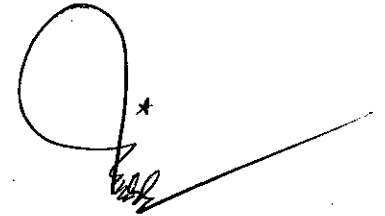


15.07.2022

Petitioner alongwith his counsel present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Wali Muhammad, Reader for the respondents present.

02. Representative of the respondents produced copy of office order bearing No. 1941/DC/AE/F.26 dated 06.07.2022 whereby the Service Tribunal judgement dated 31.01.2022 has conditionally been implemented subject to the outcome of CPLA pending before the august Supreme Court of Pakistan. Copy of the said office order handed over to the petitioner who stated at the bar that he was satisfied with the implementation. As such the execution petition stands implemented. Consign.

03. Pronounced in open court at Peshawar and given under my hand and seal of the Tribunal this 15th of July, 2022.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a vertical stroke and a horizontal line extending to the right. A small asterisk is visible above the vertical stroke.

(MIAN MUHAMMAD)
MEMBER(E)



THE DEPUTY COMMISSIONER, BANNU

Tel: 0928-9270032, Fax: 0928-9270079, f dcbannu

No. 1941 /DC/AE/F.26

Dated Bannu the 06/07/2022

OFFICE ORDER

In pursuance of Khyber Pakhtunkhwa Service Tribunal Judgement announced on 31.01.2022 in service appeal No.11965/2020 in case titled Nafirullah Khan, Ex-Patwari VS Commissioner Bannu Division Bannu and Others, Mr.Nafirullah Khan, Patwari, dismissed from service vide this office order No.2914/DC/AE dated 15.07.2020, is **hereby re-instated into service with all back benefits** subject to the decision in CPLA No.349-P/2022 pending before August Supreme Court of Pakistan.


DEPUTY COMMISSIONER

Even No. & Date

Copy of the above is forwarded to:-

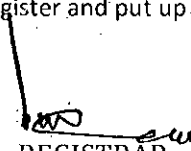

1. Commissioner Bannu Division.
2. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
3. Additional Advocate General Khyber Pakhtunkhwa Service Tribunal.
4. Additional Deputy Commissioner (Gen) Bannu.
5. District Comptroller of Accounts Bannu.
6. PS to SMBR Khyber Pakhtunkhwa.
7. Bill Clerk DC office for necessary action.
8. Patwari concerned.

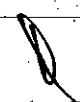

DEPUTY COMMISSIONER

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 270/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	28.04.2022	<p>The execution petition of Mr. Nafirullah submitted today by Mr. Taimur Ali Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p> REGISTRAR</p>
2	25-8-22	<p>This execution petition be put up before to Single Bench at Peshawar on <u>9.6.22</u>. Original file be requisitioned. Notices to the parties be also issued for the date fixed.</p> <p> CHAIRMAN</p>
09.06.2022		<p>Petitioner in person present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Wali Muhammad, Reader for respondents present.</p> <p>Representative of the respondent department submitted copy of CPLA in august Supreme Court of Pakistan, which is placed on file. Respondent department are directed to produce stay order or conditional implementation report positively submitted before the court on next of hearing. Case to come up implementation report on 15.07.2022 before S.B.</p>


(Fareeha Paul)
Member (E)

Case Title:

Commissioner Bannu Division, Bannu and others v. Nafir Ullah Khan

Case No:

C.P.349-P/2022

Case Status:

Pending

Case Institution Date:

21-04-2022

Case Disposal Date:**AOR/ASC:**

Advocate General, Khyber Pakhtunkhwa (-)
Saadullah Mian (AOR)

History:

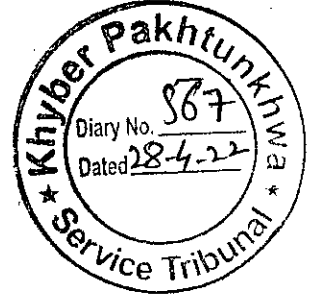
Fixation Date

Details

Action

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

Execution Petition No. 270 /2022
In Service Appeal No.11965/2020



Nafir Ullah Khan Ex-Patwari,
(then Halqa Parwai Bezan Khel), Tehsil Domel, District Bannu.

