

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

Service Appeal No. 1280/2013

**BEFORE:** SALAH UD DIN --- MEMBER(J)  
MIAN MUHAMMAD --- MEMBER(E)

**Khalid Salim Marwat S/o Amir Sardar Khan, R/o House No. 75, Street No. 4, Sector E-1, Phase-I Hayatabad, Peshawar, Ex-Deputy Secretary, Home & Tribal Affair Department, Khyber Pakhtunkhwa Peshawar..... (Appellant)**

**VERSUS**

1. Chief Minister, Government of Khyber Pakhtunkhwa, through Respondent No. 2.
2. Chief Secretary, Government of Khyber Pakhtunkhwa Peshawar.
3. Secretary Government of Khyber Pakhtunkhwa Establishment Department, Peshawar.
4. Akbar Khan Marwat, Additional Secretary FATA, Fata Secretariat Warsak Road Peshawar.
5. Shafir Ullah, Additional Secretary FATA, Fata Secretariat Warsak Road Peshawar.
6. Muhammad Maqbool, Additional Secretary, Auqaf Department Peshawar Cantt.
7. Syed Mubashar Hussain Shah, Deputy Commissioner, Nowshera.  
..... (Respondents)

**Present:**

ARBAB SAIFUL KAMAL,  
Advocate --- For Appellant.

MUHAMMAD RIAZ KHAN PAINDAKHEL,  
Assistant Advocate General, --- For respondents.

Date of Institution.....02.09.2013  
Date of Hearing.....14.09.2022  
Date of Decision.....14.09.2022

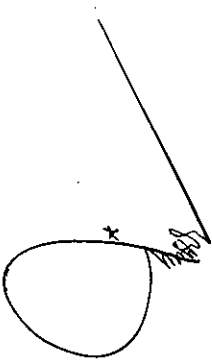
**JUDGEMENT.**

**MIAN MUHAMMAD, MEMBER(E):-** The appellant has invoked jurisdiction of the Service Tribunal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the

appellate order dated 04.07.2013 passed on his departmental appeal against promotion Notification of private respondent No. 4 & 5 dated 30.05.2011 and promotion Notification of Private respondent No. 6 & 7 dated 27.10.2011. It has been prayed that “on acceptance of appeal, the impugned Notifications dated 30.05.2011, 27.10.2011 and 04.07.2013 of the respondents be set aside/modified and appellant be given profroma promotion to BPS-19 for monetary benefits with effect from 30.05.2011 with all service benefits, with such other relief as may be deemed proper and just in circumstances of the case”.

02. Brief facts, giving rise to the service appeal are that the appellant joined the respondent department as Naib Tehsildar in 1975 and elevated to BS-18 by way of promotion in his cadre in the year 2006. When he was posted as District Officer (Revenue & Estate) Peshawar (March, 2002- September, 2007), disciplinary action was taken against him as well as others co-accused at that time under Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 for illegal registration of gift deed. He was awarded the penalty of “reduction to lower post/pay scale for a period of three years and on restoration it shall operate to postpone future increments for three years” on 25.05.2010. The penalty was challenged in the first round of litigation before the Service Tribunal through service appeal No. 1393/2010 and the Service Tribunal while allowing his appeal partially on 15.12.2011, remanded case of the appellant as well as

other appellants to the competent authority for de-novo departmental proceedings in accordance with letter and spirit of law. The respondents assailed the Service Tribunal Judgement in the august Supreme Court of Pakistan through filing of CPLA, which was declined on 19.04.2012. The respondents having no other option but to implement Service Tribunal judgement dated 15.12.2011 and the then impugned Notification of penalty dated 25.05.2010 was withdrawn vide Notification dated 03.08.2012 and through another Notification dated 03.08.2012 the appellant was retired from service on attaining the age of superannuation w.e.f. 29.04.2012. The instant service appeal is second round of litigation seeking proforma promotion in BS-19 from the date when his erstwhile juniors were promoted during pendency of the appeal.



03. On admission of the service appeal in preliminary hearing on 09.01.2014, the respondents were put on notice to submit written defense through reply/para-wise comments. Reply/Parawise comments were submitted on 13.08.2015. We have heard learned counsel for the appellant as well as learned Assistant Advocate General for the respondents in Divisional Bench and gone through the record thoroughly with their valuable assistance today.

04. Learned counsel for the appellant vehemently contended that the appellant had over 36 years unblemished

service record to his credit. His penalty of "reduction to lower post/pay scale" was set aside when the Service Tribunal remanded the case for denovo enquiry on 15.12.2011. The respondent did not conduct the denovo enquiry as per judgement of the Service Tribunal and challenged it thorough CPLA in the august Supreme Court of Pakistan which was declined on 19.04.2012. All charges and the penalty so imposed on the appellant were quashed away and there remained no stigma in the service career of the appellant. Moreover, it was due to the apathy of department and pending appeal of the appellant that he could not be considered for promotion to BS-19 alongwith his erstwhile juniors at due time and he retired from service on attaining the age of superannuation on 29.04.2012. But once the appellant was restored to his original position on 03.08.2012 by withdrawing the then impugned Notification dated 25.05.2010, he became eligible to be given proforma promotion w.e.f. 30.5.2011. In support of his argument, learned counsel for the appellant relied on 2007 SCMR 1769, 2013 SCMR 752 and produced copy of the judgement delivered on 13.12.2019 by Accountability Court III Peshawar in criminal case against the appellant whereby he has been acquitted. He therefore, requested that nothing is pending against the appellant and being entitled for proforma promotion in BS-19, his service appeal may graciously be accepted, he concluded.



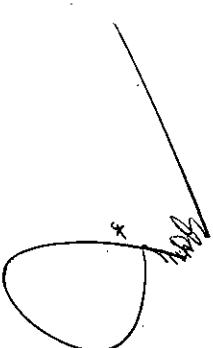
05. Learned Assistant Advocate General controverted the assertions taken in the service appeal and arguments of the learned counsel for appellant mainly on the ground that "major penalty of reduction to lower post/scale for three years" had been imposed on the appellant as a result of which name of the appellant was dropped from the list of PCS (Executive Group BS-18) and came down to the list of BS-17. Since his name was no longer on the list of PCS (Executive Group) BS-18 Officers, therefore, his name was not included in the panel for consideration of PSB and his otherwise juniors on the list i.e. private respondent No. 4, 5, 6 and 7 were promoted vide Notification 30.05.2011 and 27.10.2011. Moreover, in pursuance of the Service Tribunal judgement dated 15.12.2011, denovo enquiry was ordered vide Notification dated 12.04.2012 but the appellant escaped the penalty only because he attained the age of superannuation on 29.04.2012. In terms of FR-54 A, enquiry proceedings against the appellant were abated and he was not exonerated of the charges previously framed against him. The appeal being devoid of merits, may be dismissed with costs, he concluded.

06. A careful perusal of the record reveals that the Service Tribunal remanded cases of all the three appellants in service appeal No. 1393/2010 to the competent authority for de-novo enquiry on 15.12.2011. Para 10 (operative part of the judgement) is relevant to be quoted here for better understanding;

*“As a sequel to the foregoing discussion, all the three appeals are partially accepted and by setting aside the impugned orders, the cases of all the three appellants are remanded to the competent authority for denovo departmental proceedings in accordance with letter and spirit of law, in light of above observations, with further direction to afford reasonable opportunity of defence and hearing to the appellants, where-after the competent authority shall pass an appropriate order strictly according to law, within reasonable time, but in no case beyond the period prescribed by the law. There shall, however, be no order as to costs.”*

07. On communication of the judgement of Service Tribunal, the respondent department was under obligation to have either conditionally/provisionally implemented the judgement or got it suspended by the Apex Court subject to the outcome of CPLA. Reliance in this regard is made on Supreme Court of Pakistan Order No. XX (Miscellaneous) and PLD 1981 (C.S) 249. But it is evident from Para 9 of the reply/Parawise comments of respondents that denov enquiry was ordered vide Notification dated 12.04.2012 meaning thereby that de-novo proceedings were initiated after about 04 months of the said judgement. Interestingly, the august Supreme Court of Pakistan declined CPLA of the Provincial government on 19.04.2012 i.e. just after one week of the department ordered the denovo enquiry! It is also beyond comprehension that the then impugned order “reduction to lower post/pay scale for a period of three years”, dated 25.05.2010 was withdrawn vide Notification dated

03.08.2012 and the appellant was retired from service on attaining the age of superannuation w.e.f. 29.04.2012 vide Notification of the same date i.e. 03.08.2012. It is observed that what did the department do after rejection of CPLA by the august Supreme Court of Pakistan on 19.04.2012 till 03.08.2012 i.e. during 106 days? Had the department initiated de-novo proceedings against the appellant immediately on communication of the Service Tribunal judgement dated 15.12.2011, a just, final and timely outcome was obvious to have arrived for orders of the competent authority well before the superannuation of appellant on 29.04.2012. This proves to be a classic example of locus poenitentia where the appellant has suffered from the wrong doings of the respondent department.



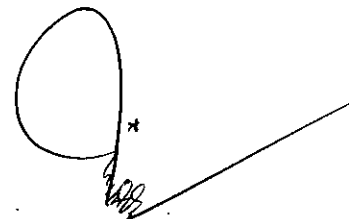
08. It is not disputed and rather an admitted fact that the appellant's name was placed at serial No. 2 of the list of PCS (Executive Group BS-18) whereas that of private respondent No. 4, 5, 6, 7 were at serial No. 4, 8, 3 and 9 respectively on the said seniority list. When the penalty of "reduction to lower post/pay scale" dated 25.05.2010 was withdrawn on 03.08.2012, the appellant regained his seniority in BS-18 and there was no penalty left in the field against him on 30.05.2011 and 27.10.2011 i.e. the date of notification; his erstwhile juniors were promoted in BS-19.

09. As a sequel to the foregoing discussion, we have arrived at the conclusion that the appellant has valid reasons on facts, circumstances and material on record for proforma promotion with effect from the due date. The appeal is, therefore, allowed as prayed for. Parties are left to bear their own costs. File be consigned to record room.

10. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 14<sup>th</sup> day of September, 2022.*



(SALAH UD DIN)  
MEMBER (J)



(MIAN MUHAMMAD)  
MEMBER (E)



ORDER

14.10.2022

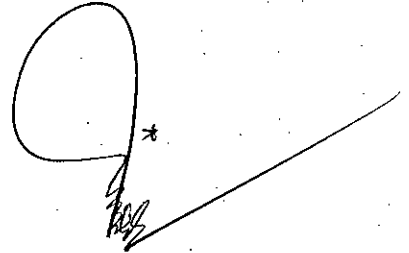
Mr. Arbab Saiful Kamal, Advocate for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

02. Vide our detailed judgement of today separately placed on file consisting (07) pages, we have arrived at the conclusion that the appellant has valid reasons on facts, circumstances and material on record for profroma promotion with effect from the due date. The appeal is, therefore, allowed as prayed for. Parties are left to bear their own costs. File be consigned to record room.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 14<sup>th</sup> day of September, 2022.*



(SALAH UD DIN)  
MEMBER (J)

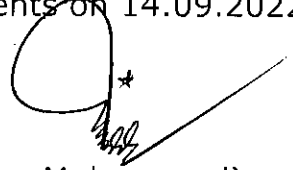


(MIAN MUHAMMAD)  
MEMBER (E)

13.09.2022

Appellant alongwith his counsel present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Partial arguments heard. To come up for remaining arguments on 14.09.2022 before the D.B.



(Mian Muhammad)  
Member (Executive)



(Salah-Ud-Din)  
Member (Judicial)

31.03.2022

Counsel for the appellant present. Mr. Mukarram Khan, Section Officer (Litigation) and Mr. Sultan Shah, Superintendent alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Learned counsel for the appellant sought adjournment being not prepared for arguments today. Adjourned. To come up for arguments on 19.05.2022 before the D.B.



(Rozina Rehman)  
Member (J)

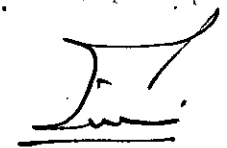


(Salah-ud-Din)  
Member (J)

19.05.2022

Junior of learned counsel for the appellant present. Mr. Muhammad Rasheed, District Attorney for the respondents present.

Learned Member (Judicial) Ms. Rozina Rehman is on leave, therefore, arguments could not be heard. Adjourned. To come up for arguments on 18.07.2022 before the D.B.



(Salah-ud-Din)  
Member (Judicial)

18.07.2022

Appellant present in person.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

Former requested for adjournment as his counsel is busy before the Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 13.09.2022 before D.B.



(Fareeha Paul)  
Member(E)



(Rozina Rehman)  
Member (J)

Due to non availability of  
DB the case is adjourned to 29/10/21

M  
Reads

29.10.2021

Learned counsel for the appellant present. Mr. Mukarram Khan, Section Officer for the respondents present.

Learned counsel for the appellant requested for adjournment being not prepared for arguments today. Adjourned. To come up for arguments before the D.B on 16.12.2021.

(Mian Muhammad)  
Member (E)

(Salah-Ud-Din)  
Member (J)

16.12.21

DB is on Tour case to come up  
For the same on Dated. 31-3-22

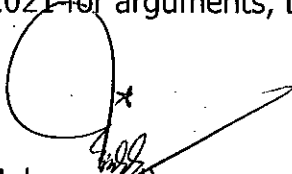
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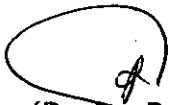
11.11.2020

Appellant present through representative.

Usman Ghani learned District Attorney for respondents present.

Lawyers are on general strike, therefore, case is adjourned to 19.01.2021 for arguments, before D.B.

  
(Mian Muhammad)  
Member (E)

  
(Rozina Rehman)  
Member (J)

19.01.2021

Appellant in person and Mr. Muhammad Rashid, DDA alongwith Zar Muhammad, Assistant for the respondents present.

Former requests for adjournment as his learned counsel is engaged before the Hon'ble High Court today. Adjourned to 24.02.2021 for hearing before the D.B.

  
(Mian Muhammad)  
Member(E)

  
Chairman


24.2.21

*Due to COVID 19, the case is adjourned to 24.5.21 for the same.*



24.05.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 01.09.2021 for the same as before.

  
Reader

29.06.2020

Due to COVID-19, the case is adjourned to 11.08.2020 for the same.

  
Reader

11.08.2020


Due to summer vacations case to come up for the same on 14.10.2020 before D.B.

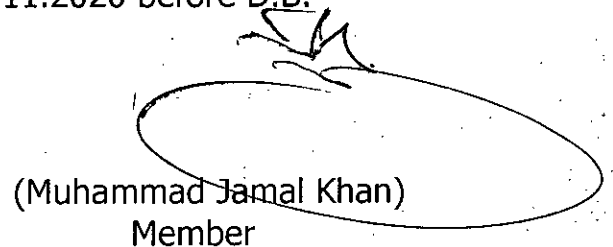
  
Reader

14.10.2020

Learned counsel for appellant present. Mr. Muhammad Jan learned Deputy District Attorney alongwith Zar Muhammad Assistant for respondents present.

Learned counsel for appellant requested for adjournment to further prepare the brief. Adjourned. To come up for arguments on 11.11.2020 before D.B.

  
(Atiq-Ur-Rehman Wazir)  
Member

  
(Muhammad Jamal Khan)  
Member

09.01.2020 Due to general strike of the Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for arguments on 14.01.2020 before D.B.

  
Member

  
Member

14.01.2020 Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 24.02.2020 for arguments before D.B.

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

24.2.2020

The Bench is incomplete  
therefor case is adjourned

to 2-4-2020

  
Reader

2.4.2020

Due to Public Holiday on account of  
(COVID-19) the case is adjourned. To come  
up for same on 29.6.2020.



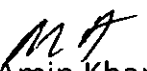
29.10.2019 Clerk to counsel for the appellant present. Mr. Usman Ghani, District Attorney for respondents present. Clerk to counsel for the appellant seeks adjournment due to general strike of the bar. Adjourned. Case to come up for arguments on 19.11.2019 before D.B.

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

12.11.2019 Learned counsel for the appellant present. Mr. Riaz Khan Paindakhel learned Assistant Advocate General for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 07.01.2020 before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

07.01.2020 Appellant absent. Learned counsel for the appellant absent. Uzma Advocate present on behalf of learned counsel for the appellant present and seeks adjournment. Mr. Muhammad Jan learned Deputy District Attorney present. Being an old case of the year 2013, last chance is given. Adjourn. To come up for arguments on 09.01.2020 before D.B.

Member

  
Member



17.06.2019

Junior to counsel for the appellant and Mr. Riaz Paindakhel learned Assistant Advocate General for the respondents present. Junior to counsel for the appellant requested for adjournment as senior counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 22.07.2019 before D.B.



Member



Member

22.07.2019

Junior to counsel for the appellant present. Mr. Muhammad Jan learned Deputy District Attorney for the respondents present. Junior to counsel for the appellant seeks adjournments as senior counsel for the appellant is not in attendance. Adjourned. To come up for further proceedings on 19.09.2019 before D.B.



(Hussain Shah)

Member



(M. Amin Khan Kundi)

Member

19.09.2019

Appellant absent. Learned counsel for the appellant absent. Junior to counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment. Being an old case of the year 2013, adjourned on the payment of cost of Rs.3000/- to be paid on behalf of appellant. To come up for arguments on 29.10.2019 before D.B.



Member



Member

19.02.2019

Junior to counsel for the appellant and Mr. Zia Ullah learned DDA for the respondents present. Request<sup>s</sup> made for adjournment in order to seek fresh instructions from appellant as the case pending against him before the learned Judge Accountability Court has not reached to its conclusion. Adjourned to 20.03.2019 before D.B.

  
Member

  
Chairman


20.03.2019

Clerk of counsel for the appellant and Mr. Ziaullah, DDA for the respondents present.

Due to general strike on the call of Bar Council, learned counsel for the appellant is not in attendance.

Adjourned to 10.05.2019 before the D.B.

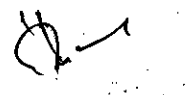
  
Member

  
Chairman

10.05.2019

Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 17.06.2019 before D.B.

  
Member

  
Member

24.07.2018

Junior to counsel for the appellant and Mr. Sardar Shaukat Hayat and Additional Advocate General present. Junior to counsel for appellant seeks adjournment as senior counsel is not in attendance. Adjourned. To come up for arguments on 14.09.2018 before D.B

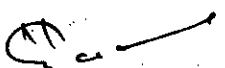
Member

  
Member

2018

Junior to counsel for the appellant and Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 08.11.2018 before D.B.

  
(Hussain Shah)  
Member

  
(Muhammad Hamid Mughal)  
Member

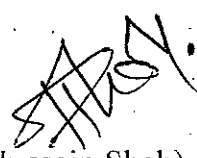
08.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 21.12.2018.

