
DEPARTMENT (RESPONDENT NO.2)
WHEREBY THE APPELLANT WAS
AWARDED MAJOR PENALTY OF
REMOVAL FROM SERVICE. THE
APPELLANT FILED DEPARTMENTAL
APPEAL WITH THE RESPONDENT
NO.1 ON 17-08-2018 BUT THE SAME
WAS REJECTED ON 17-09-2018.**

Filed to-day

Registrar

24/9/18

● **Prayer in Appeal**

By accepting this appeal, the impugned orders dated 13-08-2018 & 17-09-2018 may very graciously be set aside and the appellant may kindly be re-instated in service with full back wages and benefits.

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

Respectfully Sheweth,

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

- 1. That the appellant was serving as a Patwari Halqa Sand-e-Sar, District Mansehra at the relevant time. He had 7 years unblemished service record to his credit.**

- 2. That the appellant was performing his duties with great zeal, zest and devotion when one Fayyaz Khan (Naib Nazim V/C Sand-e-Sar) S/O Mehboob Ali R/O Chitta Batta, District Mansehra, came in Patwarkhana and requested him for lodging report regarding the death of Khani Zaman S/O Arsala Khan so that to enable his legal heirs to get their legal shares under the law. The appellant believed that no person will give false information to a public servant otherwise liable for penal action under the relevant law. He also strongly believed that Fayyaz Khan being a public representative will never furnish false information so as to damage and lose the confidence of people who trusted him and chose him as (Naib Nazim V/C Sand-e-Sar). Therefore, he entered the report in "Roznamcha-e-Waqiati" in good faith and his signature was obtained on it as a token of correctness. The report thereof was displayed for information of general public.**

(Copy of Roznamcha is appended as Annex-A)

3. That thereafter, the appellant processed the matter and sent it to the next authority known as Girdawar (Kanungo) for necessary action. The said officer thoroughly checked the same, verified it accordingly and forwarded to the Tehsildar during "Jalssai-e-Aam" at Sand-e-Sar.
4. That the Tehsildar attested the inheritance mutation No.9344 on 18-02-2015 by virtue of Section 42 of Land Revenue Act, 1967.

**(Copy of inheritance mutation
is appended as Annex-B)**

5. That on 10-04-2017, Patwari Halqa processed a case regarding rectification of Mutation No. 9344 attested on 18-02-2015 as Khani Zaman, owner of the disputed land was alive and was residing aboard. The Deputy Commissioner/Collector approved the matter and ordered for the cancellation of above inheritance mutation. Thereafter, the Revenue Officer complied with the order in letter and spirit and cancelled the disputed inheritance mutation. Resultantly, the land was restored in its original position and necessary entry was also made in the relevant Register and that no loss whatsoever was sustained to anybody on this count.

**(Copy of revised mutation is
appended as Annex-C)**

6. That in the meanwhile, the Assistant Commissioner, Mansehra was nominated to conduct preliminary inquiry in the matter while on the other hand, the Director Anti-Corruption also commenced inquiry on the complaint filed by Ali Zaman S/O Arsala Khan against the appellant and other employees. But after proper probe, the complaint was filed as devoid.

**(Copy of inquiry report of
Anti-corruption is appended
as Annex-D)**

7. That the Assistant Commissioner, Mansehra conducted inquiry and held the appellant and other employees guilty of the allegations and made the following recommendations:

Recommendations

In view of above, it is stated that since the above inheritance mutation has been rejected after review and original position of land has been restored, hence it is recommended that:

1. **Strick disciplinary action may be taken against M/S Farrukh Mehmood Patwari, Waheed Akhtar Kanungo, Muhammad Taj Khan, the then Tehsildar Mansehra & major penalties may be imposed on them on account of above lapses.**
2. **Since giving false evidence in front of public servant is a criminal offence liable to punishment. M/S Asim Jadoon s/o Ghulam Mustafa, Muhammad Farooq s/o Mughal Khan and Muhammad Shabir Khan s/o Muhammad Sadiq, General Councilor should be dealt accordingly and criminal proceedings may be initiated against them under relevant provision of law.**

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

8. That on the basis of above report, the appellant was served with a charge sheet alongwith statement of allegations and that Syed Saif-ul-Islam Additional Deputy Commissioner Haripur was nominated as Inquiry Officer to conduct regular

inquiry in the matter. It would be advantageous to reproduce herein the allegations so as to know the legal and factual aspect of the same:

1. That you entered inheritance mutation No. 9344 in Revenue Estate Sand-e-Sar Mansehra without attestation about the deceased and his legal heirs. The said mutation was wrongly entered and attested as the original owners of the land are residing in Indonesia.

2. Your this act tantamount and liable you to be proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

(Copy of charge sheet alongwith statement of allegation is appended as Annex- F)

9. That the appellant submitted elaborate and exhaustive reply, denied the allegations and also termed it as fallacious, malicious and misconceived. He added that he had acted justly, fairly and in accordance with law.

(Copy of reply is appended as Annex-G).

10. That the above reply was not found satisfactory and inquiry was conducted in utter violation of law as there was no iota of evidence to connect the appellant with the commission of so-called misconduct. But despite thereof, the Inquiry Officer held the appellant and other employees guilty of the charges and recommended them for major penalties.

(Copy of inquiry report is appended as Annex-H)

11. That the appellant was served with a show cause notice and then awarded him major penalty of removal from service by an order dated 13-08-2018 passed by the Senior Member Board of Revenue (respondent No.2).

(Copies of show cause notice and impugned order are appended as Annex-I & J)

12. That the appellant felt aggrieved by the said order, filed a departmental appeal with respondent No.1 on 17-08-2018. But the same was rejected on 17-09-2018.

(Copies of departmental appeal and rejection order are appended as Annex-K & L)

13. That the appellant is jobless since his removal from service.
14. That the appellant now files this appeal before this Hon'ble Tribunal inter-alia on the following grounds within the statutory period of law.

GROUND OF APPEAL

- A. That respondents have not treated appellant in accordance with law, rules and policy on the subject and acted in violation of **Article 4 of the Constitution of Islamic Republic of Pakistan, 1973**. Therefore, the impugned order is not sustainable in the eye of law.
- B. That the preliminary inquiry was conducted in utter violation of law as neither any witness was examined in the presence of appellant nor he was provided any opportunity of cross

examination. Similarly, he was also not provided any chance to produce his defence in support of his version. The above defect in enquiry proceeding is sufficient to declare entire process as sham and distrustful. Right of fair trial is a fundamental right by dint of which a person is entitled to a fair trial and due process of law. The appellant has been deprived of his indispensable fundamental right of fair trial as enshrined in **Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973**. Similarly, regular inquiry was also not conducted in a manner prescribed by law as neither the star witness namely Fayyaz Khan (Naib Nazim V/C Sand-e-Sar) who lodged a report with the appellant was examined nor the marginal witnesses and identifiers were produced to dig out the truth. But it is curious to note that the Inquiry Officer placed reliance on the statements of those persons who were examined during the preliminary inquiry as evident from his report and held the appellant and other employees guilty of the allegations in utter violation of law. Thus, the Inquiry Officer has committed gross illegality on this count despite the fact that he was under statutory obligation to have summoned the above persons, recorded their statements and then provided an opportunity to the appellant to cross-examine them so that to fulfill the requirement of Fair Trial as enshrined in **Article 10A of the Constitution of Islamic Republic of Pakistan, 1973**. But he did not bother to observe the mandatory provision of law and Constitution. Therefore, the act of the Inquiry Office is against the spirit of administration of Justice. Besides, the Inquiry Officer was legally bound to have substantiated the role of each official/accused allegedly attributed toward so-called misconduct. But he took no pain to do so. Akin, it was also incumbent on the Inquiry Officer to ascertain whether the requirements of **Sub-Section 6 & 7 of Section 42 of the Land Revenue Act, 1967** were fulfilled by the Tehsildar/Revenue Officer before attestation of the inheritance mutation or otherwise. Moreover, the appellant and other employees have

given exhaustive statements before the inquiry in support of their respective versions but these statements were discarded without any cogent and valid reasons. Hence, the report of the Inquiry Officer is based on conjectures, surmises and supposition. Therefore, the impugned orders passed on the basis of such inquiries are not warranted under the law.

- C. That the Competent Authority (respondent No.2) was under statutory obligation to have considered the case of appellant in its true perspective and also in accordance with law and to see whether the preliminary inquiry and regular inquiry were conducted in consonance with law and the allegations thereof were proved against the appellant without any shadow of doubt or otherwise. But he has overlooked this important aspect of the case without any cogent and valid reasons and awarded harsh and extreme penalty of removal from service to the appellant. Thus, the impugned orders are liable to be set aside on this count alone.
- D. That the Appellant Authority (respondent No.1) was legally bound to have applied his independent mind to the merit of the case by taking notice about the illegality and lapses committed by the Inquiry Officers as well as respondent No.2 as enumerated in Para-B & C above. But he failed to do so and rejected the departmental appeal without any cogent reasons. Mere mentioning that **“your departmental appeal dated 17-08-2018 has been examined and rejected by Appellate Authority”** will not fulfill the requirement of speaking order as envisaged in Section 24^A of the General Clauses Act, 1897 as well as law laid down by august Supreme Court of Pakistan reported in 2011-SCMR-1 (citation-b). The relevant citation of the judgment is reproduced herein for facility of reference:

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

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

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

1996-SCMR-284 (citation-c)

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

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

E. That joint inquiries were conducted against the appellant and other two officials and they all were held guilty of the allegations and recommended them for major penalties. But the Competent Authority (respondent No.2) awarded lesser punishment of compulsory retirement to Tehsildar and Kanungo while the appellant being a low paid employee was imposed harsh and extreme penalty of removal from service and as such he was not treated qua-similarly placed employees. Hence, the impugned orders passed on the basis of such findings are also not warranted under the law. Moreover, it is

a disparity and anomaly and is also violation of **Article 25 of the Constitution of Islamic Republic of Pakistan, 1973** which has unequivocally laid down that all citizens placed in similar circumstances are entitled to equal treatment and protection of law. The Hon'ble Supreme Court of Pakistan through various judgments has maintained that equal treatment is the fundamental right of every citizen. Reliance can be placed on **2002-SCMR-71 & 2007-SCMR-410(d)**. The relevant citations are as under:-

2002-SCMR-71
(citation-c)

---Art. 25---Equality of citizens---Two groups of persons similarly placed could not be treated differently---Dictates of law, justice and equity required exercise of power by all concerned to advance the cause of justice and not to thwart it.