PETITIONER

VERSUS

1. The Commissioner Bannu, Division, Bannu.
2. The Deputy Commissioner, Bannu Division Bannu.
3. The Senior Member of Board of Revenue, Khyber Pakhtunkhwa, Peshawar.

RESPONDENTS

.....
**EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 22.12.2021 OF THIS
HONOURABLE TRIBUNAL IN LETTER AND
SPIRIT.**
.....

RESPECTFULLY SHEWETH:

1. That the petitioner has filed service appeal No.11965/2020 in the Honourable Tribunal against the order dated 15.07.2020, whereby the petitioner was removed from service and against the rejection order dated 24.09.2020 whereby departmental appeal of the petitioner has been rejected for no ground grounds.
2. The said appeal was heard by this Honourable Service Tribunal on 31.01.2022. The Honourable Service Tribunal accepted the appeal of the petitioner. The impugned orders dated 15.07.2022 and 24.09.2022 were set aside and the petitioner was reinstated into service with all back benefits. **(Copy of judgment dated 31.01.2022 is attached as Annexure-A)**

3. That the petitioner also submitted application on 01.03.2022 to respondent No.2 along with the copy of judgment dated 31.01.2022 of this Honourable for its implementation. **(Copy of application is attached as Annexure-B)**
4. That the Honourable Tribunal in its judgment dated 31.01.2022 reinstated the petitioner into is service with all back benefits, but after the lapse of more than two months the petitioner was not reinstated by the respondents by implementing the judgment dated 31.01.2022 of this Honourable Tribunal.
5. That in-action and not fulfilling formal requirements by the respondents after passing the judgment of this Honourable Service Tribunal, is totally illegal amount to disobedience and Contempt of Court.
6. That the judgment is still in the field and has not been suspended or set aside by the Supreme Court of Pakistan, therefore, the department is legally bound to obey the judgment dated 31.01.2022 of Honourable Service Tribunal in letter and spirit.
7. That the petitioner has having no other remedy except to file this execution petition for implementation of judgment dated 31.01.2022 of this Honourable Tribunal.

It is, therefore, most humbly prayed that the respondents may kindly be directed to implement the judgment dated 31.01.2022 of this Honourable Service Tribunal in letter and spirit. Any other remedy, which this august Service Tribunal deems fit and appropriate that, may also be awarded in favour of petitioner.

N.Y.S
PETITIONER
Nafir Ullah Khan

THROUGH:

[Signature]
(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT

AFFIDAVIT

It is affirmed and declared that the contents of the execution petition are true and correct to the best of my knowledge and belief.

28 APR 2022



N.Y.S
DEPONENT

بخدمت جناب ڈپٹی کمشنر صاحب بنوں ضلع بنوں

عنوان :- درخواست برآمد بحالی سروس و ادائیگی سرکاری اخراجات (تنواریس)

جناب عالی!

گذشتہ با حضور انور ہے کہ من سائل آپ صاحبان کے زیر سایہ پٹواری کمی ڈیوٹی پر

عامور رہا ہوں۔

من سائل بوجہ امور عدالت اپنی سروسز سے دستبردار رہا اور تا فیصلہ

عدالت حکومتی "قانون و ضبط" کا پابند رہا۔

من سائل کو عدالت فیصلہ سروس ڈپٹی سمنٹل "اپریل نمبر 20/11965/20 مورخہ 22-01-2022

کو بحالی اور عاثر سرکاری اخراجات (تنواریس) دیا گیا ہے۔ (کاپی لف ہے)