  
READER

21.12.2018

Appellant in person and Mr. Riaz Paindakheil learned Assistant Advocate General for the respondents present. Appellant requested for adjournment that his counsel is not in attendance. Adjourned. To come for arguments on 19.02.2019 before D.B

  
(Hussain Shah)  
Member

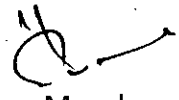
  
(Muhammad Amin Kund)  
Member

24.07.2018

Junior to counsel for the appellant and Mr. Sardar Shaukat Hayat learned Additional Advocate General present. Junior to counsel for appellant seeks adjournment as senior counsel is not in attendance. Adjourned. To come up for arguments on 14.09.2018 before D.B



Member



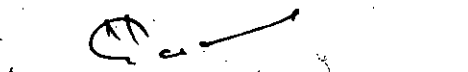
Member

14.09.2018

Junior to counsel for the appellant and Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 08.11.2018 before D.B



(Hussain Shah)  
Member



(Muhammad Hamid Mughal)  
Member

08.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 21.12.2018.



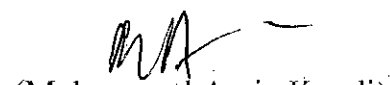
READER

21.12.2018

Appellant in person and Mr. Riaz Paindakheil learned Assistant Advocate General for the respondents present. Appellant requested for adjournment that his counsel is not in attendance. Adjourned. To come for arguments on 19.02.2019 before D.B



(Hussain Shah)  
Member



(Muhammad Amin Kundi)  
Member

28.03.2018

Learned counsel for the appellant and Mr. Zia Ullah, learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 22.05.2018 before D.B



(Muhammad Amin Kundi)  
Member



(Muhammad Hamid Mughal)  
Member

22.05.2018

Junior counsel for the appellant and Mr. Zia Ullah, DDA for the respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 13.06.2018 before D.B.



(Muhammad Amin Khan Kundi)  
Member

13.06.2018

Junior to counsel for the appellant and Mr. Muhammad Jan, Learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel is not in attendance. Adjourned. To come up for arguments on 24.07.2018 before D.B.




(Muhammad Amin Kundi)  
Member

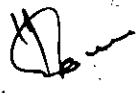


(Muhammad Hamid Mughal)  
Member

31.10.2017


Learned counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney alongwith Sultan Shah, Assistant for the respondents present. Counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 05.12.2017 before D.B.


  
(Gul Zeb Khan)  
Member (E)

  
(Muhammad Hamid Mughal)  
Member (J)

05.12.2017

Counsel for the appellant present. Mr. Ziaullah, Deputy District Attorney alongwith Mr. Sultan Shah, Assistant for official respondents No. 1 to 3 also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 24.01.2018 before D.B.

  
(Ahmad Hassan)  
Member (E)

  
(Muhammad Amin Khan Kundi)  
Member (J)

24.1.2018

Counsel for the appellant, and Addl. AG alongwith Sultan Shah, Assistant for the official respondents present. Counsel for the appellant seeks adjournment. To come up for arguments 28.01.2018 before the D.B.

  
Member

  
Chairman

19.01.2017


Counsel for appellant and Mr. Muhammad Jan, GP for respondents present. It was pointed out that fresh de-novo proceedings is not available on file and to reach just conclusion of the fresh de-novo proceedings result, the respondents are directed to produce the result of fresh de-novo proceedings as per which the other co-accused government officials have been penalized. To come up for such record and arguments on 10.05.2017 before D.B.


  
(AHMAD HASSAN)  
MEMBER

  
(ASHFAQUE TAJ)  
MEMBER

10.05.2017

Counsel for the appellant and Mr. Ziaullah, GP for official respondents present. Private respondents are not present. Notices be issued to private respondents. To come up for arguments on 22.08.2017.

  
(Ahmad Hassan)  
Member

  
(M.Amin Khan Kundi)  
Member

22/8/2017.

Clerk of counsel for the appellant and Mr. Ziaullah, Deputy District Attorney along with ~~Mr. Ziaullah~~ for the respondents present. Clerk of counsel for the appellant requested for adjournment as his counsel is not available due to strike of the bar. To come up for arguments on 31/10/2017 before DB.

  
(GUL ZEB KHAN)  
MEMBER

27.6.2016

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

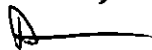
~~20-10-16~~

  
Member

  
Member

20.10.2016

Counsel for the appellant and Mr. Sultan Shah, Supdt alongwith Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 19.01.2017.



(ABDUL LATIF)  
MEMBER



(PIR BAKHSH SHAH)  
MEMBER.

~~20.10.2016~~

~~Counsel for appellant requested for adjournment. Request accepted. To come up for arguments on 19.01.2017. The respondents are directed to produce the result of fresh de novo proceedings as per which the alleged government officials have been penalized. To come up for such record and arguments on 19.05.2017 before D.B.~~


~~(AHMAD HUSSAIN)  
MEMBER~~

~~(ASHFAQUL HAQ)  
MEMBER~~



13.08.2015

None present for appellant. Mr. Sultan Shah, Assistant alongwith Assistant A.G for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 2.12.2015.

  
Chairman

01.12.2015


Clerk to counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Rejoinder on behalf of the appellant submitted copy of which is placed on file. To come up for arguments on 21.3.2016

  
Member

  
Member

21.03.2016

Counsel for the appellant and Mr. Usman Ghani, Sr. Government Pleader for the respondents present. Rejoinder received on behalf of the appellant which is placed on file. To come up for arguments on 27.06.2016.

  
Member

  
Member

12.02.2015

Counsel for the appellant and Addl: A.G for official respondents NO. 1 to 3 present. None present on behalf of private respondents No. 4. Fresh notice be issued to respondent No. 4. To come up for written reply on behalf of respondents No. 1 to 4 on 24.03.2015.

  
Chairman

24.03.2015

Counsel for appellant and Mr. Sultan Shah, Assistant for official respondents alongwith Addl: A.G present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 22.5.2015 before S.B.

  
Chairman

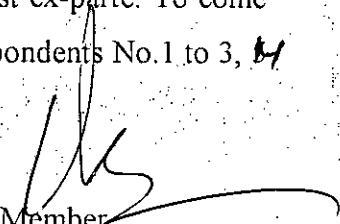
22.05.2015

None present for appellant. Addl: A.G for respondents present. Written reply not submitted despite last opportunity. Requested for further adjournment. Last opportunity is extended for submission of written reply to 13.8.2015.

  
Member


4.7.2014

Appellant with counsel, Mr. Sultan Shah, Assistant for respondents No.1 to 3 with AAG present. Notices of respondents No.4 & 6 received back due to incorrect addresses. Appellant is directed to furnish fresh/correct addresses of respondents No.4 & 6 within a week, whereafter notices be issued to them for written reply. Respondents No.5 & 7 are not present despite their service through registered post, hence proceeded against ex-parte. To come up for written reply/comments on behalf of respondents No.1 to 3, ~~4~~ & ~~6~~ on 30.9.2014.

  
Member

30.09.2014

Appellant in person and Mr. Sultan Shah, Assistant for respondents No. 1 to 3 with Mr. Muhammad Adeel Butt, AAG present. Appellant furnished fresh addresses of respondents No. 4 and 6. According to the appellant, respondent No. 6 has been retired from service and that his name be deleted from the panel of respondents. The name of respondent No. 6 is accordingly deleted from the panel of respondents. Notice be issued to respondent No. 4 on his fresh address for written reply/comments. To come up for written reply/comments on behalf of respondents No. 1 to 3 and 4, positively, on 25.11.2014.

  
Member

25.11.2014


Ms. Wajeeha, Advocate on behalf of counsel for the appellant and Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for written reply/comments on 12.02.2015.

  
Reader

Appeal No. 1280/2013


3.  
25.11.2013

Counsel for the appellant present and requested for adjournment. To come up for preliminary hearing on 09.01.2014.

  
Member

4.  
09.01.2014

Counsel for the appellant present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. The impugned final order dated 04.07.2013 is not a speaking order and the order has been issued in violation of Rule-5 of the Civil Servant (Appeal) Rules-1986. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission written reply on 03.04.2014.

  
Member

5.  
09.01.2014

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

  
Chairman

3.4.2014



Appellant with counsel (Arbab Saif-ul-Kamal, Advocate) present. Notices to the respondents could not be issued due to non-deposit of security and process fee. Learned counsel for the appellant moved application for extension of time. Process fee and security be deposited within a week, whereafter notices be issued to the respondents for written reply/comments on 4.7.2014.

  
Member

Appellant Deposited  
Security & Process Fee  
Rs. 260/-  
Receipt is attached with File.  
Bank

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_  
Case No. 1280 /2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	02/09/2013	<p>The appeal of Mr. Khaled Saleem presented today by Mr. Saadullah Khan Marwat Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	5-9-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>25-11-2013</u></p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

S.A. No. 1280/2013

Khalid Saleem

Versus

Government & others


**INDEX**

S.No	Documents	Annex	P.No.
1.	Memo of Appeal		1-4
2.	Seniority List,	"A"	5-8
5.	Reduction orders in grade, 25.05.2010	"B"	9-10
6.	Appeal before Service Tribunal	"C"	11-19
7.	Promotion order, 30.05.2011	"D"	20
8.	Promotion order, 27.10.2011	"E"	21
9.	Judgment of ST, 15.12.2011	"F"	22-29
10.	Order of SC, 19.04.2012	"G"	30
11.	Retirement order, 03.08.2012	"H"	31
12.	Restoration order, 03.08.2012	"I"	32
13.	Representation, 06.08.2012	"J"	33-34
14.	Rejection order, 04.07.2013	"K"	35

Dated. 2.09.2013

Through

Appellant



Saad Ullah Khan Marwat

Advocate.

21-A Nasir Mension,  
Shoba Bazar, Peshawar.

Ph: 0300-5872575

**BEFORE KPK SERVICE TRIBUNAL PESHAWAR**

S.A No. 1280 /2013

Khalid Salim Marwat S/o Amir Sardar Khan, R/o House No.75, Street No.4, Sector E-1, Phase-I, Hayatabad, Peshawar, Ex-Deputy Secretary, Home & Tribal affair Department, KPK, Peshawar . . . . . Appellant

~~SECRET~~  
1308  
02-9-13

Versus

1. Chief Minister, Govt. of KPK, through R.No.2.
2. Chief Secretary, Govt. of KPK, Peshawar.
3. Secretary, Govt. of KPK, Establishment Department, Peshawar. . . . . Respondents
- ✓4. Akbar Khan Marwat, Additional Secretary, Law Department, Peshawar.
- (5) Shafir Ullah, Additional Secretary, FATA, Fata Secretariat, Warsak Road, Peshawar.
- (6) Muhammad Maqbool, Additional Secretary, Augaf Department, Peshawar cantt. /deleted
- (7) Syed Mubashar Hussain Shah, Deputy Commissioner, Nowshera. . . . . Proforma Respondents

~~SECRET~~  
2/9/13  
No 6 is dda  
vid vide dt 30-8-14  
Respect's no. 527  
Peshawar agst. B. P. P. P.  
vide order sheet dt. 4-7-14  
Rashid

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST APPELLATE ORDER NO.SO(E-1)E&AD/4-472/2013, DATED 04.07.2013 OF R.NO.1 WHEREBY APPEAL**

**AGAINST OFFICE NOTIFICATION NO. SO(E-I)/E&AD/5-1/2001, DATED 30.05.2011 AND OFFICE NOTIFICATION NO. SO(E-I)/E&AD/4-2/2001, DATED 27.10.2011, PROMOTING R.NO. 4 TO 7 TO THE POSTS OF ADDITIONAL SECRETARY, BPS-19 WAS REJECTED FOR NO LEGAL REASON.**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth;

1. That appellant started service as Naib Tehsildar since the year, 1975. He was promoted to the post of Tehsildar, BPS-16 in 1979, to the post of Extra Assistant Commissioner (EAC), BPS-17 in 1990 and to BPS-18 in the year, 2006. From 2002 till 2007, he remained as District Officer (Revenue & Estate) (DOR), Peshawar.
2. That on 08.03.2010, Seniority List of PCS, Executive Group was issued wherein appellant was placed at S.No.2. (Copy as annex "A")
3. That grabbing of Govt. property became play of child everywhere in the province, so such issue cooked up and appellant was too termed and was booked for departmental action and then on 25.05.2010, penalty of reduction to lower post/pay scale for a period of 3 years and on restoration, it shall operate to postpone future increments for 3 years was imposed upon him. (Copy as annex "B")
4. That against the aforesaid penalty, appellant filed S.A.No.1393/2010 before this hon'ble Tribunal which was contested by the department. (Copy as annex "C")
5. That during the pendency of the appeal before the hon'ble Tribunal, R.No.1, without considering appellant for promotion to BPS-19, promoted junior most respondents from BPS-18 to BPS-19 vide orders dated 30.05.2011 and 27.10.2011. (Copies as annex "D & E")



6. That the aforesaid appeal of appellant came up for hearing on 15.12.2011 and after lengthy discussion, the same was accepted on 15.12.2011 and the impugned order dated 25.05.2010 was set aside. (Copy as annex "F")
7. That the department filed Civil Petition for Leave to Appeal (CPLA) before the apex Supreme Court of Pakistan which came up for hearing on 19.04.2012 and then grant of Leave was declined. (Copy as annex "G")
8. That by now, appellant was retired from service on 29.04.2012 on attaining the age of superannuation. (Copy as annex "H")
9. That in pursuance of the aforesaid judgment/order dated 15.12.2011 and 19.04.2012 of the hon'ble Tribunal and Supreme Court of Pakistan, appellant was restored to his original position on 03.08.2012 by withdrawing Notification dated 25.05.2010. (Copy as annex "I")
10. That after the final settlement of his fate, appellant submitted departmental appeal on 06.08.2012 before R.No.2 for award of BPS-19 which was rejected on 04.07.2013, Copy of which was received on 27.08.2013 from the office of the respondent. (Copies as annex "J & K")

Hence this Writ Petition, inter alia, on the following grounds:-

G R O U N D S:

- a. That appellant was at S.No.2 of the seniority list and was senior to the promoted respondents. The promoted respondents were given BPS-19 but appellant was ignored due to the so called illegal order of reduction to lower grade.
- b. That the stigma of reduction was washed out by the hon'ble Service Tribunal, the apex Supreme Court of

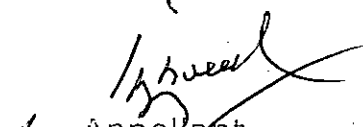

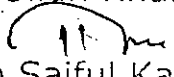
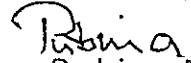
Pakistan and the department herself, so appellant is legally entitled for the grant of BPS-19.

- c. That appellant was compelled to lengthy litigation for no legal reason and was harassed and deprived from monetary benefits of BPS-19 due to the so called order dated 25.05.2010.
- d. That order dated 25.05.2010 was based on malafide and was illegal, so the same was struck down by the hon'ble Tribunal/Supreme Court of Pakistan.
- e. That appellant was dropped from award of the post of Additional Secretary BPS-19 with ulterior motive, otherwise he was qualified and eligible for the same.
- f. That by now appellant has been retired from service on 29.04.2012 but is legally entitled for proforma promotion to get monetary benefits of BPS-19.
- g. That order of rejection dated 04.07.2013 is not supported by reasons, so the same cannot be treated under the law as a legal order.

It is, therefore, most humbly prayed that on acceptance of appeal, the impugned Notifications dated 30.05.2011, 27.10.2011 and 04.07.2013 of the respondents be set aside/modified and appellant be given proforma promotion to BPS-19 for monetary benefits with effect from 30.05.2011 with all service benefits, , with such other relief as may be deemed proper and just in circumstances of the case.

Dated. 2 .00.2013

Through

  
 Appellant  
  
 Saad Ullah Khan Marwat  
  
 Arbab Saiful Kamal  
 &  
  
 Miss Rubina Naz,  
 Advocates.

A 5 8-3-10

GOVERNMENT OF NWFP  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT

No. SO (E-I).E&AD/4-2/2010  
Dated Peshawar, the 8<sup>th</sup> March 2010

To

Mr. Muhammad Saleem  
Khan

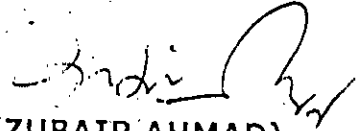
**SUBJECT: - TENTATIVE SENIORITY LIST OF PCS (EXECUTIVE GROUP) OFFICER IN BS- 18 AS ON 5<sup>TH</sup> MARCH 2010.**

Dear Sir,

I am directed to refer to the subject cited above and to forward herewith a copy of tentative seniority list of PCS (Executive Group) Officers in BS- 18 as stood on 5<sup>th</sup> March 2010, with the request that the enclosed certificate may be returned duly signed, indicating, education, error/omission, if any, for the purpose of rectification alongwith attested supporting documents upto 30<sup>th</sup> March 2010.

2. In case of receipt of no response by the due date, it would be considered that particulars have been accepted as correct.

Yours Faithfully,



(ZUBAIR AHMAD)

SECTION OFFICER (ESTT-I)

PH: & FAX # 091/9210529

Encl: As above.