2007-SCMR-410
(citation-d)

---Art. 25---Equal protection of law---Principles---Concept of equal protection of law envisages that a person or class of persons should not be denied the rights, which are enjoyed by other persons in the same situation.

Hence, the impugned orders are not tenable under the law.

(Copy of order of lesser penalty is appended as Annex-M)


F. That mere entering a report in Roznamcha-e-Waqiati will not automatically transfer the property of any deceased person amongst his legal heirs unless verified by the concerned Kanungo and then attested the mutation by the

Tehsildar/Revenue Officer under Section 42 of the Land Revenue Act, 1967 . Therefore, the authority was not justified to award such harsh and extreme penalty of removal from service to the appellant as it did not commensurate with the gravity of charge. Thus, the impugned orders are bad in law.

- G.** That the appellant entered the report in Roznamcha-e-Waqiati at the instance of Fayyaz Khan (Naib Nazim V/C Sand-e-Sar) as he believed that no person will give false information to the public servant otherwise liable for penal action under the relevant law. He also strongly believed that Fayyaz Khan being a public representative will never give him false information so as to damage and lose the confidence of the people who trusted him and chose him as (Naib Nazim V/C Sand-e-Sar). Thus, the report was entered in good faith which constitutes no misconduct in any manner. Hence, the impugned orders are against the norms of justice
- H.** That the impugned orders are suffering from legal infirmities and as such caused grave miscarriage of justice to the appellant.
- I.** That the impugned order are against law, facts of the case and norms of natural justice. Therefore, the same are not tenable under the law.
- J.** That the respondent No. 1 & 2 passed the impugned orders in mechanical manner and the same are perfunctory as well as non-speaking and also against the basic principle of administration of justice. Thus, the same are not warranted under the law.
- K.** That the appellant would like to seek the permission of this Hon'ble Tribunal to advance some more grounds at the time of arguments.

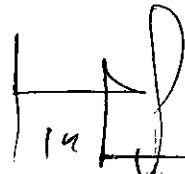
In view of the above narrated facts and grounds, the impugned orders dated 13-08-2018 & 17-09-2018 may very graciously be set aside and the appellant may kindly be re-instated in service with full back wages and benefits.

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



Appellant

Through



RIZWANULLAH

M.A. LL.B

Advocate High Court, Peshawar.

Dated: 24/09/2018

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

Service Appeal No. _____/2018

1. Farrukh Mehmood Ex-Patwari, Halka Laberkot, District Mansehra.

APPELLANT

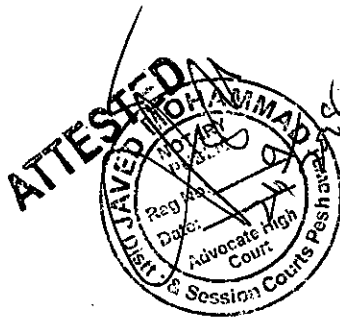
VERSUS

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

RESPONDENTS

AFFIDAVIT

I, Farrukh Mehmood Ex-Patwari, Halka Laberkot, District Mansehra, do hereby solemnly affirm and declare that the contents of the accompanied Service Appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.




DEPONENT

15	14	13	12	11	10	9	8	7	6	5	4	3	2	1
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کتابخانه عمومی

اسم کتاب: ...

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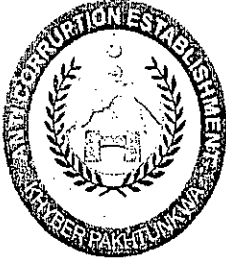
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31/01 3015

2/3/11

Attested

U.N. 1062- ...



Annex-D (17)

(S)

**DIRECTORATE OF
ANTI-CORRUPTION ESTABLISHMENT
KHYBER PAKHTUNKHWA
PESHAWAR**

No. 14440 Dated 25/09/2017.

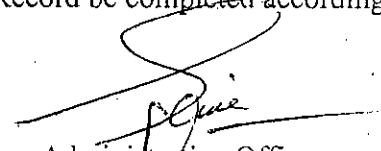
To
The Assistant Director Crimes,
Anti-Corruption Establishment,
Manshra.

Subject:- **COMPLAINT NO. 6542/ACE, DATED 18.4.2017 AGAINST THE
CONCERNED STAFF OF REVENUE DEPARTMENT,
MANSEHRA AND OTHERS.**

Reference your report dated 16.8.2017.


The subject complaint has been filed. Record be completed accordingly.

Encls: As above.


Administrative Officer,
Anti-Corruption Establishment,
Khyber Pakhtunkhwa,
Peshawar.

No. Dated /09/2017.

Copy to S.A., ACE, Peshawar.


Administrative Officer,
Anti-Corruption Establishment,
Khyber Pakhtunkhwa,
Peshawar.

~~Attested~~
Appellant

ضلع طابندہ

فائل راجپوت برائے داخل دفتر

6542/Ace

حوالہ شکایت نمبر 6542/Ace مورخہ 18/04/17 حکم عدلیہ

بذریعہ علی زمان خان ولد ارسل خان مکہ بیرو ملک اندول سیالکوٹ

بنام ایلیکاران حکم عدلیہ و سوسائٹیز وغیرہ۔
ضلع طابندہ! حالات شکایت عنوان بالا ایس میں آمدی باہر نے شری شکایت بدعت
کوڈ 542/Ace کی ہے کہ وہ طابندہ میں پاکستان آیا اور رشتہ داران سے معلوم
ہوا کہ ایک والد ارسل خان کا جائیداد وراثت ایلیکاران طابندہ کی ملکیت ہے
حوالہ استعمال نمبر 9344 مورخہ 18/05/17 بمقام خانیڑ خان ولد ارسل خان لعدلیہ ہوئی اور
لعدلیہ اسکا جائیداد اور ایک ہائیوس وغیرہ وراثت کی اراہی مختلف لوگوں کو لعدلیہ
سے بذریعہ انتقال منتقل کیا گیا۔

شکایت میں درج الزما کی روٹی حکم عدلیہ سے مطلوب ریکارڈز الفارڈ
ماہل کی نہیں اور بیانات ایلیکاران حکم عدلیہ سے پتہ چلا کہ عدلیہ کے پاس
کوڈ ریکارڈز اور بیانات ایلیکاران حکم عدلیہ سے پایا گیا کہ شکایت کنندہ اور اس
کیا عدلیہ وراثت کی جو جائیداد بذریعہ انتقال منتقل کیا گیا تھی وہ انتقال راجپوت
امران نے راجپوتوں کو لعدلیہ کے منت لعدلیہ خانی خارج کر دیے ہیں۔ شکایت کنندہ
اور ایک دیگر وراثت کو کوئی لعدلیہ اب نہیں ہے اُنکا جمل جائیداد اُنکی
کے نام واپس منتقل ہو چکا ہے جو نے خاندان حکم عدلیہ راجپوتوں کے ایلیکاران
سے ہوئی تھی وہ درست ہو چکا ہے

اسد ماہیک شکایت صدا کو لعدلیہ ADR/Ace سے داخل دفتر

فرمایا جائے گا
Co-Ace-MA
16-08-2017

Attested
Appellant

No-233
14/9/17

Reference Attached.

R/Sir,

Circle Officer Anti-Corruption Establishment, Mansehra conducted Preliminary Enquiry on the allegation levelled in the complaint, collected the relevant record of disputed mutations of inheritance of late Ali Zaman Khan Son of Arsla Khan and recorded the statements of concerned Revenue officials. After going through the revenue record and statements, it is found that all the disputed mutation regarding property of late Khani Zaman and his brothers cancelled by revenue officials concerned under revenue ACT and there remains no loss to complainant and his brothers etc. Their property is intact in revenue record after cancellation of disputed mutations by revenue officials. CO submitted final report for filing the instant complaint.

Therefore, it is requested that in the light of above mentioned circumstances, the in hand complaint may kindly be filed after opinion of ADR/ACE, please.

Assistant Director Crimes,
Anti-Corruption Establishment
Mansehra.