آپ صاحبان سے من سائل درخواست گزار ہوں کہ فیصلہ عدالت من سائل کے

حق میں داخل دفتر فرمایا جاوے اور من سائل کو سروسز کے ساتھ اخراجات (تنواریس) کے

جانے کے احکامات صادر فرمائے جائیں۔

من سائل ناصیات دعا گو و مشکور رہوں گا۔

گفتہ آپ صاحبان سہر بانی دینا کر احکامات صادر فرمادیں۔

من سائل

مورخہ 01-03-2022

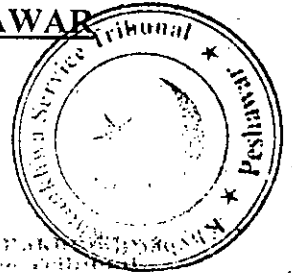
الارض

کلیئر (پٹواری)
سائل - نقیصر (پٹواری)

RECEIVED
No. 1855
dt. 01-03-2022
Return date
Deputy Commissioner Office Ganna

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 11965/20



Nafir Ullah Khan Ex- Patwari,
(then Halqa Patwari bezan Kheil)
Tehsil Domel, Distt Bannu.

1142
14/10/2020

(Appellant)

VERSUS

1. The Commissioner Bannu Division Bannu.
2. The Deputy Commissioner, Bannu Division Bannu.
3. The Senior Member of Board of Revenue, kpk, Peshawar

(Respondents)

.....

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ODER DATED 15.07.2020 WHEREBY THE APPELLANT WAS REMOVED FROM THE SERVICE AND AGAINST THE REJECTION ORDER DATED 24.09.2020 WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

14/10/2020

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 15.07.2020 AND 24.09.2020 MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED IN TO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS

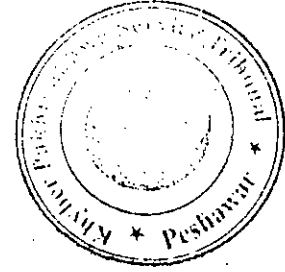
ATTESTED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 11965/2020

Date of Institution ... 14.10.2020

Date of Decision ... 31.01.2022



Nafir Ullah Khan Ex-Patwari (then Halqa Patwari Bezan Khel) Tehsil Domel,
District Bannu ... (Appellant)

VERSUS

The Commissioner Bannu Division Bannu and two others.
... (Respondents)

Syed Noman Ali Bukhari,
Advocate

... For Appellant

Naseer-Ud-Din
Assistant Advocate General

... For respondents

AHMAD SULTAN TAREEN ...

CHAIRMAN

ATIQ-UR-REHMAN WAZIR ...

MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the

case are that the appellant while serving as Patwari, was proceeded against on the charges of misconduct and was ultimately removed from service vide order dated 15-07-2020, against which the appellant filed departmental appeal, which was rejected vide order dated 24-09-2020, hence the present service appeal with prayers that the impugned order dated 15-07-2020 and 24-09-2020 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned orders are against law, facts and norms of natural justice and material on record, therefore, not tenable and liable to be set aside; that in the first inquiry the appellant was exonerated of the charges and without showing any reason for de-

ATTACHED

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

novo inquiry, in second inquiry the appellant was held guilty without issuing charge sheet/statement of allegation and without conducting regular inquiry, which is violation of Article-10 of the Constitution; that in case the authority disagree with findings of the inquiry officer, reason must be recorded but in case of the appellant no such reason was recorded; that no charge sheet/statement of allegation was served upon the appellant, no proper inquiry was conducted as the appellant was not associated with proceedings of the so called inquiry; that neither statement of the witnesses including the complainant were recorded in presence of the appellant nor the appellant was afforded opportunity to cross-examine such witnesses; that copy of the so called inquiry was not handed over to the appellant alongwith show cause notice, which was mandatory; that the mutation in question had correctly been prepared by the appellant in light of the contents of revenue record of the mouza concerned and there exist no mistake or irregularity either in the factum of the sale transaction reported to appellant or the contents of the sheet of subject mutation.