Attested  
by

**TENTATIVE SENIORITY LIST OF PCS (EXECUTIVE GROUP) BS-18  
OFFICERS**

S.#	Name of the Officer with academic qualification	Date of birth and Domicile	Date of 1 <sup>st</sup> entry into Govt Service	Regular appointment/Promotion to present post			Present Posting
				Date	BPS	Method of Recruitment	
1	2	3	4	5	6	7	8
1.	Syed Zaheer-ul-Islam Shah	12.4.1965 (Mansehra)	17.3.1988	13.4.2006	18	By Promotion	Deputy Chief Economist (7.11.2009)
2.	Mr. Khalid Saleem Khan	30.4.1952 (Lakki Marwat)	9.9.1975	13.4.2006	18	-do-	Dy: Secretary Home Deptt: (29.11.2008)
3.	Mr. Muhammad Maqbool	16.9.1953 (N.W.Agency)	8.9.1975	11.9.2006	18	-do-	Distt Officer (R&E) Hangu. (11.8.2008)
4.	Mr. Akbar Khan Marwat	30.3.1955 (Bannu)	23.1.1980	11.9.2006	18	-do-	Add: Commissioner DIKhan (13.1.2009)
5.	Mr. Latif-ur-Rehman	16.7.1957 (Nowshera)	26.6.1980	11.9.2006	18	-do-	DO(R&E) Mansehra (31.8.2009)
6.	Mr. Rashid Ahmad Khan	1.4.1955 (Swat)	10.6.1974	11.9.2006	18	-do-	Director Land Record NWFP (24.9.2009)
7.	Mr. Mazhar Sajjad	1.11.1958	15.8.1984	23.12.2006	18	-do-	Dy: Secy Industries Deptt: (30.1.2009)
8.	Mr. Shafirullah	9.3.1956 (FR Bannu)	7.10.1978	23.12.2006	18	-do-	Political Agent, Khyber Agency. (19.9.2009)
9.	Syed Mubashir Hussain Shah	8.1.1957 (Mansehra)	26.6.1980	23.12.2006	18	-do-	Secretary-I BOR (25.10.2008)
10.	Mr. Muhammad Farid	15.2.1954 (Mansehra)	26.6.1980	23.12.2006	18	-do-	PM, DRU, Battagram (17.3.2009)

6/

*Ali*

11.	Mr. Khan Bakhsh	2.1.1956 (Lakki Marwat)	31.8.1980	16.2.2007	18	-do-	DCO DIKhan (7.9.2009)
12.	Mr. Abdul Qayyum	23.11.1952	8.9.1975	16.2.2007	18	-do-	D.S (Narcotics) FATA (4.9.2009)
13.	Mr. Muhammad Farooq	4.2.1952	10.9.1975	4.6.2007	13	-do-	PM, DRU, Abbottabad (12.9.2009)
14.	Mr. Muhammad Masood Sethi	12.5.1953 (Peshawar)	8.9.1975	21.5.2008	13	-do-	Addl: Commissioner Peshawar Division (28.7.2009)
15.	Syed Musadiq Shah	15.3.1953	10.9.1975	4.6.2007	13	-do-	DCO Hangu (19.9.2009)
16.	Mr. Aqal Badshah	25.9.1958 (Kohat)	8.7.1982	8.12.2007	13	-do-	D.S Health Deptt: (21.4.2009)
17.	Mr. Atta-ur-Rehman	1.9.1958 (Mardan)	8.7.1982	21.5.2008	13	-do-	Dy: Secry, Governor's Sectt (4.3.2008)
18.	Mr. Siraj Ahmad	5.8.1957 (Mardan)	29.10.1992	8.12.2007	13	-do-	DCO Peshawar (05.02.2010)
19.	Mr. Amin-ul-Haq	10.10.1957 (Dir)	8.7.191982	8.12.2007	13	-do-	DCO Kohistan (9.5.2009)
20.	Mr. Mutahir Zeb	3.2.1966 (Malakand Agency)	24.10.1992	8.12.2007	13	-do-	P.A NWA (12.8.2008)
21.	Miss. Aneela Mahfooz Durrani	13.4.1969	4.9.1995	6.1.2009	13	-do-	A.S Zakat, Ushr, Deptt: (7.9.2009)
22.	Mr. Zakaullah Khattak.	2.9.1968 (Karak)	26.5.1997	8.12.2007	18	-do-	D.S Chief Minister's Sectt: (28.4.2009)
23.	Mr. Amir Latif.	19.8.1969 (Bannu).	26.5.1997	8.12.2007	18	-do-	DCO Tank (25.5.2009)
24.	Mr. Muhammad Ali	23.1.1972 (DIKhan)	7.6.1995	6.1.2009	18	-do-	Estate Officer Ministry of Housing (2.9.2008)
25.	Mr. Yousuf Rahim	19.5.1971 (S.W.A)	26.5.1997	21.5.2008	18	-do-	DCO Mansehra (4.9.2009)
26.	Miss Kaneez Sughra.	25.12.1965 (Mansehra)	26.5.1997	21.5.2008	18	-do-	Director (P&T) PERRA (31.8.2009)

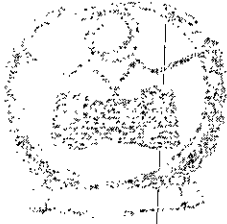
27.	Mr. Riaz Khan Mahsud	1.4.1970 (S.W Agency)	26.5.1997	6.1.2009	18	-do-	P.A Orakzai Agency (4.9.2009)
28.	Mr. Ghulam Muhammad	9.6.1956 (Chitral)	6.6.1979	8.12.2007	18	-do-	DCO Dir Lower (12.8.2008)
29.	Mr. Anwar Zeb Khan	10.10.1950 (Nowshera)	8.7.1982	8.12.2007	18	-do-	Secretary-II BOR (17.9.2009)
30.	Mr. Fazal Karim.	2.1.1955 (Dir)	21.5.1973	8.12.2007	18	-do-	Distt Officer (R&E) Dir Upper. (6.10.2007)
31.	Mr. Abdul Kamal.	13.3.1957 (Karak)	8.7.1982	8.12.2007	18	-do-	Dy. Relief Commissioner (31.5.2008)
32.	Mr. Mujeeb-ur-Rehman..	1.1.1956 (Mohmand Agency)	8.7.1982	8.12.2007	18	-do-	DCO Buner (19.9.2009)
33.	Mr. Inamullah Khan	1.3.1956 (Malakand)	8.7.1982	8.12.2007	18	-do-	D.S Auqaf Deptt: (8.6.2009)
34.	Mr. Basir Khan	4.10.1958 (FR Bannu)	8.7.1982	8.12.2007	18	-do-	P.A Kurram Agency (4.9.2009)

sb/

Sabir Khattak/\*\*

*Zubair Ahmad*  
**(ZUBAIR AHMAD)**  
**SECTION OFFICER (ESTT-I)**  
**PHONE & FAX # 091-9210529**

*Attested*  
*BY*



B 9

**GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT**

Dated Peshawar, the 25<sup>th</sup> May 2010

**ORDER**


**NO.SO(E-I)E&AD/11-8/2010** WHEREAS, Mr. Khalid Saleem (PCS EG BS-18) the then D.O.(R&E) Peshawar now Deputy Secretary Home & T.As Department was served with a Show Cause notice under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 for the charges mentioned in the charge sheet/Statement of allegations served upon him on 03.09.2009 on the basis of enquiry conducted by the Enquiry Committee comprising of M/s Dr. Jamal Nasir (DMG BS-20) Secretary P&D FATA and Aurangzeb (PCS EG BS-20) the then Secretary ST&IT now Secretary LG&RD Department.

Now **THEREFORE**, the Competent Authority, after having considered the charges, evidence on record, reply/explanation of the accused officer to the Show Cause and findings of the Enquiry Committee (detailed above), and exercising his powers under Section-3 read with Section-8 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 has been pleased to impose minor penalty of "**reduction to lower post/pay scale for a period of three years and on restoration it shall operate to postpone future increments for three years**" on Mr. Khalid salim (PCS EG BS-18) the then D.O.(R&E) Peshawar now Deputy Secretary, Home & T.As Department with immediate effect.

**CHIEF SECRETARY  
GOVT: OF KHYBER PAKHTUNKHWA**

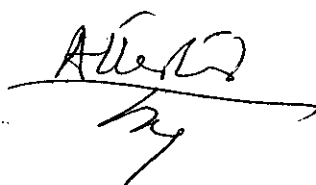
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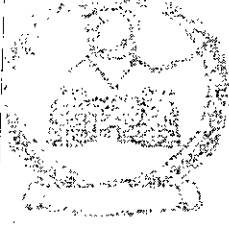
1. Senior Member Board of Revenue, Khyber Pakhtunkhwa
2. Additional Chief Secretary, Home Khyber Pakhtunkhwa
3. Secretary to Governor, Khyber Pakhtunkhwa
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
5. Commissioner Peshawar
6. Accountant General, Khyber Pakhtunkhwa
7. District Coordination Officer, Peshawar.
8. D.O.(R&E) Peshawar
9. S.O. (Secret) E&AD
10. PS to Chief Secretary, Khyber Pakhtunkhwa/S.O.E.II/S.O.E.III E&AD
11. PS to Secretary Establishment, Khyber Pakhtunkhwa
12. Mr. Khalid salim (PCS EG BS-18) the then D.O.(R&E) Peshawar now Deputy Secretary, Home & T.As Department.
13. Manager, Government Printing Press, Peshawar.

  
(ZUBAIR AHMAD)  
SECTION OFFICER (ESTT. I)  
Ph: & Fax No. 091/9210529

#  
Home & T.As

218/22  
6277  
28/5/2010





**GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT**

Dated Peshawar, the 25<sup>th</sup> May 2010

**ORDER**

**NO.SO(E-I)E&AD/11-8/2010** WHEREAS, Mr. Khalid Saleem (PCS EG BS-18) the then D.O.(R&E) Peshawar now Deputy Secretary Home & T.As Department was served with a Show Cause notice under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 for the charges mentioned in the charge sheet/Statement of allegations served upon him on 03.09.2009 on the basis of enquiry conducted by the Enquiry Committee comprising of M/s Dr. Jamal Nasir (DMG BS-20) Secretary P&D FATA and Aurangzeb (PCS EG BS-20) the then Secretary ST&IT now Secretary LG&RD Department.

**Now THEREFORE**, the Competent Authority, after having considered the charges, evidence on record, reply/explanation of the accused officer to the Show Cause and findings of the Enquiry Committee (detailed above), and exercising his powers under Section-3 read with Section-8 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 has been pleased to impose major penalty of "**reduction to lower post/pay scale for a period of three years and on restoration it shall operate to postpone future increments for three years**" on Mr. Khalid salim (PCS EG BS-18) the then D.O.(R&E) Peshawar now Deputy Secretary, Home & T.As Department with immediate effect.

**CHIEF SECRETARY  
GOVT: OF KHYBER PAKHTUNKHWA**

**Endst. No. NO.SO(E-I)E&AD/11-8/2010**

Dated 26<sup>th</sup> May 2010

Copy forwarded to the:-

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa
2. Additional Chief Secretary, Home Khyber Pakhtunkhwa
3. Secretary to Governor, Khyber Pakhtunkhwa
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
5. Commissioner Peshawar
6. Accountant General, Khyber Pakhtunkhwa
7. District Coordination Officer, Peshawar.
8. D.O.(R&E) Peshawar
9. S.O. (Secret) E&AD
10. PS to Chief Secretary, Khyber Pakhtunkhwa/S.O.E.II/S.O.E.III E&AD
11. PS to Secretary Establishment, Khyber Pakhtunkhwa
12. Mr. Khalid salim (PCS EG BS-18) the then D.O.(R&E) Peshawar now Deputy Secretary, Home & T.As Department.
13. Manager, Government Printing Press, Peshawar.

*received on  
14/6/2010*

*ASA*

(ZUBAIR AHMAD)

SECTION OFFICER (ESTT. I)

Ph: & Fax No. 091/9210529



C

11

26-7-10

4

**BEFORE THE SERVICE TRIBUNAL, K.P.K PESHAWAR**

S.A.No. 1393 /2010

Khalid Saleem Marwat, Deputy Secretary,  
Govt. of Khyber Pukhtoon Khawa,  
Home & Tribal Affairs Department, Peshawar,  
Ex-District Officer (Revenue & Estate), Peshawar.  
.....Appellant

**Versus**

1. Chief Minister, Govt. of K.P.K. through Chief Secretary, Govt. of Khyber Pukhtoon Khawa, Civil Secretariat, Peshawar.
2. Chief Secretary, Govt. of Khyber Pukhtoon Khawa, Civil Secretariat, Peshawar.
3. Secretary, Govt. of Khyber Pukhtoon Khawa, Establishment Department, Peshawar.  
.....Respondents

Appeal against O/O No.So(E-1) P-497  
56/c  
E&AD/11-8/2010, dated 25.5.2010 of  
R.No.1 where by Major Penalty of  
reduction to lower post/pay. Scale for a  
period of three years and on restoration,  
it shall operate to postpone future  
increments for three years was imposed  
on the appellant for no legal reason.

**Respectfully Sheweth:**

1. That appellant was initially appointed as Naib Tehsildar in the year, 1975 and was promoted to the post of Tehsildar in 1979. In the year, 1990 he was promoted to the post of EAC BPS-17. He during this period, performed his services on various posts.

Attested  
by

On satisfactory performances of the official duties, he was promoted to BPS-18. From March, 2002 till September, 2007, he remained as District officer (Revenue & Estate), Peshawar.

2. That on 28.09.2005, Mr. Roohullah Jan S/o M. Ilyas resident of Mashu Khel, Peshawar submitted an application before the appellant that his father was the owner of the property situated in Mauza Tukra No.1 vide mutation No. 405, dated 20.09.1921. As his father has since been died and the family members are intending to register a gift deed in his favour on the basis of the aforesaid mutation, so he be permitted for doing the needful. Appellant was requested to direct Sub Registrar, Peshawar to register a gift deed on the basis of aforesaid mutation in his favour. On the face of this application, following remarks were recorded.

**Sub Registrar:**

*"Gift deed as requested is allowed subject to observance of all codal formalities and as provided in the law on the subject". (Copy as annex "A").*

Here it would be not out of place to mention that wherever, Government land exists every one tries his best to illegally possess/ occupy the same especially by land Mafia, Qabza groups, encroachers, etc.

3. That later on, having come to know that the applicant has illegally been succeeded in grabbing State Land, the appellant immediately cancelled the

P/E

2/ 22/1, 22/2  
and  
P/23

113

registered instant gift deed. The encroacher Mr. Roohullah was dispossessed and FIR was lodged against the intruders (his men while busy in grabbing State Land).

P/24,25,26,27

4. That Senior Member, Board of Revenue, Khyber Pukhtoon Khawa on the report of Provincial Inspection Team wrote in two different Summaries to R.No-1 that no irregularity has been found on the part of appellant and the report of Provincial Inspection Team against him be made filed. The District Officer (Revenue & Estate) also reported that the plot is still lying vacant. (Copy as annex "B").

P/22

P/14/10

5. That on 24.06.2006, appellant again wrote to all the Revenue Officers in Peshawar District that Land Mafia has increased their unlawful activities by taking over possession of State Land and in this connection, so many FIRs have been lodged but despite this fact, such trend was in progress, so you are directed to sensitize your field duties and immediately report of any mistake regarding the subject matter. (Copy as annex "C").

P/19

P/18/10

6. That on the aforesaid count, appellant alongwith others were served with charge sheet/ statement of allegations on 29.11.2008 in the light of the inquiry report of the Provincial Inspection Team by R.No-1 under the Removal from Services (Special Powers) Ordinance, 2000. Inquiry Committee was constituted and appointed Dr. Hamad Awais Agha,

P. 19-20/c

the than Secretary Environment as an Inquiry Officer. The charge sheet/statement of allegations was replied, denying the charges in toto. (Copies as annex "D" & "E" respectively)

7. That disciplinary proceedings in shape of enquiry against appellant and others were initiated. After finalization of the proceedings, appellant was exonerated honourably but the authority, disagreeing with the findings and recommendations of 1<sup>st</sup> inquiry, constituted a second (2<sup>nd</sup>) Inquiry Committee by launching disciplinary proceedings in utter violation of the Provisions of Removal from Service (Special Powers) Ordinance, 2000, so he again served appellant and others with charge sheet and statement of allegations on 03.09.2009. In the statement of allegations, the Inquiry Committee, comprising of Dr. Jamal Nasir Secretary, P&D FATA and Mr. Aurangzeb Secretary, Local Government was constituted to probe into the allegations. The charge sheet and statement of allegations was again replied on 17.09.2009 by giving cogent reasons in rebuttal thereof. (Copies as annex "F", "G" & "H" respectively).

P. 28-30/c

8. That after finalization of the proceedings, the Inquiry Committee did not communicate the recommendations of the said proceedings to appellant, however, copy of the findings, communicated were in cut paper pages, yet did not make any recommendations in respect of award of any penalty. (Copy as annex "I").

P. 40/c

9. That on 23.01.2010, appellant was served with show cause notice without supplying the inquiry proceedings to him, which was replied on 30.01.2010. (Copies as annex "J" & "K" respectively).

P 43  
u/s  
K

10. That on 25.05.2010, Minor Penalty of "reduction to lower post/ pay scale for a period of three years and on restoration, it shall operate to postpone future increments for 3 years", was imposed by the appellant. (Copy as annex "L").

P 49  
K

11. That on 07.06.2010, appellant submitted representation before R.No-2 for setting aside the impugned order. (Copy as annex "M").

P 50  
K

12. That as soon as the representation of appellant was received by the authority and smelling the commission of illegalities in the order, subsequent back dated order of the same date i.e. 25.05.2010 was issued by the authority by omitting word "Minor" in to "Major". This order was revived by R-No.2 on 25.05.2010, received by appellant on 14.06.2010. (Copy as annex "N").

P 56  
K

13. That in the meanwhile appellant was allowed to perform duties as Deputy Secretary, Home and Tribal Affairs Department by the Chief Secretary, Government of KPK vide order dated 21.06.2010. (Copy as annex "O").

P 57  
K

14. That appellant had filed Writ Petition No.2397/2010 to not deprive him from further promotion on the basis of the first order dated 25.05.2010, which was disposed of vide order dated 22.06.2010 by the Honourable High Court. (Copy as annex "P").

P 58  
K

15. That on 23.06.2010, appellant submitted subsequent representation before the authority which was rejected vide order dated 21.07.2010. (Copy as annex "Q" & "R" respectively).

Hence this appeal, inter alia, on the following grounds.

**GROUND S:**

- A. That for the last 30/32 years, appellant rendered meritorious service to the Departments and his performances were highly appreciated in this respect.
- B. That on the application of Mr. Roohullah Jan, appellant recorded the remarks which were quite legal and no illegality, whatsoever, was ever committed by him as per the law but still he was awarded with "Major Penalty".
- C. That the Land Mafia, Qabza Groups, Encroachers, etc are very strong and every time are in search to occupy illegally the State Land in one way or the other but appellant wrote numerous letters to the higher authorities as well as to law agencies to save the State Land from the clutches of the Mafias. In the instant case, not only FIR was lodged, even possession of State Land was retrieved and deeds which were attested fraudulently were cancelled.
- D. That authority is debarred under the rules to make any order for holding the 2<sup>nd</sup> inquiry without giving any reason in respect of superseding the findings

*Fact finding*

and recommendations of 1<sup>st</sup> enquiry which were not communicated despite request made on two occasions.

99 ← E. That the 2<sup>nd</sup> inquiry was also not conducted by the Inquiry Committee as per the mandate of law/ordinance. No statement of any witness was ever recorded in the presence of appellant nor he was afforded opportunity of cross examination, meaning thereby that he was not provided fair opportunity of self defence and was condemned unheard. ??