16/8/17

صاحب عالی

ADR/ADL - I

علاقہ رپورٹ تاشل انوائری ڈویژن - MAC
سائل کے زیر غور رضیہ کے بارے میں انتقال سے پہلے کی نقلی ہو کر
درستی ہو چکی ہے۔ لہذا کاغذات حال ایسی اصل حالت میں آئی ہیں
لہذا رپورٹ ختم کرنا اور اسے درستی میں لے کر آئے۔ AD داخل دفتر کی
جانے کی سفارش ہو جاتی ہے

16/8/17

ADL - I

Attested

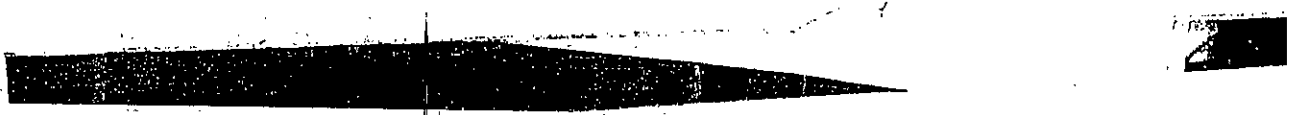
PROCEEDINGS.

1- STATEMENT OF MR. MUHAMMAD TAJ KHAN THE THEN TEHSILDAR/REVENUE OFFICER
MANSEHRA NOW TEHSILDAR ANTI-CORRUPTION KHYBER PAKHTUNKHWA
PESHAWAR.

Statement of Mr. Muhammad Taj Khan the then Tehsildar/Revenue Officer, Mansehra now Tehsildar Anti-Corruption Khyber Pakhtunkhwa Peshawar was recorded on 07-07-2017, wherein he stated that inheritance mutation No: 9344 dated 18-02-2015 of Khanizaman s/o Arsala Caste Swati R/O Sandesar was attested during his posting as Revenue Officer, Mansehra. In this regard, he clarified that:-

- 1- Mutation No. 9344 was entered by the then Patwari Halqa on 12-01-2015, checked by the Kanungo Circle Laberkot and later-on the same was produced before him in Jalsa-e-Aam for attestation. The Patwari Halqa had mentioned that the deceased had belonged to Deh i.e (village Sandesar) Mansehra as no entry regarding settlement of deceased in abroad had been made by the Patwari concerned. Basic record is in the custody of Patwari and Kanungo Circle is responsible for its checking. Revenue Staff i.e. Patwari/Kanungo are well aware about the owners and their settlement/particulars, as Patwari Halqa concerned, who entered the mutation in question had been performing his duty as Patwari Halqa Sandesar since long. The Revenue Officer does not know any vendee, vendor and deceased personally, but the mutations are being attested on the identification of witnesses. Now it has been come to the notice that the deceased viz Khanizaman is residing in abroad. Hence, it was the responsibility of concerned Patwari to thoroughly investigate about the deceased and his legal heirs before entrance of above mutation.
- 2- The Revenue Officer has also mentioned that he attested the above inheritance mutation after completion of all codal formalities according to Revenue Act 1964 under section 42 (page 83 and 85) in Jalsa-e-Aam in the presence of heirs of deceased through Mr. Asim Jadoon s/o Ghulam Mustafa Jaddon R/O Reerh (relative of deceased) on the identification of M/S Shabir Khan Councilor and Muhammad Farooq Khan s/o Fazal Khan.
- 3- After the attestation of above mutation Rayasat etc sons of Ghulam Rabbani have instituted a suit against above mutation in the Court of learned Civil Judge-IX Mansehra, wherein besides above mutation, inheritance mutation No. 4044 for the year 1979 of Arsala Khan was also declared as wrong. According to suit Mr. Arsala Khan s/o Ahmad Jee was unmarried. Case in this regard is under trial in Civil Court Mansehra.
- 4- Inheritance mutation No. 9344 of Arsala s/o Ahmad Jee was attested in the name of Khanizaman on 06-01-1979 and after that Mr. Khanizaman was owner in revenue record.

~~Attested~~
Appellant



STATEMENT OF WAHEED AKHTAR KANUNGO SETTLEMENT CIRCLE LABERKOT.

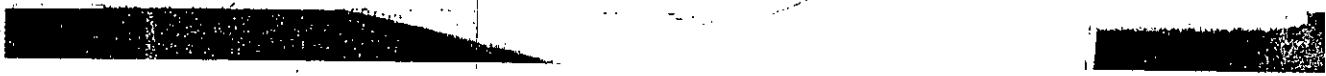
Statement of Waheed Akhtar Kanungo Settlement Circle Laberkot was recorded on 07-07-2017, wherein he stated that he visited Patwarkhana Sandesar as per tour programme on 21-01-2015. Patwari Halqa had two Mouzajat i.e. Chitta Batta and Sandesar. He further stated that he examined/compared relevant record i.e. Mutations with Register Haqdaran-i-Zamin and then put his signature including inheritance Mutation No. 9344. He also mentioned that Sale, gifted and exchange mutations are compared with revenue record. Patwari prepares shares of inheritance mutation including pedigree on mutation which checked by Girdawar. The Patwari Haqa verifies the legal heirs at the time of entrance of mutation and Revenue Officer also check/verify the legal heirs at the time of attestation of mutation in Jalsa-e-Aam. He said that vendees, vendors and legal heirs of deceased were not present at the time of checking/comparison of record. Statement of Mr. Waheed Akhtar Kanungo Settlement Circle Laberkot is enclosed as Annexure "E".

5- STATEMENT OF MR. FARUKH MEHMOOD FORMER PATWARI HALQA SANDESAR NOW PATWARI HALQA LABERKOT MANSEHRA.

Statement of Mr. Farukh Mehmood, the then Patwari Halqa Sandesar now Patwari Halqa Laberkot was recorded, wherein he stated that inheritance Mutation of Khanizaman s/o Arsala Caste Swati R/O Sandesar was registered/attested during is posting as Patwari Halqa Sandesar Mansehra. In this regard he clarified that:-

- 1- He had entered mutation in question as Patwari Halqa Sandesar after completion of all codal formalities as per Land Revenue Act 1967 vide section 42. He further stated that one Mr. Fayyaz s/o Mehmood Ali Khan, Naib Nazim VC Sandesar came in Patwarkhana. Hence, he entered legal heirs of Khanizaman as per law vide report No. 289. As far as inheritance of Khanizaman is concerned, the said individual had already been entered in 1979 in Register Haqdaran-e-Zamin as "Khanizaman s/o Arsala resident of Sandesar" and still continued. He was not aware about settlement of said deceased in abroad. There is no bar of in country and out country for inheritance.
- 2- He further stated that mutation NO. 9344 dated 18-02-2015 has been produced by him before Mr. Taj Muhammad, the then Tehsildar/Revenue Officer for attestation in Jalsa-e-Aam. The Revenue Officer concerned himself is responsible to check/verify the legal heirs.
- 3- After the attestation of above mutation Mr. Rayasat etc; sons of Ghulam Rabbani have challenged the mutation in the Court of learned Civil Judge IX Mansehra. Besides said mutation, inheritance mutation No. 4044 of Arsala attested in 1979 was also declared wrong in the said suit with the justification that Arsala s/o Ahmad Jee was unmarried. Case in this regard is under trial in Civil Court Mansehra.
- 4- After attestation inheritance mutation No. 4044 dated 06-01-1979 of Arsala s/o Ahmad Jee, Khanizaman had become owner in revenue record and still continued.

Attested
Appellate



5- He also stated that mutation No. 9344 has been reviewed and previous position has been restored in revenue record with the approval of competent authority. Dispute between the parties is inheritance of Mr. Arsala s/o Ahmad Jee. According to Revenue Record of Sandesar, inheritance of Arsala s/o Ahmad Jee was attested in 1979 and case in this regard is under trail in Civil Court.

6- He further stated that previous position of revenue record has been restored through revival/rejection of above mutations and case regarding inheritance of Arsala Khan which was attested in 1979 is under trail in Civil Court. He also mentioned that he performed his duty as per law. Hence, the above case may be filed. Statement of Mr. Farrukh Mehmood, former Patwari Halqa Sandesar now Patwari Halqa Laberkot is enclosed as Annexure "F".

6- STATEMENT OF MUHAMMAD FAROOQ S/O MUGHAL KHAN R/O SANDESAR (WITNESS)

Statement of Mr. Muhammad Farooq s/o Mughal Khan R/O Sandesar (Witness) was recorded wherein he stated on oath that at the time of inheritance mutation No. 9344 of Khanizaman s/o Arsala in the name of Mst: Rashida etc, the Tehsilar concerned had recorded evidence of Mr. Asim Jadoon on the above inheritance mutation. As per routine there was need of two witnesses. He further stated that Asim Jadoon came to him and stated that deceased is his relative and legal heirs are correct/genuine. Mr. Asim Jadoon also assured him that that he personally knows the deceased and his legal heirs. Hence, he gave evidence on the request of Mr. Asim Jadoon. The inheritance mutation No. 9344 has now been rejected after completion of codal formalities. Statement of Muhammad Farooq is enclosed as Annexure "G"

7- STATEMENT OF MUHAMMAD SHABIR KHAN S/O MUHAMMAD SADIQ GENERAL COUNCILOR R/O SANDESAR MANSEHRA.

Statement of Mr. Muhammad Shabir Khan s/o Muhammad Sadiq General Councilor R/O Sandesar (Witness) was recorded wherein he stated on oath that at the time of inheritance mutation No. 9344 of Khanizaman s/o Arsala in the name of Mst: Rashida etc, the Tehsilar concerned had recorded an evidence of Mr. Asim Jadoon on the above inheritance mutation. As per routine there was need of two witnesses. He further stated that Asim Jadoon came to him and stated that deceased is his relative, legal heirs are correct/genuine and he (Asim Jadoon) personally knows the deceased and his legal heirs. Hence, he gave evidence on the request of Mr. Asim Jadoon. The inheritance mutation No. 9344 has now been rejected after completion of codal formalities. He also mentioned that neither he knows deceased personally nor his legal heirs. Statement of Muhammad Farooq is enclosed as Annexure "H"

8- STATEMENT OF TANVEER SHAHZAD, TEHSILDAR SETTLEMENT OPERATION-I MANSEHRA.

Statement of Mr. Tanveer Shahzad, Tehsildar Settlement Operaiton-I Mansehra has also recorded wherein he stated that mutation No. 9344 was attested on 18-02-2015 by the then Tehsildar Mansehra. On 10-04-2017 vide report of concerned Patwari Halqa it came into notice that aforesaid mutations was fake one and incorrect which needs revision as per section 163 of Land Revenue Act. On the approval of Deputy Commissioner/Collector notices were served and after observing all the coal formalities aforesaid mutation No. 9344 was set aside and real owners got back their rights. It is worth mentioning here Mutation No. 4040 dated 16-01-1979 was also challenged in the Civil Court which has yet to be decided. Statement of Mr. Tanveer Shah, Tehsildar Settlement Operation-I Mansehra is enclosed as Annexure "I"

Attested
Appellant

- 5- Mutation No. 9344 and other related mutations have been rejected on 20-04-2017 after review/approval of the competent authority and the landed property of Khanizaman has been restored in its original position.
- 6- He also stated that mutation No. 9344 has been reviewed and previous position has been restored in revenue record. Dispute between the parties is inheritance of Mr. Arsala s/o Ahmad Jee. According to Revenue Record of Sandesar, inheritance of Arsala s/o Ahmad Jee was attested in 1979 and case in this regard is under trail in Civil Court.
- 7- He requested that since previous position of revenue record has been restored by revival/rejection of above mutations and case regarding inheritance of Arsala Khan which was attested in 1979 is under trail in Civil Court, therefore, he may be exonerated from the charges in light of Land Revenue Act 1967, Section 181. He further prayed that the case may be filed. Statement of Mr. Muhammad Taj Khan, the then Tehsildar Mansehra now Tehsildar Anti-Corruption Khyber Pakhtunkhwa Peshawar is enclosed as Annexure "B".

2- STATEMENT OF MR. QAISAR AHMAD PATWARI HALQA SANDESAR MANSEHRA.

Statement of Mr. Qaisar Ahmad Patwari Halqa Sandesar Mansehra was recorded on 07-07-2017, wherein he stated that report regarding review of Mutation NO. 9344 dated 18-02-2015, 9450, 9478, 9479, 9506, 9507, 9508, 9544, 9571, 9610 for review has since been submitted for review on 10-04-2017 on the persistent insistence of locals of the area. Statement of Mr. Qaisar Ahmad Patwari Halqa Sandesar is enclosed as Annexure "C".

3- STATEMENT OF MR. ASIM JADOON S/O GHULAM MUSTAFA R/O REERH TEHSIL AND DISTRICT MANSEHRA.

Statement of Mr. Asim Jadoon s/o Ghulam Mustafa R/O Reerh Tehsil and District Mansehra was recorded on 07-07-2017, wherein he stated on oath that he along with M/S Zaid and Abdur Rashid (presently residing in Karachi) went to Patwarkhana Sandesar and met with Mr. Farrukh Mehmood Patwari Halqa and Mr. Abdur Rashid gave his CNIC and Police Service Card to Patwari concerned for entrance of inheritance mutation of Khanizaman s/o Arsala. The Patwari Halqa had entered the inheritance mutation on the request of Abdur Rashid and then Patwari Halqa brought him (Mr. Abdur Rashid) before Tehsildar Mansehra. In the meanwhile Mr. Abdur Rashid received a telephonic call and started weeping saying that backbone of his son has been fractured due to an accident. The Tehsildar (Revenue) himself heard Mr. Abdur Rashid and asked him to go back and send his representative at the time of attestation of mutation. He stated that he went on the spot at the time of attestation of mutation as per request of Abdur Rashid and Tehsildar had taken his signature though he was unaware of the names of legal heirs of Khanizaman s/o Arsala. The names were already got entered by Mr. Abdur Rashid himself. He went to Patwarkhana on the request of Zaid and put his signature on the mutation which Abdur Rashid has got entered and the names of legal heirs were entered before him. Mr. Abdur Rashid is responsible for above lapses. Statement of Mr. Asim Jadoon s/o Ghulam Mustafa R/O Reerh Tehsil and District Mansehra is enclosed as Annexure "D".

Attested
Appellant

The undersigned has thoroughly perused the entire record placed on file including statements of above individuals and observed that:-

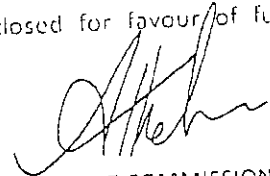
- 1- Mr. Farrukh Mehmood, the then Patwari Halqa Sandesar (now Patwari Halqa Laberkot) was required to interrogate about the deceased and his legal heirs through locals /prominent of the area before entrance of inheritance Mutation No. 9344, but he did not do so, as a result of which, the above inheritance mutation was wrongly processed.
- 2- Mr. Waheed Akhtar, the then Kanungo Circle Laberkot was required to properly check the legal heirs and deceased, but he has also not bothered to interrogate the same at time of checking of mutations.
- 3- Mr. Muhammad Taj Khan, the then Tehsildar Mansehra was required to interrogate about deceased and his legal heirs at the time of attestation of inheritance mutation in Jalsa-e-Aam but he had also blindly attested the above important inheritance mutation.
- 4- M/S Farrukh Mehmood Patwari, Waheed Akhtar Kanungo and Muhammad Taj Khan Tehsildar are responsible for the above lapses, as it was their foremost duty to check/verify the deceased and his legal heirs before entrance and attestation of mutation but they have blindly completed the process, which is a serious slackness and negligence on their part in handling of above important inheritance mutation.
- 5- Mr. Asim Jadoon s/o Ghulam Mustafa R/O Ruerh, Muhammad Farooq s/o Mughal Khan and Muhammad Shabir Khan s/o Muhammad Sadiq General Councilor have also given false evidence before the Revenue Officer regarding attestation of above mutation which is also clear cut violation of rules and is foul play with officers. Therefore they are also responsible for above lapses.

RECOMMENDATIONS

In view of above, it is stated that since the above inheritance mutation has been rejected after review and original position of land has been restored, hence it is recommended that:-

- 1- Strict disciplinary action may be taken against M/S Farrukh Mehmood Patwari, Waheed Akhtar Kanungo, Muhammad Taj Khan, the then Tehsildar Mansehra and major penalties may be imposed on them on account of above lapses.
- 2- Since giving false evidence in front of a public servant is a criminal offence liable to punishment, M/S Asim Jadoon s/o Ghulam Mustafa, Muhammad Farooq s/o Mughal Khan and Muhammad Shabir Khan s/o Muhammad Sadiq, General Councilor should be dealt accordingly and criminal proceedings may be initiated against them under relevant provision of law.

Inquiry report containing 39 pages is enclosed for favour of further necessary action please.


ASSISTANT COMMISSIONER,
MANSEHRA.
(INQUIRY OFFICER)

Attested
Appellant




Office of the Additional Deputy Commissioner, Haripur
Phone No: 0995-613691 613823 Fax No: 0995-613691
No. 1687/GH/2018 Date: 11/06/2018

- 1. Mr. Mohammad Taj, the then Tehsil District Manager,
- Mr. Waheed Akhtar, Khattak DIN-160733, In
- Mr. Farukh Mohammad, Parwar Talqa Sub-division District Manager.

Subject: DISCIPLINARY ACTION AGAINST OFFICER / OFFICIAL


Vide, Govt. of Khyber Pakhtunkhwa, Board of Revenue, Revenue & Estate Department, Peshawar, letter No. Estt/1/1/1/Muhammad Taj/24686, dated: 08.06.2018, the undersigned nominated as Enquiry Officer by the Competent Authority under the provisions contained in the Government Servants (Efficiency & Discipline) Rules, 2011 to conduct inquiry against you as per charge sheet / statement of allegation which are enclosed herewith.


You are directed to attend the office of undersigned on 12.06.2018 at 12.00 pm along with your written defence to inquiry proceedings.


Addl: Deputy Commissioner, Haripur.

Copy to the:

- 1. Deputy Commissioner, Manselra with the request to deputee representative for inquiry proceedings on the date, time and venue mentioned above along with original record as desired by the Competent Authority.
- 2. Assistant Secretary (Estt) Govt. of Khyber Pakhtunkhwa, Board of Revenue, Revenue & Estate Department, Peshawar with to his letter cited above.


Addl: Deputy Commissioner, Haripur.

Attested

Appellant

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

CHARGE SHEET

I, Zafar Iqbal Senior Member, Board of Revenue Khyber Pakhtunkhwa Government Authority, hereby charge you Mr. Farrukh Mehmood, Patwari, Sandesar Mansehra as follows:

That you while posted as Patwari halqa Sandesar Mansehra committed the following irregularities:

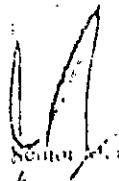
1. That you entered inheritance mutation of 9344 in Revenue Sandesar Mansehra without attestation about the deceased's legal heirs. The said mutation was wrongly entered and attested as the original owners of the land are residing in Iran.
2. Your this act tantamount to misconduct and liable you to be proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011.

By reasons of the above, you appear to be guilty of misconduct under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

You are, therefore, required to submit your written defence within 15 days of receipt of this charge sheet to the Inquiry Officer.

Your written defence, if any, should reach the Inquiry Officer within the stipulated period, failing which it shall be presumed that you have no defence. In that case ex-parte action shall be taken against you.

Intimate us to whether you desire to be heard in person or otherwise. Statement of allegations is enclosed.


Senior Member

*Attested
Appellant*

To
The Additional Deputy Commissioner,
Haripur/Inquiry Officer

Subject: **CHARGE SHEET**

Sir,

Kindly refer to charge sheet/statement of allegations received vide your goodself letter No: 1(8)511-16/ADC(H), dated 11.06.2018.

With regard to inheritance mutation No. 9344, It is submitted that procedure as laid down under section 42 of the Land revenue Act 1967 was adopted while processing the mutation.

Necessary entry in "**Roznamcha-e-Waqiati**" was made at the instance of one Mr. Fiaz Khan (Naib Nazim V/C Sand-e-Sar) S/O Mehboob Ali R/O Chitta Batta copy attached. The report was displayed for information of general public, whereafter an inheritance mutation was entered into the register of mutation & presented to the Revenue officer in "**Jalssai-Aam**" at Sand-e-Sar. It was the Revenue officer to make an inquiry under rule section 6-7 of section 42 of the Land Revenue Act 1967 in the "**Jalssai-Aam**". Needful was done by the Revenue Officer & the mutation was attested by him at the attestation of two indentifiers namely:-

1. Shabir Ahmed General Councilor V/C Sand-e-Sar R/O Sand-e-Sar.
2. Haji Farooq R/O Sand-e-Sar.

Attested


Appellant


Mutation was processed in the prescribed manner & codal formation were completed.

However, lateron, on 10.04.2017, The Patwari Halqa submitted a report stating that there were some anomolies in inherittance mutation No. 9344 dated 18.02.215 & processed the case for reviouir of the mutation, which was approved by the DC/Collector on 18.04.2017 & the Revenue Officer cancelled interalia the mutation under section 163 of the Land Revenue Act 1967 at Sand-e-Sar necessary entries to this effect have been made in the record & original position of land was restored.

It is submitted that there was no malafiole intention in the whole process, original position of land has been restored/maintained, therefore it is requested that I may very kindly be exonerated of the charges & obligue.

Your Obediently,


(Furrakh Mehmood)
Patwari. 13/6/18


13/06/18

~~Attested~~
Appellant



1

INQUIRY PROCEEDINGS AGAINST M/S MUHAMMAD TAJ, THE THEN TEHSILDAR MANSEHRA, WAHEED AKHTER KANUNGO, DISTRICT MANSEHRA AND FARRUKH MEHMOOD PATWARI HALQA SANDESAR, DISTRICT MANSEHRA HELD ON 27.06.2018 IN THE OFFICE OF ADDITIONAL DEPUTY COMMISSIONER, HARIPUR.

Background:

The Senior Member, Board of Revenue, Revenue & Estate Department, Peshawar was pleased to appoint the undersigned as Inquiry Officer, which was conveyed vide letter No. Estt://PF/Muhammad Taj/24686 dated 08.06.2018 with the mandate to enquire into the allegations leveled against the following officials as mentioned in the Charge Sheets and Statements of Allegations:-

1. Mr. Muhammad Taj, the then Tehsildar Mansehra.
2. Mr. Waheed Akhter, Kanungo Girdawar District Mansehra.
3. Mr. Farrukh Mehmood, Patwari Halqa Sandesar, District Mansehra.

The Competent Authority was further pleased to order submission of the findings / recommendations / report of the inquiry within a period of 20 days positively.

Proceedings:

All the above mentioned officials were directed to appear before the Inquiry Officer on 27.06.2018 for inquiry proceedings vide this office letter No. 1(8)/511-16/ADC(H) dated 11.06.2018. Similarly the Deputy Commissioner, Mansehra was requested to depute a departmental representative with record to assist during inquiry proceedings (Annexure-A). Accordingly, all the accused officials attended the office of the undersigned on the date fixed and submitted their respective written statements (copies of which are attached as Annexure-B, C & D). They were directed to attend the office of the undersigned on 27.06.2018 vide this office letter No. 1(8)/517-21/ADC(H) dated 13.06.2018 for cross examination and further proceedings (Annexure-E). Mr. Muhammad Zia, Assistant District Kanungo, DC Office Mansehra participated the inquiry proceedings and produced the relevant / required record.

1. Mr. Muhammad Taj, the then Tehsildar Mansehra stated on oath that he remained posted as Tehsildar Mansehra from 15.07.2013 to 19.03.2015 and he attested mutation No. 9344, which was entered by Patwari Halqa on 18.02.2015 during Jalsa-e-Aam. Replying to a question, he stated that it was correct that he attested the said mutation being Revenue Officer, which was examined by Girdawar Circle concerned. His report was existing on the said mutation. Mr. Asim Jadoon s/o Ghulam Mustafa Jadoon identified himself as relative of the deceased Khani Zaman. Furthermore, on the witnesses of locals namely Shabbir Khan Councilor and Muhammad Farooq s/o Afzal Khan, the mutation was attested. Attestation of mutation is of summary nature, recording of details and checking is the responsibility of Patwari Halqa and Girdawar Circle. Replying to a question as to whether he satisfied himself that the witnesses of the mutation had complete information about the legal heirs of deceased, he replied that mutation No. 9344 was attested after completion of all codal formalities correctly and on the identification of witnesses. Replying to a question as to how he came to know that the mutation was suspect, he replied that after his transfer from Mansehra, Patwari Halqa reported the matter and in pursuance of which Deputy Commissioner / Collector, Mansehra ordered for cancellation of the inheritance mutation. Furthermore, a civil suit is pending in Civil Court pertaining to the said mutation. Anti Corruption also inquired into it and filed the complaint against him. The Deputy Commissioner / Collector, District Mansehra has also held the Revenue Officer exonerated of this charge (copies of cross examination are attached as Annexure-F).

28/07/18
Attested
Appellant

2. Mr. Waheed Akhter, Kanungo, District Manshura stated on oath that he remained posted as Girdawar Circle Labarkot from 2014 to 25.10.2017 and he examined inheritance mutation No. 9344 which was entered by Patwari Halqa on 21.01.2015 as deceased Khani Zaman s/o Arsala was land owner. He was asked as to whether during examination of the mutation he inquired about Mr. Fiaz Khan s/o Mehboob Ali r/o Chitta Batta (Naib Nazim VC Sandesar) as who was him and in which capacity asked the Patwari Halqa to prepare inheritance mutation? He replied as since the deceased was the land owner and verification of Shajra was the responsibility of Patwari Halqa during preparation of mutation and entering it in Roznamcha Waqiyati. The Revenue Officer has to verify a mutation in the presence of witnesses. He further stated that responsibility of the Girdawar Circle was to compare the entries of the mutation with register Haqdarain-e-Zameen for examination. Buyers and Sellers appear before the Revenue Officer during the Jalsa-e-Aam and not before the Girdawar during the examination process. He also stated that he performed his duty satisfactorily during the examination of the mutation entered by the Patwari on 21.01.2015 (copies of cross examination are attached as Annexure-G).

3. Mr. Farrukh Mehmood, Patwari Halqa Sandesar, District Manshura stated on oath that he remained posted as Patwari Halqa Sandesar from 19.10.2012 to 31.08.2016 and entered / prepared inheritance mutation No. 9344 in the name of legal heirs of deceased Khani Zaman s/o Arsala caste Swati on the oral request of Fiaz Khan s/o Mehboob Ali r/o Chitta Batta (Naib Nazim VC Sandesar) under rapat No. 289 dated 21.01.2015 and signature of Mr. Fiaz Khan are existing the same. He was asked as to whether he inquired from Mr. Fiaz Khan as in which capacity he was asking to enter the said mutation? He replied that yes he asked him who replied that he shall be responsible for any legal complications, therefore, I entered the mutation. He was asked that in his written statement dated 13.06.2018 he stated that the mutation under reference was entered on the oral request of Mr. Fiaz Khan whereas Mr. Asim Jadoon s/o Ghulam Mustafa r/o Village Rerh Tehsil & District Manshura, the said mutation was entered on the request of Mr. Zahid and Abdur Rashid presently residents of Karachi, what do you want to say in this regard? He replied that the said mutation was entered through Mr. Fiaz Khan and there is no mention of Mr. Zahid and Abdur Rashid etc in his written statement dated 13.06.2018. He was further asked as to whether it was not his responsibility to verify the credentials of all concerned and whether they have complete knowledge about the legal heirs of deceased and whether it was not his responsibility to inquire about the legal heirs of the deceased. What do you want to say in this regard? He replied that it was correct that it was his responsibility to enquire about the rights of the legal heirs of the deceased and satisfy himself before entering a mutation but since the whole responsibility was taken by said Fiaz Khan who signed rapat No. 289. of mutation No. 9344 (copies of cross examination are attached as Annexure-H).

[Handwritten signature]
 28/06/18

Findings and Recommendations:

From the perusal of record produced before the undersigned, written statements and cross examination etc, it transpires that all the officials who remained posted as Tehsildar, Girdawar Circle and Patwari Halqa were bound to perform their duties in accordance with relevant rules / regulations as they were found totally naïve and casual to their prime responsibility / job description. All the accused officials were required to investigate about the deceased and his legal heirs through prominent locals of the area before entering / processing of inheritance mutation No. 9344 but they did not do so, resultantly the said inheritance mutation was wrongly attested by the Revenue Officer. It was the foremost responsibility /

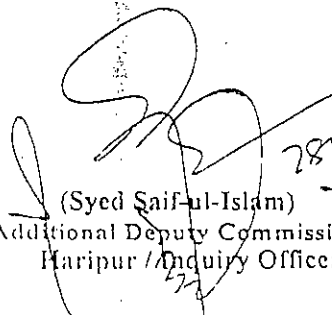
Attested
[Signature]
 Appellant

duty of the accused officials to check and verify about the deceased and his legal heirs but they blindly completed the process without bothering of going into the details. This is, therefore, serious slackness and criminal negligence on the part of all three accused officials.

Surprisingly, all the accused officials are taking refuge behind the identifiers / witnesses of the inheritance mutation No. 9344 namely Mr. Asim Jadoon s/o Ghulam Mustafa Jadoon, Shabbir Khan Ex. Lambardar and Muhammad Farooq Khan s/o Fazal Khan whereas all of them vide their statements given during an inquiry held on the same subject by Assistant Commissioner, Manshehra had denied any relation with the deceased and knowledge about his legal heirs (copies of their written statements given to AC Manshehra provided by departmental representative are attached as Annexure-I, J & K).

In view of the above, it is recommended that one of the major penalties as mentioned in Rule-4(b) of Government Servants (Efficiency and Discipline) Rules-2011 may be imposed upon the accused officials for serious violation of revenue laws and criminal negligence in processing a very important matter of attestation of inheritance mutation.

Submitted please.


(Syed Saif-ul-Islam)
Additional Deputy Commissioner
Haripur / Inquiry Officer
28/06/18

Attested

Appellant

Peshawar dated 26/07/2018

SHOW CAUSE NOTICE

I, Dr. Fakhri Alam, Senior Member, Board of Revenue, as Competent Authority, under the Khyber Pakhtunkhwa, Government Servant (Efficiency & Discipline) Rules, 2011 do hereby serve you Mr. Farrukh Mehmood Patwari Halqa Sandesar Mansehra as follow

1. That you entered inheritance mutation o. 9344 in Revenue Estate Sandesar Mansehra without attestation about the deceased and his legal heirs. The said mutation was wrongly entered and attested as the original owners of the land are residing in Indonesia.
2. These act on your part tantamount to misconduct and make action under the Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011.

2. As a result thereof, I as Competent Authority have tentatively decided to impose upon you the penalty under Rule -- 4 of the Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011.

3. You are therefore required to Show Cause as to why the aforesaid penalty should not be imposed upon you. Furthermore, you are directed to appear on 13.07.18 at 10.00 AM before the undersigned for personal hearing.

5. If no reply to this notice is received within seven days of its delivery, it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.


Senior Member

No. Estt: I/PF/Muhammad Taj
Peshawar dated 26/07/2018.

26979


Attested
Appellant

Amer-J (33)

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT
Peshawar dated the 13/08/2018

NOTIFICATION.

No.Estt:I/PF/Muhammad Taj/ 30039 WHEREAS; Mr. Farrukh Mehmood Patwari Halqa Sandesar District Mansehra, was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules 2011 for the charges mentioned in the Charge Sheet.

2. AND WHEREAS; Syed Saif-ul-Islam Additional Deputy Commissioner Haripur was appointed as Inquiry Officer to probe into the charges leveled against the said official and submit finding/ recommendations.

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

4. AND WHEREAS, the Competent Authority, is of the view that the accused official is inefficient and has committed misconduct / slackness and criminal negligence by entering inheritance mutation by relying on a fake statement of an irrelevant person; the accused did not bother to contact legal heirs of the land owner and simply rely on the verbal statement of an informer without seeking any documentary evidence like death certificate for registration of inheritance mutation and subsequently he was found criminally negligent and incompetent to further register sale mutations against the property of the alive owner living abroad without his knowledge will and consent.

5. NOW THEREFORE, I as Competent Authority in exercise of powers conferred by Rule 4 (b) (iii) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 impose major penalty of "removal from service" upon Mr. Farrukh Mehmood Patwari Halqa Sandesar District Mansehra, with immediate effect.


By order of
Senior Member.

No.Estt:I/PF /Muhammad Taj/ 30039-38

Copy forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa.
2. Commissioner, Hazara Division Abbottabad.
3. Deputy Commissioner, Mansehra.
4. District Accounts Officer, Mansehra.
5. Official concerned.
6. Office order file.

Attested
Appellant


Assistant Secretary (Estt.)
9/10/18

To

The Chief Secretary Khyber Pakhtunkhwa,
Khyber Pakhtunkhwa, Peshawar.

Subject: **DEPARTMENTAL APPEAL AGAINST THE IMPUGNED
ORDER DATED 13.08.2018**

Respected Sir,

With most respect it is stated that the appellant is the employee of the Revenue Department and had served the Department as Patwari quite efficiently and up to the entire satisfaction of his superiors. That while posted as Patwari, Halqa Sandesar District Mansehra, the appellant received charge sheet along with statement of allegation issued vide dated 19.6.2018 wherein it was alleged that the appellant while posted as Patwari Halqa Sandesar, District Mansehra, **"entered inheritance Mutation No.9344 in Revenue Estate Sandesar Mansehra without attestation about the deceased and his legal heirs. The said mutation was wrongly entered and attested as the original owners of the land are residing in Indonesia"**.

That in response to the said charge sheet and statement of allegations the appellant submitted his detailed reply and denied the allegation. That in the said reply the appellant had clearly stated that the necessary entry in "Roznamcha-e-Waqiati" was made at the instance of one Mr. Fiaz Khan (Naib Nazim V/C Sand-e-Sar) S/O Mehmoob Ali R/O Chitta Batta. The report was displayed for information of general public, where after an inheritance mutation was entered into the register of mutation & presented to the Revenue Officer in "Jalsai-Aam" at Sandesar. Needful was done by the Revenue Officer & the mutation was attested by him at the attestation of two identifiers namely:-

1. Shabir Ahmed General Councilor C/C Sand-e-Sar R/O Sand-e-Sar.
2. Haji Farooq R/O Sand-e-Sar.

Mutation was processed in the prescribed manner & codal formations were completed. However, later on 10.04.2017 the Patwari Halqa submitted a report stating that there were some anomalies in inheritance mutation No.9344 dated 18.04.2015 & processed the case for revivour of the mutation, which was approved by the DC/Collector on 18.04.2017 & the Revenue Officer cancelled inter alia the mutation under section 163 of the Land Revenue Act 1967 at Sand-e-Sar necessary entries to this effect have been made in the record & original position of land was restored. The Deputy

Attested

Appellant

Commissioner conducted preliminary inquiry into the matter and declared witnesses responsible while the appellant and officials of the concerned circle were exonerated.

That astonishingly the concerned authority without adopting the legal procedure as mentioned in the Khyber Pakhtunkhwa Government Servants E&D Rules 2011 issued the impugned Notification dated 13.8.2018 whereby major punishment of removal from service was imposed on the appellant.

That as the revenue officer don't know the owners and legal heirs personally but attest/verify mutation through witnesses similarly, the appellant processed mutation No.9344 bonafide in the presence of above mentioned witnesses and no malafide has been proved on the part of the appellant, therefore the impugned Notification is not tenable and liable to be set aside.

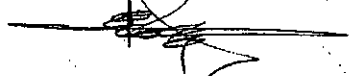
That show cause notice nor chance of personal hearing was provided to the appellant while issuing the impugned Notification dated 13.8.2018. Moreover no opportunity was provided to the appellant to cross examine the witnesses nor regular Departmental inquiry have been conducted by the concerned authority which as per Supreme Court Judgments is necessary in punitive action against Civil Servants.

It is therefore, most humbly requested that on acceptance of this Departmental appeal the impugned Notification dated 13.02.2018 may please be set aside and the appellant may kindly be re-instated in to service with all back benefits.

Dated: 17.08.2018


Attested
Appellant

Sincerely Your's


FARRUKH MEHMOOD
Ex-Patwari Halqa Laberkot,
District Mansehra.



Annex-L (36)
GOVERNMENT OF KHYBER PAKHTUNKHWA,

BOARD OF REVENUE,

REVENUE & ESTATE DEPARTMENT

Facebook ID: www.facebook.com/bor.kpk.92

Twitter ID: @RevenueBoardkp

Fax No: 091.9213989

No.Esst:I/PF/Muhammad Taj/32528
Peshawar dated the 17/09/2018

To

Mr. Farrukh Mehmood,
Ex-Patwari Halqa Laberkot,
District Manshra.

SUBJECT: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED
13.08.2018.

Your Departmental appeal dated 17.08.2018 has been examined and rejected by
appellate authority.

~~Attested~~
Appellant

~~Assistant Secretary (Estt)~~

Annex - M

37

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT
Peshawar dated the 12/08/2018

NOTIFICATION

No Estt I/PF Muhammad Taj/ _____ WHEREAS; Mr Waheed Akhtar Kanungo Laberkot District Manshara, was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules 2011 for the charges mentioned in the Charge Sheet.

2 AND WHEREAS; Syed Saif-ul-Islam Additional Deputy Commissioner Haripur was appointed as Inquiry Officer to probe into the charges leveled against the said official and submit finding recommendations.

3 AND WHEREAS, The Inquiry Officer after having examine the charges, evidence produced before him and statement of accused official, submitted his reply whereby the charges against the accused official stand proved.

4 AND WHEREAS, The Competent Authority, is of the view that the accused official is inefficient and has committed misconduct / slackness and criminal negligence in verifying and in supervising action for inheritance mutation. Under para 2.45 of the Land Record Manual, Kanungo is fully responsible to check the work of Patwari, but he blindly compared the wrong entry of Patwari, due to which the inheritance mutation of alive person, living abroad, attested by Tehsildar unlawfully, illegally and against the will and consent of the real land owner.

5 NOW THEREFORE, I as Competent Authority in exercise of powers conferred by Rule 4 (b) (ii) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 impose major penalty of "compulsory retirement" upon Mr. Waheed Akhtar Kanungo Laberkot District Manshara with immediate effect.

By order of
Senior Member

No. Estt I/PF / Muhammad Taj/ 30096-31


Attested
Appellant

Copy forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa.
2. Commissioner, Hazara Division Abbottabad.
3. Deputy Commissioner, Manshara.
4. District Accounts Officer, Manshara.
5. Official concerned.
6. Office order file.


Assistant Secretary

Before the Honble بعدالت
Chairman, KPK Service Tribunal

Service Appeal

2 مخاب
بنام

Farrukh Mahmood
Vs
Chief Secretary KPK
and others.

مورد
مقدمہ
دعوی
جرم

باعث تحریر آنکہ

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

آن مقام کیلئے Peshawar Adv. Razaullah

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

Farrukh Mahmood
Advocate

Handwritten signature and date: 2018

19

المرقوم

العبد العبد

کے لئے منظور ہے۔ Peshawar

مقام

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1179/2018.

Farrukh Mehmood Ex-Patwari District Mansehra.

VERSUS

Senior Member Board of Revenue and others.

PRELIMINARY OBJECTIONS.

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

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

1. No comments. Pertains to record.
2. Correct to the extent that on receipt of report from Deputy Commissioner Mansehra to the effect that the appellant has entered inheritance mutation of an alive person who was residing in Indonesia and thereafter also attested subsequent mutation. Charge sheet was served upon the appellant and an enquiry was conducted through Syed Saif Ul Islam, Additional Deputy Commissioner, Haripur. (Copy of charge sheet alongwith statement of allegations and inquiry is at (Annexure-A, B & C).
3. Incorrect. Not satisfied with the reply of the appellant, the Inquiry Officer recommended major penalty to be imposed upon the appellant.
4. Incorrect. On the basis of report of Inquiry Officer, major penalty of removal from service upon the appellant.
5. Incorrect. The appellant has committed gross irregularity by attesting inherence of an alive person, therefore major penalty of removal from service was imposed upon the appellant.
6. Correct to the extent that a preliminary inquiry was conducted and later on proper proceedings initiated by issuing charge sheet and regular inquiry was conducted. Departmental proceedings and criminal proceeding may go side by side as per law.
7. As per para 6.
8. Para 8 of reply has already been given above.
9. Pertains to report, however reply of the appellant may not found satisfactory.
10. Incorrect. Proper inquiry was conducted and the appellant was provided all opportunities to defend himself.
11. Correct.
12. Correct to the extent of Departmental Appeal.

13. No comments.
14. Reply on the grounds are as under.

GROUND.

- A. Incorrect. Notification dated 13.08.2018 was issued strictly in accordance with law after fulfillment proper procedure under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011.
- B. Incorrect. The appellant has been treated in accordance with law/rules. Proper inquiry was conducted in accordance with law.
- C. Incorrect. Both the orders / Notification have been issued with the approval of Competent Authority. In accordance with law and rules.
- D. Incorrect. The impugned orders are in accordance with law.
- E. Incorrect. Regular enquiry has been conducted against the accused appellant in accordance with law and rules.
- F. Incorrect. The appellant has been proved guilty in the inquiry proceedings.
- G. Incorrect. That Inquiry Officer has held the appellant guilty of negligence / inefficiencies.
- H. Incorrect. In the regular enquiry under (Efficiency & Discipline), Rules 2011 the appellant has been found guilty of inefficiency, therefore major penalty was imposed upon the appellant by the Competent Authority.
- I. Incorrect. All the proceedings have been carried according to law/rules by the Inquiry Officer as well as by the Competent Authority.
- J. Incorrect. Major penalty of compulsory retirement was imposed upon the appellant on the basis of recommendation of Inquiry Officer. Which is in accordance with law and rules.
- K. No comments.

It is therefore requested that the appeal may kindly be dismissed with cost.



Respondent No. 1, 2 & 3

A

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

CHARGE SHEET

I, Zafar Iqbal Senior Member, Board of Revenue Khyber Pakhtunkhwa as Competent Authority, hereby charge you Mr. Farrukh Mehmood Patwari halqa Sandesar Mansehra as follows:

That you while posted as Patwari halqa Sandesar Mansehra committed the following irregularities:-

1. That you entered inheritance mutation o. 9344 in Revenue Estate Sandesar Mansehra without attestation about the deceased and his legal heirs. The said mutation was wrongly entered and attested as the original owners of the land are residing in Indonesia.
2. Your this act tantamount to misconduct and liable you to be proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011.

2. By reasons of the above, you appear to be guilty of misconduct under Rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

3. You are, therefore, required to submit your written defence within 07 days of the receipt of this charge sheet to the Inquiry Officer.

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

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

6. Statement of allegations is enclosed.


Senior Member

B

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

DISCIPLINARY ACTION

1. Zafar Iqbal, Senior Member, Board of Revenue Khyber Pakhtunkhwa as Competent Authority, am of the opinion that Mr. Farrukh Mehmood Patwari halqa Sandesar Mansehra has rendered himself liable to be proceeded against, as he committed the following acts / omissions, within the meaning of Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

1. That you entered inheritance mutation o. 9344 in Revenue Estate Sandesar Mansehra without attestation about the deceased and his legal heirs. The said mutation was wrongly entered and attested as the original owners of the land are residing in Indonesia.
2. Your this act tantamount to misconduct and liable you to be proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011.

2. For the purpose of inquiry against the said accused with reference to the above allegations, **Mr. Saif ul Islam Additional Deputy Commissioner Haripur** is appointed as Inquiry Officer under Rule 10(1)(a) of the Rules *ibid*.

3. The Inquiry Officer shall, in accordance with the provisions of the Rules *ibid* provide reasonable opportunity of hearing to the accused, record findings and make, within thirty (30) days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

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

C
/

INQUIRY PROCEEDINGS AGAINST M/S MUHAMMAD TAJ, THE THEN TEHSILDAR MANSEHRA, WAHEED AKHTER KANUNGO, DISTRICT MANSEHRA AND FARRUKH MEHMOOD PATWARI HALQA SANDESAR, DISTRICT MANSEHRA HELD ON 27.06.2018 IN THE OFFICE OF ADDITIONAL DEPUTY COMMISSIONER, HARIPUR.

Background:

The Senior Member, Board of Revenue, Revenue & Estate Department, Peshawar was pleased to appoint the undersigned as Inquiry Officer, which was conveyed vide letter No. Estt:/I/PF/Muhammad Taj/24686 dated 08.06.2018 with the mandate to enquire into the allegations leveled against the following officials as mentioned in the Charge Sheets and Statements of Allegations:-

1. Mr. Muhammad Taj, the then Tehsildar Mansehra.
2. Mr. Waheed Akhter, Kanungo Girdawar District Mansehra.
3. Mr. Farrukh Mehmood, Patwari Halqa Sandesar, District Mansehra.

The Competent Authority was further pleased to ordered submission of the findings / recommendations / report of the inquiry within a period of 20 days positively.

Proceedings:

All the above mentioned officials were directed to appear before the Inquiry Officer on 27.06.2018 for inquiry proceedings vide this office letter No. 1(8)/511-16/ADC(H) dated 11.06.2018. Similarly the Deputy Commissioner, Mansehra was requested to depute a departmental representative with record to assist during inquiry proceedings (**Annexure-A**). Accordingly, all the accused officials attended the office of the undersigned on the date fixed and submitted their respective written statements (copies of which are attached as **Annexure-B, C & D**). They were directed to attend the office of the undersigned on 27.06.2018 vide this office letter No. 1(8)/517-21/ADC(H) dated 13.06.2018 for cross examination and further proceedings (**Annexure-E**). Mr. Muhammad Zia, Assistant District Kanungo, DC Office Mansehra participated the inquiry proceedings and produced the relevant / required record.

- 23/06/18
1. **Mr. Muhammad Taj, the then Tehsildar Mansehra** stated on oath that he remained posted as Tehsildar Mansehra from 15.07.2013 to 19.03.2015 and he attested mutation No. 9344, which was entered by Patwari Halqa on 18.02.2015 during Jalsa-e-Aam. Replying to a question, he stated that it was correct that he attested the said mutation being Revenue Office, which was examined by Girdawar Circle concerned. His report was existing on the said mutation. Mr. Asim Jadoon s/o Ghulam Mustafa Jadoon identified himself as relative of the deceased Khani Zaman. Furthermore, on the witnesses of locals namely Shabbir Khan Councilor and Muhammad Farooq s/o Afzal Khan, the mutation was attested. Attestation of mutation is of summary nature, recording of details and checking is the responsibility of Patwari Halqa and Girdawar Circle. Replying to a question as to whether he satisfied himself that the witnesses of the mutation had complete information about the legal heirs of deceased, he replied that mutation No. 9344 was attested after completion of all codal formalities correctly and on the identification of witnesses. Replying to a question as to how he came to know that the mutation was suspect, he replied that after his transfer from Mansehra, Patwari Halqa reported the matter and in pursuance of which Deputy Commissioner / Collector, Mansehra ordered for cancellation of the inheritance mutation. Furthermore, a civil suit is pending in Civil Court pertaining to the said mutation. Anti Corruption also inquired into it and filed the complaint against him. The Deputy Commissioner / Collector, District Mansehra has also held the Revenue Officer exonerated of this charge (copies of cross examination are attached as **Annexure-F**).

2. **Mr. Wabeed Akhter, Kanungo, District Mansehra** stated on oath that he remained posted as Girdawar Circle Labarkot from 2014 to 25.10.2017 and he examined inheritance mutation No. 9344 which was entered by Patwari Halqa on 21.01.2015 as deceased Khani Zaman s/o Arsala was land owner. He was asked as to whether during examination of the mutation he inquired about Mr. Fiaz Khan s/o Mehboob Ali r/o Chitta Batta (Naib Nazim VC Sandesar) as who was him and in which capacity asked the Patwari Halqa to prepare inheritance mutation? He replied as since the deceased was the land owner and verification of Shajra was the responsibility of Patwari Halqa during preparation of mutation and entering it in Roznamcha Waqati. The Revenue Officer has to verify a mutation in the presence of witnesses. He further stated that responsibility of the Girdawar Circle was to compare the entries of the mutation with register Haqdarain-e-Zameen for examination. Buyers and Sellers appear before the Revenue Officer during the Jalsae-Aam and not before the Girdawar during the examination process. He also stated that he performed his duty satisfactorily during the examination of the mutation entered by the Patwari on 21.01.2015 (copies of cross examination are attached as **Annexure-G**).
3. **Mr. Farrukh Mehmood, Patwari Halqa Sandesar, District Mansehra** stated on oath that he remained posted as Patwari Halqa Sandesar from 19.10.2012 to 31.08.2016 and entered / prepared inheritance mutation No. 9344 in the name of legal heirs of deceased Khani Zaman s/o Arsala caste Swati on the oral request of Fiaz Khan s/o Mehboob Ali r/o Chitta Batta (Naib Nazim VC Sandesar) under rapat No. 289 dated 21.01.2015 and signature of Mr. Fiaz Khan are existing the same. He was asked as to whether he inquired from Mr. Fiaz Khan as in which capacity he was asking to enter the said mutation? He replied that yes he asked him who replied that he shall be responsible for any legal complications, therefore, I entered the mutation. He was asked that in his written statement dated 13.06.2018 he stated that the mutation under reference was entered on the oral request of Mr. Fiaz Khan whereas Mr. Asim Jadoon s/o Ghulam Mustafa r/o Village Reh Tehsil & District Mansehra, the said mutation was entered on the request of Mr. Zahid and Abdur Rashid presently residents of Karachi, what do you want to say in this regard? He replied that the said mutation was entered through Mr. Fiaz Khan and there is no mention of Mr. Zahid and Abdur Rashid etc in his written statement dated 13.06.2018. He was further asked as to whether it was not his responsibility to verify the credentials of all concerned and whether they have complete knowledge about the legal heirs of deceased and whether it was not his responsibility to inquire about the legal heirs of the deceased. What do you want to say in this regard? He replied that it was correct that it was his responsibility to enquire about the rights of the legal heirs of the deceased and satisfy himself before entering a mutation but since the whole responsibility was taken by said Fiaz Khan who signed rapat No. 289 of mutation No. 9344 (copies of cross examination are attached as **Annexure-H**).

Findings and Recommendations:

From the perusal of record produced before the undersigned, written statements and cross examination etc. it transpires that all the officials who remained posted as Tehsildar, Girdawar Circle and Patwari Halqa were bound to perform their duties in accordance with relevant rules / regulations as they were found totally naïve and casual to their prime responsibility / job description. All the accused officials were required to investigate about the deceased and his legal heirs through prominent locals of the area before entering / processing of inheritance mutation No. 9344 but they did not do so. resultantly the said inheritance mutation was wrongly attested by the Revenue Officer. It was the foremost responsibility /

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Appeal No. 1179/2018.

Farrukh Mehmood, Ex-Patwari Halqa Labarkot, District Mansehra.

VERSUS


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

PRELIMINARY OBJECTIONS

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

**COMMENTS OF RESPONDENT NO. 04 (DEPUTY COMMISSIONER,
MANSEHRA)**

The Board of Revenue, Revenue & Estate Department, Khyber Pakhtunkhwa, Peshawar has already filed comments on behalf of Respondents No. 1, 2 & 3 in the captioned Service Appeal. The undersigned (Respondent No. 4) also adopts the same comments.


Deputy Commissioner
Mansehra
(Respondent No. 4)

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

Service Appeal No. 1179/2018

1. Farrukh Mehmood Ex-Patwari, Halka Laberkot, District Mansehra.

APPELLANT

VERSUS

1. The Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar.
2. The Senior Member Board of Revenue & Estate Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. The Commissioner Hazara Division, Hazara Abbottabad.
4. The Deputy Commissioner, District Mansehra.

RESPONDENTS

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

RESPECTFULLY SHEWETH,

PRELIMINARY OBJECTIONS

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

ON FACTS

1. Para-1 is incorrect as the respondents were under statutory obligation to have scanned the relevant record and confirmed the real position of

appellant. But they failed to do so and “beat around the bush”. Thus, Para is deemed as admitted by the respondents.

2. Para-2 is incorrect and misconceived as one Fayyaz Khan (Naib Nazim V/C Sand-e-Sar) S/O Mehboob Ali R/O Chitta Batta, District Mansehra, lodged a report with the appellant regarding the death of Khani Zaman S/O Arsala Khan so as to enable his legal heirs to get their legal shares under the law. The appellant believed that no person will give false information to a public servant otherwise liable for penal action under the relevant law. He also strongly believed that Fayyaz Khan being a public representative will never furnish false information so as to damage and lose the confidence of people who trusted him and chose him as (Naib Nazim V/C Sand-e-Sar). Therefore, he entered the report in “Roznamcha-e-Waqiati” in good faith and his signature was obtained on it as a token of correctness. The report thereof was displayed for information of general public. Moreover, Deputy Commissioner, Mansehra conducted inquiry in utter violation of law as neither any witness was examined in presence of appellant nor he was provided any opportunity of cross-examination. Similarly, he was also not provided any chance to produce defence in support of his version. Besides, the inquiry officer placed reliance on the statements of those persons who were examined during the preliminary enquiry in absence of appellant as evident from his report and held the appellant and other employees guilty of the allegation in utter violation of law. Thus, the inquiry officer has committed gross illegality on this count. Therefore, the enquiry report is perverse and is not sustainable in the eye of law.
3. Para-3 is incorrect and that of appeal is correct.
4. Para-4 is incorrect as the appellant submitted elaborate and exhaustive reply but the same was not deemed satisfactory and he was awarded major penalty of removal from service on the basis of such enquiry which was not conducted in a manner prescribed by law.
5. Para-5 is incorrect and that of appeal is correct.

6. Incorrect as all the disciplinary proceedings were initiated against the appellant in utter violation of law. Besides, the Anti-Corruption Department also conducted discreet enquiry and held the appellant innocent of the allegations and filed the complaint accordingly.
7. Same reply as furnished in Para-6 above.
8. Incorrect and that of appeal is correct.
9. Incorrect as the reply was neither considered in its true perspective nor in accordance with law.
10. Incorrect and that of appeal is correct.
11. Needs no rejoinder as the same was candidly admitted by the respondents.
12. The respondents admitted the first part of Para regarding filing of Departmental appeal as correct but offered no reply regarding its rejection. Thus, the same is also deemed as admitted by them.
13. The respondents offered no reply and as such the same is deemed as admitted by them.
14. The appellant has a good prima facie case to invoke the jurisdiction of this Hon'ble Tribunal.

ON GROUNDS

- A. Para-A is incorrect as Notification in question was issued against the spirit of administration of Justice.
- B. Para-B is incorrect and that of appeal is correct.
- C. Incorrect as both the Orders/Notifications were not issued in consonance with law.
- D. Same reply as furnished in para-C above.
- E. Incorrect and detail reply offered in Para-2 of the facts above.
- F. Same reply as enumerated in Para-2 of the facts as above.
- G. Para-G is incorrect and that of appeal is correct.

- H. incorrect and detail reply furnished in Para-2 of the facts above.
- I. Incorrect and detail reply offered in Para-6 of the facts above.
- J. Incorrect as the appellant was awarded major penalty of removal from service in utter violation of law and not that of compulsory retirement.
- K. The respondents failed to offer reply and as such the same is deemed as admitted by them.

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

Dated: 22-1-2019



Through

Appellant

Rizwanullah
M.A. LL.B

Advocate High Court, Peshawar.

AFFIDAVIT

I, Farrukh Mehmood Ex-Patwari, Halka Laberkot, District Mansehra do hereby solemnly affirm and declare that the contents of the accompanied rejoinder are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

DEPONENT

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

Service Appeal No. 1179/2018

1. Farrukh Mehmood Ex-Patwari, Halka Laberkot, District Mansehra.

APPELLANT

VERSUS

1. The Chief Secretary Government of Khyber Pakhtunkhwa, Peshawar.
2. The Senior Member Board of Revenue & Estate Department, Government of Khyber Pakhtunkhwa, Peshawar.
3. The Commissioner Hazara Division, Hazara Abbottabad.
4. The Deputy Commissioner, District Mansehra.

RESPONDENTS

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

RESPECTFULLY SHEWETH,

PRELIMINARY OBJECTIONS

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

ON FACTS

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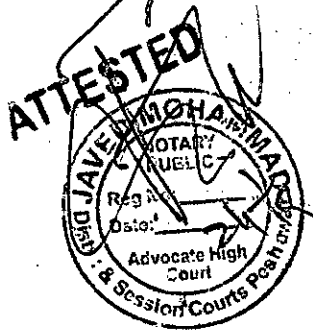
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DEPONENT