03. Learned Assistant Advocate General for the respondents has contended that upon a complaint lodged against the appellant, proper inquiries were conducted against the appellant and he was afforded appropriate opportunity of defense; that proper show cause was served upon him, but he failed to prove his innocence; that the appellant was afforded opportunity of personal hearing and all codal formalities were fulfilled; that the appellant was rightly awarded major penalty of removal from service as the appellant was a habitual offender, as previously he had also prepared fake mutation, for which the appellant was penalized; that service record of the appellant is full of bad entries and the appellant is not honest to his duty; that again the appellant was found guilty of misconduct, therefore after hearing the appellant, order of his removal from service was maintained and his departmental appeal was rejected; that the

ATTESTED


impugned orders are in accordance with law and appeal of the appellant being devoid of merit may be dismissed.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant while serving as Patwari in Patwar Halqa Bezan Khel, entered five number mutations for verification but the appellant was transferred after some time from the said Halqa. One Mr. Gul Mar Khan lodged a complaint against the appellant with the allegation that he had paid rupees fifty thousand as tax to the appellant for transfer of the property in the said mutations. To this effect an inquiry was conducted by AAC-II Bannu, who found that the mutations were entered as per law and were verified by Girdawar Circle. The inquiry report further reveals that some of the mutations were rejected by Revenue Officer on 30-06-2017 due to non-attendance of the parties and the rest are under process and stance of the complainant to the effect that his mutations were missing is not based on facts. The inquiry officer exonerated the appellant of the charges of mutation as well as of the charges of corruption. The inquiry report was submitted to the authority on 22-12-2017, but the competent authority without recording any reason appointed another inquiry officer and the inquiry officer conducted another fact finding inquiry and submitted its report on 16-06-2019 and held the appellant guilty of misconduct, but without proving such allegations against the appellant. In the said inquiry neither the appellant was associated with proceedings of the inquiry nor statement of the witnesses were recorded in presence of the appellant, thus the appellant was deprived of the opportunity to cross-examine witnesses. Still another inquiry on the same charges and on the same pattern was conducted and the inquiry officer again held the appellant guilty of the charges and submitted its report on 24-01-2020. The appellant was served with a show cause notice without issuing charge sheet/statement of allegation, thus the authorized officer, failed to frame the

ATTESTED

Signature
 Service Officer
 Bannu

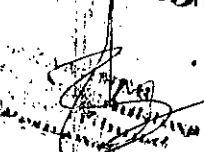
proper charge sheet properly explaining the charges and other relevant circumstances proposed to be taken into consideration, as framing of charge and its communication was not merely a formality but it was a mandatory pre-requisite, which was to be followed. Reliance is placed on 2000 SCMR 1743. The appellant was finally awarded with major punishment of removal from service.

06. In the first place, it was noted that the appellant had rightly made entry in the register of mutation as per provisions contained in Section 42 of the Land Revenue Act 1967 read with Para 7.4(i) of the Land Record Manual, which infers that Patwari is required to make entry in the register of mutation every report made to him either by the person acquiring any rights in the landed property or on the information of any other person having charge of the property intended to be transferred through mutation and the appellant was rightly exonerated of the charges by the inquiry officer in the first inquiry report submitted on 22-12-2017.

It was further noted that such entry is made with pencil, which are later on verified by Girdawar and finally attested by Tehsildar in Jalsa-e-Aam, thereafter it is entered with ink pen, so omission if any, would not be the sole responsibility of the appellant, but inspite of the fact only the appellant was malafiedly implicated on the issue of entering mutation and there is every possibility of rectification of error if any under Para 7.44 of the land record manual and which does not constitute gross misconduct entailing major penalty of dismissal from service. It was further noted that no damage whatsoever was caused either to State or to any individual due to entry of the subject mutation.