F. That it was mandatory for the authority to supply all the inquiry proceedings to a Govt. servant while serving him with final show cause notice but no such inquiry proceedings i.e. findings and recommendations in both inquiries were attached with the final show cause notice except findings of 2<sup>nd</sup> inquiry and that too in shape of cut paper pages. ✓

G. That no one on the same charge as per the verdict of Supreme Court of Pakistan be discriminated. All shall be dealt with equally and fairly. In the impugned order, appellant was awarded "Major Penalty of reduction to lower post/pay scale as well as forfeiture of future increments for 3 years" while Mr. Samiullah Jan, Sub Registrar, Peshawar was awarded with "Minor Penalty" of withholding of promotion for a period of two years, thus discriminated.

- H. That the impugned order is ultra-vire, unconstitutional and against the norms of natural justice as the appellant has been prosecuted as well as punished twice for the same act.
- I. That the petitioner stands at S.No.2 of the seniority list circulated by the Establishment and Administration Department and is likely to be promoted to grade-19 in the forthcoming Provincial Selection Board meeting. In order to deprive him from his due right of promotion, the impugned order, being based on malafide, was issued against the rules, regulations, law and natural justice.
- J. That in hazard manner, the authority issued two different orders, one on 25.05.2010 and second too on 25.05.2010 which are totally against the mandate of law. The interesting one is that the subsequent order was made back dated. From this it is quite clear that no fair game was played in the subject matter. ✓
- K. That the order is void, illegal and has been passed without affording opportunity of personal hearing to the appellant.
- L. That the rejection order is not supported by any reason which is against the judgments of the Apex Supreme Court of Pakistan.
- M. That the impugned order is not only without lawful authority but is also based on malafide as a single inch of state property was neither possessed nor encroached by any one, so the order is improper, unjust, arbitrary, discriminatory and of no legal effect.

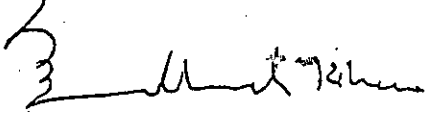


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It is, therefore, most humbly prayed that on acceptance of this appeal, the impugned office order dated 25.05.2010 of R.No.1 be set aside and appellant be restored to his original position with all back benefits.

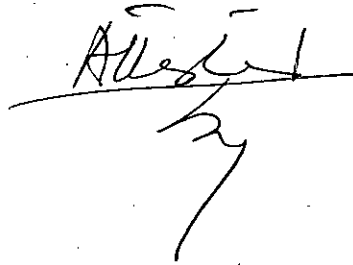
Through

  
Appellant



Saadullah Khan Marwat  
Advocate,

Dated: 23/07/2010





GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT

Dated Peshawar, the 30<sup>th</sup> May 2011

**NOTIFICATION**

NO.SO(E-I)E&AD/5-1/201. The competent authority on the recommendations of the Provincial Selection Board is pleased to promote the following officers of PCS (Executive Group) as noted against each, on regular basis with immediate effect:-

S.#.	NAME OF OFFICER	FROM	TO
1	Mr. Akbar Khan Marwal	BS-18	BS-19
2	Mr. Shafiqullah	BS-18	BS-19

2. The officers on promotion will remain on probation for a period of one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-15(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

3. Consequent upon the above, the following postings/transfers are made henceforth:-

S.#	NAME OF OFFICERS	FROM	TO	REMARKS
1.	Mr. Akbar Khan Marwal (PCS-EG-BS-19)	Deputy Secretary Provincial Ombudsman, Khyber Pakhtunkhwa	Additional Secretary Industries Department	Against the vacant post.
2.	Mr. Shafiqullah (PCS-EG-BS-19)	Political Agent Khyber Agency	Political Agent Khyber Agency	Already holding charge

CHIEF SECRETARY  
GOVERNMENT OF KHYBER PAKHTUNKHWA

Endst. of even No. & date

Copy forwarded to the:-

1. Additional Chief Secretary, P&D Department.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. Additional Chief Secretary (FATA), FATA Secretariat.
4. All Administrative Secretaries in Khyber Pakhtunkhwa.
5. Secretary to Governor, Khyber Pakhtunkhwa.
6. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
7. All Divisional Commissioners in Khyber Pakhtunkhwa.
8. Accountant General, Khyber Pakhtunkhwa.
9. All Political Agents in Khyber Pakhtunkhwa.
10. PS to Provincial Ombudsman, Khyber Pakhtunkhwa.
11. PS to Chief Secretary, Khyber Pakhtunkhwa.
12. PS to Secretary Establishment, E&A Department.
13. PS to Special Secretary (Reg.)/ P.A. to Addl. Secretary (Estt.)/ Section Officer (Secret)/Director Protocol/Librarian, E&A Deptt.
14. Officers concerned.
15. Controller, Govt Printing Press, Peshawar.

(ZUBAIR AHMAD)  
SECTION OFFICER (E-I)  
PHONE & FAX # 091-9210529

ZIA.UL.HAQ/..



E  
21  
27-10-11

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT**

Dated Peshawar, the 27<sup>th</sup> October 2011

**NOTIFICATION**

**NO.SO(E-I)E&AD/4-2/2001.** Government of Khyber Pakhtunkhwa on the recommendations of the Provincial Selection Board is pleased to promote the following officers of PCS (Executive Group) as noted against each, on regular basis with immediate effect:-

S. #.	NAME OF OFFICER	FROM	TO
1.	Syed Jamal-ud-Din Shah	BS-19	BS-20
2.	Sahibzada Muhammad Anis	BS-19	BS-20
3.	Mr. Muhammad Magbool	BS-18	BS-19
4.	Syed Mubashir Hussain Shah	BS-18	BS-19

2. The officers on promotion will remain on probation for a period of one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-15(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

3. Consequent upon the above, the following postings/transfers are made henceforth:-

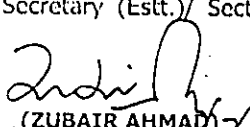
S.#	NAME OF OFFICERS	FROM	TO
1.	Syed Jamal-ud-Din Shah (PCS EG BS-20)	Secretary Sports and Tourism Department, in his own pay and scale.	Secretary Sports and Tourism Department
2.	Sahibzada Muhammad Anis (PCS EG BS-20)	Commissioner Kohat Division, Kohat, in his own pay and scale.	Commissioner Kohat Division, Kohat.
3.	Mr. Muhammad Magbool (PCS EG BS-19)	Deputy Secretary Zakat, Ursh, Social Welfare & Women Development Department	Additional Secretary (Opinion) Law Department, against the vacant post, relieving Mr. Muhammad Arif Khattak (BS-19 Prosecution Service) Director (Administration) Directorate of Prosecution of the additional charge.
4.	Syed Mubashir Hussain Shah (PCS EG BS-19)	Secretary Board of Revenue, Khyber Pakhtunkhwa	Additional Secretary (HRD) Wing Establishment Department, against the vacant post.

**CHIEF SECRETARY  
GOVERNMENT OF KHYBER PAKHTUNKHWA**

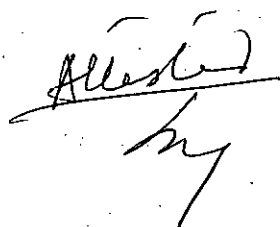
**Endst. of even No. & date**

Copy forwarded to the:-

1. Additional Chief Secretary, P&D Department.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. Additional Chief Secretary (FATA), FATA Secretariat.
4. All Administrative Secretaries in Khyber Pakhtunkhwa.
5. Secretary to Governor, Khyber Pakhtunkhwa.
6. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
7. All Divisional Commissioners in Khyber Pakhtunkhwa.
8. Accountant General, Khyber Pakhtunkhwa.
9. All Political Agents in Khyber Pakhtunkhwa.
10. PS to Chief Secretary, Khyber Pakhtunkhwa.
11. PS to Secretary Establishment, E&A Department.
12. PS to Special Secretary (Reg.)/ P.A. to Addl. Secretary (Estt.)/ Section Officer (Secret)/Director Protocol/Librarian, E&A Deptt.
13. Officers concerned.
14. Controller, Govt. Printing Press, Peshawar.

  
(ZUBAIR AHMAD)  
SECTION OFFICER (E-I)  
PHONE & FAX # 091-9210529

ZIAULHAQ/..



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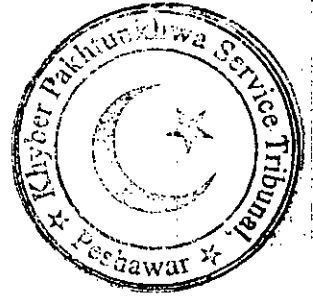
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15-12-11

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

APPEAL NO. 1393/2010

Date of institution ... 26.07.2010  
Date of judgment ... 15.12.2011



Khalid Saleem Marwat, Deputy Secretary,  
Govt. of Khyber Pakhtunkhwa,  
Home & Tribal Affairs Department, Peshawar,  
Ex-District Officer (Revenue & Estate), Peshawar.

..... (Appellant)

VERSUS

1. Chief Minister, Govt. of Khyber Pakhtunkhwa through Chief Secretary, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Chief Secretary, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. Secretary, Govt. of Khyber Pakhtunkhwa, Establishment Department, Peshawar.

..... (Respondents)

APPEAL AGAINST OFFICE ORDER NO. SO(E-1)E&AD/11-8/2010, DATED 25.5.2010 OF RESPONDENT NO. 1 WHEREBY MAJOR PENALTY OF REDUCTION TO LOWER POST/PAY SCALE FOR A PERIOD OF THREE YEARS AND ON RESTORATION IT SHALL OPERATE TO POSTPONE FUTURE INCREMENTS FOR THREE YEARS WAS IMPOSED ON THE APPELLANT FOR NO LEGAL REASON.

Mr. Saadullah Khan Marwat,  
Advocate.  
Mr. Ghulam Mohy-ud-Din Malik,  
Advocate.  
Mr. Bilal Ahmad Kakaizai,  
Advocate.  
Mr. Sher Afgan Khattak,  
Addl: Advocate General.

For appellant  
For appellant in connected  
Appeal No. 1911/2010.  
For appellant in connected  
Appeal No. 2157/2010

For respondents

Mr. Qalandar Ali Khan  
Mr. Khalid Hussain

.. Chairman  
Member

JUDGMENT

QALANDAR ALI KHAN, CHAIRMAN:- Since this appeal as well as

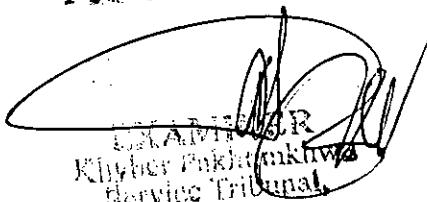
appeals by Gul Said (No.1911/2010) and Mian Samiullah (No. 2157/2010) arise out of the same case of illegal registration of gift deed, this single judgment shall also dispose of the said two connected appeals.

2. The facts, stated in brief, giving rise to the said three appeals are that one Roohullah submitted application for registration of gift deed to the appellant in

**ATTESTED**  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

this appeal, then District Officer (Revenue & Estate), Peshawar, on 28.9.2005, which was allowed by the appellant 'subject to observance of codal formalities and as provided in the law on the subject'. Gift deed was accordingly entered in the record by Gul Said, then Registration Muharrir, Peshawar and registered by Mian Samiullah, then Sub-Registrar, Peshawar. Since the gift deed was regarding state land, namely, Javed Park, Gulbahar, Peshawar, it appears, a fact finding inquiry was conducted through the Provincial Inspection Team, and on receipt of the inquiry report, the Authority i.e. Chief Minister, Khyber Pakhtunkhwa, ordered initiation of disciplinary proceedings against the appellants and another person, namely, Pir Azam, Record Keeper Muhafiz Khana/Senior Clerk DOR office, Peshawar, under the NWFP (Khyber Pakhtunkhwa) Removal from Service (Special Powers) Ordinance, 2000, through Dr.Hamad Awais Agha, Secretary to Government of NWFP (Khyber Pakhtunkhwa), Environment Department, who, after inquiry, recommended, in his report, filing of the departmental/inquiry proceedings as the officers were not found guilty of committing any illegality or irregularity and further that allegations against them could not be proved. Meanwhile, the Senior Member Board of Revenue, NWFP (Khyber Pakhtunkhwa), Peshawar also submitted his report on the inquiry of Provincial Inspection Team, wherein, he also recommended filing of the departmental proceedings against the appellants as, according to him, no irregularity was found on their part. However, the Authority did not agree with the recommendations of the Inquiry Officer and directed/ordered a second inquiry/departmental proceedings against the appellants. The appellants were, accordingly, again served with charge sheets and statements of allegations, containing the same allegations as leveled in the first charge sheet and statement of allegations. This time, the inquiry was conducted through a committee comprising Dr.Jamal Nasir, Secretary, P&D, FATA, and Mr.Aurangzeb,

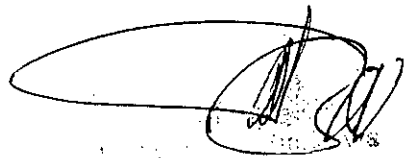
**ATTESTED**

  
 EXAMINER  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

Secretary, Science & Technology and I.T Department, who recommended awarding of major penalty of reducing the appellants to lower posts/pay scale while exoneration of the fourth officer/official, Pir Azam. The appellants were accordingly served with show cause notices by the competent authority to which they submitted their replies/written defence; and the Authority imposed the penalty of 'reduction to lower post/pay scale for a period of three years and on restoration it shall operate to postpone future increments for three years' on the appellant in this appeal as well as Mr. Gul Said, appellant in the connected appeal, while the third appellant, namely, Mian Samiullah, was awarded minor penalty of 'with-holding of promotion for a period of two years'. Initially, penalty imposed on the former two appellants was also described as 'minor' but later on the order was substituted with another order showing the penalty as 'major'. All the three appellants preferred departmental appeals, and both the appellants in this appeal as well as in the connected appeal, Gul Said, filed Writ Petitions in the High Court, while departmental appeal of Mian Samiullah was rejected by the appellate authority for being time barred. The departmental appeal of the appellant, in this appeal, was also rejected on 21.7.2010.

3. All the three appellants lodged separate appeals, inter-alia, on the grounds that they had acted in accordance with law which did not oblige them to probe into the title of the applicant asking for registration of the gift deed, and that there was also no malafide on their part, as the gift deed was cancelled as soon as they got knowledge that the same was fake and bogus. They alleged that they were found not guilty and exonerated by both the Inquiry Officer as well as the SMBR, but without furnishing any reason for dissenting with the recommendation of Ist Inquiry Officer, the Authority illegally constituted an Inquiry Committee, which, without recording any evidence and affording them the opportunity of defence and hearing, recommended the imposition of penalties

ATTESTED



Secretary, Science & Technology  
I.T Department

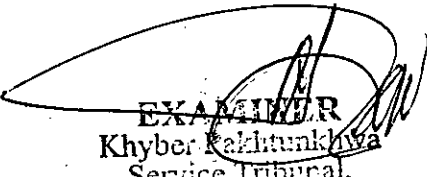
which did not commensurate with the gravity of charges against them. The appellant in this appeal as well as appellant in the connected appeal, Gul Said, further alleged that the Authority imposed two penalties, one major and the other minor, which amounted to double jeopardy and was not provided for by the law. The appellants maintained that they have not been treated in accordance with law and that their appeals have also been disposed of in a summary way without furnishing any reason for rejection, and further that the departmental appeal of Gul Said was not even disposed of within the statutory period.

4. The respondents resisted the appeals, mainly, on the ground that though fully aware of the rules and regulations, the appellants illegally registered gift deed which, though cancelled later, nevertheless landed the Provincial Government in unnecessary litigation. They defended the departmental proceedings and alleged that reasonable opportunity of defence and hearing was provided to the appellants, and major penalty was imposed by the competent authority only after charges were proved against the appellants.

5. The appellants also filed replications/rejoinders to the written replies/comments of the respondents, wherein, they reiterated their case put forth in their appeals, besides refuting contentions of the respondents; where-after arguments of counsel for all the appellants and AAG heard, and record perused.

6. As a result of departmental proceedings under the NWFP (Khyber Pakhtunkhwa) Removal from Service (Special Powers) Ordinance, 2000, and in the light of recommendations of the Inquiry Committee, the competent authority imposed penalties on the appellants, which have been impugned through these appeals. The appellants were proceeded against departmentally on the charge of their involvement in the registration of an illegal gift deed. The appellant in this appeal was District Officer (Revenue & Estate) Peshawar, appellant Gul Said

**ATTESTED**

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Registration Muharrir and appellant Mian Samiullah Sub-Registrar, Peshawar at the relevant time. The gift deed in-question was presented to the appellant in this appeal by one Roohullah, which was allowed by the appellant, and then the deed was entered in the relevant record by appellant, Gul Said, and registered by appellant, Mian Samiullah. The main allegation against the appellants is that though duty bound, by virtue of their positions as DOR, Registration Muharrir and Sub-Registrar, respectively, to verify ownership of the executant of the gift deed/donor, they failed to perform their duty and committed mis-conduct by registration of a gift deed regarding state land. It is not disputed by the appellants that the gift deed was registered without verification of the ownership, but they claimed that while performing functions of registration authority, it was not their duty to verify ownership, and that they were bound to register the gift deed when presented for registration under paragraph 135 of the Registration Rules, 1929. Their this claim also received support from the findings/report of the Ist Inquiry Officer, Dr. Hamad Awais Agha, as well as report of SMBR. Nevertheless, they could not defend the procedure adopted for registration of the gift deed in the light of legal provisions. The appellant in this appeal could not explain under what authority he directly received application from Roohullah and then allowed the same, and, like-wise, the other two appellants also failed to come up with explanation for not following the established procedure of going through the latest 'Jama-Bandi'. They also failed to explain that if the gift deed was properly and legally registered, what was the need of its subsequent cancellation and registration of case against the said Roohullah, which, indeed, landed the Provincial Government in unnecessary litigation and complications.

7. However, since legality of the departmental proceedings and impugned orders have been assailed in these appeals, the question that whether the appellants have been treated in accordance with law, and prescribed procedure

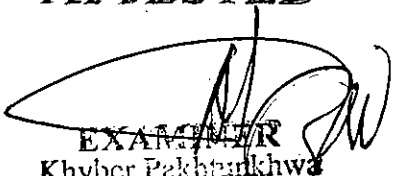
ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar



observed by the authority as well as Inquiry Committee, becomes relevant and essential for proper adjudication of the appeals. It is an admitted fact that in the first instance, on the basis of inquiry report of the Provincial Inspection Team, the appellants were proceeded against under the NWFP (Khyber Pakhtunkhwa) Removal from Service (Special Powers) Ordinance, 2000, served with charge sheets and statements of allegations by the competent authority, and inquiry conducted through the Inquiry Officer, Dr. Hamad Awais Agha. In his report, the Inquiry Officer recommended filing of the departmental/inquiry proceedings and held that the appellants were not found guilty of committing any illegality or irregularity. Though one can ignore the report of the SMBR sent to the Political Secretary to the Chief Minister as the same is not only uncalled for but also having no legal value; but one cannot over-look this fact that the competent authority was duty bound to record reasons for disagreeing with the inquiry report and also serve notice on the accused officer (2011 SCMR 1504 (b) (Supreme Court of Pakistan), before ordering/directing a second inquiry through an Inquiry Committee after serving the appellants with another charge sheet and statement of allegations. The learned counsel for the appellant, Gul Said, argued that once inquiry was conducted through an Inquiry Officer, the competent authority could not switch over to Inquiry Committee; but once the second inquiry, without furnishing reasons for dissenting with the first inquiry report and serving the accused-officer with notice by the competent authority, is held as not warranted by law, hardly any room is left for further discussion on the issue whether the competent authority was bound to conduct second inquiry also through an Inquiry Officer instead of Inquiry Committee once it was decided to conduct inquiry through an Inquiry Officer. It is, indeed, note worthy that neither in the first inquiry by the Inquiry Officer nor during the second inquiry by the Inquiry Committee, any evidence was recorded. Both the Inquiry Officer and the

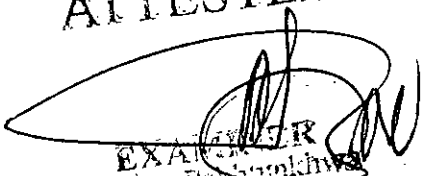
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**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

Inquiry Committee placed reliance on the written replies of the appellants to the charge sheets and statement of allegations and their own examination, without seeking support or rebuttal from other evidence. As such, the appellants were also deprived of the valuable opportunity of defence and cross-examination. Consequently, it would be safe to hold that inquiry proceedings were not in accordance with letter and spirit of the relevant law.

8. The final show cause notices served on the appellants by the competent authority contained tentative decision of the competent authority to impose the penalty of reduction to a lower post/pay scale, but in the impugned orders, the competent authority traveled beyond the scope of show cause notice and also imposed the minor penalty of postponing future increments for three years on restoration in respect of appellant in this appeal as well as appellant in the connected appeal, Gul Said; while made a complete departure from the show cause notice in the case of Mian Samiullah and imposed the minor penalty of with-holding of promotion for a period of two years on him. The learned counsel for the appellants in the two appeals sounded convincing when they alleged that the other two appellants have been discriminated against even in the imposition of penalty on them as all the three appellants were proceeded against on similar charges and found equally guilty by the Inquiry Committee. The learned counsel are also not wrong when they say that the imposition of two penalties and combination of a minor penalty with a major penalty amount to not only double jeopardy but also illegality, not at all sustainable in law.

9. Needless to say that once the impugned order of the competent authority is held to be illegal and not sustainable in law, limitation would not run against a person aggrieved of such a void order, but even then departmental appeals in this case as well as in the case of Gul Said, appellant, against the impugned order

**ATTESTED**  
  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

dated 25.5.2010 were preferred on 23.6.2010 and 7.6.2010 respectively. The departmental appeal in this case was rejected by the appellate authority on merits, not on the ground of limitation, on 21.7.2010, whereas the appeal was lodged on 26.7.2010; and in the case of Gul Said the departmental appeal was not decided within the statutory period, and the appellant lodged the service appeal on 6.10.2010, after his writ petition was dismissed as withdrawn by the august High Court on 22.9.2010. Though departmental appeal/representation of Mian Sâmiullah, appellant, has been filed on the ground of the same being time barred; but the record, especially the impugned order dated 25.5.2010, would show that the same was received by the appellant on 7.6.2010 and he preferred departmental appeal on 16.6.2010.

10. As a sequel to the foregoing discussion, all the three appeals are partially accepted and by setting aside the impugned orders, the cases of all the three appellants are remanded to the competent authority for denovo departmental proceedings in accordance with letter and spirit of law, in the light of above observations, with further direction to afford reasonable opportunity of defence and hearing to the appellants, where-after the competent authority shall pass an appropriate order strictly according to law, within reasonable time, but in no case beyond the period prescribed by the law. There shall, however, be no order as to costs.

ANNOUNCED  
15.12.2011

(KHALID HUSSAIN)  
MEMBER

(QALANDAR ALI KHAN)  
CHAIRMAN

Date of Presentation of Appeal 15-12-2011  
Number of Words 3200  
Copying Fee 18  
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Total 18  
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Date of Completion of Copy 20-12-2011  
Date of Delivery of Copy 20-12-2011

Certified to be true copy

[Signature]  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

[Signature]  
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30

19-4-12

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

PRESENT:  
MR. JUSTICE JAWWAD S. KHAWAJA  
MR. JUSTICE MIAN SAQIB NISAR

CIVIL PETITION NO.85-P/2012  
(Against the judgment dated 15.12.2011 passed by KPK  
Service Tribunal, Peshawar passed in Appeal  
No.1393/2010)

Chief Minister, Khyber Pakhtunkhwa through Chief Secretary, Government of  
KPK and others

... Petitioner(s)

VERSUS

Khalid Saleem Marwat

... Respondent(s)

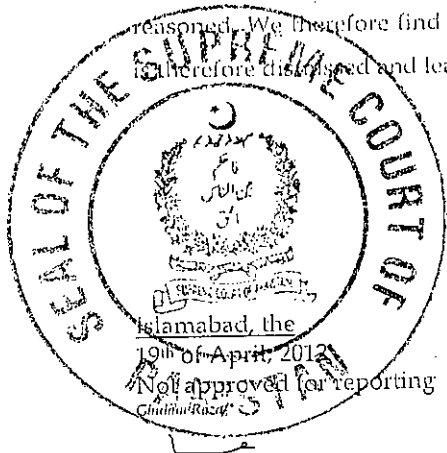
For the Petitioner(s): Syed Arshad Hussain, Addl. A.G. KPK

For the Respondent(s): N.R.

Date of Hearing: 19.4.2012.

ORDER

JAWWAD S. KHAWAJA, J.: The petitioner-province impugns the judgment of the Service Tribunal, dated 15.12.2011 whereby service appeal preferred by the respondent was allowed and as a consequence the department was directed to hold a *de novo* inquiry. This order was passed because of certain errors which were noted in the departmental proceedings. After hearing the learned Law Officer at some length, we find that the impugned judgment is well reasoned. We therefore find no justification for interfering therein. This petition is therefore dismissed and leave to appeal is declined.



26.4.12

Sd/ Jawwad S. Khawaja  
Sd/ Mian Saqib Nisar  
Certified to be true copy  
26/4/12

Attested  
by

SR No:	333-P/12	Civil/Criminal
Date of Presentation:	21.4.2012	
No. of Words:	300	
No. of folios:	3	
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Court Fee stamps:	6.86	
Date of Completion of Copy:	28/4/12	
Date of delivery of Copy:	8/5/12	
Compared by:	A. J. Khan	
Received by:		

H

31

3-8-12



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT**

Dated Peshawar, the August 3, 2012

**NOTIFICATION**

**NO.SO(E-I)E&AD/4-472/2012:** In terms of Section-13 of the Khyber Pakhtunkhwa Civil Servants Act 1973, Mr. Khalid Saleem (PCS EG BS-18), Ex-DO(R) Peshawar, stands retired from service on 29.04.2012, on attaining the age of superannuation as his date of birth is 28.04.1952.

**SECRETARY ESTABLISHMENT  
GOVERNMENT OF KHYBER PAKHTUNKHWA**

**ENDST. NO & DATE EVEN**

Copy forwarded to the:-

1. Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Accountant General, Khyber Pakhtunkhwa.
4. PS to Secretary Establishment, Khyber Pakhtunkhwa.
5. Officer concerned.
6. Manager, Govt. Printing Press, Peshawar.

*Attested*  
*[Signature]*

*[Signature]*  
**(MUHAMMAD TAUFIQUE)**  
SECTION OFFICER (ESTT-I)  
PHONE & FAX # 091-9210529

I

32

3-8-12



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT

Dated Peshawar the August 3, 2012

**NOTIFICATION**

**NO.SO(E-I)E&AD/11-8/2010.** In pursuance of judgment of Khyber Pakhtunkhwa Service Tribunal dated 15.12.2011 in the Service Appeal No.1393/2011 titled Khalid Saleem versus Government of Khyber Pakhtunkhwa & others, the Competent Authority is pleased to withdraw this Department's notification of even No. dated 25.05.2010.

**CHIEF SECRETARY  
GOVERNMENT OF KHYBER PAKHTUNKHWA**

Endst. No. & Date even

**Copy forwarded to the:-**

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Accountant General, Khyber Pakhtunkhwa.
4. PS to Chief Secretary, Khyber Pakhtunkhwa.
5. PS to Secretary Establishment, Khyber Pakhtunkhwa.
6. SO(Secret) E&A Department/SO(Admn) E&AD
7. Officer concerned.
8. Manager, Government Printing Press, Peshawar.

*(Signature)*  
**(MUHAMMAD TAUFIQUE)**  
SECTION OFFICER (ESTT. I)  
Ph: & Fax No. 091/9210529

*Attested*  
*(Signature)*  
**SUPERINTENDENT**  
Estt: I Section  
Estt: & Admn Deptt:  
Khyber Pakhtunkhwa.

*Attested*  
*(Signature)*

J

33

6-8-12

To

The Chief Minister,  
Govt. of Khyber Pakhtunkhwa, Peshawar.

Subject: **APPEAL AGAINST OFFICE NOTIFICATION NO.SO(E-I)E&AD/5-1/2001, DATED 30.05.2011 AND OFFICE ORDER NOTIFICATION NO.SO(E-I)/E&AD/4-2/2001, DATED 27.10.2011 OF THE CHIEF SECRETARY, GOVT. OF KPK WHEREBY THE INCUMBENTS MENTIONED THEREIN WERE PROMOTED TO THE POSTS OF ADDITIONAL SECRETARY AND APPELLANT BEING SENIOR WAS IGNORED FOR NO LEGAL REASON.**

Respected Sir,

1. That facts and grounds of the appeal has been narrated in Service Appeal No.1393/2010 filed before the KPK Service Tribunal, Peshawar. (Copy as annex "A")
2. That the aforesaid appeal was contested by the department and after final hearing of the case, the hon'ble Tribunal was pleased to accept the appeal by setting aside the impugned orders dated 25.05.2010 whereby penalty of reduction to lower grade in the said order was imposed upon appellant. (Copy as annex "B")
3. That the said judgment was transmitted to the department for implementation but the same was delayed on the reason that the department has filed petition for leave to appeal before the apex Supreme Court of Pakistan but when the case came up for hearing before the apex court, leave to appeal was refused vide order dated 19.04.2012. (Copy as annex "C")
4. That on implementation petition, the department produced order dated 03.08.2012, first relating to the order of withdrawal dated 25.05.2010 whereby appellant was reduced from BPS-18 to BPS-17 and in the 2<sup>nd</sup> order appellant was retired from service with effect from 29.04.2012 on attaining the age of superannuation. (Copies as annex "D")
5. That when order dated 25.05.2010 was withdrawn by the department by restoring appellant to his original position in

BPS-18 and by accepting the appeal by the hon'ble Service Tribunal, no stigma remained in the service career of appellant, so he is entitled to be promoted to BPS-19 with effect from 30.05.2011 with all service benefits.

6. That appellant is at S.No.2 of the seniority list and was senior to the incumbents, namely (1) Akbar Khan Marwat, (2) Mr. ShafirUllah, (3) Muhammad Maqbool and (4) Syed Mubashar Hussain Shah. The said incumbents were promoted to BPS-19 but appellant was ignored due to the so called illegal order of reduction to lower grade dated 25.05.2010.
7. That the stigma of reduction was washed out by the hon'ble Service Tribunal, apex Supreme Court of Pakistan and the department herself, so appellant is legally entitled to the grant of BPS-19.
8. That appellant was compelled to lengthy litigation for no legal reason and was harassed, deprived from facilities of BPS-19 due to the so called order dated 25.05.2010.
9. That order dated 25.05.2010 was based on malafide and was illegal, so the same was struck by the hon'ble Tribunal/Supreme Court of Pakistan.

It is, therefore, most humbly requested that appellant be given proforma promotion in BPS-19 with effect from 30.05.2011 with all service benefits, with such other relief as may be deemed proper and just in circumstances of the case.

Dated 06.08.2012

Appellant.

*sd/*

Khalid Saleem

H.No.75, St#4, Sector E-I,  
Phase-I, Hayat Abad, Peshawar.

Ex- Deputy Secretary,  
Home & Tribal Affairs, Department,  
Govt. of Khyber Pakhtunkhwa.

*Attest*  
*by*



K

35

4-7-13



GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

NO. SO(E-I)E&AD/4-472/2013  
Dated Peshawar, the July 4, 2013

To

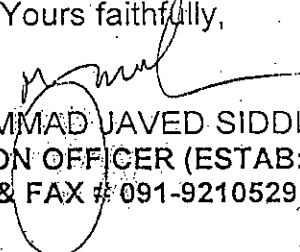
Mr. Khalid Saleem,  
(RTD. PCS EG BS-18)  
Ex-Deputy Secretary, Home Department

SUBJECT: - PROVISION OF ATTESTED COPY OF DECISION TAKEN ON AN APPEAL


Dear Sir,

I am directed to refer to your application dated 19.6.2013, on the subject cited above and to inform that your case was considered but not found tenable under the law/rules.

Yours faithfully,

  
(MUHAMMAD JAVED SIDDIQI)  
SECTION OFFICER (ESTAB: I)  
PH: & FAX # 091-9210529

Received from office  
Today i.e. 27/8/2013

  
27/8/2013  
Khalid Saleem

27/8/2013

Attested  
by

بعد التّ جناب سرسری ٹریبونل صوبہ سرحد پشاور

اسلام آباد

منجانب

گورنمنٹ سروس

بنام

خالد سلیم

دعویٰ اصل

### باعتبار تحریر ایسکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیلئے سعید اڈاس خان سرور سے ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے راضی نامہ و تقرر ثالث و فیصلہ بر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ملاگری کرنے اجراء اور وصولی چیک و روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تقدیر اور اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ملاگری کیسٹ یا ایل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور صاحب مقدمہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر واختہ منظور قبول ہوگا و دوران مقدمہ میں جو خرچہ و ہرجانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا دفر حسبہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم

العبد

العبد

العبد

خالد سلیم

سعید اللہ خان سرور

ایڈووکیٹ

سعید اللہ خان

خالد سلیم

11  
ارباب سنیہ اسکال  
ایڈووکیٹ

Rawla  
مس روینہ ناز  
ایڈووکیٹ

Before the Service Tribunal, KPK, Peshawar.

AND 1280/13.

Khalid Saleem vs Govt & others

Application for Extending time for deposit of fee, Security etc.

Respectfully Sheweth,

- 1- That the above mentioned appeal is pending adjudication in this honourable tribunal in which today's is fixed for Reply of respondents.
- 2- That due to some misunderstanding, the appellant/applicant could not deposit process fee, security etc.
- 3- That this honourable tribunal has got jurisdiction to extend time for deposit of security fee, process fee etc.

It is therefore most humbly prayed that time kindly be extended so that the appellant/applicant could deposit security and process fee etc.

Dt- 03/04/14.

Applicant  
through  
Asbab Saiful  
Advocate,

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

S.A. No. 1980/2013

Khalid Saleem

Versus

Government & others

**I N D E X**

S.No	Documents	Annex	P.No.
1.	Memo of Appeal		1-4
2.	Seniority List,	"A"	5-8
5.	Reduction orders in grade, 25.05.2010	"B"	9-10
6.	Appeal before Service Tribunal	"C"	11-19
7.	Promotion order, 30.05.2011	"D"	20
8.	Promotion order, 27.10.2011	"E"	21
9.	Judgment of ST, 15.12.2011	"F"	22-29
10.	Order of SC, 19.04.2012	"G"	30
11.	Retirement order, 03.08.2012	"H"	31
12.	Restoration order, 03.08.2012	"I"	32
13.	Representation, 06.08.2012	"J"	33-34
14.	Rejection order, 04.07.2013	"K"	35

Dated. 9.09.2013

Through

Appellant

Saad Ullah Khan Marwat

Advocate.

21-A Nasir Mension,  
Shoba Bazar, Peshawar.

Ph: 0300-5872576

**BEFORE KPK SERVICE TRIBUNAL PESHAWAR**

S.A No. \_\_\_\_\_/2013

Khalid Salim Marwat S/o Amir Sardar  
Khan, R/o House No.75, Street No.4,  
Sector E-1, Phase-I, Hayatabad,  
Peshawar, Ex-Deputy Secretary, Home &  
Tribal affair Department, KPK, Peshawar ..... Appellant

Versus

1. Chief Minister, Govt. of KPK, through  
R.No.2.
2. Chief Secretary, Govt. of KPK,  
Peshawar.
3. Secretary, Govt. of KPK, Establishment  
Department, Peshawar ..... Respondents
4. Akbar Khan Marwat, Additional  
Secretary, Law Department,  
Peshawar.
5. Shafir Ullah, Additional Secretary,  
FATA, Fata Secretariat, Warsak Road,  
Peshawar.
6. Muhammad Maqbool, Additional  
Secretary, Auqaf Department,  
Peshawar cantt.
7. Syed Mubashar Hussain Shah, Deputy  
Commissioner, Nowshera ..... Proforma Respondents

⇄<=>⇄<=>⇄<=>⇄<=>⇄

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL  
ACT, 1974 AGAINST APPELLATE ORDER  
NO.SO(E-1)E&AD/4-472/2013, DATED  
04.07.2013 OF R.NO.1 WHEREBY APPEAL**

2

AGAINST OFFICE NOTIFICATION NO. SO(E-I)E&AD/5-1/2001, DATED 30.05.2011 AND OFFICE NOTIFICATION NO. SO(E-I)/E&AD/4-2/2001, DATED 27.10.2011, PROMOTING R.NO. 4 TO 7 TO THE POSTS OF ADDITIONAL SECRETARY, BPS-19 WAS REJECTED FOR NO LEGAL REASON.

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth;

1. That appellant started service as Naib Tehsildar since the year, 1975. He was promoted to the post of Tehsildar, BPS-16 in 1979, to the post of Extra Assistant Commissioner (EAC), BPS-17 in 1990 and to BPS-18 in the year, 2006. From 2002 till 2007, he remained as District Officer (Revenue & Estate) (DOR), Peshawar.
2. That on 08.03.2010, Seniority List of PCS, Executive Group was issued wherein appellant was placed at S.No.2. (Copy as annex "A")
3. That grabbing of Govt. property became play of child everywhere in the province, so such issue cooked up and appellant was too termed and was booked for departmental action and then on 25.05.2010, penalty of reduction to lower post/pay scale for a period of 3 years and on restoration, it shall operate to postpone future increments for 3 years was imposed upon him. (Copy as annex "B")
4. That against the aforesaid penalty, appellant filed S.A.No.1393/2010 before this hon'ble Tribunal which was contested by the department. (Copy as annex "C")
5. That during the pendency of the appeal before the hon'ble Tribunal, R.No.1, without considering appellant for promotion to BPS-19, promoted junior most respondents from BPS-18 to BPS-19 vide orders dated 30.05.2011 and 27.10.2011. (Copies as annex "D & E")

6. That the aforesaid appeal of appellant came up for hearing on 15.12.2011 and after lengthy discussion, the same was accepted on 15.12.2011 and the impugned order dated 25.05.2010 was set aside. (Copy as annex "F")
7. That the department filed Civil Petition for Leave to Appeal (CPLA) before the apex Supreme Court of Pakistan which came up for hearing on 19.04.2012 and then grant of Leave was declined. (Copy as annex "G")
8. That by now, appellant was retired from service on 29.04.2012 on attaining the age of superannuation. (Copy as annex "H")
9. That in pursuance of the aforesaid judgment/order dated 15.12.2011 and 19.04.2012 of the hon'ble Tribunal and Supreme Court of Pakistan, appellant was restored to his original position on 03.08.2012 by withdrawing Notification dated 25.05.2010. (Copy as annex "I")
10. That after the final settlement of his fate, appellant submitted departmental appeal on 06.08.2012 before R.No.2 for award of BPS-19 which was rejected on 04.07.2013, Copy of which was received on 27.08.2013 from the office of the respondent. (Copies as annex "J & K")

Hence this Writ Petition, inter alia, on the following grounds:-

G R O U N D S:

- a. That appellant was at S.No.2 of the seniority list and was senior to the promoted respondents. The promoted respondents were given BPS-19 but appellant was ignored due to the so called illegal order of reduction to lower grade.
- b. That the stigma of reduction was washed out by the hon'ble Service Tribunal, the apex Supreme Court of

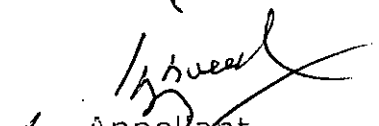

Pakistan and the department herself, so appellant is legally entitled for the grant of BPS-19.

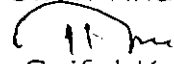
- c. That appellant was compelled to lengthy litigation for no legal reason and was harassed and deprived from monetary benefits of BPS-19 due to the so called order dated 25.05.2010.
- d. That order dated 25.05.2010 was based on malafide and was illegal, so the same was struck down by the hon'ble Tribunal/Supreme Court of Pakistan.
- e. That appellant was dropped from award of the post of Additional Secretary BPS-19 with ulterior motive, otherwise he was qualified and eligible for the same.
- f. That by now appellant has been retired from service on 29.04.2012 but is legally entitled for proforma promotion to get monetary benefits of BPS-19.
- g. That order of rejection dated 04.07.2013 is not supported by reasons, so the same cannot be treated under the law as a legal order.

It is, therefore, most humbly prayed that on acceptance of appeal, the impugned Notifications dated 30.05.2011, 27.10.2011 and 04.07.2013 of the respondents be set aside/modified and appellant be given proforma promotion to BPS-19 for monetary benefits with effect from 30.05.2011 with all service benefits, , with such other relief as may be deemed proper and just in circumstances of the case.

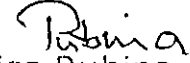
Dated. .08.2013

Through

  
Appellant  
  
Saad Ullah Khan Marwat

  
Arbab Saiful Kamal

&

  
Miss Rubina Naz,  
Advocates.



A S 8-3-10  
GOVERNMENT OF NWFP  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT

No. SO (E-I) E&AD/4-2/2010  
Dated Peshawar, the 8<sup>th</sup> March 2010

To

Mr.

Khalid Saleem

Khan

**SUBJECT: - TENTATIVE SENIORITY LIST OF PCS (EXECUTIVE GROUP)  
OFFICER IN BS- 18 AS ON 5<sup>TH</sup> MARCH 2010.**

Dear Sir,

I am directed to refer to the subject cited above and to forward herewith a copy of tentative seniority list of PCS (Executive Group) Officers in BS- 18 as stood on 5<sup>th</sup> March 2010, with the request that the enclosed certificate may be returned duly signed, indicating, education, error/omission, if any, for the purpose of rectification alongwith attested supporting documents upto 30<sup>th</sup> March 2010.

2. In case of receipt of no response by the due date, it would be considered that particulars have been accepted as correct.

Yours Faithfully,



(ZUBAIR AHMAD)

SECTION OFFICER (ESTT-I)

PH: & FAX # 091/9210529

Encl: As above.

**TENTATIVE SENIORITY LIST OF PCS (EXECUTIVE GROUP) BS-18  
OFFICERS**

S.#	Name of the Officer with academic qualification	Date of birth and Domicile	Date of 1 <sup>st</sup> entry into Govt Service	Regular appointment/Promotion to present post			Present Posting
				Date	BPS	Method of Recruitment	
1	2	3	4	5	6	7	8
1.	Syed Zaheer-ul-Islam Shah	12.4.1965 (Mansehra)	17.3.1988	13.4.2006	18	By Promotion	Deputy Chief Economist (7.11.2009)
2.	Mr. Khalid Saleem Khan	30.4.1952 (Lakki Marwat)	9.9.1975	13.4.2006	18	-do-	Dy: Secretary Home Deptt: (29.11.2008)
✓3.	Mr. Muhammad Maqbool	16.9.1953 (N.W.Agency)	8.9.1975	11.9.2006	18	-do-	Distt Officer (R&E) Hangu. (11.8.2008)
✓4.	Mr. Akbar Khan Marwat	30.3.1955 (Bannu)	23.1.1980	11.9.2006	18	-do-	Addl: Commissioner DIKhan (13.1.2009)
✓5.	Mr. Latif-ur-Rehman	16.7.1957 (Nowshera)	26.6.1980	11.9.2006	18	-do-	DO(R&E) Mansehra (31.8.2009)
✓6.	Mr. Rashid Ahmad Khan	1.4.1955 (Swat)	10.6.1974	11.9.2006	18	-do-	Director Land Record NWFP (24.9.2009)
✓7.	Mr. Mazhar Sajjad	1.11.1958	15.8.1984	23.12.2006	18	-do-	Dy: Secy Industries Deptt: (30.1.2009)
✓8.	Mr. Shafirullah	9.3.1956 (FR Bannu)	7.10.1978	23.12.2006	18	-do-	Political Agent, Khyber Agency. (19.9.2009)
✓9.	Syed Mubashir Hussain Shah	8.1.1957 (Mansehra)	26.6.1980	23.12.2006	18	-do-	Secretary-I BOR (25.10.2008)
10.	Mr. Muhammad Farid	15.2.1954 (Mansehra)	26.6.1980	23.12.2006	18	-do-	PM, DRU, Battagram (17.3.2009)

6/

2nd

11.	Mr. Khan Bakhsh	2.1.1956 (Lakki Marwat)	31.8.1980	16.2.2007	18	-do-	DCO DIKhan (7.9.2009)
12.	Mr. Abdul Qayyum	23.11.1952	8.9.1975	16.2.2007	18	-do-	D.S (Narcotics) FATA (4.9.2009)
13.	Mr. Muhammad Farooq	4.2.1952	10.9.1975	4.6.2007	13	-do-	PM, DRU, Abbottabad (12.9.2009)
14.	Mr. Muhammad Masood Sethi	12.5.1953 (Peshawar)	8.9.1975	21.5.2008	13	-do-	Addl: Commissioner Peshawar Division (28.7.2009)
15.	Syed Musadiq Shah	15.3.1953	10.9.1975	4.6.2007	13	-do-	DCO Hangu (19.9.2009)
16.	Mr. Aqal Badshah	25.9.1958 (Kohat)	8.7.1982	8.12.2007	13	-do-	D.S Health Deptt: (21.4.2009)
17.	Mr. Atta-ur-Rehman	1.9.1958 (Mardan)	8.7.1982	21.5.2008	13	-do-	Dy: Secry, Governor's Sectt (4.3.2008)
18.	Mr. Siraj Ahmad	5.8.1957 (Mardan)	29.10.1992	8.12.2007	13	-do-	DCO Peshawar (05.02.2010)
19.	Mr. Amin-ul-Haq	10.10.1957 (Dir)	8.7.191982	8.12.2007	13	-do-	DCO Kohistan (9.5.2009)
20.	Mr. Mutahir Zeb	3.2.1966 (Malakand Agency)	24.10.1992	8.12.2007	18	-do-	P.A NWA (12.8.2008)
21.	Miss. Aneela Mahfooz Durrani	13.4.1969	4.9.1995	6.1.2009	18	-do-	A.S Zakat, Ushr, Deptt: (7.9.2009)
22.	Mr. Zakaullah Khattak.	2.9.1968 (Karak)	26.5.1997	8.12.2007	18	-do-	D.S Chief Minister's Sectt: (28.4.209)
23.	Mr. Amir Latif.	19.8.1969 (Bannu).	26.5.1997	8.12.2007	18	-do-	DCO Tank (25.5.2009)
24.	Mr. Muhammad Ali	23.1.1972 (DIKhan)	7.6.1995	6.1.2009	18	-do-	Estate Officer Ministry of Housing (2.9.2008)
25.	Mr. Yousuf Rahim	19.5.1971 (S.W.A)	26.5.1997	21.5.2008	18	-do-	DCO Mansehra (4.9.2009)
26.	Miss Kaneez Sughra.	25.12.1965 (Mansehra)	26.5.1997	21.5.2008	18	-do-	Director (P&T) PERRA (31.8.2009)

27.	Mr. Riaz Khan Mahsud	1.4.1970 (S.W Agency)	26.5.1997	6.1.2009	18	-do-	P.A Orakzai Agency (4.9.2009)
28.	Mr. Ghulam Muhammad	9.6.1956 (Chitral)	6.6.1979	8.12.2007	18	-do-	DCO Dir Lower (12.8.2008)
29.	Mr. Anwar Zeb Khan	10.10.1950 (Nowshera)	8.7.1982	8.12.2007	18	-do-	Secretary-II BOR (17.9.2009)
30.	Mr. Fazal Karim.	2.1.1955 (Dir)	21.5.1973	8.12.2007	18	-do-	Distt Officer (R&E) Dir Upper. (6.10.2007)
31.	Mr. Abdul Kamal.	13.3.1957 (Karak)	8.7.1982	8.12.2007	18	-do-	Dy: Relief Commissioner (31.5.2008)
32.	Mr. Mujeeb-ur-Rehman.	1.1.1956 (Mohmand Agency)	8.7.1982	8.12.2007	18	-do-	DCO Buner (19.9.2009)
33.	Mr. Inamullah Khan	1.3.1956 (Malakand)	8.7.1982	8.12.2007	18	-do-	D.S Auqaf Deptt: (8.6.2009)
34.	Mr. Basir Khan	4.10.1958 (FR Bannu)	8.7.1982	8.12.2007	18	-do-	P.A Kurram Agency (4.9.2009)

*Zubair Ahmad*

**(ZUBAIR AHMAD)**  
**SECTION OFFICER (ESTT-I)**  
**PHONE & FAX # 091-9210529**

Sabir Khattak/\*\*



B \_\_\_\_\_ 9

**GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT**

Dated Peshawar, the 25<sup>th</sup> May 2010

**ORDER**

**NO.SO(E-I)E&AD/11-8/2010** WHEREAS, Mr. Khalid Saleem (PCS EG BS-18) the then D.O.(R&E) Peshawar now Deputy Secretary Home & T.As Department was served with a Show Cause notice under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 for the charges mentioned in the charge sheet/Statement of allegations served upon him on 03.09.2009 on the basis of enquiry conducted by the Enquiry Committee comprising of M/s Dr. Jamal Nasir (DMG BS-20) Secretary P&D FATA and Aurangzeb (PCS EG BS-20) the then Secretary ST&IT now Secretary LG&RD Department.

Now **THEREFORE**, the Competent Authority, after having considered the charges, evidence on record, reply/explanation of the accused officer to the Show Cause and findings of the Enquiry Committee (detailed above), and exercising his powers under Section-3 read with Section-8 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 has been pleased to impose minor penalty of "**reduction to lower post/pay scale for a period of three years and on restoration it shall operate to postpone future increments for three years**" on Mr. Khalid salim (PCS EG BS-18) the then D.O.(R&E) Peshawar now Deputy Secretary, Home & T.As Department with immediate effect.

**CHIEF SECRETARY  
GOVT: OF KHYBER PAKHTUNKHWA**

Endst. No. & date even.  
Copy forwarded to the:-

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa
2. Additional Chief Secretary, Home Khyber Pakhtunkhwa
3. Secretary to Governor, Khyber Pakhtunkhwa
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
5. Commissioner Peshawar
6. Accountant General, Khyber Pakhtunkhwa
7. District Coordination Officer, Peshawar.
8. D.O.(R&E) Peshawar
9. S.O. (Secret) E&AD
10. PS to Chief Secretary, Khyber Pakhtunkhwa/S.O.E.II/S.O.E.III E&AD
11. PS to Secretary Establishment, Khyber Pakhtunkhwa
12. Mr. Khalid salim (PCS EG BS-18) the then D.O.(R&E) Peshawar now Deputy Secretary, Home & T.As Department.
13. Manager, Government Printing Press, Peshawar.

  
(ZUBAIR AHMAD)

SECTION OFFICER (ESTT. I)  
Ph: & Fax No. 091/9210529

Zia/\*\*

#  
Home & T.As Department

28/5/2010



**GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT**

Dated Peshawar, the 25<sup>th</sup> May 2010

**ORDER**

**NO.SO(E-I)E&AD/11-8/2010** WHEREAS, Mr. Khalid Saleem (PCS EG BS-18) the then D.O.(R&E) Peshawar now Deputy Secretary Home & T.As Department was served with a Show Cause notice under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 for the charges mentioned in the charge sheet/Statement of allegations served upon him on 03.09.2009 on the basis of enquiry conducted by the Enquiry Committee comprising of M/s Dr. Jamal Nasir (DMG BS-20) Secretary P&D FATA and Aurangzeb (PCS EG BS-20) the then Secretary ST&IT now Secretary LG&RD Department.

Now **THEREFORE**, the Competent Authority, after having considered the charges, evidence on record, reply/explanation of the accused officer to the Show Cause and findings of the Enquiry Committee (detailed above), and exercising his powers under Section-3 read with Section-8 of the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 has been pleased to impose major penalty of "**reduction to lower post/pay scale for a period of three years and on restoration it shall operate to postpone future increments for three years**" on Mr. Khalid salim (PCS EG BS-18) the then D.O.(R&E) Peshawar now Deputy Secretary, Home & T.As Department with immediate effect.

**CHIEF SECRETARY  
GOVT: OF KHYBER PAKHTUNKHWA**

**Endst. No. NO.SO(E-I)E&AD/11-8/2010**

Dated 26<sup>th</sup> May 2010

Copy forwarded to the:-

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa
2. Additional Chief Secretary, Home Khyber Pakhtunkhwa
3. Secretary to Governor, Khyber Pakhtunkhwa
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
5. Commissioner Peshawar
6. Accountant General, Khyber Pakhtunkhwa
7. District Coordination Officer, Peshawar.
8. D.O.(R&E) Peshawar
9. S.O. (Secret) E&AD
10. PS to Chief Secretary, Khyber Pakhtunkhwa/S.O.E.II/S.O.E.III E&AD
11. PS to Secretary Establishment, Khyber Pakhtunkhwa
12. Mr. Khalid salim (PCS EG BS-18) the then D.O.(R&E) Peshawar now Deputy Secretary, Home & T.As Department.
13. Manager, Government Printing Press, Peshawar.

KSA

(ZUBAIR AHMAD)

SECTION OFFICER (ESTT. I)

Ph: & Fax No. 091/9210529

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26-7-10

4

**BEFORE THE SERVICE TRIBUNAL, K.P.K PESHAWAR**

S.A.No. 1393 /2010

Khalid Saleem Marwat, Deputy Secretary,  
Govt. of Khyber Pukhtoon Khawa,  
Home & Tribal Affairs Department, Peshawar,  
Ex-District Officer (Revenue & Estate), Peshawar.  
.....Appellant

**Versus**

1. Chief Minister, Govt. of K.P.K. through Chief Secretary, Govt. of Khyber Pukhtoon Khawa, Civil Secretariat, Peshawar.
2. Chief Secretary, Govt. of Khyber Pukhtoon Khawa, Civil Secretariat, Peshawar.
3. Secretary, Govt. of Khyber Pukhtoon Khawa, Establishment Department, Peshawar.  
.....Respondents

Appeal against O/O No.So(E-1) P-494  
E&AD/11-8/2010, dated 25.5.2010 of 56/c  
R.No.1 where by Major Penalty of  
reduction to lower post/pay. Scale for a  
period of three years and on restoration,  
it shall operate to postpone future  
increments for three years was imposed  
on the appellant for no legal reason.

**Respectfully Sheweth:**

1. That appellant was initially appointed as Naib Tehsildar in the year, 1975 and was promoted to the post of Tehsildar in 1979. In the year, 1990 he was promoted to the post of EAC BPS-17. He during this period, performed his services on various posts.

On satisfactory performances of the official duties, he was promoted to BPS-18. From March, 2002 till September, 2007, he remained as District officer (Revenue & Estate), Peshawar.

2. That on 28.09.2005, Mr. Roohullah Jan S/o M. Ilyas resident of Mashu Khel, Peshawar submitted an application before the appellant that his father was the owner of the property situated in Mauza Tukra No.1 vide mutation No. 405, dated 20.09.1921. As his father has since been died and the family members are intending to register a gift deed in his favour on the basis of the aforesaid mutation, so he be permitted for doing the needful. Appellant was requested to direct Sub Registrar, Peshawar to register a gift deed on the basis of aforesaid mutation in his favour. On the face of this application, following remarks were recorded.

**Sub Registrar:**

*"Gift deed as requested is allowed subject to observance of all codal formalities and as provided in the law on the subject". (Copy as annex "A").*

Here it would be not out of place to mention that wherever, Government land exists every one tries his best to illegally possess/ occupy the same especially by land Mafia, Qabza groups, encroachers, etc.

3. That later on, having come to know that the applicant has illegally been succeeded in grabbing State Land, the appellant immediately cancelled the

P/E

13

of 22/1, 22/2  
and  
P/23



registered instant gift deed. The encroacher Mr. Roohullah was dispossessed and FIR was lodged against the intruders (his men while busy in grabbing State Land).

P/24, 25, 26, 27

4. That Senior Member, Board of Revenue, Khyber Pukhtoon Khawa on the report of Provincial Inspection Team wrote in two different Summaries to R.No-1 that no irregularity has been found on the part of appellant and the report of Provincial Inspection Team against him be made filed. The District Officer (Revenue & Estate) also reported that the plot is still lying vacant. (Copy as annex "B").

P/22

P/14/1

5. That on 24.06.2006, appellant again wrote to all the Revenue Officers in Peshawar District that Land Mafia has increased their unlawful activities by taking over possession of State Land and in this connection, so many FIRs have been lodged but despite this fact, such trend was in progress, so you are directed to sensitize your field duties and immediately report of any mistake regarding the subject matter. (Copy as annex "C").

(P/19)

P/18/1

6. That on the aforesaid count, appellant alongwith others were served with charge sheet/ statement of allegations on 29.11.2008 in the light of the inquiry report of the Provincial Inspection Team by R.No-1 under the Removal from Services (Special Powers) Ordinance, 2000. Inquiry Committee was constituted and appointed Dr. Hamad Awais Agha,

P. 19-20/c

the than Secretary Environment as an Inquiry Officer. The charge sheet/statement of allegations was replied, denying the charges in toto. (Copies as annex "D" & "E" respectively)

7. That disciplinary proceedings in shape of enquiry against appellant and others were initiated. After finalization of the proceedings, appellant was exonerated honourably but the authority, disagreeing with the findings and recommendations of 1<sup>st</sup> inquiry, constituted a second (2<sup>nd</sup>) Inquiry Committee by launching disciplinary proceedings in utter violation of the Provisions of Removal from Service (Special Powers) Ordinance, 2000, so he again served appellant and others with charge sheet and statement of allegations on 03.09.2009. In the statement of allegations, the Inquiry Committee, comprising of Dr. Jamal Nasir Secretary, P&D FATA and Mr. Aurangzeb Secretary, Local Government was constituted to probe into the allegations. The charge sheet and statement of allegations was again replied on 17.09.2009 by giving cogent reasons in rebuttal thereof. (Copies as annex "F", "G" & "H" respectively).

P. 22-28-30/c

8. That after finalization of the proceedings, the Inquiry Committee did not communicate the recommendations of the said proceedings to appellant, however, copy of the findings, communicated were in cut paper pages, yet did not make any recommendations in respect of award of any penalty. (Copy as annex "I").

P. 40/c

9. That on 23.01.2010, appellant was served with show cause notice without supplying the inquiry proceedings to him, which was replied on 30.01.2010. (Copies as annex "J" & "K" respectively).

P 43  
u/g

10. That on 25.05.2010, Minor Penalty of "reduction to lower post/ pay scale for a period of three years and on restoration, it shall operate to postpone future increments for 3 years", was imposed by the appellant. (Copy as annex "L").

P 49  
u/g

11. That on 07.06.2010, appellant submitted representation before R.No-2 for setting aside the impugned order. (Copy as annex "M").

P 50  
u/g

12. That as soon as the representation of appellant was received by the authority and smelling the commission of illegalities in the order, subsequent back dated order of the same date i.e. 25.05.2010 was issued by the authority by omitting word "Minor" in to "Major". This order was revived by R-No.2 on 25.05.2010, received by appellant on 14.06.2010. (Copy as annex "N").

P 56  
u/g

13. That in the meanwhile appellant was allowed to perform duties as Deputy Secretary, Home and Tribal Affairs Department by the Chief Secretary, Government of KPK vide order dated 21.06.2010. (Copy as annex "O").

P 57  
u/g

14. That appellant had filed Writ Petition No.2397/2010 to not deprive him from further promotion on the basis of the first order dated 25.05.2010, which was disposed of vide order dated 22.06.2010 by the Honourable High Court. (Copy as annex "P").

P 58  
u/g

P. 60-64 / C

15. That on 23.06.2010, appellant submitted subsequent representation before the authority which was rejected vide order dated 21.07.2010. (Copy as annex "Q" & "R" respectively).

Hence this appeal, inter alia, on the following grounds.

**GROUND S:**

- A. That for the last 30/32 years, appellant rendered meritorious service to the Departments and his performances were highly appreciated in this respect.
- B. That on the application of Mr. Roohullah Jan, appellant recorded the remarks which were quite legal and no illegality, whatsoever, was ever committed by him as per the law but still he was awarded with "Major Penalty".
- C. That the Land Mafia, Qabza Groups, Encroachers, etc are very strong and every time are in search to occupy illegally the State Land in one way or the other but appellant wrote numerous letters to the higher authorities as well as to law agencies to save the State Land from the clutches of the Mafias. In the instant case, not only FIR was lodged, even possession of State Land was retrieved and deeds which were attested fraudulently were cancelled.
- D. That authority is debarred under the rules to make any order for holding the 2<sup>nd</sup> inquiry without giving any reason in respect of superseding the findings.

and recommendations of 1<sup>st</sup> enquiry which were not communicated despite request made on two occasions.

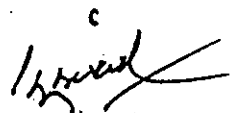
79 = E. That the 2<sup>nd</sup> inquiry was also not conducted by the Inquiry Committee as per the mandate of law/ordinance. No statement of any witness was ever recorded in the presence of appellant nor he was afforded opportunity of cross examination, meaning thereby that he was not provided fair opportunity of self defence and was condemned unheard. 79

F. That it was mandatory for the authority to supply all the inquiry proceedings to a Govt. servant while serving him with final show cause notice but no such inquiry proceedings i.e. findings and recommendations in both inquiries were attached with the final show cause notice except findings of 2<sup>nd</sup> inquiry and that too in shape of cut paper pages.

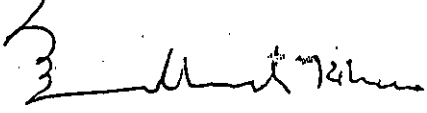
G. That no one on the same charge as per the verdict of Supreme Court of Pakistan be discriminated. All shall be dealt with equally and fairly. In the impugned order, appellant was awarded "Major Penalty of reduction to lower post/pay scale as well as forfeiture of future increments for 3 years" while Mr. Samiullah Jan, Sub Registrar, Peshawar was awarded with "Minor Penalty" of withholding of promotion for a period of two years, thus discriminated.

- H. That the impugned order is ultra-vire, unconstitutional and against the norms of natural justice as the appellant has been prosecuted as well as punished twice for the same act.
- I. That the petitioner stands at S.No.2 of the seniority list circulated by the Establishment and Administration Department and is likely to be promoted to grade-19 in the forthcoming Provincial Selection Board meeting. In order to deprive him from his due right of promotion, the impugned order, being based on malafide, was issued against the rules, regulations, law and natural justice.
- J. That in hazard manner, the authority issued two different orders, one on 25.05.2010 and second too on 25.05.2010 which are totally against the mandate of law. The interesting one is that the subsequent order was made back dated. From this it is quite clear that no fair game was played in the subject matter. ✓
- K. That the order is void, illegal and has been passed without affording opportunity of personal hearing to the appellant.
- L. That the rejection order is not supported by any reason which is against the judgments of the Apex Supreme Court of Pakistan.
- M. That the impugned order is not only without lawful authority but is also based on malafide as a single inch of state property was neither possessed nor encroached by any one, so the order is improper, unjust, arbitrary, discriminatory and of no legal effect.

It is, therefore, most humbly prayed that on acceptance of this appeal, the impugned office order dated 25.05.2010 of R.No.1 be set aside and appellant be restored to his original position with all back benefits.

  
Appellant

Through



Saadullah Khan Marwat  
Advocate,

Dated: 23/07/2010



D 20 30-5-11

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT**

Dated Peshawar, the 30<sup>th</sup> May 2011

**NOTIFICATION**

NO.SO(E-I)E&AD/5-1/201. The competent authority on the recommendations of the Provincial Selection Board is pleased to promote the following officers of PCS (Executive Group) as noted against each, on regular basis with immediate effect:-

S.#.	NAME OF OFFICER	FROM	TO
1	Mr. Akbar Khan Marwat	BS-18	BS-19
2	Mr. Shafirullah	BS-18	BS-19

2. The officers on promotion will remain on probation for a period of one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-15(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

3. Consequent upon the above, the following postings/transfers are made henceforth:-

S.#	NAME OF OFFICERS	FROM	TO	REMARKS
1.	Mr. Akbar Khan Marwat (PCS-EG-BS-19)	Deputy Secretary Provincial Ombudsman, Khyber Pakhtunkhwa	Additional Secretary Industries Department	Against the vacant post.
2.	Mr. Shafirullah (PCS-EG-BS-19)	Political Agent Khyber Agency	Political Agent Khyber Agency	Already holding charge

**CHIEF SECRETARY  
GOVERNMENT OF KHYBER PAKHTUNKHWA**

Endst. of even No. & date

Copy forwarded to the:-

1. Additional Chief Secretary, P&D Department.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. Additional Chief Secretary (FATA), FATA Secretariat.
4. All Administrative Secretaries in Khyber Pakhtunkhwa.
5. Secretary to Governor, Khyber Pakhtunkhwa.
6. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
7. All Divisional Commissioners in Khyber Pakhtunkhwa.
8. Accountant General, Khyber Pakhtunkhwa.
9. All Political Agents in Khyber Pakhtunkhwa.
10. PS to Provincial Ombudsman, Khyber Pakhtunkhwa.
11. PS to Chief Secretary, Khyber Pakhtunkhwa.
12. PS to Secretary Establishment, E&A Department.
13. PS to Special Secretary (Reg.)/ P.A. to Addl. Secretary (Estt.)/ Section Officer (Secret)/Director Protocol/Librarian, E&A Deptt.
14. Officers concerned.
15. Controller, Govt Printing Press, Peshawar.

*Zubair Ahmad*  
(ZUBAIR AHMAD)

SECTION OFFICER (E-I)

PHONE & FAX # 091-9210529

ZIA UL HAQ/..





21 27-10-11

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT**

**NOTIFICATION**

Dated Peshawar, the 27<sup>th</sup> October 2011

**NO.SO(E-I)E&AD/4-2/2001.** Government of Khyber Pakhtunkhwa on the recommendations of the Provincial Selection Board is pleased to promote the following officers of PCS (Executive Group) as noted against each, on regular basis with immediate effect:-

S. #.	NAME OF OFFICER	FROM	TO
1.	Syed Jamal-ud-Din Shah	BS-19	BS-20
2.	Sahibzada Muhammad Anis	BS-19	BS-20
3.	Mr. Muhammad Magbool	BS-18	BS-19
4.	Syed Mubashir Hussain Shah	BS-18	BS-19

2. The officers on promotion will remain on probation for a period of one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-15(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

3. Consequent upon the above, the following postings/transfers are made henceforth:-

S.#	NAME OF OFFICERS	FROM	TO
1.	Syed Jamal-ud-Din Shah (PCS EG BS-20)	Secretary Sports and Tourism Department, in his own pay and scale.	Secretary Sports and Tourism Department
2.	Sahibzada Muhammad Anis (PCS EG BS-20)	Commissioner Kohat Division, Kohat, in his own pay and scale.	Commissioner Kohat Division, Kohat.
3.	Mr. Muhammad Magbool (PCS EG BS-19)	Deputy Secretary, Zakat, Urdu, Social Welfare & Women Development Department	Additional Secretary (Opinion) Law Department, against the vacant post, relieving Mr. Muhammad Arif Khattak (BS-19 Prosecution Service) Director (Administration) Directorate of Prosecution of the additional charge.
4.	Syed Mubashir Hussain Shah (PCS EG BS-19)	Secretary Board of Revenue, Khyber Pakhtunkhwa	Additional Secretary (HRD) Wing Establishment Department, against the vacant post.

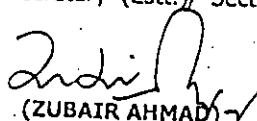
**CHIEF SECRETARY**

**GOVERNMENT OF KHYBER PAKHTUNKHWA**

**Endst. of even No. & date**

Copy forwarded to the:-

1. Additional Chief Secretary, P&D Department.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. Additional Chief Secretary (FATA), FATA Secretariat.
4. All Administrative Secretaries in Khyber Pakhtunkhwa.
5. Secretary to Governor, Khyber Pakhtunkhwa.
6. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
7. All Divisional Commissioners in Khyber Pakhtunkhwa.
8. Accountant General, Khyber Pakhtunkhwa.
9. All Political Agents in Khyber Pakhtunkhwa.
10. PS to Chief Secretary, Khyber Pakhtunkhwa.
11. PS to Secretary Establishment, E&A Department.
12. PS to Special Secretary (Reg.)/ P.A. to Addl. Secretary (Estt.) Section Officer (Secret)/Director Protocol/Librarian, E&A Deptt.
13. Officers concerned.
14. Controller, Govt. Printing Press, Peshawar.

  
(ZUBAIR AHMAD)  
SECTION OFFICER (E-I)  
PHONE & FAX # 091-9210529

F

22

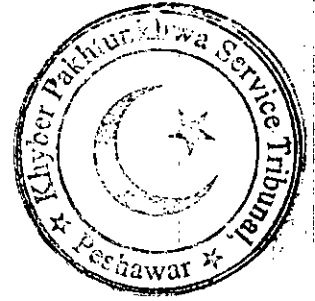
15-12-11

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

APPEAL NO. 1393/2010

Date of institution ... 26.07.2010

Date of judgment ... 15.12.2011



Khalid Saleem Marwat, Deputy Secretary,  
Govt. of Khyber Pakhtunkhwa,  
Home & Tribal Affairs Department, Peshawar,  
Ex-District Officer (Revenue & Estate), Peshawar.

..... (Appellant)

**VERSUS**

1. Chief Minister, Govt. of Khyber Pakhtunkhwa through Chief Secretary,  
Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Chief Secretary, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. Secretary, Govt. of Khyber Pakhtunkhwa, Establishment Department, Peshawar.

..... (Respondents)

APPEAL AGAINST OFFICE ORDER NO. SO(E-1)E&AD/11-8/2010, DATED 25.5.2010 OF RESPONDENT NO. 1 WHEREBY MAJOR PENALTY OF REDUCTION TO LOWER POST/PAY SCALE FOR A PERIOD OF THREE YEARS AND ON RESTORATION IT SHALL OPERATE TO POSTPONE FUTURE INCREMENTS FOR THREE YEARS WAS IMPOSED ON THE APPELLANT FOR NO LEGAL REASON.

Mr.Saadullah Khan Marwat,  
Advocate.  
Mr. Ghulam Mohy-ud-Din Malik,  
Advocate.  
Mr.Bilal Ahmad Kakaizai,  
Advocate.  
Mr.Sher Afgan Khattak,  
Addl: Advocate General.

For appellant  
For appellant in connected  
Appeal No. 1911/2010.  
For appellant in connected  
Appeal No. 2157/2010

For respondents

Mr.Qalandar Ali Khan  
Mr.Khalid Hussain

.. Chairman  
Member

JUDGMENT

QALANDAR ALI KHAN, CHAIRMAN:-

Since this appeal as well as

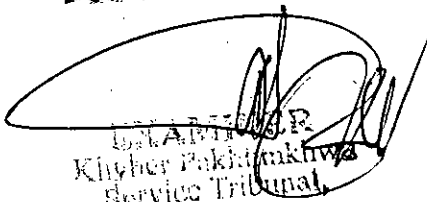
appeals by Gul Said (No.1911/2010) and Mian Samiullah (No. 2157/2010) arise out of the same case of illegal registration of gift deed, this single judgment shall also dispose of the said two connected appeals.

2. The facts, stated in brief, giving rise to the said three appeals are that one Roohullah submitted application for registration of gift deed to the appellant in

**ATTESTED**  
KHALID SALEEM MARWAT  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

this appeal, then District Officer (Revenue & Estate), Peshawar, on 28.9.2005, which was allowed by the appellant 'subject to observance of codal formalities and as provided in the law on the subject'. Gift deed was accordingly entered in the record by Gul Said, then Registration Muharrir, Peshawar and registered by Mian Samiullah, then Sub-Registrar, Peshawar. Since the gift deed was regarding state land, namely, Javed Park, Gulbahar, Peshawar, it appears, a fact finding inquiry was conducted through the Provincial Inspection Team, and on receipt of the inquiry report, the Authority i.e. Chief Minister, Khyber Pakhtunkhwa, ordered initiation of disciplinary proceedings against the appellants and another person, namely, Pir Azam, Record Keeper Muhafiz Khana/Senior Clerk DOR office, Peshawar, under the NWFP (Khyber Pakhtunkhwa) Removal from Service (Special Powers) Ordinance, 2000, through Dr.Hamad Awais Agha, Secretary to Government of NWFP (Khyber Pakhtunkhwa), Environment Department, who, after inquiry, recommended, in his report, filing of the departmental/inquiry proceedings as the officers were not found guilty of committing any illegality or irregularity and further that allegations against them could not be proved. Meanwhile, the Senior Member Board of Revenue, NWFP (Khyber Pakhtunkhwa), Peshawar also submitted his report on the inquiry of Provincial Inspection Team, wherein, he also recommended filing of the departmental proceedings against the appellants as, according to him, no irregularity was found on their part. However, the Authority did not agree with the recommendations of the Inquiry Officer and directed/ordered a second inquiry/departmental proceedings against the appellants. The appellants were, accordingly, again served with charge sheets and statements of allegations, containing the same allegations as leveled in the first charge sheet and statement of allegations. This time, the inquiry was conducted through a committee comprising Dr.Jamal Nasir, Secretary, P&D, FATA, and Mr.Aurangzeb,

**ATTESTED**

  
 CHAIRMAN  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

Secretary, Science & Technology and I.T Department, who recommended awarding of major penalty of reducing the appellants to lower posts/pay scale while exoneration of the fourth officer/official, Pir Azam. The appellants were accordingly served with show cause notices by the competent authority to which they submitted their replies/written defence; and the Authority imposed the penalty of 'reduction to lower post/pay scale for a period of three years and on restoration it shall operate to postpone future increments for three years' on the appellant in this appeal as well as Mr.Gul Said, appellant in the connected appeal, while the third appellant, namely, Mian Samiullah, was awarded minor penalty of 'with-holding of promotion for a period of two years'. Initially, penalty imposed on the former two appellants was also described as 'minor' but later on the order was substituted with another order showing the penalty as 'major'. All the three appellants preferred departmental appeals, and both the appellants in this appeal as well as in the connected appeal, Gul Said, filed Writ Petitions in the High Court, while departmental appeal of Mian Samiullah was rejected by the appellate authority for being time barred. The departmental appeal of the appellant, in this appeal, was also rejected on 21.7.2010.

3. All the three appellants lodged separate appeals, inter-alia, on the grounds that they had acted in accordance with law which did not oblige them to probe into the title of the applicant asking for registration of the gift deed, and that there was also no malafide on their part, as the gift deed was cancelled as soon as they got knowledge that the same was fake and bogus. They alleged that they were found not guilty and exonerated by both the Inquiry Officer as well as the SMBR, but without furnishing any reason for dissenting with the recommendation of Ist Inquiry Officer, the Authority illegally constituted an Inquiry Committee, which, without recording any evidence and affording them the opportunity of defence and hearing, recommended the imposition of penalties

ATTESTED

Handwritten signature and official stamp of the authority.

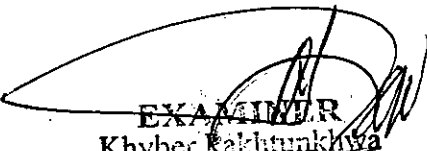
which did not commensurate with the gravity of charges against them. The appellant in this appeal as well as appellant in the connected appeal, Gul Said, further alleged that the Authority imposed two penalties, one major and the other minor, which amounted to double jeopardy and was not provided for by the law. The appellants maintained that they have not been treated in accordance with law and that their appeals have also been disposed of in a summary way without furnishing any reason for rejection, and further that the departmental appeal of Gul Said was not even disposed of within the statutory period.

4. The respondents resisted the appeals, mainly, on the ground that though fully aware of the rules and regulations, the appellants illegally registered gift deed which, though cancelled later, nevertheless landed the Provincial Government in unnecessary litigation. They defended the departmental proceedings and alleged that reasonable opportunity of defence and hearing was provided to the appellants, and major penalty was imposed by the competent authority only after charges were proved against the appellants.

5. The appellants also filed replications/rejoinders to the written replies/comments of the respondents, wherein, they reiterated their case put forth in their appeals, besides refuting contentions of the respondents; where-after arguments of counsel for all the appellants and AAG heard, and record perused.

6. As a result of departmental proceedings under the NWFP (Khyber Pakhtunkhwa) Removal from Service (Special Powers) Ordinance, 2000, and in the light of recommendations of the Inquiry Committee, the competent authority imposed penalties on the appellants, which have been impugned through these appeals. The appellants were proceeded against departmentally on the charge of their involvement in the registration of an illegal gift deed. The appellant in this appeal was District Officer (Revenue & Estate) Peshawar, appellant Gul Said


**ATTESTED**

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Registration Muharrir and appellant Mian Samiullah Sub-Registrar, Peshawar at the relevant time. The gift deed in-question was presented to the appellant in this appeal by one Roohullah, which was allowed by the appellant, and then the deed was entered in the relevant record by appellant, Gul Said, and registered by appellant, Mian Samiullah. The main allegation against the appellants is that though duty bound, by virtue of their positions as DOR, Registration Muharrir and Sub-Registrar, respectively, to verify ownership of the executant of the gift deed/donor, they failed to perform their duty and committed mis-conduct by registration of a gift deed regarding state land. It is not disputed by the appellants that the gift deed was registered without verification of the ownership, but they claimed that while performing functions of registration authority, it was not their duty to verify ownership, and that they were bound to register the gift deed when presented for registration under paragraph 135 of the Registration Rules, 1929. Their this claim also received support from the findings/report of the Ist Inquiry Officer, Dr. Hamad Awais Agha, as well as report of SMBR. Nevertheless, they could not defend the procedure adopted for registration of the gift deed in the light of legal provisions. The appellant in this appeal could not explain under what authority he directly received application from Roohullah and then allowed the same, and, like-wise, the other two appellants also failed to come up with explanation for not following the established procedure of going through the latest 'Jama-Bandi'. They also failed to explain that if the gift deed was properly and legally registered, what was the need of its subsequent cancellation and registration of case against the said Roohullah, which, indeed, landed the Provincial Government in unnecessary litigation and complications.

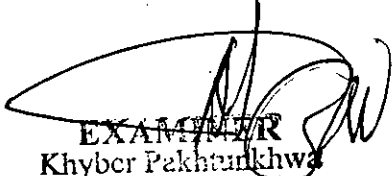
7. However, since legality of the departmental proceedings and impugned orders have been assailed in these appeals, the question that whether the appellants have been treated in accordance with law, and prescribed procedure

ATTESTED

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

observed by the authority as well as Inquiry Committee, becomes relevant and essential for proper adjudication of the appeals. It is an admitted fact that in the first instance, on the basis of inquiry report of the Provincial Inspection Team, the appellants were proceeded against under the NWFP (Khyber Pakhtunkhwa) Removal from Service (Special Powers) Ordinance, 2000, served with charge sheets and statements of allegations by the competent authority, and inquiry conducted through the Inquiry Officer, Dr. Hamad Awais Agha. In his report, the Inquiry Officer recommended filing of the departmental/inquiry proceedings and held that the appellants were not found guilty of committing any illegality or irregularity. Though one can ignore the report of the SMBR sent to the Political Secretary to the Chief Minister as the same is not only uncalled for but also having no legal value; but one cannot over-look this fact that the competent authority was duty bound to record reasons for disagreeing with the inquiry report and also serve notice on the accused officer (2011 SCMR 1504 (b) (Supreme Court of Pakistan), before ordering/directing a second inquiry through an Inquiry Committee after serving the appellants with another charge sheet and statement of allegations. The learned counsel for the appellant, Gul Said, argued that once inquiry was conducted through an Inquiry Officer, the competent authority could not switch over to Inquiry Committee; but once the second inquiry, without furnishing reasons for dissenting with the first inquiry report and serving the accused-officer with notice by the competent authority, is held as not warranted by law, hardly any room is left for further discussion on the issue whether the competent authority was bound to conduct second inquiry also through an Inquiry Officer instead of Inquiry Committee once it was decided to conduct inquiry through an Inquiry Officer. It is, indeed, note worthy that neither in the first inquiry by the Inquiry Officer nor during the second inquiry by the Inquiry Committee, any evidence was recorded. Both the Inquiry Officer and the

**ATTESTED**

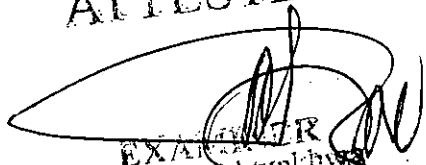
  
**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

Inquiry Committee placed reliance on the written replies of the appellants to the charge sheets and statement of allegations and their own examination, without seeking support or rebuttal from other evidence. As such, the appellants were also deprived of the valuable opportunity of defence and cross-examination. Consequently, it would be safe to hold that inquiry proceedings were not in accordance with letter and spirit of the relevant law.

8. The final show cause notices served on the appellants by the competent authority contained tentative decision of the competent authority to impose the penalty of reduction to a lower post/pay scale, but in the impugned orders, the competent authority traveled beyond the scope of show cause notice and also imposed the minor penalty of postponing future increments for three years on restoration in respect of appellant in this appeal as well as appellant in the connected appeal, Gul Said; while made a complete departure from the show cause notice in the case of Mian Samiullah and imposed the minor penalty of with-holding of promotion for a period of two years on him. The learned counsel for the appellants in the two appeals sounded convincing when they alleged that the other two appellants have been discriminated against even in the imposition of penalty on them as all the three appellants were proceeded against on similar charges and found equally guilty by the Inquiry Committee. The learned counsel are also not wrong when they say that the imposition of two penalties and combination of a minor penalty with a major penalty amount to not only double jeopardy but also illegality, not at all sustainable in law.

9. Needless to say that once the impugned order of the competent authority is held to be illegal and not sustainable in law, limitation would not run against a person aggrieved of such a void order, but even then departmental appeals in this case as well as in the case of Gul Said, appellant, against the impugned order

ATTESTED

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar



dated 25.5.2010 were preferred on 23.6.2010 and 7.6.2010 respectively. The departmental appeal in this case was rejected by the appellate authority on merits, not on the ground of limitation, on 21.7.2010, whereas the appeal was lodged on 26.7.2010; and in the case of Gul Said the departmental appeal was not decided within the statutory period, and the appellant lodged the service appeal on 6.10.2010, after his writ petition was dismissed as withdrawn by the august High Court on 22.9.2010. Though departmental appeal/representation of Mian Samiullah, appellant, has been filed on the ground of the same being time barred; but the record, especially the impugned order dated 25.5.2010, would show that the same was received by the appellant on 7.6.2010 and he preferred departmental appeal on 16.6.2010.

10. As a sequel to the foregoing discussion, all the three appeals are partially accepted and by setting aside the impugned orders, the cases of all the three appellants are remanded to the competent authority for denovo departmental proceedings in accordance with letter and spirit of law, in the light of above observations, with further direction to afford reasonable opportunity of defence and hearing to the appellants, where-after the competent authority shall pass an appropriate order strictly according to law, within reasonable time, but in no case beyond the period prescribed by the law. There shall, however, be no order as to costs.

ANNOUNCED  
15.12.2011

*(Handwritten signature)*  
(KHALID HUSSAIN)  
MEMBER

*(Handwritten signature)*  
(QALANDAR ALI KHAN)  
CHAIRMAN

Date of Presentation of Appeal 15-12-2011  
Number of Words 3200  
Copying Fee 18  
Urgent 18  
Total 18  
Name of Copyist [Signature]  
Date of Completion of Copy 20-12-2011  
Date of Delivery of Copy 20-12-2011

Certified to be true copy  
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Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

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30

19-4-12

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

PRESENT:  
MR. JUSTICE JAWWAD S. KHAWAJA  
MR. JUSTICE MIAN SAQIB NISAR

CIVIL PETITION NO.85-P/2012  
(Against the judgment dated 15.12.2011 passed by KPK  
Service Tribunal, Peshawar passed in Appeal  
No.1393/2010)

Chief Minister, Khyber Pakhtunkhwa through Chief Secretary, Government of  
KPK and others ... Petitioner(s)

VERSUS

Khalid Saleem Marwat ... Respondent(s)

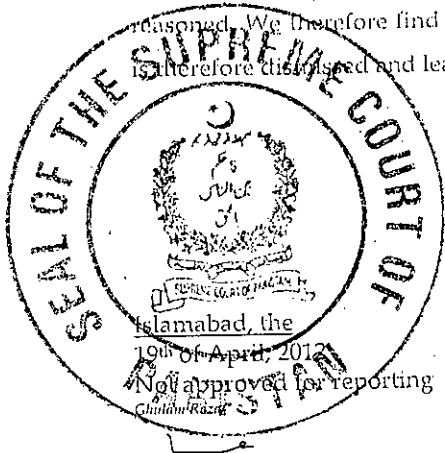
For the Petitioner(s): Syed Arshad Hussain, Addl. A.G. KPK

For the Respondent(s): N.R.

Date of Hearing: 19.4.2012.

ORDER

JAWWAD S. KHAWAJA, J.- The petitioner-province impugns the judgment of the Service Tribunal, dated 15.12.2011 whereby service appeal preferred by the respondent was allowed and as a consequence the department was directed to hold a *de novo* inquiry. This order was passed because of certain errors which were noted in the departmental proceedings. After hearing the learned Law Officer at some length, we find that the impugned judgment is well reasoned. We therefore find no justification for interfering therein. This petition is therefore dismissed and leave to appeal is declined.



26.4.12

Sd/ Jawwad S. Khawaja  
Sd/ Mian Saqib Nisar

Certified to be true copy

26/4/12  
Sd/ [Signature]  
Sd/ [Signature]

333-P/12 Civil/Criminal

Case No: \_\_\_\_\_

Date of Presentation: 21.4.2012

No. of Words: \_\_\_\_\_

No. of folios: ③

Regulation Fee Rs: 5.00

Copy Fee In: 1.86

Court Fee stamps: 6.86

Date of Completion of \_\_\_\_\_

Copy: 26/4/12

Date of delivery of \_\_\_\_\_

Copy: 8/5/12

Composed by: [Signature]

Received by: \_\_\_\_\_

H.

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3-8-12



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT**

Dated Peshawar, the August 3, 2012

**NOTIFICATION**

**NO.SO(E-I)E&AD/4-472/2012:** In terms of Section-13 of the Khyber Pakhtunkhwa Civil Servants Act 1973, Mr. Khalid Saleem (PCS EG BS-18), Ex-DO(R) Peshawar, stands retired from service on 29.04.2012, on attaining the age of superannuation as his date of birth is 28.04.1952.

**SECRETARY ESTABLISHMENT  
GOVERNMENT OF KHYBER PAKHTUNKHWA**

**ENDST. NO & DATE EVEN**

Copy forwarded to the:-

1. Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Accountant General, Khyber Pakhtunkhwa.
4. PS to Secretary Establishment, Khyber Pakhtunkhwa.
5. Officer concerned.
6. Manager, Govt. Printing Press, Peshawar.

**(MUHAMMAD TAUFIQUE)**  
SECTION OFFICER (EST-I)  
PHONE & FAX # 091-9210529



I 32 3-8-12

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT**

Dated Peshawar the August 3, 2012

**NOTIFICATION**

**NO.SO(E-I)E&AD/11-8/2010.** In pursuance of judgment of Khyber Pakhtunkhwa Service Tribunal dated 15.12.2011 in the Service Appeal No.1393/2011 titled Khalid Saleem versus Government of Khyber Pakhtunkhwa & others, the Competent Authority is pleased to withdraw this Department's notification of even No. dated 25.05.2010.

**CHIEF SECRETARY  
GOVERNMENT OF KHYBER PAKHTUNKHWA**

Endst. No. & Date even

**Copy forwarded to the:-**

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Accountant General, Khyber Pakhtunkhwa.
4. PS to Chief Secretary, Khyber Pakhtunkhwa.
5. PS to Secretary Establishment, Khyber Pakhtunkhwa.
6. SO(Secret) E&A Department/SO(Admn) E&AD
7. Officer concerned.
8. Manager, Government Printing Press, Peshawar.

*14 1*  
**(MUHAMMAD TAUFIQUE)**  
SECTION OFFICER (ESTT. I)  
Ph: & Fax No. 091/9210529

*Attested*  
*[Signature]*  
**SUPERINTENDENT**  
Estt: I Section  
Estt: & Admn Deptt:  
Khyber Pakhtunkhwa.



J

33

6-8-12

To

The Chief Minister,  
Govt. of Khyber Pakhtunkhwa, Peshawar.

Subject: **APPEAL AGAINST OFFICE NOTIFICATION NO.SO(E-I)E&AD/5-1/2001, DATED 30.05.2011 AND OFFICE ORDER NOTIFICATION NO.SO(E-I)/E&AD/4-2/2001, DATED 27.10.2011 OF THE CHIEF SECRETARY, GOVT. OF KPK WHEREBY THE INCUMBENTS MENTIONED THEREIN WERE PROMOTED TO THE POSTS OF ADDITIONAL SECRETARY AND APPELLANT BEING SENIOR WAS IGNORED FOR NO LEGAL REASON.**

**Respected Sir,**

1. That facts and grounds of the appeal has been narrated in Service Appeal No.1393/2010 filed before the KPK Service Tribunal, Peshawar. (Copy as annex "A")
2. That the aforesaid appeal was contested by the department and after final hearing of the case, the hon'ble Tribunal was pleased to accept the appeal by setting aside the impugned orders dated 25.05.2010 whereby penalty of reduction to lower grade in the said order was imposed upon appellant. (Copy as annex "B")
3. That the said judgment was transmitted to the department for implementation but the same was delayed on the reason that the department has filed petition for leave to appeal before the apex Supreme Court of Pakistan but when the case came up for hearing before the apex court, leave to appeal was refused vide order dated 19.04.2012. (Copy as annex "C")
4. That on implementation petition, the department produced order dated 03.08.2012, first relating to the order of withdrawal dated 25.05.2010 whereby appellant was reduced from BPS-18 to BPS-17 and in the 2<sup>nd</sup> order appellant was retired from service with effect from 29.04.2012 on attaining the age of superannuation. (Copies as annex "D")
5. That when order dated 25.05.2010 was withdrawn by the department by restoring appellant to his original position in

BPS-18 and by accepting the appeal by the hon'ble Service Tribunal, no stigma remained in the service career of appellant, so he is entitled to be promoted to BPS-19 with effect from 30.05.2011 with all service benefits.

6. That appellant is at S.No.2 of the seniority list and was senior to the incumbents, namely (1) Akbar Khan Marwat, (2) Mr. ShafirUllah, (3) Muhammad Maqbool and (4) Syed Mubashar Hussain Shah. The said incumbents were promoted to BPS-19 but appellant was ignored due to the so called illegal order of reduction to lower grade dated 25.05.2010.
7. That the stigma of reduction was washed out by the hon'ble Service Tribunal, apex Supreme Court of Pakistan and the department herself, so appellant is legally entitled to the grant of BPS-19.
8. That appellant was compelled to lengthy litigation for no legal reason and was harassed, deprived from facilities of BPS-19 due to the so called order dated 25.05.2010.
9. That order dated 25.05.2010 was based on malafide and was illegal, so the same was struck by the hon'ble Tribunal/Supreme Court of Pakistan.

It is, therefore, most humbly requested that appellant be given proforma promotion in BPS-19 with effect from 30.05.2011 with all service benefits, with such other relief as may be deemed proper and just in circumstances of the case.

Appellant.

Dated 06.08.2012

Khalid Saleem  
H.No.75, St#4, Sector E-I,  
Phase-I, Hayat Abad, Peshawar.  
Ex- Deputy Secretary,  
Home & Tribal Affairs, Department,  
Govt. of Khyber Pakhtunkhwa.

K

35

4-7-13



GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

NO. SO(E-I)E&AD/4-472/2013  
Dated Peshawar, the July 4, 2013

To

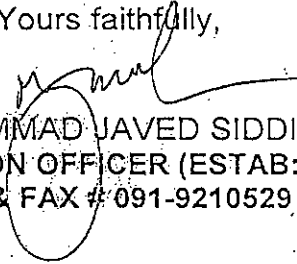
Mr. Khalid Saleem,  
(RTD. PCS EG BS-18)  
Ex-Deputy Secretary, Home Department

SUBJECT: - PROVISION OF ATTESTED COPY OF DECISION TAKEN ON AN APPEAL


Dear Sir,

I am directed to refer to your application dated 19.6.2013, on the subject cited above and to inform that your case was considered but not found tenable under the law/rules.

Yours faithfully,

  
(MUHAMMAD JAVED SIDDIQI)  
SECTION OFFICER (ESTAB: I)  
PH: & FAX # 091-9210529

Received from office  
Today i.e. 27/8/2013

  
27/8/2013  
Khalid Saleem

27/8/2013

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ایڈیشنل سیکرٹری لاہور