07. We have also noted that the respondents, while conducting another inquiry by another inquiry officer has not completed codal formalities under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, as the appellant was not issued fresh charge sheet/statement of allegations nor any reason was recorded for disagreement with the inquiry officer, which shows malafide on part of the respondents. The inquiries so conducted are replete with

ATTESTED

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deficiencies, as the inquiry officer did not bother to record statement of the main complainant Mr. Gul Mar Khan, hence deprived the appellant of the opportunity to cross-examine such witness, thus the respondents also violated Section 11 (1) and (4) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 by not affording opportunity to cross examine witnesses, nor recorded statements of witnesses in presence of appellant, thus deprived the appellant of his lawful right, which was not warranted by law. Reliance is placed on 2002 SCMR 433, 2012 PLC (CS) 728 and 1997 SCMR 1073. We are of the considered opinion that the appellant has been treated discriminately and the respondents were bent upon removing the appellant from service at any cost.

08. Three inquiries were conducted on the same charges against the appellant but the allegations so leveled were flimsy in nature and no specific charge was framed against the appellant. Perusal of the inquiry reports would suggest that such inquiries were fact-finding inquiries and not a regular inquiry as statements of witnesses and particularly of the complainants have not been recorded, which was mandatory for affording opportunity to the appellant to cross-examine such witnesses, thus skipping a mandatory step in the disciplinary proceedings, therefore action of authority in awarding major penalty of removal from service, in circumstances, was in sheer violation of principles of natural justice. Reliance is placed on 2011 PLC (CS) 387.

09. We have noticed that the disciplinary proceedings against the appellant have been conducted in a haphazard manner without adhering to the manner prescribed in law and to this effect, the august Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. Main

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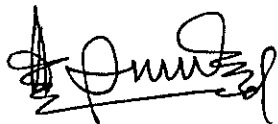
W. H. Khan
Secretary
Khyber Pakhtunkhwa
Government Servants
Discipline

task of the inquiry officer was to prove such allegations with solid evidence, but the inquiry officer badly failed to prove such allegations. The respondents preferred to punish the appellant only based on presumptions; facts however, had to be proved and not presumed, particularly for awarding major penalty of dismissal from service. Reliance is placed on 2002 PLC (CS) 503 and 2008 SCMR 1369.

10. In order to justify their stance, the respondents had projected the appellant with a tainted past, whereas on the strength of PLJ 2005 Tr.C (Services) 107 and PLJ 2016 Tr.C. (Services) 324, it cannot be made a ground for awarding penalty to a government servant.

11. There are enough grounds available on record to show that the appellant has not been treated in accordance with law and was treated discriminately. Neither the charges of corruption were proved against him nor the entry of fake mutation, despite he was removed from service in an unlawful manner without adhering to the method prescribed in law and without any fault of the appellant. In view of the foregoing, the instant appeal is accepted. The impugned orders dated 15-07-2020 and 24-09-2020 are set aside and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
31.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



(ATIQU-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be true copy

EXAMINER
Khairpur
Services Tribunal
Peshawar

Date of Presentation of Application 23/2/22
Number of Words 2400
Copying Fee 26/-
Urgent 4/-
Total 30/-
Name of Copyist _____
Date of Completion of Copy 23/2/22
Date of Delivery of Copy 23/2/22

VAKALAT NAMA

NO. _____/2021

IN THE COURT OF KP Service Tribunal, Peshawar

Nafis Ullah Khan (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Commissioners Bannu & others (Respondent)
(Defendant)

I/We, Nafis Ullah Khan

Do hereby appoint and constitute **Taimur Ali Khan, Advocate High Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/2021

N. Y. S
(CLIENT)

ACCEPTED

Taimur Ali Khan
TAIMUR ALI KHAN
Advocate High Court
BC-10-4240
CNIC: 17101-7395544-5
Cell No. 0333-9390916

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar