

26.09.2022

Appellant present through counsel.

Naseer Ud Din Shah, learned Assistant Additional Advocate General for official respondents No.1 to 3 present. Private respondent No.4 was reportedly dead. He had appeared before this Tribunal on 09.02.2016, where-after, he never appeared as the matter in dispute pertains to promotion, and the private respondent being necessary party was put on notice. He was being represented by Mr. Muhammad Zafar Khan Tahirkheli and Mr. Ansar Ullah Khan Advocate, they were put on notice time and again and today, Mr. Muhammad Zafar Khan Tahirkheli Advocate appeared before this Bench and recorded his statement in respect of death of private respondent No.4. In this view of the matter, proceedings against private respondent No.4 stands abated. Attendance is complete. Comments have already been submitted. To come up for arguments on 19.10.2022 before D.B.



(Fareeha Paul)
Member (E)



(Rozina Rehman)
Member (J)

- 19th Oct., 2022
01. None present on behalf of the appellant. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.
02. Called several times, till last hours of the court but nobody turned up on behalf of the appellant. The appeal is, therefore, dismissed in default. Consign.
03. **Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 19th day of October, 2022.**



(Fareeha Paul)
Member (E)



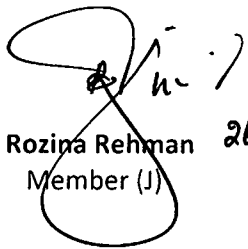
(Kalim Arshad Khan)
Chairman

26.09.2022

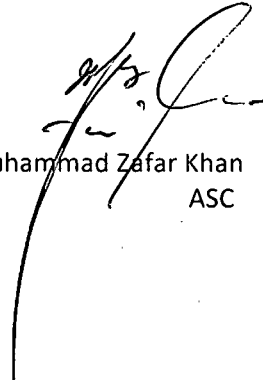
Statement of the counsel of Respondent No. 4. Muhammad Zafar Khan, ASC

States that respondent No. 4 has passed away a couple of year ago and hence the power of attorney executed by respondent No. 4 has abated. In the given circumstances, I being counsel for deceased respondent No. 4, am unable to assist the Hon'ble Tribunal.

(Heard and found correct)


Rozina Rehman
Member (J) 26/9/22

Fareeha Paul
Member (E)


Muhammad Zafar Khan
ASC

15.06.2022

Appellant in person present. Mr. Imran Akbar, Assistant alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his counsel is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 06.07.2022 before the D.B.



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

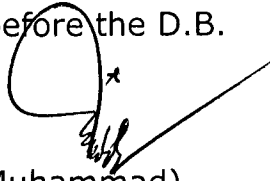


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

06.07.2022

Appellant in person present. Mr. Imran Ahmad, Assistant alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for official respondents No. 1 to 3 present. .

Appellant requested for adjournment on the ground that his counsel is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 31.08.2022 before the D.B.



(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

31.08.2022

Bench is incomplete, therefore, case is adjourned to 26.09.2022 for the same as before.




Reader

01.02.2022

Learned counsel for the appellant present. Mr. Qasim Khan, Superintendent alongwith Mr. Muhammad Adeel Butt, Addl. AG for respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not prepared the brief. Adjourned. To come up for arguments before the D.B on 02.03.2022.


(Atiq-Ur-Rehman Wazir)
Member (E)


Chairman

02.03.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 16.05.2022 for the same as before.


Reader

16.05.2022

Junior of learned counsel for the appellant present. Mr. Imran Akbar Assistant alongwith Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 15.06.2022 before the D.B.


(Rozina Rehman)
Member (J)

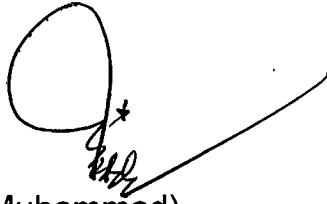

(Salah-Ud-Din)
Member (J)

12.11.2021

Appellant in person present.

Kabirullah Khattak, Adll: AG for respondents present.

Former requests for adjournment on the ground that his counsel is busy before the august Supreme Court of Pakistan. Adjourned but as a last chance. To come up for arguments on 08.12.2021 before D.B.



(Mian Muhammad)
Member (E)

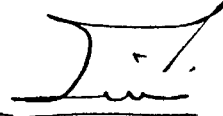


(Rozina Rehman)
Member (J)

08.12.2021

Mr. Taimur Ali Khan, Advocate, for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

The Worthy Chairman is on leave, therefore, the bench is incomplete. Adjourned. To come up for arguments on 13.01.2022 before the D.B.



(Salah-ud-Din)
Member (J)

13.01.2022

Counsel for the appellant and Mr. Kabirullah Khattak, Adll. AG for the respondents present.

Due to paucity of time, arguments could not be heard. To come up for arguments on 28.01.2022 before the D.B.



(Atiq-Ur-Rehman Wazir)
Member (E)



Chairman

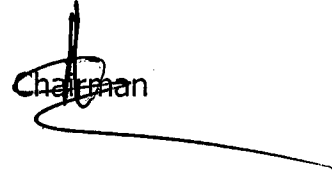
22.06.2021

Appellant in person present. Muhammad Riaz Khan Paindkheil learned Assistant Advocate General for the respondents present.

Former made a request for adjournment on the ground that his counsel is busy before the Hon'ble Peshawar High Court Peshawar. Adjourned to 30.07.2021 for arguments before the D.B.



(Atiq-Ur-Rehman Wazir)
Member (Executive)



Chairman

30.07.2021

Junior to counsel for appellant present.

Muhammad Adeel Butt learned Additional Advocate General for respondents present.

Former made a request for adjournment. In this regard he also submitted an application for adjournment; allowed. To come up for arguments on 01.09.2021 before D.B.



(Rozina Rehman)
Member (J)



Chairman

Due non availability of the bench to come up for the same on 01-10-2021



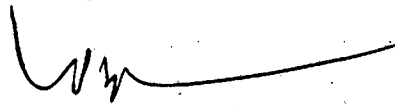
08.02.2021

Appellant with counsel and Addl. AG alongwith Muhammad Ajmal Khan, Asstt. Secretary for the official respondents present.

Former states that private respondent No. 4 (Qaisar Naz) has passed away quite some time ago. He was being represented by M/S. Muhammad Zafar Tahir Kheli and Ansarullah Khan, Advocates.

In the circumstances, notices be issued to learned counsel for respondent No. 4 for 12.03.2021.

Adjourned.



(Atiq-ur-Rehman Wazir)
Member(E)



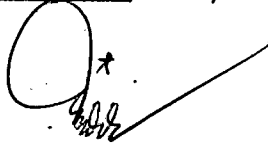
Chairman

12.03.2021

Appellant with counsel present.

Kabir Ullah Khattak learned Additional Advocate General for official respondents present.

Despite notice to learned counsel for private respondent No.4, nemo for the said respondent. Therefore, private respondent No.4 be put on notice for the next date in order to ascertain the fact in respect of the death of private respondent No.4. At the same time, M/S Muhammad Zafar Tahir Kheli and Ansarullah Khan, Advocates be noticed once again for 29/04/2021, before D.B.



(Mian Muhammad)
Member (E)



(Rozina Rehman)
Member (J)

01.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 22.06.2021 for the same as before.



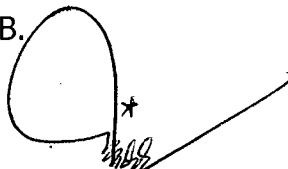
Reader

Handwritten note:
Kabir Ullah
18/3/2021

Appeal No. 1581/2013

04.12.2020 Appellant alongwith counsel and Addl. AG for respondents No. 1 to 3 present. Nemo for respondent No. 4.

Respondent No. 4 appeared before this Tribunal lastly on 09.02.2016. Thereafter, he was neither placed ex-parte nor was sent notice in the subsequent proceedings. As the matter in dispute pertains to promotion, the private respondent seems to be a necessary party. He shall, therefore, be issued notice for appearance on 06.01.2021 before the D.B.



(Mian Muhammad)
Member(E)



Chairman

06.01.2021

Appellant in person and Asstt. A.G for the respondents present.

A request for adjournment is made due to engagement of learned counsel for the appellant before the Apex Court today. Adjourned to 08.02.2021 for hearing before the D.B. Office shall issue notice to respondent No. 4 for the next date of hearing.



(Atiq-ur-Rehman Wazir)
Member(E)



Chairman

16.04.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 16.07.2020 before D.B.



Reader

16.07.2020

Due to COVID-19, the case is adjourned for the same on ~~01.08~~ 01.08.2020 before D.B.



Reader

17.08.2020

Due to summer vacations, the case is adjourned to 19.10.2020 for the same.

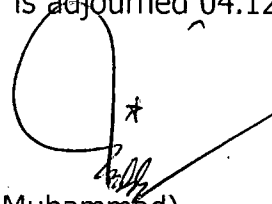


Reader

19.10.2020

Junior to counsel for the appellant and Addl. AG for the respondents present.

The Bar is observing general strike today, therefore, the matter is adjourned 04.12.2020 for hearing before the D.B.



(Mian Muhammad)
Member



Chairman

16.01.2020

Noted
J
7-2-2020

Appellant absent. Learned counsel for the appellant absent. Mr. Zia Ullah learned Deputy District Attorney alongwith Mr. Arif Superintendent for the respondents present. Due to general strike of the bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for further proceedings/arguments on 28.02.2020 before D.B. Appellant be put to notice for the date fixed.


Member


Member

28.02.2020

Junior to counsel for the appellant present. 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 available today. Adjourn. To come up for arguments on 12.03.2020 before D.B.


Member


Member

12.03.2020

Appellant in person present. Mr. Zia Ullah learned Deputy District Attorney alongwith Arif Superintendent for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourn. To come up for arguments on 16.04.2020 before D.B


Member


Member

26.09.2019


Junior counsel for the appellant and Mr. Usman Ghani, District Attorney for official respondents No. 1 to 3 present. Junior counsel for the appellant seeks adjournment on the ground that learned senior counsel for the appellant is not available today. Adjourned to 01.11.2019 for arguments before D.B.

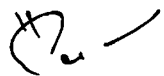

(HUSSAIN SHAH)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

01.11.2019

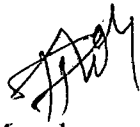
Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney alongwith Muhammad Arif Superintendent present. Learned counsel for the appellant seeks adjournment. Adjourned by way of last chance. To come up for arguments on 09.12.2019 before D.B.

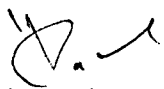

Member


Member

09.12.2019

Lawyers are on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourn. To come up for further proceedings/arguments on 16.01.2020 before D.B.


Member


Member

17.05.2019

Counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Muhammad Arif, Superintendent for the respondents present.

Due to demise of his father, learned Member of the Bench (Mr. Hussain Shah) is on leave. Adjourned to 25.06.2019 for arguments before the D.B.


Chairman

25.06.2019

Counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Mr. Javed Khan, Assistant for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. Case to come up for arguments on 26.08.2019 before D.B.


Member


Member

26.08.2019

Clerk to counsel for the appellant present. Addl: AG for respondents present. Clerk to counsel for the appellant seeks adjournment due to general strike on the call of Peshawar Bar Association. Adjourn. To come up for arguments on 26.09.2019 before D.B.


Member


Member

01.03.2019

Clerk to counsel for the appellant and Addl. AG for the respondents present.

Due to general strike on the call of Bar Association instant matter is adjourned to 26.04.2019 before the D.B.


Member


Chairman

26.04.2019

Due to general strike of the bar, the case is adjourned. To come up for arguments on 10.05.2019 before D.B.


Member


Member

10.05.2019

Counsel for the appellant and Addl:AG alongwith Mr. Muhammad Arif, Supdt for respondents present.

Learned AAG states that the instant case was noted by his office in the diary of 14.06.2019, therefore, the brief could not be prepared. Being an old case of the year 2013, it is adjourned to 17.05.2019 for arguments before D.B.


Member


Chairman

26.11.2018

Junior to counsel for the appellant Mr. Muhammad Jan learned Deputy District Attorney for the respondents present. Junior to counsel for the appellant requested for adjournment that his senior counsel is not in attendance. Adjourn. To come up for arguments on ~~13~~ 12.2018 before D.B.



Member



Member

~~13~~

~~13.12.2018~~

13.12.2018

Junior to counsel for the appellant present. Mr. M. Arif, Supdt alongwith Mr. Muhammad Jan, DDA for respondents present. Junior to counsel for the appellant seeks adjournment. Adjourned. Case to come up for arguments on 04.02.2019 before D.B.



Member

Member

04.02.2019

Appellant alongwith his counsel present. Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Muhammad Arif, Superintendent for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 01.03.2019 for arguments before D.B.




(AHMAD HASSAN)
MEMBER



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

29.06.2018

Appellant in person present. Learned counsel for the appellant is absent. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Appellant seeks adjournment on the ground that his counsel is busy before the Hon'ble Peshawar High Court. Being one of the oldest case, last opportunity is granted for arguments. Adjourned. To come up for arguments on 17.08.2018 before D.B.



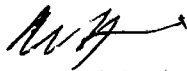
(Muhammad Amin Kundi)
Member



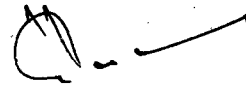
(Muhammad Hamid Mughal)
Member

17.08.2018

Appellant with counsel and Mr. Muhammad Jan learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 09.10.2018 before D.B.



(Muhammad Amin Kundi)
Member



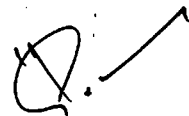
(Muhammad Hamid Mughal)
Member

09.10.2018

Junior to counsel for the appellant and Mr. Riaz Ahmed Painsdakhel for the respondents present. junior to counsel for the appellant seeks adjournment as his senior is not in attendance. Adjourned. To come up for arguments on 26.11.2018 before D.B.




Member




Member

19.12.2017


Clerk to counsel for the appellant and Asst: AG for respondents present. Clerk to counsel for the appellant seeks adjournment as counsel for the appellant is not in attendance due to death of his wife. Adjourned. To come up for arguments on 20.02.2018 before D.B.


Member


Chairman

20.02.2018

Due to non availability of D.B. Adjourned. To come up on 16.04.2018 before D.B.


(Gul Zeb Khan)
Member

16.04.2018

Counsel for the appellant and Mr. Ziaullah, DDA alongwith Mr. Attaullah, Assistant Secretary for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 29.06.2018 before D.B.



(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

28.07.2017

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 12.09.2017 before D.B.



(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

12.09.2017

Counsel for the appellant and Mr. Ziaullah, DDA along with Mr. Muhammad Azhar, Assistant (Lit) for the respondents present. Learned Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 25.10.2017 before D.B.


Member
(Executive)


Member
(Judicial)

25/10/2017

Counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present. Counsel appellant seeks adjournment. To come up for arguments on 19/12/2018 before DB.

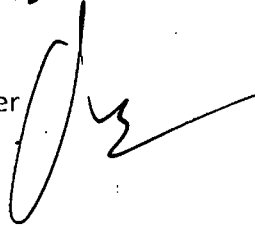

Member


Chairman

17.08.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Learned counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 9-12-16 before D.B.

Member



Member



09.12.2016

Counsel for the appellant and Mr. Muhammad Ibrar, Assistant Secretary alongwith Mr. Ziaullah, GP for official respondents and clerk to counsel for private respondents also present. Clerk to counsel for private respondents requested for adjournment. Request accepted. To come up for arguments on 14.4.17.

(ASHFAQUE TAJ)
MEMBER



(MUHAMMAD AAMIR NAZIR)
MEMBER



14.04.2017

Counsel for the appellant present. Mr. Muhammad Ibrar, Assistant Secretary alongwith Mr. Muhammad Jan, Government Pleader for official respondents No. 1 to 3 also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 28.07.2017 before D.B.

(Ahmad Hassan)
Member

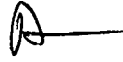


(Muhammad Amin Khan Kundi)
Member



18.11.2015

Appellant with counsel, Mr. Mukhtiar Ali, Supdt. alongwith Muhammad Jan, GP for official respondents and counsel for private respondents No. 4 present. Due to paucity of time therefore, arguments could not be heard. To come up for arguments on 9-2-2016.



MEMBER



MEMBER

09.02.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for official respondents and counsel for private respondent No. 4 present. Counsel for the appellant requested for adjournment. To come up for arguments on 27-4-16



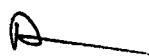
MEMBER



MEMBER

27.04.2016

Appellant in person and Mr. Muhammad Adeel Butt, AAG for official respondents No. 1 to 3 present. Due to general strike of the Bar learned counsel for the appellant is not in attendance. Adjourned for arguments to 17.8,2016 before D.B.



Member



Chairman

1581/13

20.2.2015

Counsel for the appellant and Mr. Muhammad Jan, GP with Mukhtiar Ali Supdt. for the official respondents and counsel for private respondent No. 4 present. Counsel for private respondent No. 4 requested for adjournment. To come up for arguments on 28.5.2015.


Member


Member

28.05.2015

Appellant in person and Mr. Muhammad Jan, GP with Mukhtiar Ali, Supdt. for the official respondents and clerk of counsel for private respondent No. 4 present. Due to general strike of the legal fraternity, counsel for the parties are not available. To come up for arguments on 13.8.2015.


MEMBER


MEMBER

13.08.2015

Counsel for the appellant, Mukhtiar Ali, Supdt alongwith Muhammad Jan, GP for official respondents present and counsel for private respondent No.4 present. Counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 18-11-2015.

Member


Member

17.07.2014.

Counsel for the appellant and AAG with Mukhtiar Ali, Supdt. for official respondents present who already filed written reply. Counsel for private respondent No. 4 present who needs further time for submission of written reply. Request is accepted but last opportunity is given to him for submission of written reply on 01.09.2014.


MEMBER


MEMBER

01.09.2014.

Clerk to counsel for the appellant, Mr. Muhammad Jan, GP with Mukhtiar Ali, Supdt. for the official respondents present who already filed written reply. Clerk to counsel for private respondent No. 4 present and written reply filed. Copy handed over to clerk to counsel for the appellant. To come up for rejoinder on 10.10.2014.


MEMBER

10.10.2014

Appellant with counsel, Mr. Kabeerullah Khattak, Asstt. AG with Mukhtiar Ali, Supdt. for the official respondents and counsel for private respondent No. 4 present. Rejoinder received, copy whereof is handed over to the learned AAG and counsel for private respondent No. 4. To come up for arguments on 10.12.2014.


MEMBER

10.12.2014

Clerk to counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Mukhtiar Ali, Supdt. for the official respondents and counsel for private respondent No. 4 present. The Tribunal is incomplete. To come up for the same on 20.2.2015.


MEMBER

1581/13

29.4.2014

Counsel for the appellant and Mr. Muhammad Jan, GP with Mir Qasam, Assistant Secretary for respondents No. 1 & 3 present and reply filed. Muhammad Tariq, Steno for respondent No. 2 and counsel for private respondent No. 4 present and requested for further time. To come up for written reply of respondents No. 2 and 4 on 23.5.2014.

MEMBER 

23.5.2014.

Appellant with counsel and Sr.GP with Mukhtiar Ali, Supdt. for respondent No. 1 and 3 present who already filed written reply. Respondent No. 2 sent letter No. Appeal 1581/2013/AR-3611 dated 24.3.2014, whereby he relied on the written reply submitted by the Board of Revenue. Counsel for private respondent No. 4 present and requested for further time. To come up for written reply of private respondent No.4 on 16.6.2014.

MEMBER 

MEMBER 

16.6.2014


Appellant with counsel and AAG with Mukhtiar Ali, Supdt. for official respondents and junior to counsel for private respondent No. 4 present. Respondent No. 4 still needs time. To come up for written reply of respondent No. 4 on 17.7.2014. Rejoinder to written reply of official respondents received and copies whereof handed over to opposite sides.

MEMBER 

Appeal No. 1581/2013
Mr. Jamshed Khan

3.
30.12.2013

Counsel for the appellant present and submitted an application for early hearing. To come up for arguments on early hearing application on 07.01.2014.


Member

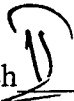
4.
07.01.2014

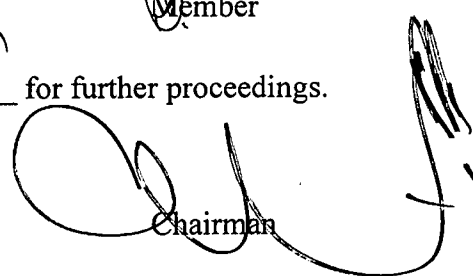
Counsel for the appellant present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. The appellant filed the instant appeal on 29.11.2013, against the final order dated 22.11.2013. He further contended that the impugned order is not a speaking order and 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 of written reply on 28.03.2014.

*Appellant deposited
process fee & security
of Rs. 2000/- Bank Receipt
attached with file.*


Member


5.
07.01.2014

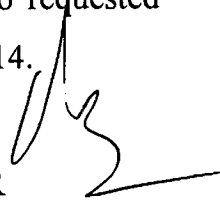
This case be put before the Final Bench  for further proceedings.


Chairman

28.3.2014

Appellant with counsel, Mr. Muhammad Jan, GP with Mir Qasam, Assistant Secretary respondent No.1 and 3, and Muhammad Ayub, Revenue Assistant for respondent No.2 with Mr. Muhammad GP for the official respondents present and requested for time. Mr. Muhammad Zafar Tahirkheli, Advocate/counsel for private respondent No. 4 present and Wakalatnama placed on file. He also requested for time. To come up for written reply on 29.4.2014.




MEMBER


MEMBER

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1581/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	04/12/2013	<p>The appeal of Mr. Javed Khan resubmitted today by Mr. M. Asif Yousafzai 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	10-12-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>21-1-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

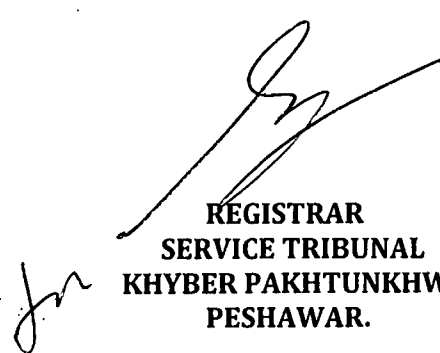
The appeal of Mr. Javed Khan DRA Revenue Department Peshawar received today i.e. on 29.11.2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures-A, B and E of the appeal are illegible which may be replaced by legible/better one.

No. 1702 /S.T,

Dt. 02/12 /2013.

Mr. M. Asif Yousafzai Adv. Pesh.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Re-submitted after compliance
Asif

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No. 1581 /2013

MR. JAVED KHAN

V/S

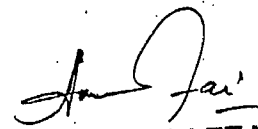
SMBR, K.P. AND OTHERS.

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-04
2.	Copy of Seniority List	- A -	05
3.	Copy of Promotion Order	- B -	06
4.	Copy of Judgment (19.5.2008)	- C -	07-12
5.	Copy of Order (14.3.2009)	- D -	13-14
6.	Copy of Order (11.6.2009)	- E -	15
7.	Copy of Tribunal's Order	- F -	16-17
8.	Copy of Appeal	G	18-21
9.	Copy of Rejection Order	H	22
10.	Vakalat Nama	---	23

APPELLANT
JAVED KHAN

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No. 1581 /2013

1597
29-11-13

Mr. Javed Khan, DRA,
Revenue Department, Peshawar.

APPELLANT

VERSUS

1. The Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
2. The Commissioner, Peshawar Division, Peshawar.
3. The Assistant Secretary Establishment, Revenue Department, Peshawar.
4. Mr. Qaisar Naz, Secretary, RTA, Kohat.

RESPONDENTS

.....

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 22.11.2013 WHEREBY THE APPEAL OF THE APPELLANT FOR PROMOTION AS NAIB TEHSILDAR AND THEN TO TEHSILDAR FROM THE DATE WHEN HIS JUNIOR OF THE APPELLANT WERE PROMOTED HAS BEEN REJECTED FOR NO GOOD GROUNDS.

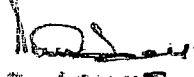
.....

PRAYER:

29/11/13

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 22.11.2013 MAY BE SET ASIDE AND THE RESPONDENTS MAY BE DIRECTED TO CONSIDER THE APPELLANT FOR PROMOTION AS NAIB TEHSILDAR AND THEN TO TEHSILDAR POST FROM THE DATE WHEN HIS JUNIOR RESPONDENT NO.4 WAS PROMOTED WITH ALL CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

re-submitted to court
and filed.



4/12/13.

RESPECTFULLY SHEWETH:

1. That the appellant joined the Revenue Department as Junior Clerk in the year 1985 whereas the respondent No.2 joined the same post in the year 1986, meaning that the respondents No.2 was junior to the appellant. Copy of the Seniority list of the year 2000 of D.C. office Kohat is attached as Annexure-A.
2. That in the year 2006, the appellant was regularly promoted as Naib Tehsildar with the condition of passing exam and training which the appellant did successfully. Copy of promotion order is attached as Annexure-B.
3. That then a dispute arose for the regular promotion to the post of Naib Tehsildar in the year 2006 which went before the KPK Service Tribunal in Appeal No.3/2006. The said dispute was amongst the Abdus Sammad, Hamid Khan, Syed Mohammad Qaba Hussain, Qaiser Naz and the appellant.
4. That the said appeal was decided by the August Tribunal on 19.5.2008 and decided the issue as "The official respondents were legally bound to consider the seniority of appellant and private respondents and to appoint the senior most officials on regular basis while the junior should be appointed on acting charge basis or till the arrival of recommendees of the Public Service Commission. The appeal was partially accepted and the official respondents were directed to sort out the seniority appoint/promote the senior on regular basis as Naib Tehsildar and the juniors may be regularized as Naib Tehsildar when vacancy are available for them". Copy of the Judgment is attached as Annexure-C.
5. That in the light of the Judgment of the Service Tribunal, the Revenue Department passed an order on 14.3.2009, whereby, Abdus Sammad, Hameed Khan, and Haider Hussain were promoted as Naib Tehsildar on regular basis with effect from 10.4.2001 and 3.1.2006, respectively, while the appellant and respondent No.2 Qaisar Naz promotion order of regular one were modified as on acting charge basis with the condition that the appellant and the respondent No.2 would be considered for regular promotion when vacancies when the vacancies occurred in the quota of Kohat Division. Copy of the order is attached Annexure-D.
6. That despite clear order dated 14.3.2009, the respondent No.2 was promoted vide 11.6.2009 on regular basis while he was junior

to the appellant and Haider Hussain was also promoted on regular basis who was already stood promoted on regular basis with effect from 3.1.2006 vide order dated 14.3.2009. Thus the appellant name was omitted from promotion order was due to malafide for not showing vacancy for him. Copy of the Order is attached as Annexure-E.

7. That as the above order was passed in violation of the Judgment of the Tribunal, therefore the appellant went for execution of the Tribunal Judgment through Execution Petition No.121/2009. The said petition was finally heard on 12.10.2013, the Tribunal was kind enough to hold that since the appellant was respondent in main appeal so he can not file Execution Petition, however, if any order affecting his seniority and promotion rights, he may avail other legal remedies available to him under the law. Copy of Tribunal's order is attached as Annexure-F.
8. That after the observation of the Honourable Tribunal, the appellant filed representation before the Respondent No.1 but the same has been rejected for no good grounds on 22.11.2013, hence the present appeal on the following grounds amongst the others: Copy of Appeal and Rejection Order are attached as Annexure-G and H.

GROUND:

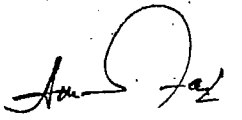
- A) That not considering the appeal of the appellant for promotion as Naib Tehsildar and Tehsildar from the date when his junior were promoted and the rejection order dated 22.11.2013 are against the law, rules, norms of justice and material on record, therefore, not tenable.
- B) That the appellant has been discriminated on the basis of non availability of vacancy, while at the same time, Mr. Mohammad Shoaib, Naik Mohammad, Mohammad Arshad, Zafar Iqbal and Nawab Gul, all junior to the appellant, have been promoted on regular basis after the Judgment of the Tribunal and the appellant has been kept on acting charge till date.
- C) That due to arbitrary in-action of the Revenue Department the appellant's seniority as well as promotion rights have badly affected and especially the respondent No.2 is also promoted to BPS-16.

- D) That the seniority and promotion is vital for all Government Servants and according to the Supreme Court Judgments the same should not be affected by the Department in an arbitrary manner.
- E) That the appellant's record is good and no adverse entry communicated to the appellant till date which also proves that the appellant along with training also has good record and fully eligible for promotion as Naib Tehsildar on regular basis.
- F) That the appellant has not been treated according to the Judgment of the Tribunal and subsequent order based on the Judgment of the Tribunal.
- G) That the rejection order dated 22.11.2013 is the total violation of the Judgment of this Honourable Tribunal dated 19.5.2008 as well as observation of the Honourable Tribunal dated 2.10.2013, therefore, not sustainable, otherwise the factors of limitation is not attracted in the matter of pay, pension and promotion.
- H) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that the appeal of the appellant maybe accepted as prayed for.


APPELLANT
JAVED KHAN

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

Boffes copy A 5

JUNIOR CLERK.
SENIORITY LIST OF THE ESTABLISHMENT OF DEPUTY
COMMISSIONER KOHAT OFFICE AS STOOD ON 1ST DECEMBER, 2000.

S.No.	Name of Official	Designation	Date of Birth	Date of It Entry into service	Date of Regular Appointment/ Appointment to the post	Remarks
1.	Akram Khan	J/ Clerk	01.06.1965	15.10.1974	15.10. 1974	
2.	Aman Khan	-do-	03.6.1966	1.2.1980	1.2. 1980	
3.	Dilbar Ali	-do-	17.3.1947	4.10.1981	4.10. 1981	
4.	Iftikhar Ahmad	-do-	20.5.1961	8.9.1982	8.9. 1982	
5.	Mohammad Shakil	-do-	20.3.1960	20.12.1982	20.12. 1982	
6.	Taj Mohammad	-do-	02.9.1963	15.2.1983	15.2. 1983	
7.	Imraj Gul	-do-	20.11.1962	16.2.1983	16.2. 1983	
8.	Nijat Hussain	-do-	15.03.1960	16.2.1983	16.2. 1983	
9.	Muhammad Shoaib	-do-	14.03.1966	10.4.1983	10.4. 1983	
10.	Abdul Khanan	-do-	10.11.1948	22.8.1983	22.8. 1983	
11.	Mohammad Ilyas	-do-	25.11.1962	6.11.1983	6.11. 1983	
12.	Akhtar Saeed	-do-	01.03.1962	1.12.1983	1.12. 1983	
13.	S. Yahya Hussain	-do-	13.3.1959	1.4.1983	1.4. 1984	
14.	Noor Mohammad	-do-	04.09.1963	21.4.1984	21.4. 1984	
15.	Mohammad Raza	-do-	06.03.1967	4.7.1984	4.7. 1984	
16.	Hazrat Ali	-do-	10.4.1966	2.8.1984	2.8. 1984	
17.	Javed Khan-I	-do-	28.1.1964	20.5.1985	20.5. 1985	
18.	Yousaf Hayat	-do-	3.12.1964	5.6.1985	5.6. 1985	
19.	Gul Islam	-do-	13.2.1965	1.7.1985	1.7. 1985	
20.	Mirza Sikandar	-do-	04.04.1967	1.8.1985	1.8. 1985	
21.	Mudasar Ali Shah	-do-	09.09.1964	3.8. 1985	3.8. 1985	
22.	Moh. Asghar Shah	-do-	1956	6.12. 1985	6.12. 1985	
23.	S. Israr Hussain Shah	-do-	13.10.1961	29.12. 1985	29.12. 1985	
24.	Qaisar Naz	-do-	10.06.1956	27.7. 1985	27.7. 1986	
25.	Qazi Asmatullah	-do-	01.07.1961	27.7. 1986	27.7. 1986	
26.	Nasir Khan	-do-	22.1.1960	1.1. 1987	1.1. 1987	
27.	Nasim Khan	-do-	10.09.1959	22.2. 1987	22.2. 1987	
28.	Haroon Shah	-do-	14.09.1968	4.4. 1987	4.4. 1987	
29.	Shakir Pervez	-do-	04.8.1964	5.4. 1987	5.4. 1987	
30.	Hifzul Haq	-do-	15.3.1967	5.4. 1987	5.4. 1987	
31.	Tariq Mubarak Ahmad	-do-	19.03.1959	15.7. 1987	15.7. 1987	
32.	Javed Khan-II	-do-	02.05.1963	8.2. 1988	8.2. 1988	
33.	Azam Khan	-do-	07.1.1965	9.2. 1988	9.2. 1986	
34.	Hafiz-ud-Din	-do-	03.04.1968	9.2. 1988	9.2. 1988	
35.	Muhammad Yaqoob	-do-	30.04.1968	30.7. 1988	30.7. 1988	
36.	Mohammad Shahid	-do-	01.12.1970	01.08. 1988	1.8. 1988	
37.	Mohammad Zaman	-do-	02.03.1966	09.12.1989	1.12. 1989	
38.	Tatbeer Ali	-do-	07.04.1979	09.12.1989	9.12. 1989	

A

STATEMENT OF THE EMPLOYMENT OF
OFFICERS AND JUNIORS OF THE
INDIAN ARMY IN THE YEAR 2000.

A (5)

Serial No.	Name of Officer/Junior	Grade	Date of Birth	Date of Int. Service	Date of Appoint-ment to Post
	Akram Khan.	Junior Clerk.	01-6-1956.	15-10-74.	15-10-74. ✓
	Abd. Khan.	-do-	03-6-1966.	01-2-1980.	01-2-1980.
	Abd. Ali.	-do-	17-3-1947.	04-10-1981.	04-10-1981. ✓
	Muhammad Ahmad.	-do-	20-5-1961.	08-9-1982.	08-9-1982. ✓
	Muhammad Ghani.	-do-	20-3-1960.	20-12-1982.	20-12-1982. ✓
	Muhammad.	-do-	02-9-1963.	15-2-1983.	15-2-1983. ✓
	Muhammad Gul.	-do-	20-11-1962.	16-2-83.	16-2-8983. ✓
	Muhammad Hussain.	-do-	15-3-1960.	16-2-83.	16-2-1983. ✓
	Muhammad Iqbal.	-do-	14-3-1960.	10-4-83.	10-4-1983. ✓
	Muhammad Ishaq.	-do-	10-11-1948.	22-8-83.	22-8-1983. ✓
	Muhammad Ishaq.	-do-	29-12-1962.	06-11-83.	06-11-1983. ✓
	Muhammad Ishaq.	-do-	01-3-1962.	01-12-83.	01-12-1983. ✓
	Muhammad Ishaq.	-do-	13-3-1959.	01-4-83.	01-4-1984. ✓
	Muhammad Ishaq.	-do-	04-9-53.	21-4-84.	21-4-1984. ✓
	Muhammad Ishaq.	-do-	6-3-1967.	4-7-1984.	4-7-1984. ✓
	Muhammad Ishaq.	-do-	10-4-1966.	2-8-1984.	2-8-1984. ✓
	Muhammad Ishaq.	-do-	08-1-1964.	20-5-1985.	20-5-1985. ✓
	Muhammad Ishaq.	-do-	3-12-1964.	5-6-1985.	05-6-1985. ✓
	Muhammad Ishaq.	-do-	11-2-1965.	01-7-1985.	01-7-1985. ✓
	Muhammad Ishaq.	-do-	04-4-1967.	01-8-1985.	01-8-1985. ✓
	Muhammad Ishaq.	-do-	09-9-1964.	03-8-1985.	03-8-1985. ✓
	Muhammad Ishaq.	-do-	1956.	06-12-85.	06-12-1985. ✓
	Muhammad Ishaq.	-do-	13-10-1961.	29-12-1985.	29-12-1985. ✓
	Muhammad Ishaq.	-do-	10-1-1956.	27-7-1986.	27-7-1986. ✓
	Muhammad Ishaq.	-do-	11-7-1961.	27-7-1986.	27-7-1986. ✓
	Muhammad Ishaq.	-do-	23-1-1960.	1-1-1987.	1-1-1987. ✓
	Muhammad Ishaq.	-do-	10-8-1959.	22-2-1987.	22-2-1987. ✓
	Muhammad Ishaq.	-do-	14-9-1968.	04-4-1987.	04-4-1987. ✓
	Muhammad Ishaq.	-do-	01-1-64.	05-4-1987.	05-4-1987. ✓
	Muhammad Ishaq.	-do-	01-1-1967.	05-4-1987.	05-4-1987. ✓
	Muhammad Ishaq.	-do-	20-3-1959.	15-7-1987.	15-7-1987. ✓
	Muhammad Ishaq.	-do-	02-5-1963.	08-2-1988.	08-2-1988. ✓
	Muhammad Ishaq.	-do-	07-4-1965.	09-2-1988.	09-2-1988. ✓
	Muhammad Ishaq.	-do-	03-4-1968.	09-2-1988.	09-2-1988. ✓
	Muhammad Ishaq.	-do-	20-4-1968.	30-7-1988.	30-7-1988. ✓
	Muhammad Ishaq.	-do-	01-12-1970.	01-8-1988.	01-8-1988. ✓
	Muhammad Ishaq.	-do-	02-1-1966.	09-12-1989.	01-12-1989. ✓
	Muhammad Ishaq.	-do-	07-4-1979.	09-12-1989.	09-12-1989. ✓

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GOVERNMENT OF NWFP
REVENUE AND ESTATE DEPARTMENT

PESHAWAR DATED THE 03.01.2006.

ORDER

No. /Admn:I/196. In pursuance of Senior Number, Board of Revenue, NWFP Judgment dated 14.12.2005 Mr. Javed Khan-I, Junior Clerk DCO Office Kohat is hereby selected as Naib Tehsildar (BS-14) with immediate effect on regular basis on the following terms and condition against Ministerial Quota with immediate effect.

2. His appointment as Naib Tehsildar will be subject to the successful completion of prescribed training and passing of Kanungo certificate examination within three months after completion of Settlement training.

3. On appointment/selection he will undergo the requisite training as laid down in the West Pakistan Tehsildari/ Naib Tehsildari Training Rules, 1968 for a period of 6 months, after completion of Settlement/Revenue Training shall remain on probation for a period of two years as per provision laid in Para-15(1) of the NWFP Civil Servant (Appointment, Promotion and Transfer) Rules, 1989. The Training programme is attached.

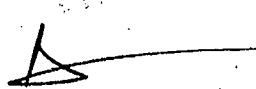
Sd/-Senior Member
Board of Revenue NWFP

No.159-67/Admn:I/196.

Copy forwarded to the :-

1. District Officer (B&E)/Collector, Kohat and Chitral.
2. Settlement Officer (Chitral).
3. Principal Revenue Training Academy Karak.
4. Accountant General, NWFP Peshawar.
5. District Accounts Officer, Karak, Kohat & Chitral.
6. Budget & Accounts Officer, Board of Revenue, NWFP, Peshawar.
7. Official concerned.
8. Personal file.
9. Office Order file.

Sd/- Secretary,
Board of Revenue NWFP.



Board of Revenue, N.W.F.P.
Secretary, N.W.F.P.

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Copy forwarded to the :-
District Officer (R&D)/Collector, Kohat and Chitral.
District Accounts Officer, Kohat & Chitral.
District Accounts Officer, Muzak, Kohat & Chitral.
District Accounts Officer, Peshawar.
District Accounts Officer, Peshawar.
District Accounts Officer, Peshawar.
District Accounts Officer, Peshawar.

Senior Member,
Board of Revenue, N.W.F.P.

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158-67 /Amn: I/196

On appointment/selection he will undergo the
completion of settlement procedure.
Karnal certificate examination within three months after
the successful completion of prescribed training and passing of
his appointment as Sub-Inspector will be subject to
immediate effect.

the following terms and conditions against Ministerial quota with
Karnal certificate (NS-14) with immediate effect on regular basis on
Khan-I-Dar (NS-14) Office Kohat is hereby selected as
Board of Revenue, N.W.F.P. (NS-14-2005-196)
In pursuance of Senior Member,
/Amn: I/196

GOVERNMENT OF N.W.F.P.
SECRETARY TO GOVERNMENT
18/1/1966

CHAIRMAN
MEMBER.

MR. JUSTICE (R) SALIM KHAN,
DR. ABDUR RAUF

Advocate

CAZI MUHAMMAD ANWAR,

Adv. Government Pleader,
MR. TAHIR IQBAL,

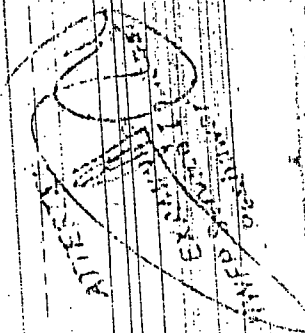
Advocate

MR. KHALID RAHMAN,

For respondent No.2.

For official respondents.

For appellant.



ORDERED TO BE SELECTED/PROMOTED AS NAIB TEHSILDAR
AGAINST THE POST FELL VACANT ON THE EVE OF RETIREMENT
OF RESPONDENT NO.4.
RESPONDENT NO.2 THEREBY HE (RESPONDENT NO.2) WAS
TIME BARRED REPRESENTATION DATED 05.09.2005 OF THE
TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED
SERVICE APPEAL UNDER SECTION 4 OF THE NWFP SERVICE

(Respondents)

1. The Senior Member Board of Revenue, NWFP Peshawar.
2. Mr. ~~Abdul Khan~~ Junior Clerk/Naib Tehsildar, office of the District
Coordination Officer, Kohat.
3. The District Coordination Officer, Kohat.
4. Syed Muhammad Qaba Hussain, Naib Tehsildar, Hangu, District
Hangu (Now retired).
5. ~~Caiser Naz~~ Political Naib Tehsildar, F.R Kohat.

VERSUS

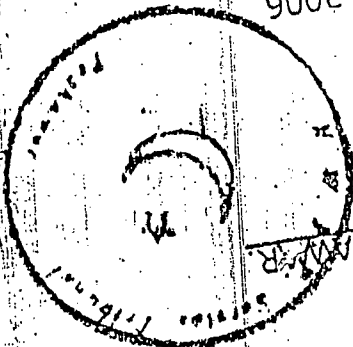
Abdul Samad Khan, Naib Tehsildar, Nowshera.

(Appellant).

03.01.2006
19.05.2008

Date of Institution
Date of Decision.

Appeal No. 03/2006



BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR

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(S) (9)

contended the Service Tribunal as the competent forum, which had the jurisdiction to determine the eligibility or otherwise of the candidates for appointment as Naib Tehsildars from quota of Revenue staff/Ministerial staff. But respondent No.2 filed appeal No. 891 of 2005 before this Tribunal on 2.9.2005, which was returned to him on 3.9.2005

4. Respondent No.2 then filed departmental representation on 5.9.2005, which was accepted and order of promotion of respondent No.2 as Naib Tehsildar against the post vacated on the retirement of Syed Muhammad Qaba Hussain (respondent No.4) was issued. The appellant is aggrieved of the mentioned order.

5. Hameed Khan was Assistant (BPS-11) in the office of Commissioner, Kohat Division in consequence of order dated 8.10.1986. Vide order dated 16.8.1999, he was posted as Naib Tehsildar in his own pay scale on current charge basis till further orders, in order to look after the matters of vacant post of Political Naib Tehsildar Upper Kurram, the incumbent of which was granted 120 days earned leave with immediate effect. Vide order dated 10.4.2001, he was promoted/selected as Naib Tehsildar on temporary basis till the arrival of nominees of NWFP Public Service Commission, like Abdul Samad and three others.

6. Both the appellants are aggrieved of the order dated 03.01.2006 vide which Javed Khan (respondent No.2) Junior Clerk DCO office Kohat was selected as Naib Tehsildar (BPS-14) with immediate effect on regular basis, in pursuance of the judgment dated 14.12.2005 of the Senior Member Board of Revenue.

The Senior Member Board of Revenue contended that the appellants were appointed to the post of Naib Tehsildar till the arrival of nominees of the NWFP Public Service Commission, with the condition

a

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that the said appointment would not confer on them any right of regular promotion/appointment.

8. Respondent No.2 also contested the appeals on various grounds, including the ground that Section 22 of the NWFP Civil Servants Act, 1973 places bar on appeal/representation in respect of an order of departmental authority determining the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade. He also contended that Section 4 of the NWFP Service Tribunals Act, 1974 places complete bar on appeal against the promotion and also bars the jurisdiction of Service Tribunal regarding promotion.

9. We heard the arguments of the learned counsel for the parties in detail.

10. The learned counsel for respondent No. 2, at the initial stage, took up the objection that this Tribunal lacked jurisdiction for the purposes of this case, and could not decide an appeal regarding the fitness or otherwise of a person for promotion and regarding the order declaring a person entitled or otherwise to hold such a post. The learned counsel for the appellants contended that respondent No. 2 could not be considered for promotion in priority to the appellants, and that too, in preference of both the appellants. He contended that the appellants were Assistants while respondent No.2 was a Junior Clerk before his promotion and appointment as Naib Tehsildar.

11. The AGP contended that both the appellants were appointed on temporary basis till the arrival of the recommendees/selectees of the regular Public Service Commission, and their appointment was purely for a temporary period. He was of the view that such appointment of the

B

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appealed on regular basis in preference of both the appellants, who had
arranged the appellants for request promotion, Javed Khan was
the NWFP Public Service Commission. On the other hand, without
recruitment. The appellants had to vacate their seats for the selectees of
Service Commission. These vacancies were to be filled in by initial
reserved vacancies for the recommendees/selectees of the NWFP Public
Service Commission. The vacancies allowed for the appellants temporarily were

14

experience.
occurred and preference was to be given to persons with settlement
under the subordinate service in the Division, where the vacancies
remaining vacancies were to be filled in by selection on merit from
of Naib Tehsildar were to be filled in by initial recruitment, and the
to with mentioning at this stage that 50% of the vacancies in the case
was not so considered for holding the post of Naib Tehsildar as such. It
arrival of nominees of the NWFP Public Service Commission. Javed Khan
Tehsildar, though on current charge basis or on temporary basis till the

13. The basic question between the parties, however, is that
both the appellants were considered fit for holding the post of Naib

Tehsildar and his fitness or otherwise to hold the post of Naib Tehsildar.
otherwise of Javed Khan concerning his promotion to the post of Naib
does not have the jurisdiction to hear an appeal against the fitness or
to be promoted to a higher post or grade. This Tribunal, therefore,
or otherwise of a person to be appointed to or hold a particular post or
order or decision of a competent authority, determining - (i) the fitness
of the proviso provides that no appeal shall lie to a Tribunal against an

12. Section 4 of the NWFP Service Tribunal Act, 1974 in part (b)
appellants did not confer any right, whatsoever, on the appellants for
their promotion.

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a vested right to be considered for promotion on regular basis, as being senior to Javed Khan.

15. The dispute, therefore, between the parties is not that whether Javed Khan was fit for promotion as Naib Tehsildar or to hold the post of Naib Tehsildar. The dispute was that whether Javed Khan could be appointed on regular basis in preference to both the appellants. As both the appellants are senior to Javed Khan (respondent No.2), the official respondents were legally bound to consider the seniority of the appellants versus respondents No.2 and 5 and to appoint the senior most amongst them on regular basis, while the others were to be appointed either on acting charge basis or, as the case might be, on temporary basis till the arrival of the recommendees of the NWFP Public Service Commission, or till a regular vacancy was turned up, if available for them.

16. In the light of the above, we partially accept both the appeals to the extent that the official respondents shall be directed to exercise to reconsider the seniority of the appellants and respondents No.2 and 5, and appoint the senior most amongst them on regular basis as Naib Tehsildar, while the others may be regularized as Naib Tehsildars as and when vacancies are available for them. But they shall remain as Naib Tehsildars for the periods for which their promotion as Naib Tehsildar is permissible under the law, either on current charge basis or on acting charge basis. In view of the complicated nature of the case, we leave the parties to bear their own costs.

Sd/- Justice (R. G. J. Khan) Member
Sd/- Dr. Akbar Khan Member

ANNOUNCED
19.05.2008

Date of presentation of application	3-6-08
Number of wards	2400
Copying fee	11
Stamp	2
Total	14
Name of respondent	Naib Tehsildar
Date of completion of app	3-6-08
Date of delivery of app	3-6-08

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Handwritten mark or signature at the bottom left.

Dated Peshawar the 14/03/2009

ORDER

(Admin/NWPE/14) On the recommendation of Departmental Promotion Committee held under the Chairmanship of Senior Member Board of Revenue on 27.02.2009, in light of the NWFP Service Tribunal Judgments dated 19.05.2008 and 05.06.2008 as well as the direction of Peshawar High Court dated 19.01.2009, the Committee examined the promotion of the Ministerial staff of Kohat Division and unanimously agreed / recommended the promotion of the following Ministerial staff as under:-

S.No	Name	Remarks
1.	Mr. Abdul Samad Assistant of the office of Commissioner Kohat Division	Promoted as Naib Tehsildar (BPS - 14) on regular basis w.e.f 10.04.2001. He will go six months settlement / revenue training
2.	Mr. Hameed Khan Assistant of the office of Commissioner Kohat Division	Promoted as Naib Tehsildar (BPS - 14) on regular basis w.e.f 10.04.2001. He will go six months settlement / revenue training
3.	Mr. Haider Hussain Assistant of the office of Commissioner Kohat Division	His regular promotion as Naib Tehsildar (BPS - 14) w.e.f 10.04.2001 is hereby modified and is considered on regular basis w.e.f 03.01.2006 instead of 10.04.2001. He will continue as Tehsildar Banda Daud Shah District Karak (Own Pay & Scale)
4.	Mr. Javed Khan Junior Clerk of the office of DCO Kohat	His promotion as Naib Tehsildar (BPS - 14) on regular basis w.e.f 03.01.2006 is hereby modified and is considered as Naib Tehsildar (BPS - 14) on Acting Charge Basis. His services already placed at the disposal of FATA Secretariat for further posting as Political Naib Tehsildar
5.	Mr. Quaiser Naz Junior Clerk of the office of Deputy Commissioner Kohat	His promotion as Naib Tehsildar (BPS - 14) on regular basis w.e.f 10.04.2001 is hereby modified and is considered as Naib Tehsildar (BPS - 14) on Acting Charge Basis. He will continue as Tehsildar Hangu (Own Pay & Scale)

(14)

(14) (21)

M/S Javed Khan and Qaiser Naz Naib Tehsildars (BPS - 14) on
A case charge form will be considered for promotion as Naib, Tehsildar on
regular basis as and when vacancy occur in Ministerial employees quota in
Kohat Division.

By Order of
Senior Member
Board of Revenue NWFP

No. 6446-69 /Admn.V/PF/(H)

Copy to:-

1. Commissioner Peshawar Division Peshawar.
2. Commissioner Kohat Division Kohat.
3. Political Agent Khyber Agency.
4. District Coordination Officer, Kohat.
5. District Officer (Revenue & Estate)/Collector, Kohat, Nowshera,
Karak, and Hangu.
6. Agency Accounts Officer Khyber Agency.
7. Accounts Officers Nowshera, Kohat, Karak and Hangu.
8. Official concerned.
9. Office Order File

Javed Khan
MQ

Secretary
Board of Revenue NWFP

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Behead copy (13)

**GOVERNMENT OF NWFP
REVENUE AND ESTATE DEPARTMENT**

NOTIFICATION

No. /Admn:/26/Vol.I; In pursuance of decision of Departmental Promotion Committee, the competent authority is pleased to order the promotion of the following Naib Tehsildars as Tehsildar (BPS-16) on regular basis with immediate effect.

S.No.	Name
1.	Mr. Haider Hussain
2.	Mr. Qaisar Naz
3.	Mr. Liaqat Ali

On their promotion the above officers will be on probation for a period of one year in terms of Section-6 (2) of NWFP Civil servants Act 1973 read with Rule-15 (1) of NWFP Civil Servant (Appointment, Promotion and Transfer) Rules, 1989.

Consequent upon their promotion as Tehsildar on regular basis, they will continue to work against their present post of Tehsildar Banda Daud Shah, DI Khan and Peshawar.

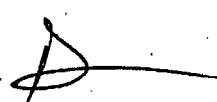
By Order of
Senior Member,
Board of Revenue NWFP.

No.17232-45/Admn:/26/Vol.II;

Copy forwarded to the :-

1. Commissioner, Peshawar, D I Khan and Kohat Division.
2. Accountant General, NWFP Peshawar.
3. District Coordination Officer, Peshawar, DI Khan and Karak.
4. District Officer (Revenue & Estate) / Collector, Peshawar, DI Khan and Karak.
5. District Accounts Officer, Peshawar, DI Khan and Karak.
6. Official concerned.
7. Personal file.
8. Office Order file.

Sd/- Secretary,
Board of Revenue NWFP.



15

MINORITY

E

15

GOVERNMENT OF NWFP
REVENUE & ESTATE DEPARTMENT

Dated 11/06/2009

Admin. No. 104/2009
In pursuance of decision of
Competent Authority is pleased to
promote the following officers as Tehsildar (BPS - 16)
1. Mr. Banda Daud
2. Mr. ...
3. Mr. ...

On their promotion the above officers will be on probation for a
period of one year in terms of Section 49 (3) of NWFP Civil Servants Act
1974 read with Rule - 13 (1) of NWFP Civil Servant ((Appointment,
Promotion & Transfer) Rules, 1989.

Consequent upon their promotion as Tehsildar on regular basis,
they will continue to work against their present post of Tehsildar Banda Daud
Banda Daud Peshawar.

By order of
Senior Member,
Board of Revenue NWFP

Admin. No. 104/2009

- 1. Mr. Banda Daud, Dikhan and Kohat Divisions.
- 2. Mr. ... Peshawar, Dikhan and Karak.
- 3. Mr. ... Collector, Peshawar, Dikhan and Karak.
- 4. Mr. ... Dikhan and Karak.

Personal File
Order File

Secretary-1
Board of Revenue NWFP

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16

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.

Application No. /2009

Javid Khan, Naib Tehsildar, office of the District
Coordination Officer Kohat Applicant

VERSUS

1. The Senior Member Board of Revenue, NWFP, Peshawar.
2. Abdul Samad Khan Naib Tehsildar, Nowshera.
3. The District Coordination Officer, Kohat.
4. Syed Muhammad Qaba Hussain, Naib Tehsildar, Hangu (Now retired).
5. Qaiser Naz, Tehsildar Peshawar Respondents

10.10.2013

Petitioner with counsel and Mr. Mir Qasim, Assistant Secretary
in charge of respondent No.1 with AAG for official respondents
present.

The bench of record revealed that the petitioner is seeking
implementation/execution of judgment of the Tribunal dated
14.5.2008 in Appeal No.3/2006 by Abdul Samad Khan (Appellant),
respondent No.2 herein. wherein, the petitioner was respondent No.2.
The said appeal was disposed vide the aforesaid judgment in the
following terms:

"In the light of the above, we partially accept
both the appeal to the extent that the official
respondents shall take up the exercise to reconsider
the seniority of the appellants and respondents No.2
and 5, and appoint the senior most amongst them on
regular basis as Naib Tehsildar, while the others may
be regularized as Naib Tehsildars as and when
vacancies are available for them. But they shall
remain as Naib Tehsildars for the periods for which
their promotion as Naib Tehsildar is permissible
under the law, either on current charge basis or on
acting charge basis."

In pursuance of the above referred judgment of the Tribunal,
the respondent-department issued order dated 14.3.2009 whereby
appellant in the said appeal i.e. Abdul Samad and appellant in the
connected appeal namely Javid Khan were promoted as Naib
Tehsildar on regular basis with order in respect of the petitioner, Javid
Khan, was modified and he was considered as Naib Tehsildar
(DPS-10) on acting charge basis w.e.f 3.1.2006 when he was promoted
as Naib Tehsildar (DPS-1) on regular basis.

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As such, apart from the fact that the petitioner was not an applicant in the case, rather a respondent, therefore, his appeal was not entertained of which he is seeking implementation/execution; the judgment dated 19.5.2008 also stands implemented with issuance of writ dated 14.7.2009, referred to above. Therefore, this implementation/execution petition has to be disposed of as having served the purpose.

As regards the contention of the learned counsel for the petitioner that the petitioner has not been granted his due seniority in accordance with the above referred judgment dated 19.5.2008, suffice it to say that the petitioner is well within his right to assail any order affecting his seniority if he is aggrieved of the same, subject to availability of legal right to him to do so. He may avail legal remedy in this respect in accordance with law/rules; and the implementation/execution petition is disposed of as having served the purpose. File be consigned to the record.

ANNOUNCED
22.10.2013

Signature
Chairman

Certified to be a true copy

Signature
Service Tribunal
Peshawar

Date: Application 2-10-2013
800
6
7
10-10-2013
3-10-2013

Signature

Javed Khan, DRA,

Revenue Deptt: Peshawar.....Appellant.

VERSUS

- 1- The Commissioner Peshawar Division, Peshawar.
- 2- Qaiser Naz, Presently Secretary RTA, Kohat.

.....Respondents.

APPEAL FOR JUSTICE AND PROMOTION AS
NAIB TESILDAR, & TEHSILDAR FROM THE
DATES WHEN JUNIOR TO THE APPELLANT
(RESPONDENT NO.2) WAS PROMOTED.

R.SHEWETH.

- 1- That the appellant joined the revenue Deptt; as Junior Clerk in the year 1985 whereas the respondent No.2 joined the same post in the year 1986, meaning that the respondents NO.2 was junior to the appellant. Copy of the seniority list of the year 2000 of D.C Office Kohat is attached as Annexure – A.
- 2- That in the year 2006, the appellant was regularly promoted as Naib Tehsildar with the condition of passing exam & training which the appellant did successfully. Copy of promotion order is attached as Annexure- B.
- 3- That then a dispute arose for the regular promotion to the post of Naib Tehsildar in the year 2006 which went before the KPK Service tribunal in appeal NO. 3/2006. The said dispute

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was amongst the Abdus Sammad, Hamid Khan, Syed Mohammad Qaba Hussain, Qaiser Naz and the appellant.

4- That the said appeal was decided by the august Tribunal on 19.5.2008 and decided the issue as "The official respondents were legally bound to consider the seniority of appellant and private respondents and to appoint the senior most officials on regular basis while the junior should be appointed on acting charge basis or till the arrival of recommendees of the Public Service Commission. The appeal was partially accepted and the official respondents were directed to sort out the seniority, appoint/promote the senior on regular basis as Naib Tehsildar and the juniors may be regularized as Naib Tehsildar when vacancy are available for them." Copy of the judgment is attached as Annexure - C.

5- That in light of the judgment of the Service Tribunal the Revenue Deptt: passed an order on 14.3.2009, whereby, Abdus Sammad, Hameed Khan, & Haider Hussain were promoted as Naib Tehsildar on regular basis w.e.from 10.4.2001 & 3.1.2006, respectively, while the appellant and respondent No.2 Qaisar Naz promotion order of regular one were modified as on acting charge basis with the condition that the appellant and the respondent No.2 would be considered for regular promotion when vacancies when the vacancies occurred in their quota of Kohat Division. Copy of the order is attached as Annexure - D.

6- That despite clear order dated. 14.3.2009, the respondent No.2 was promoted vide 11.6.2006 on regular basis while he was junior to the appellant and Haider Hussain was also promoted on regular basis who was already stood promoted on regular basis w.e.from 3.1.2006 vide order dated. 14.3.2009. Thus the appellant name was omitted from promotion order was due to malafide for not showing vacancy for him. Copy of the order is attached as Annexure - E.

7- That as the above order was passed in violation of the Judgment of the Tribunal; therefore, the appellant went for execution of the Tribunal Judgment through execution petition

A

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NO.121/2009. The said petition was finally heard on 12.10.2013, the Tribunal was kind enough to hold that since the appellant was respondent in main appeal so he cannot file execution petition, however, if any order affecting his seniority and promotion rights, he may avail other legal remedies available to him under the law. Copy of the Tribunal's order is attached as Annexure - F.

- 8- That the appellant has been discriminated on the basis of non availability of vacancy, while at the same time, Mr. Mohammad Shoaib, Naik Mohammad, Mohammad Arshad, zafar Iqbal and Nawab Gul, all junior to the appellant, have been promoted on regular basis after the judgment of the Tribunal and the appellant has been kept on acting charge till date.
- 9- That due to arbitrary in-action of the Revenue Deptt: the appellant's seniority as well as promotion rights have badly affected and especially the respondent No.2 is also promoted to BPS-16.
- 10- That the seniority and promotion is vital for all Govt: servants and according to the supreme Court judgments the same should not be affected by the Deptt: in an arbitrary manner.
- 11- That the appellant's record is good and no adverse entry communicated to appellant till date which also proves that the appellant along with training also has good record and fully eligible for promotion as Naib Tehsildar on regular basis.
- 12- That the appellant has not been treated according to the judgment of the Tribunal and subsequent order based on the judgment of the Tribunal.
- 13- That the appellant has been kept deprived from his legal rights in an arbitrary manner exercise of unjustified discretion.

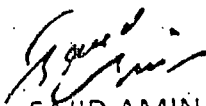
It is therefore most humbly prayed that on acceptance of this appeal, the appellant may be promoted as regular Naib Tehsildar and further promoted to BPS-16 from the date when

his junior (respondent No.2) was promoted with all seniority and other back and consequential benefits. Any other remedy not specifically prayed for that may also be awarded in favour of appellant.

APPELLANT

JAVED KHAN
DRA, PESHAWAR.

Through:



SAJID AMIN KHAN
ADVOCATE

(22) H

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

No. Estt: V/Javed/Pesh/ 21024
Peshawar dated 23/11/2013

To

Mr. Javed Khan,
District Revenue Accountant Peshawar.

SUBJECT: - APPEAL FOR JUSTICE AND PROMOTION AS
NAIB TEHSILDAR AND TEHSILDAR FROM THE DATES
WHEN JUNIOR TO THE APPELLANT
(RESPONDENT NO. 2 WAS PROMOTED).

I am directed to refer to your appeal / representation dated Nil on
the subject and to say that you have failed to prove your contention given in the
appeal. M/S Qaiser Naz etc were promoted through Departmental Promotion
Committee on the basis of seniority list of Naib Tehsildar issued for the year
2008, which was not challenged by you in any forum.

The Competent Authority after considering your representation
had held it to be time barred and rejected it.


Assistant Secretary (Estt.)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1581of 2013.

Javed Khan, Naib Tehsildar Petitioner

VERSUS

Senior Member, Board of Revenue..... Respondents

COMMENTS ON BEHALF OF RESPONDENTS NO.1&2

PRELIMINARY OBJECTIONS.

1. That the appeal is barred by law as an employee appointed in Settlement Operation on contract basis cannot claim Seniority over regular Naib Tehsildar of Revenue & Estate Department.
2. The appellant has no locus standi to bring the present Appeal.
3. The appeal is bad for non-joinder/mis-joinder of necessary parties.
4. That the appellant has no cause of action.
5. That the appellant has been estopped by his own conduct to file the present appeal.

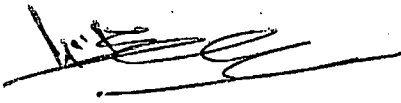
ON FACTS

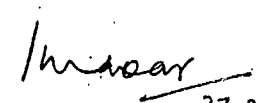
1. No comments pertain to record.
2. Correct to the extent that both the appellants and present respondent No.4 were promoted as Naib Tehsildar in the year, 2006 & 2001 respectively. The orders were challenged in Service Tribunal by M/S Abdul Samad and Hameed Khan Assistant office of the Commissioner, Kohat. On acceptance of their appeals, M/S Abdul Samad and Hameed Khan were promoted as Naib Tehsildar on regular basis while the regular orders of the present appellant and respondent were modified and converted into Acting Charge basis according to judgment of Service tribunal dated 19.05.2008
3. No comments.
4. Correct, however, there was no vacant post of Naib Tehsildar on the share of Ministerial Quota in Kohat Division.
5. No comments.
6. Incorrect. No malafide has been committed as the respondent promoted in the year, 2001, while the appellant Mr. Javed Khan was promoted in the year, 2006. (Annexure A&B). The appellant was required to challenge the same order within stipulated period which he did not do so and the order got its finality
7. Incorrect. The judgment of Service Tribunal was fully implemented by promoting M/S Abdul Samad and Hameed Khan on regular basis while the order of present appellant and respondent were modified as per judgment of Service Tribunal. So far, seniority of the appellant is concerned; it merits to mention that the respondent was promoted in the year, 2001 while the appellant was promoted in the year, 2006. The appellant had not challenged the order which got its finality. Consequently the respondent was promoted as Tehsildar on the basis of their seniority and now a PMS-17 Officer, but the appellant had not assailed any order at any forum.
8. Incorrect. The representation of the appellant was examined under the rules and rightly rejected.

GROUNDS.

- A. Incorrect. M/S Qaiser Naz etc were promoted through Departmental Promotion Committee on the basis of seniority list of Naib Tehsildar issued for the year, 2008, which was not challenged by the appellant in any forum, therefore; appeal/representation of the appellant examined and rightly rejected.
- B. Incorrect. No discrimination has been done. The officials mentioned in the para were senior and were rightly promoted as Naib Tehsildar.
- C. Incorrect. The appellant has no concern with the seniority of Respondent No.2.
- D. All promotion have been made on the basis of seniority according to law/rules.
- E. Correct, but on his own turn.
- F. Incorrect. The appellant has been treated according to the judgment of Service Tribunal dated 19.05.2008.
- G. Incorrect. Reply has already been given in above paras and preliminary objections.
- H. No comments. However, the respondent seeks permission to advance further grounds at the time of arguments.

In view of the above, the service appeal has no merits and may be dismissed with costs.


Respondent No.3


Respondent No.1

27-3-2014

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 1581/2013

Javed Khan.

VS

Revenue Deptt:

REJOINDER ON BEHALF OF APPELLANT.

R.SHEWETH.

PRELIMINARY OBJECTIONS:

- 1-5. All objections raised by respondents are incorrect and baseless. Rather the respondents are stopped to raise any objection due to their own conduct.

FACTS:

- 1- No comments endorsed by respondents which means that they have admitted para-1 of the appeal as correct.
- 2- Not denied by respondents, so no comments.
- 3- No comments endorsed by respondents which means that they have admitted para-3 of appeal as correct.
- 4- Not denied by respondents so no comments.
- 5- No comments endorsed by respondents which means that they have admitted para-3 of appeal as correct.
- 6- Incorrect while para-6 of appeal is correct. The respondents on one hand showed no vacancy while on the other hand promoted junior one which is malafide on the part of respondents.
- 7- Not replied according to contents of the para-7 of appeal. Therefore para-7 of appeal is correct. More over no order of juniors was ever communicated to appellant therefore the contention of respondents is incorrect.
- 8- Partially admitted correct by respondents. More over the appeal of appellant was not rejected according to law and rules because

not challenging any un-communicated seniority list does not debar the appellant from his rights of promotion according to section 9 of the Civil Servants act.

GROUND:

A- Incorrect while para-A of appeal is correct. More over the appellant cannot be deprived from his rights on the basis of un-communicated seniority list and especially when the appellant's career was in the knowledge of the respondent Deptt:

B- Incorrect while para-b of appeal is correct.

C- Not replied accordingly, therefore the contention of respondents Deptt: is incorrect while para-C of appeal is correct.

D- Incorrect while para-D of appeal is correct.


E- Admitted correct by respondents so no comments.

F- Incorrect while p[ara-F of appeal is correct.

G- Incorrect while para-G of appeal is correct.

H- Legal.

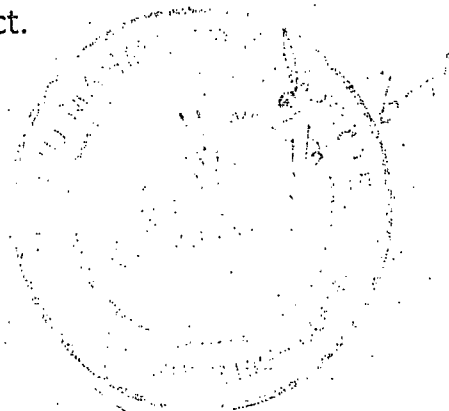
It is therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

APPELLANT
THROUGH; 
M. ASIF YOUSAFZAI
ADVOCATE.

AFFIDAVIT.

It is affirmed that the contents of appeal and rejoinder are true and correct.


DEPONENT.



BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No: 1581 //2013

Javed Khan

VERSUS

SMBR etc

=====
RESPONDENT NO 4's REPLY
=====

RESPECTFULLY SHEWETH,

Preliminary Objections:

1. The appellant has got no locus standi, much less any cause of action.
2. The appeal in hand is badly time barred, hence liable to be dismissed summarily.
3. The appellant's writ petition No.527/04 and Civil Petition No.735/04 on the same subject mater has already been dismissed.

Para Wise Reply

1. Denied in detail. While disposing of Writ Petition No.527/04 titled "Javed Khan-1 Vs Board of Revenue etc" the Peshawar High Court in its judgment dated 09-03-2004 is held that

"Though Qaisar Naz, respondent No.6, as per the seniority list attached with the writ petition, is junior to the petitioner, yet his appointment is also not open to any exception in the writ jurisdiction of this Court, because the petitioner asserts his right of promotion on account of his seniority but the Rules do not provide selection / promotion of the Naib Tehsildars on the basis of seniority. The relevant provisions of Rule 5 of the West Pakistan Tehsildar and Naib Tehsildari Rules, 1962 provide as under:-

"5. Method of recruitment – (1) Recruitment to the Service shall be made by the following methods:-

I. In the case of Naib Tehsildars – (a) fifty percent of the vacancies shall be filled by initial recruitment; and

(b) the remaining vacancies shall be filled by selection on merit from the subordinate service in the Division where the vacancies occur, preference being given to persons with Settlement experience."

The Minutes of the Departmental Promotion Committee, attached with the comments, indicates that Qaisar Naz, respondent No.6, was considered for promotion because he had successfully completed sensitive tasks assigned to him in a very confidential manner in F.R. Kohat in the best interest of public and administration and that he was the only minority member of the Ministerial staff in Kohat Division. Anyhow, this shows his selection by the Departmental Selection Committee on merits as provided by the Rules but otherwise also we cannot assume the job of the Departmental Selection Committee in writ jurisdiction and, therefore, the same is liable to be dismissed for the reasons stated above.

4. Accordingly, the writ petition in hand is hereby dismissed in limine.

*Sd/ Malik Hamid Saeed
Sd/ Qazi Ihsanullah Qureshi,
Judges"*

Dated: 9.3.2004.

(Copy annexed "R-1".)

The matter of seniority has been settled by the Hon'ble Peshawar High Court Peshawar, which cannot be re-agitated at this belated stage after the passage of 10 years of the said order. The claim of the appellant is incorrect and is liable to be dismissed.

2. Needs no reply.
3. Denied. The matter is settled and does not need any further probe.
4. Needs no reply.
5. Needs no reply.
6. Denied. The order dated 11-06-2006 was not challenged u/s 4(a) of Khyber Pakhtunkhwa Service Tribunal Act, 1974, before the appellate authority and then u/s 4 before the Service Tribunal, Khyber Pakhtunkhwa Peshawar.

The said order is thus gain finality and the present appeal is badly time barred, liable to be dismissed on this account alone.

7. The judgment of Service Tribunal Khyber Pakhtunkhwa Peshawar dated 12-10-2013 in Execution Petition No.121 / 2009, can by no means allow the appellant the condonation of delay. The appellant did not approach the proper forum at the relevant time and hence his appeal merits dismissal.

In addition to above, the petitioner had withdrawn his civil petition No.735 of 2004, from the Supreme Court of Pakistan vide order dated 13-06-2005, to approach the Provincial Service Tribunal for the redress of his grievance. However, the petitioner took more than 8 years to file the present appeal and is badly hit by the law of limitation. (Copy annexed "R-2")

8. Denied. The appellant's departmental appeal was correctly rejected.

Reply to the Grounds

All the grounds taken in paras "A to H" are incorrect, baseless assertions, devoid of logic or sense, and liable to be ignored for want of legal justification.

As discussed in paras 1, 6 & 7 above, the matter has been adjudicated by the Hon'ble Peshawar High Court, Peshawar. The appeal in hand is badly time barred and is liable to be dismissed.

In view of the above, the appeal merits dismissal and may be dismissed with cost throughout.


Respondent No.4,

Through:


(Muhammad Zafar Tahirkheli)
Advocate

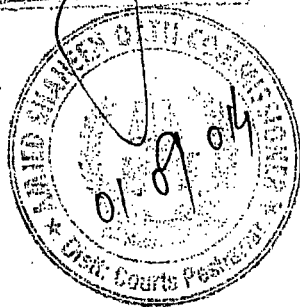
Peshawar, dated:
24th /June, 2014

AFFIDAVIT

I, Qaisar Naz, the Respondent No.4, do hereby solemnly affirm and declare on Oath that contents of this reply are true and correct to the best of my knowledge and nothing has been concealed from this Hon'ble Court.


DEPONENT


ATTESTED



VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal Peshawar.

Javed Khan (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Revenue Dept. (Respondent)
(Defendant)

I/We Javed Khan (Appellant).

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

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

Dated _____/20

Javed Khan
(CLIENT)

ACCEPTED

M. Asif Yousafzai
M. ASIF YOUSAFZAI
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:
Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

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

Appeal No. _____/2013

Mr. Javed Khan

V/S

SMBR, KPK Peshawar etc.

.....

**APPLICATION FOR FIXING OF AN EARLY DATE OF
HEARING IN THE ABOVE TITLED INSTEAD OF ~~27.01.2013~~ 2.01.2014**

.....

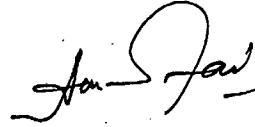
RESPECTFULLY SHEWETH:

1. That the petitioner has filed the instant appeal against the rejection order dated ~~27.01.2013~~ ^{27.01.2013} whereby the appeal of the appellant for the promotion as Naib Tehsildar and then to Tehsildar from the date when his junior were promoted.
2. That the respondents department is now making promotion again by violating the right of the appellant, therefore, an urgent hearing of the case is requested so that it should come in to the notice of the respondents that the appeal for promotion of he appellant is pending before this august Tribunal.
3. That the interest of justice demands that such like matter should be heard as early as possible to meet the ends of justice and also to meet the principles of access to justice.

It is therefore most humbly prayed that the appeal is hand may be heard on an early date to meet the ends of justice. Any other remedy which this august Tribunal that may also be awarded in favour of the appellent.

APPLICANT
Javed Khan

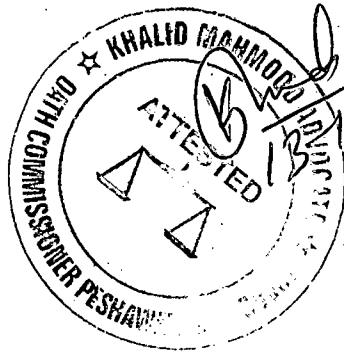
Through:



(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT:

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




Deponent

2008 S C M R 1666

[Supreme Court of Pakistan]

محمد نواز عباسی، ایجاز الحسن خان، مین حامد فاروق
 For Appellant -

Present: Muhammad Nawaz Abbasi, Ijaz-ul-Hassan Khan and Mian Hamid Farooq, JJ

CENTRAL BOARD OF REVENUE through Chairman/ Secretary, Revenue Division, Islamabad---Appellant

Versus

SHAFIQ MUHAMMAD and another---Respondents

Civil Appeal No.717 of 2007, decided on 14th April, 2008.

(On appeal from the judgment/order, dated 6-12-2006 passed by Federal Service Tribunal in Appeal No.1081(R)(C.S.) of 2004).

(a) Government Servants (Efficiency and Discipline) Rules, 1973---

---R. 5(1)(iii)---Service Tribunals Act (LXX of 1973), Ss.4(1)(a) & 5---Constitution of Pakistan (1973), Art.212(3)---Leave to appeal was granted by Supreme Court to examine as to whether the Service Tribunal had condoned the delay of 4 years for justifiable reason and also to examine whether the Tribunal was justified to take the view that the absence of the civil servant from the office of petitioner for 5 years can be condoned when the department on having taken into consideration the facts found that he was absent from service for about 12 years out of which 7 years' absence was properly explained but there was no ground to justify the absence for another 5 years which finding of the department dated 10-9-1999 was upheld by the Appellate Authority when his departmental appeal was dismissed on 15-03-2000.

Per Muhammad Nawaz Abbasi J, Ijaz-ul-Hassan Khan, J agreeing; Mian Hamid Farooq, contra, [Majority view]---

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

---Ss. 5 & 4---Constitution of Pakistan (1973), Art.212(3)---Power of Service Tribunal under S.5, Service Tribunals Act, 1973---Scope---Service Tribunal may confirm, set aside, vary or modify the order appealed against, in an appropriate manner---Only limitation on the power of Service Tribunal is to satisfy the test of reasonableness---Service Tribunal, in the present case, having considered the question of law and facts raised in the appeal formed an opinion that the extreme penalty of dismissal from service was not in consonance with the nature and gravity of charge of absence from duty without leave---However while exercising powers under S.5, Service Tribunals Act, 1973 it converted major penalty of dismissal from service into stoppage of two increments for a period of two years---Such exercise of power by the Service Tribunal would not suggest that discretion exercised by the Tribunal was beyond the scope of law---Department had not been able to satisfy that Tribunal had committed any wrong in exercising the jurisdiction on the basis of test of reasonableness or any settled principle of law on the subject, which might be treated a jurisdictional error calling for

interference by Supreme Court---Order of Service Tribunal, in circumstances, was in accordance with the concept of substantial justice.

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

---Ss. 5 & 4---Constitution of Pakistan (1973), Art.212(3)---Absence from duty---Dismissal from service without regular enquiry---Hardship case---Exercise of discretion by Service Tribunal and conversion of dismissal from service by Service Tribunal into stoppage of increments for two years and condonation of delay in filing appeal before it--Interference by Supreme Court under Art.212(3) of the Constitution---Scope and extent.

The scope of interference of the Supreme Court in a case under Article 212(3) of the Constitution is confined to the extent of satisfaction of the court regarding involvement of substantial question of law of public importance, therefore, unless the order passed by the Tribunal is found to have been passed without jurisdiction, or coram non iudice, mala fide or illegal, in respect of substantial question of law, Supreme Court may not interfere in the matter in exercise of its powers under Article 212(3) of the Constitution. In the present case, it appears that Tribunal firstly exercised discretion in favour of condonation of delay for the consideration that absence without leave may not be deliberate and intentional rather it was due to the abnormal situation which prevented the civil servant to return Pakistan and secondly, keeping in view the nature of charge and the circumstances under which he could not resume duty, it exercised discretion in favour of lesser penalty in the interest of substantial justice. The law authorizes the Tribunal to make a decision on the question of penalty awarded to a civil servant by the departmental authority and substitute the quantum of punishment in an appropriate manner in a suitable case in its discretion within the statutory command and this is settled law that a judicial power exercised in discretionary jurisdiction, is not supposed to be interfered by a higher judicial forum for collateral consequence in its discretion.

It is clear that Tribunal has to follow the limitations and restrictions of law in exercise of discretion in a manner, which may not offend the spirit of law. The concept of discretion in judicial power is to advance the cause of justice and exercise of this power in a judicious manner in aid of justice and not to perpetuate injustice whereas the executive authorities have different considerations for exercise of such power. The judicial norms do not permit to encourage continuation of exercise of jurisdiction by a State functionary to deprive a person from his legitimate rights. It would be highly unlikely that Supreme Court imbued the discretionary action of a public functionary if the same was done in violation of the recognized principles of exercise of discretionary power. The distinction in the recognition of an action of a person and governmental authorization of public officer can be demonstrated by the test of determination whether deprivation of a right was the result of such an action of individual or the breach of law by a-public authority. Where deprivation of some right or privilege is caused in consequence of an official act and the party charged with the deprivation is a person who acted as public functionary, the judicial powers necessarily have to be exercised in aid of protecting the rights and must not be exercised in aid of injustice. In the light of the facts and circumstances of the present case, the exercise of discretion by the Tribunal in condoning the delay as well as disposal of appeal with reduction of punishment without remand of case to the departmental authority for holding inquiry was quite in accordance with the concept of substantial justice in such a case of hardship.

The civil servant, in the present case, proceeded abroad with the permission of department and was also subsequently allowed ex-Pakistan leave on humanitarian ground, therefore, the element of wilful absence is not present in view of repeated explanation of civil servant regarding his difficulty, and his

seeking extension in ex-Pakistan leave. The department at the first instance treating it a hardship case allowed ex-Pakistan leave and subsequently without change of circumstances, taking a harsh view, initiated departmental proceedings against him and ultimately awarded him extreme penalty of dismissal from service. In such circumstances, the remand of the case to the department, would be futile. The regular inquiry in the departmental proceedings is a rule and dispensation is an exception depending on the facts of a case, therefore, the question whether regular inquiry in a case is necessary or not, it is to be kept in mind as to whether an adverse inference drawn without making probe into the facts in the light of explanation of a civil servant, would not amount to condemn a person unheard. The courts must not ignore cardinal principle that the hearing simpliciter does not mean providing of opportunity of written explanation to the: show-cause notice rather in the facts of each case, it must be seen that the enquiry is just, proper and fair, therefore, no general rule can be laid down for dispensation of regular inquiry. The departmental proceeding on the charge of misconduct is a sort of semi-criminal proceeding in which initial burden is on the department to prove the charge and if the allegations are denied by the accused official the charge cannot be proved without producing evidence. In the present case, the stand of civil servant, right from beginning, was that his absence was not wilful rather due to unavoidable circumstances, he was prevented from resuming duty. In view thereof, the procedure of dispensation of inquiry adopted by the department, was contrary to the law and consequently, the finding of the Tribunal in the peculiar facts and circumstances of the present case, that regular inquiry was essential to ascertain as to whether the question of willful absence and dispensation of such an inquiry was not in accordance with the spirit of law in the given facts, was unexceptional. In view thereof, the major penalty of dismissal from service without regular inquiry was not justified. The contention that the Tribunal should have remanded the case instead of disposal of appeal on merits was not raised before the Tribunal and now it is too late to undertake such a futile exercise of remanding the case at this stage.

Appeal before the Tribunal appeared to be time barred but in view of circumstances pleaded therein, no exception could be taken to the condonation of delay by the Tribunal as the objection could conveniently be overruled in view of the fact that when the order of dismissal of appeal was conveyed to the civil servant he immediately filed the appeal, Therefore, in view of his bona fide, the objection of limitation, may have no significance. A civil servant could wait till communication of decision of departmental appeal and would not be non-suited on technical grounds.

The discretion exercised by the Tribunal in condoning the delay and disposal of appeal on merits with conversion of penalty of dismissal from service into stoppage of increment, was not illegal or improper exercise of jurisdiction. The departmental proceedings were initiated against the civil servant in the year 1998 which continued for a period of about 10 years and the impugned judgment having been already given effect, civil servant was performing his duty and in view thereof, it was not proper for the Supreme Court to interfere in the judgment of the Tribunal at this stage on technical grounds. The discretionary jurisdiction exercised by the Tribunal in respect of condonation of delay and conversion of penalty was not arbitrary, illegal or un-reasonable to attract the jurisdiction of Supreme Court under Article 212(3) of the Constitution.

Nawab Khan v. Government of Pakistan PLD 1994 SC 222; Secretary, Government of the Punjab v. Riaz-ul-Haq 1997 SCMR 1552; Basharat Ali v. Director Excise and Taxation 1997 SCMR 1543; Managing Director, S.S.G.C. Ltd. v. Ghulam Abbas PLD 2003 SC 724 and Chief Engineer (North) v. Saifullah Khan Khalid 1995 SCMR 776 ref.

Per Mian Hamid Farooq, J Contra.---[Minority view].

Mst. Hajran v. Sardar Muhammad PLD 1970 SC 287; Water and Power Development Authority v. Aurangzeb 1988 SCMR 1354; Shahzada Muhammad Umar Beg v. Sultan Mahmood Khan and another PLD 1970 SC 139 and Nawaz Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others PLD 1994 SC 22 ref.

Raja, Muhammad Bashir, Advocate Supreme Court and Arshad Ali Chaudhry, Advocate-on-Record for Appellants.

Muhammad Akram Sheikh, Senior Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Respondents.

Date of hearing: 14th April, 2008.

JUDGMENT

MUHAMMAD NAWAZ ABBASI, J.--- This appeal by leave of the Court, has been directed against the judgment dated 6-12-2006 passed by Federal Service Tribunal by virtue of which Service Appeal bearing No.1081(R)(C.S.) of 2004 filed by respondent No.1 challenging the order passed by the departmental authority whereby he was awarded punishment of dismissal from service, was partly allowed and the penalty of dismissal from service was converted into reduction of pay by two stages in the time scale for a period of two years with direction of reinstatement in service.

2. The facts of the case in small compass, leading to the filing of this appeal are that Shafiq Muhammad respondent herein an Additional Commissioner in Income Tax Department, was sent on a foreign training in U.S.A. for a period of about three years from 24-8-1992 to 31-12-1995 and on completion of the training, he applied for ex-Pakistan leave, which was granted to him for 731 days from 1-1-1996 to 31-12-1997 vide notification dated 2-5-1996. The respondent on expiry of the leave, applied for further leave which was declined vide order dated 5-1-1998 and he was directed to resume the duty. In consequence to the failure of the respondent to report for the duty, he was proceeded against for departmental action under the Government Servants (Efficiency and Discipline) Rules, 1973, and was served with a show-cause notice through Embassy of Pakistan, Washington. The respondent submitted his reply to the show-cause notice and competent authority having considered the circumstances explained by him in the reply which genuinely prevented him to return to Pakistan, allowed him ex-Pakistan leave for another period of 365 days from the date of expiry of earlier leave vide notification dated 9-7-1998. Consequently, the show-cause notice was withdrawn and departmental action against him was dropped. However, before expiry of the extended period of ex-Pakistan leave, the respondent on 15-12-1998 again sent an application for further extension of leave whereupon the department instead of acceding the request of respondent issued a fresh show notice to him on 23-2-1999. The respondent in reply to the show cause notice having given reasons for not resuming the duty, again requested for grant of ex-Pakistan leave. The competent authority after dispensing with the requirement of regular inquiry and completing formalities of law, concluded the departmental proceedings against the respondent with passing of the order of his dismissal from service vide notification dated 4-8-1999 which was conveyed to him on 18-8-1999 through usual channel of the Embassy of Pakistan, Washington, whereupon he filed a departmental appeal on 10-9-1999 which was rejected and on receipt of order rejection of the appeal, he preferred an appeal before the Federal Service Tribunal, Islamabad which was dismissed as time barred. This order was challenged by the respondent before this Court and ultimately this Court remanded the case to the Tribunal for decision of the appeal afresh on merits including the question of limitation. In post

remand proceedings, the Tribunal partly allowed, the appeal of respondent vide impugned judgment whereby his dismissal from service was converted into reduction of pay by two stage in the time scale for a period of two years and he was reinstated in service with direction that period during which he remained out of service, would be treated as leave of the kind due, if any, at his credit and the remaining period as extraordinary leave without pay. The C.B.R. feeling dissatisfied with the order of Tribunal filed the present appeal before this Court in which leave was granted vide order dated 7-2-2007 as under:

"Leave to appeal was granted to examine as to whether the Tribunal had condoned the delay of 4 years for justifiable reason and also to examine whether the Tribunal was justified to take the view that the absence of the respondent from the office of petitioner for 5 years can be condoned when the department on having taken into consideration the facts found that he was absent from service for about 12 years out of which 7 years' absence was properly explained but there was no ground to justify the absence for another 5 years which finding of the department dated 10-9-1999 was upheld by the Appellate Authority when his departmental appeal was dismissed on 15-3-2000."

3. Initially the appeal filed by the respondent before the Service Tribunal was dismissed in limine on the question of limitation and this Court vide judgment dated 27-7-2006 passed in Civil Petition No.1422 of 2005 remanded the case to the Tribunal for decision of the appeal afresh after obtaining reply from the department on appeal as well as on miscellaneous application containing explanation for condonation of delay. In post remand proceedings, the Tribunal allowed the appeal of respondent vide impugned judgment.

4. The main ground of assailing the judgment of Tribunal before us in this appeal, relates to the question of condonation of delay in appeal before the Tribunal. The learned counsel for the appellant has contended firstly that the Tribunal after coming to the conclusion that the explanation offered by the respondent for condonation of delay was not sufficient, could have no justification to exercise discretion in favour of condonation of such a long delay and secondly that the long absence of respondent from duty without leave, was not deniable therefore, notwithstanding the principle of law that in the cases involving controversial question of fact regular inquiry as envisaged under the rules is necessary, the dispensation of such inquiry in the present case was not against the law and competent authority in exercise of powers under section 5(1)(iii) of Government Servants (Efficiency and Discipline) Rules, 1973, rightly while dispensing with the regular inquiry, passed the final order. Lastly, learned counsel argued that under section 4(1)(a) of the Service Tribunals Act, 1973 a civil servant on expiry of 90 days from the date of filing the departmental appeal, is not supposed to further wait for decision of appeal and must file appeal within next 30 days, failing which the appeal would be out of time and in support thereof, has placed reliance on *Nawab Khan v. Government of Pakistan* PLD 1994 SC 222 and *Secretary, Government of the Punjab v. Riaz ul Haq* 1997 SCMR 1552.

5. Learned counsel for the respondent on the other hand, with reference to the judgments of this Court in *Basharat Ali v. Director Excise and Taxation* 1997 SCMR 1543, *Managing Director, S.S.G.C. Ltd. v. Ghulam Abbas* PLD 2003 SC 724 and *Chief Engineer (North) v. Saifullah Khan Khalid* 1995 SCMR 776 without denying the position of law that if a departmental appeal/representation is not decided within a period of 90 days, the civil servant without waiting for the result of appeal/representation, can file an appeal before the Tribunal within next 30 days, submitted that an appeal filed before the Tribunal beyond 120 days from the date of order passed by the competent authority cannot be dismissed as barred by time for the reasons that the original order is merged in the order of the appellate authority, passed in appeal and without challenging the appellate order, an

appeal against an original order may not competently succeed, therefore, the limitation of 30 days of filing an appeal before the Service Tribunal in a case in which the remedy of departmental representation/appeal is provided under the rules, would start from the date of communication of the order passed by the appellate authority. Learned counsel submitted that a civil servant without being aware of the reason of rejection of his appeal/representation may not be able to set up his case in appeal before the Tribunal and would not get a fair treatment in law.

6. Learned counsel argued that the Tribunal taking into consideration the extraordinary and abnormal situation leading to the absence of respondent from duty in the light of the facts of case in totality has rightly exercised discretion in favour of condonation of delay which was not unreasonable, unjust or unfair to be questioned before this Court. Learned counsel added that absence of respondent from duty without leave was not wilful rather it was due to the circumstances beyond his control and this fact was also acknowledged by the department by treating his case as that of hardship case, granted him ex-Pakistan leave for another period of one year. Learned counsel while summoning up his arguments, submitted that in view of the factual position in the background and plausible explanation of respondent for absence from duty, the condonation of delay by the Tribunal in its discretionary jurisdiction, was not contrary to law to be questioned.

7. The peculiar circumstances of the case in the background would give rise to the essential question for determination as to whether absence of respondent was wilful and he intentionally avoided to report for duty or he was prevented by the unavoidable circumstances to resume the duty. In the light of explanation of respondent that he under the compelled circumstances, prolonged his stay abroad, on the face of it, would suggest that his absence was not wilful, therefore, a contrary presumption would not be drawn without recording evidence and holding regular inquiry as the controversial question of fact whether absence was wilful or not, could not be decided on the basis of mere show-cause notice and its reply, therefore, the presumption of wilful absence raised by the competent authority for imposing major penalty of dismissal from service was not legal without providing a fair and proper opportunity of hearing to the respondent who was condemned unheard. Learned counsel lastly argued that the Tribunal in exercise of power under section 5 of the Service Tribunals Act, 1973, in the light of the facts of case, may modify the quantum of punishment and unless this discretionary jurisdiction is found to have been exercised beyond the scope of law, it may not call for interference of this Court.

8. Section 5 of the Service Tribunals Act, 1973, provides that Tribunal may confirm, set aside, vary or modify the order appealed against in an appropriate manner. The careful examination of this provision would show that only limitation on the power of the Service Tribunal is to satisfy the test of reasonableness. Section 5 of Service Tribunals Act, 1973, provides as under:--

"5. Power to Tribunals.--- (1) A Tribunal may, on appeal confirm, set aside, vary or modify the order appealed against.

(2) A Tribunal shall, for the purpose of deciding any appeal, be deemed to be a Civil Court and shall have the same powers as are vested in such Court under the Code of Civil Procedure, 1908 (Act V of 1908), including the powers of---

(a) enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents;

(c) issuing Commission for the examination of witnesses and documents."

9. In the present case, it appears that Tribunal having considered the question of law and facts raised in the appeal formed an opinion that the extreme penalty of dismissal from service was not in consonance with the nature and gravity of charge of absence from duty without leave and while exercising power under section 5 *ibid*, converted major penalty of dismissal from service into stoppage of two increments for a period of two years and careful perusal of the record would not suggest that discretion was exercised beyond the scope of law. The learned counsel for the appellant also has not been able to satisfy us that the Tribunal has committed any wrong in exercising the jurisdiction on the basis of test of reasonableness or settled principle of law on the subject, which may be treated a jurisdictional error calling for the interference of this Court. The scope of interference of the Supreme Court in a case under Article 212(3) of the Constitution is confined to the extent of satisfaction of the court regarding involvement of substantial question of law of public importance, therefore, unless the order passed by the Tribunal unless is found to have been passed without jurisdiction, or *coram non iudice*, *mala fide* or illegal, in respect of substantial question of law, this Court may not interfere in the matter in exercise of its powers under Article 212(3) of the Constitution. In the present case, it appears that Tribunal firstly exercised discretion in favour of condonation of delay for the consideration that absence without leave may not be deliberate and intentional rather it was due to the abnormal situation which prevented the respondent to return Pakistan and secondly, keeping in view the nature of charge and the circumstances under which respondent could not resume duty, it exercised discretion in favour of lesser penalty in the interest of substantial justice. The law authorizes the Tribunal to make a decision on the question of penalty awarded to a civil servant by the departmental authority and substitute the quantum of punishment in an appropriate manner in a suitable case in its discretion within the statutory command and this is settled law that a judicial power exercised in discretionary jurisdiction, is not supposed to be interfered by a higher judicial forum for collateral consequence in its discretion.

10. It is clear that Tribunal has to follow the limitations and restrictions of law in exercise of discretion in a manner, which may not offend the spirit of law. The concept of discretion in judicial power is to advance the cause of justice and exercise of this power in a judicious manner in aid of justice and not to perpetuate injustice whereas the executive authorities have different considerations for exercise of such power. The judicial norms do not permit to encourage continuation of exercise of jurisdiction by a State functionary to deprive a person from his legitimate rights. It would be highly unlikely that Supreme Court imbue the discretionary action of a public functionary if the same was done in violation of the recognized principles of exercise of discretionary power. The distinction in the recognition of an action of a person and governmental authorization of public officer can be demonstrated by the test of determination whether deprivation of a right was the result of such an action of individual or the breach of law by a public authority. The deprivation of some right or privilege is caused in consequence to an official act and the party charged with the deprivation is a person who acted as public functionary, therefore, the judicial powers necessarily have to be exercised in aid of protecting the rights and must not be exercised in aid of injustice. In the light of the facts and circumstances of the present case, the exercise of discretion by the Tribunal in condoning the delay as well as disposal of appeal with reduction of punishment without remand of case to the departmental authority for holding inquiry was quite in accordance with the concept of substantial justice in such a case of hardship.

11. The respondent proceeded abroad with the permission of department and was also subsequently allowed ex-Pakistan leave on humanitarian ground, therefore, the element of wilful absence is not present in view of repeated explanation of respondent regarding his difficulty, sought extension in ex-

Pakistan leave. The department at the first instance treating it a hardship case allowed ex-Pakistan leave and subsequently without change of circumstances, taking a harsh view, initiated departmental proceedings against him and ultimately awarded him extreme penalty of dismissal from service and in these circumstances, the remand of the case to the department would be futile. The regular inquiry in the departmental proceedings is a rule and dispensation is an exception depending on the facts, of a case, therefore, the question whether regular inquiry in a case is necessary or not, it is to be kept in mind as to whether an adverse inference drawn without making probe into the facts in the light of explanation of a civil servant, would not amount to condemn a person unheard. The courts must not ignore cardinal principle that the hearing simpliciter does not mean providing of opportunity of written explanation to the show-cause notice rather in the facts of each case, it must be seen that the enquiry is just, proper and fair, therefore, no general rule can be laid down for dispensation of regular inquiry. The departmental proceeding on the charge of misconduct is a sort of semi-criminal proceeding in which initial burden is on the department to prove the charge and if the allegations are denied by the accused official the charge cannot be proved without producing evidence. In the present case, the stand of respondent, right from beginning, was that his absence was not wilful rather due to unavoidable circumstances, he was prevented from resuming duty. In view thereof, the procedure of dispensation of inquiry adopted by the department, was contrary to the law laid down by this Court and consequently, the finding of the Tribunal in the peculiar facts and circumstances of the present case, that regular inquiry was essential to ascertain as to whether the question of wilful absence and dispensation of such an inquiry was not in accordance with the spirit of law in the given facts, was unexceptional. In view thereof, the major penalty of dismissal from service without regular inquiry was not justified. The contention that the Tribunal should have remanded the case instead of disposal of appeal on merits was not raised before the Tribunal and now it is too late to undertake such a futile exercise of remanding the case at this stage.

12. In the light of general principle, appeal before the Tribunal appeared to be time barred but in view of circumstances pleaded therein, no exception could be taken to the condonation of delay by the Tribunal as the objection could conveniently be overruled in view of the fact that the order of dismissal of appeal was conveyed to the respondent vide letter, dated 15-3-2000 and he immediately thereafter filed the appeal, therefore, in view of his bona fide, the objection of limitation, may have no significance. This Court in *Haji Kadir Bux v. Province of Sindh* 1982 SCMR 583 in similar circumstances, held that a civil servant could wait till communication of decision of departmental appeal and would not be non-suited on technical grounds.

13. In the light of above discussion, we are of the considered view that the discretion exercised by the Tribunal in condoning the delay and disposal of appeal on merits with conversion of penalty of dismissal from service into stoppage of increment, was not illegal or improper exercise of jurisdiction. The departmental proceedings were initiated against the respondent in the year 1998 which continued for a period of about 10 years and the impugned judgment having been already given effect, respondent was performing his duty and in view thereof, it is not proper for this Court to interfere in the judgment of the Tribunal at this stage on technical grounds. Learned counsel has not been able to convince us that the discretionary jurisdiction exercised by the Tribunal in respect of condonation of delay and conversion of penalty was arbitrary, illegal or un-reasonable to attract the jurisdiction of this Court under Article 212(3) of the Constitution.

14. The upshot of above discussion is that the instant appeal has no merit and same is accordingly dismissed with no order as to costs by majority of two to one.

(Sd.) Muhammad Nawaz Abbasi, J

(Sd.) Ijaz-ul-Hassan Khan, J

add my separate judgment.

(Sd.) Mian Harold Farooq, J

MIAN HAMID FAROOQ, J.--- I have had the advantage of reading the judgment authored by my learned brother Muhammad Nawaz Abbasi J, for whom I have great regard and whose legal acumen I have always admired, however, I find myself unable to agree with his views, findings and conclusions, thus I propose to write dissenting judgment.

2. The appeal in hand, by leave of the Court, proceeds against the judgment dated 6-12-2006, whereby, Federal Service Tribunal (hereinafter called as Tribunal) partially accepted respondent's appeal in the following terms:--

"(10) In view of the above discussion both in favour and against the appellant, we convert the punishment of major dismissal to that of major penalty of reduction of his pay by two stages in the time scale for a period of two years in which he was working at the time when dismissal from service was imposed. He shall accordingly be reinstated in service. The period during which the appellant remained out of service will be treated as leave of the kind due to him if any at his credit and the remaining as extraordinary leave without pay.

(11) The appeal is partly accepted as above with no orders as to costs. Parties be informed."

3. Facts of the case, in brief, are that respondent No.1 (respondent) was working as Additional Commissioner in Income Tax Department, when, he was deputed for foreign training in the U.S.A. by the Government of Pakistan with effect from 24-8-1992 to be completed on 31-12-1995; on the said date, the respondent applied for ex-Pakistan leave and he was granted 731 days ex-Pakistan leave from 1-1-1996 to 31-12-1997 vide information dated 2-5-1996; subsequently, further ex-Pakistan leave for 365 days with effect from 1-1-1998 was granted to the respondent vide notification dated 9-7-1998; the respondent filed yet another application seeking further extension of ex-Pakistan leave, but the department refused to grant the same and issued him a show-cause notice dated 23-2-1999, which was replied by the respondent explaining the reasons for not assuming duty. The reply to the show cause notice was found unsatisfactory by the department and thus major penalty of dismissal from service was imposed upon the respondent, vide notification dated 4-8-1999. His departmental appeal, filed on 10-9-1999, was rejected on 15-3-2000. Respondent, on 27-12-2004, filed grossly time barred appeal before the Federal Service Tribunal, which dismissed it as time barred, however this Court, on 27-7-2006, remanded the case to the Tribunal for fresh decision of the appeal on merits including the question of limitation. In post remand proceedings, the Tribunal condoned the delay of almost five years and accepted the appeal, vide impugned judgment dated 6-12-2006 in the terms noted above. Feeling aggrieved by the said judgment, the department filed the petition for leave to appeal (C.P.No.72 of 2007) and this Court, on 7-2-2007, granted leave to appeal in the following manner:---

"Leave to appeal is granted to examine as to whether the Tribunal had condoned the delay of 4 years for justified reason and also to examine whether the Tribunal was justified to take the view that the absence of the respondent from the office of petitioner for 5 years can be condoned when the department on having taken into consideration the facts found that he was absent from service for about 12 years out of which 7 years absence was properly explained

but there was no ground to justify the absence for another 5 years which finding of the department dated 10-9-1999 was upheld by the Appellate Authority when his departmental appeal was dismissed on 15-3-2000."

4. Learned counsel for the parties were heard at length and I have examined the available record. Admittedly, respondent's appeal before the Tribunal was barred by almost 5 years. Straightforward undisputed facts, with regard to limitation, are that respondent's appeal, filed on 10-9-1999, was rejected by the department on 15-3-2000 and he filed the appeal before the Tribunal on 27-12-2004, thus, his appeal, more precisely, was barred by 4 years 9 months and 11 days. Respondent did file the application for condonation of the delay before the Tribunal. The only ground agitated in the said application and canvassed by his learned counsel before the Tribunal as well as before this Court was that "no intimation about rejection of departmental appeal was communicated to the appellant in U.S.A, where he was staying in connection with the treatment of his ailing daughter" and after coming to Pakistan the respondent came to know about rejection of his appeal and thereupon he filed the appeal before the Tribunal and the time for filing the appeal would run from the date of knowledge. The said plea of the respondent was duly dealt with by the Tribunal in para.8 of the impugned judgment and the learned Tribunal after finding that the plea of the appellant does not appeal to reasons as all the communications addressed to the appellant through the Embassy of Pakistan were received by him and the claim that the decision about rejection of his appeal, which was routed through the same agency i.e. Embassy of Pakistan Washington D.C, was not received seemed to be doubtful, repelled the contention of the respondent. The learned Tribunal after rendering elaborate findings on the question of limitation and repelling the contention of the appellant, on which the delay was sought, however, strangely, condoned the inordinate delay on the unheard ground that "the penalty is extreme". It is appropriate to reproduce Para-8 of the impugned judgment, which reads as under:---

"(8) The point that needs to be examined at the preliminary stage is whether the appeal is barred by time and therefore hit by limitation. From the record of the case it is clear that the appellant was imposed upon the major penalty of dismissal from service vide impugned notification dated 4-8-1999 which was received as stated by the appellant on 18-8-1999 through the Embassy of Pakistan, Washington. The appellant preferred a departmental appeal on 10-9-1999 which was rejected by the department on 15-3-2000. The appellant claims that he did not receive any intimation regarding the rejection of his departmental appeal and that it was only when he came to Pakistan in the year 2004, on his enquiry with the department regarding the fate of his departmental appeal that he was informed that the departmental appeal has been rejected. The contention of the appellant that he did not receive intimation regarding the rejection of his departmental appeal does not appeal to reason as all communications addressed to the appellant through the Embassy of Pakistan, Washington were admittedly received by the appellant and the claim that only the rejection of his departmental appeal which was also routed through the same agency i.e. the Embassy of Pakistan, Washington D.C, was not received seems to be at the very least doubtful. It appears to be a convenient ploy on the part of the appellant to justify the lapse on his part in seeking timely redressal before a competent forum including this Tribunal. He remained silent for almost five years and only on return to Pakistan he chose to agitate his case before this Tribunal on the plea that he had not received intimation about the rejection of his departmental appeal. We are not inclined to accept the contention of the appellant that he did not receive the intimation regarding the rejection of his departmental appeal especially as he does not deny having received all other relevant communications through the same source i.e. Embassy of

Pakistan, Washington D.C. However, as the penalty is extreme i.e. dismissal from service we with some reluctance condone the delay."

5. It is evident from the above, that the Tribunal after refuting the only contention raised by the respondent, qua condonation of delay, surprisingly, condoned the delay only for the reason that "the penalty is extreme." I earnestly feel that this inordinate delay of almost 5 years could not be condoned on the conjectural ground that "the penalty is extreme". It is settled law that a litigant seeking condonation of delay has to explain delay of each and everyday for not filing lis within the prescribed period. In this case, the departmental appeal was rejected on 15-3-2000, (which order according to the finding of the Tribunal itself was received by him through the Embassy of Pakistan, Washington D.C) and he filed the appeal after almost 5 years, therefore, there was no reasonable, legal and valid justification for condonation of the said inordinate delay. The Tribunal after rendering aforesaid findings and rejecting the plea of the respondent and coming to the conclusion that the appeal was barred by almost 5 years erroneously condoned the delay on the ground that the penalty is harsh incomplete oblivion of the fact that valuable rights had accrued in favour of the appellant, which could not be denied on flimsy ground. Here it appears appropriate to refer the case of Mst. Hajran v. Sardar Muhammad PLD 1970 SC 287, wherein it was held by this Court that the involvement of valuable rights of the petitioner does not furnish proper ground for condonation of delay in a civil matter. In another case reported as Water and Power Development Authority v. Aurangzeb 1988 SCMR 1354, this Court while deciding the question of limitation upheld the finding of the Tribunal viz. "it is well settled that after the prescribed period of limitation has elapsed, the door of justice is closed and no plea of injustice, hardship or ignorance can be of any avail unless the delay is properly explained and accounted for". A portion of para-5 of the judgment is reproduced bellows:---

"In such a context, however, the sole submission of the learned counsel for the petitioner is that if the delay in filing the appeal is not condoned, injustice done to the petitioner shall be perpetuated and thereby he shall suffer an irreparable loss caused by the impugned order. Learned Tribunal held that the law on the point, however is well settled that after the prescribed period of limitation has elapsed, the door of justice is closed and no plea of injustice, hardship or ignorance can be of any avail unless the delay is properly explained and accounted for. For these reasons the application for condonation of delay was rejected and, consequently, the appeal was dismissed vide the impugned order.

We have examined the submissions made by the learned counsel and find no substance in them. The impugned order is unexceptionable. Leave refused and the petition is, consequently, dismissed. (Underlining is mine).

6. Now dealing with the plea of the learned counsel for the respondent regarding exercise of discretion by the Tribunal. The learned Tribunal, as noted above, after rejecting the plea of the respondent for condonation of delay, condoned the delay of 5 years simply on the ground that the penalty is harsh, thus to my mind, the learned Tribunal exercised its discretion arbitrarily, capriciously and in a fanciful manner. It is true that the superior Courts normally do not interfere in the discretionary orders passed by the subordinate Courts, but it is equally true that when the discretion was exercised by them unreasonably, unjustly, arbitrarily and in a fanciful manner, of course, it is the duty of superior Courts to interfere in such-like orders. In this case, I feel that the Tribunal exercised discretion against all the recognized principles laid down by the superior Courts for exercise of discretion, therefore, this Court has ample powers to interfere in the discretion exercised by the Tribunal. Reference can be made to the cases of Shahzada Muhammad Umar Beg v. Sultan Mahmood

Khan and another PLD 1970 SC 139 and Nawaz Khan and another v. Government of Pakistan through Secretary, Ministry of Defence, Rawalpindi and others PLD 1994 SC 222.

7. In the above perspective, I have examined the impugned judgment and find that the same is not sustainable in law and the respondent's appeal before the Tribunal was liable to be dismissed on the ground of limitation as it is grossly barred by time. The Tribunal acted illegally and in complete ignorance of law while condoning the delay and thus I am persuaded to reverse the judgment.

8. For the foregoing reasons, the appeal in hand is allowed and the impugned judgment dated 6-12-2006 passed by the Service Tribunal is set aside and the respondent's appeal stands dismissed on the ground of limitation. No order as to costs.

M.B.A./C-6/SC

Appeal dismissed.

1995SCMR950

[Supreme Court of Pakistan]

روستو کا بیٹا اور جنرل کو اس افسر نے

Present: Ajmal Mian, Zia Mahmood Mirza and Muhammad Munir Khan, JJ

ANWAR MUHAMMAD ---Appellant

For Appellant

versus

GENERAL MANAGER, PAKISTAN RAILWAYS, LAHORE and another---Respondents

Civil Appeal No. 415 of 1992, decided on 30th November, 1994.

(On appeal from the judgment dated 1-9-1991 of the Federal Service Tribunal, Islamabad, passed in Appeal No. 96(L)/1991).

(a) Constitution of Pakistan (1973)---

----Art. 212(3)---Adverse remarks---Departmental appeal against adverse remarks although was not dismissed on point of limitation, yet appeal before Service Tribunal was dismissed on point of limitation---Validity---Leave to appeal was granted to consider whether Service Tribunal was justified to dismiss appeal on ground of limitation when Competent Authority did not dismiss the same on said ground but dismissed the same on merits.

A Guide to Performance Evaluation, para. 3.39 ref.

(b) Civil service-

~~---- Constitution of Pakistan (1973), Art. 212 --- Departmental Authority had not dismissed departmental appeal on ground of limitation but on merits---No objection having been raised before Departmental Authority relating to limitation, Authority would be deemed to have condoned the delay---Service Tribunal should, thus, have decided the same on merits and not on limitation---Case was remanded to Service Tribunal for decision afresh on merits.~~

S.M. Masood, Advocate Supreme Court and Sh. Masood Akhtar, Advocate-on-Record for Appellant.

Ch. Fazle Hussain, Advocate Supreme Court and Ch. Muhammad Aslam, Advocate-on-Record for Respondents.

Date of hearing: 30th November, 1994.

JUDGMENT

AJMAL MIAN, J.---This is an appeal with the leave of this Court against the judgment dated 1-9-1991 passed by the Federal Service Tribunal, Islamabad, hereinafter referred to as the Tribunal, in Appeal No. 96(L) of 1991, filed by the appellant against the order dated 9-4-1991 of respondent No.2, dismissing his representation treated as an appeal against the adverse remarks recorded in his

A.C.R. for the period ending on 31-12-1983 under column (2)(F) 'Ability to work under stress and strain', . "Below average", dismissing the same on the ground that the appellant's above representation/appeal was hopelessly time-barred. Leave to appeal was granted to consider the question, whether the Tribunal was justified to dismiss the above appeal on the ground of limitation when the competent authority did not dismiss the same on the above ground but dismissed it on merits.

2. The brief facts are that the appellant received intimation about the above adverse remarks through the department's letter dated 15-5-1984. The appellant filed a representation/appeal before the Divisional Superintendent instead of filing the same before the General Manager, Pakistan Railways. In response to the above representation, the appellant received Divisional Office, Rawalpindi's Letter dated 2-9-1984 for Divisional Superintendent, P.R. Rawalpindi, intimating to him that the appeal against the adverse remarks had been rejected by the competent Authority. It appears that after the lapse of several years, the appellant made a representation dated 8-1-1991 to the General Manager. The appellant received a letter dated 9-4-1991 for General Manager intimating him that his representation dated 8-1-1991 against the adverse remarks recorded in his A.C.R. for the period from 31-5-1983 to 31-12-1983 had been considered and rejected by the competent Authority. Against the above order, the appellant filed the aforesaid service appeal, which was declined for the above reason. Thereupon, the appellant filed a petition for leave to appeal, which was granted to consider the above question.

3. In support of the above appeal, Mr. S.M. Masood, learned Advocate Supreme Court appearing for the appellant, has submitted that the representation made by the appellant to the Divisional Superintendent was incompetent as the latter was in fact the Countersigning Officer on the A.C.R. and, therefore, in terms of Para. 3.39 of "A Guide to Performance Evaluation", the competent Authority was the General Manager and, hence, the appellant's earlier representation dated 15-5-1984 and the order passed thereon by the Divisional Superintendent were without jurisdiction. His further submission was that though the period for filing of a representation in terms of Para. 3.31 is thirty days but as the General Manager had not rejected his representation dated 8-1-1991 on the ground of limitation and had declined the same on merits, the Tribunal could not have dismissed the above service appeal on the ground that the appellant's representation dated 8-1-1991 to the General Manager was time-barred.

Ch. Fazle Hussain, learned Advocate Supreme Court appearing for the respondents, is unable to contradict the fact that the Divisional Superintendent was in fact the Countersigning Officer and, therefore, para. 3.39 which reads as follows:-

"3.39 The words 'competent authority' in the last sentence of Para 3.37 mean an authority next higher than the Countersigning Officer. All decisions on the representations against adverse entries in confidential reports should be taken by such an authority."

is attracted to in the case in hand.

4. Since the representation dated 15-5-1984 was incompetent and so also the order passed thereon by the Divisional Superintendent, it was open to the General Manager to have dismissed the appellant's above representation dated 8-1-1991 on the ground of limitation but since no objection was raised in respect of the limitation and the same was decided on merits, the General Manager in fact impliedly condoned the delay. In this view of the matter, the Tribunal should have decided the appellant's service appeal on merits. We would, therefore, allow the above appeal with no order as to costs and

would remand the case to the Tribunal to decide the above service appeal on merits after notice to the parties.

A.A./A-1221

Appeal accepted.



2006 S C M R 1240

روغف قائم
مختار افسر
For Appellant

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, C.J. and Mian Shakirullah Jan, J

MUHAMMAD ILYAS KHOKHAR and 24 others----Petitioners

Versus

FEDERATION OF PAKISTAN and others----Respondents

Civil Petitions Nos.2002, 2023, 2024 to 2046 of 2004, decided on 20th March, 2006

(On appeal from the judgment, dated 8-7-2004 passed by the Federal Service Tribunal in Service Appeals Nos.269(P) CS of 2000 270(R) CS of 2000 61(P) CS of 2000, 62(P) CS of 2000, 718(R) CS of 2000 64(P) CS of 2000, 260(P) CS of 2000, 261(P) CS of 2000, 262(P) CS of 2000, 263(P) CS of 2000, to 268(P) CS of 2000, 60(P) CS of 2000, 714(R) CS of 2000, 717(R) CS of 2000, 63(P) CS of 2000, 719(R) CS of 2000, 720(R) CS of 2000, 736(R) CS of 2000, 737(R) CS of 2000, 738(R) CS of 2000 and 739(R) CS of 2000).

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

----Ss. 3(ii) & 9(b)---Constitution of Pakistan (1973), Art.212(3)---Promotion---Terms and conditions of service---Departmental Circular varying the terms and conditions of service was in violation of and in conflict with Ss.3(ii) & 9(b), Civil Servants Act, 1973 as department had no lawful authority to lay down policy, unless the same was approved by the Establishment Division in accordance with the Rules of Business as well as the relevant law on the subject---Ex-post facto approval to such circular by the Establishment Division would not make the circular valid and legal which had no legal backing.

(b) Service Tribunals Act (LXX of 1975)---

----Ss. 4 & 5---Constitution of Pakistan (1973), Art.212(3)---Appeal to Service Tribunal was barred by time---Service Tribunal had the jurisdiction to condone the delay, if appeals were beyond the limitation---Supreme Court declined interference in the matter of condonation of delay by the Service Tribunal.

Managing Director, Sui Southern Gas Company Ltd., Karachi v. Ghulam Abbas PLD 2003 SC 724 ref.

Ch. Mushtaq Ahmed Khan, Senior Advocate Supreme Court with M.S. Khattak, Advocate-on-Record for Petitioners.

Mrs. Naheeda Mehboob Elahi, Dy. A.-G., Fazal Elahi Siddiqui, Advocate Supreme Court with Ch. Akhtar Ali, Advocate-on-Record for Respondents.

Date of hearing: 20th March, 2006.



IFTIKHAR MUHAMMAD CHAUDHRY, C.J.--- Petitioners seek leave to appeal against the judgment, dated 8-7-2004.

2. Facts necessary for disposal of the instant petitions are that as back as on 23-1-1974, the Establishment Division constituted Accounts Group. Later on the relevant O.M. was amended on 3-3-1976 wherein mode of induction in the I.D.C. was specified. The system of mode of induction/promotion as per the quota specified therein continued till 1999 when vide Circular No.1016-DIR(A)/3-1/Induction/97, dated 8-9-1999, the Auditor-General modified some of the conditions noted therein with regard to the promotion to the higher grade. As a result whereof, the officers of the office of Auditor-General who were not holding qualifications like I.C.M.A., I.C.A.P./MBA/M.Com./M.Sc. (Computer Science) had been denied the chance of promotion. Consequently, their juniors who were possessing such qualifications were inducted in the I.D.C. leaving behind some of the seniors though they had long service at their credit and age-wise they were also seniors.

3. Thus, being aggrieved from the decision of the department, they preferred appeals before the Service Tribunal which have ultimately been accepted vide impugned judgment, concluding para. therefrom is reproduced hereinbelow:-

"24. For the aforesaid reasons, we are constrained to set aside the impugned circular of the Auditor-General dated 8-9-1999 read with Establishment Divisions' aforesaid letter dated 19-1-2001 and direct the respondents that induction in the I.D.C. should continue to be made in line with para.4 of the Accounts Group's O.M. dated 23-1-1974 as amended in 1976."

4. Learned counsel for the petitioners contended that the circular issued in 1999 was subsequently got approved by the Auditor-General from the Establishment Division, therefore, it has got a legal sanctity and any action taken under it, shall stand ratified. On the other hand, learned Deputy Attorney-General as well as the learned counsel appearing for the caveators stated that the Auditor-General had no lawful authority to change the terms and conditions to the disadvantage of the respondents, inasmuch as the Establishment Division also cannot give approval to a circular which has got no legal backing. Therefore, under the circumstances the Service Tribunal had rightly declared the said circular illegal.

5. We have heard the learned counsel and have gone through the impugned judgment. It is to be noted that the Tribunal proceeded to accept the appeals filed by the respondents for the following reasons:--

"(i) The impugned circular has materially changed the service prospect of the appellants who were now almost barred from induction in the I.D.C. and subsequent promotion which will cause them to be stagnant and with obvious financial consequences.

(ii) The change is in violation of section 3(ii) of the Civil Servants Act, 1973 which prescribes that terms and conditions of service shall not be varied to the disadvantage of a civil servant.

(iii) The impugned circular is in violation and in conflict with section 9(b) of the Civil Servants Act, 1973 because the basic formula of 50:50 whereby departmental promotees are to be inducted into the I.D:C. has not been changed, induction/promotion in the IDC cannot be altered to the disadvantage of senior persons who have been considered on the basis of seniority-cum-fitness in accordance with Appointment, Promotion and Transfer Rules, 1973 with prospects of rising up posts in B-19 and above."

6. Learned counsel when called upon to explain as to whether the Auditor-General under the original O.M. No.1 /2/74-ARC dated 23-1-1974 or amended O.M. No.2/1-75/ARC, dated 3-1-1976 enjoys authority or the jurisdiction to change the policy by exercising the powers which have not been delegated to him by the Establishment Division, frankly stated that except the policy as well as the impugned circular, there is no other instrument on record conferring the authority on him, however, his argument was that the Establishment Division had subsequently given the approval of the impugned circular with ex post facto on 19-1-2001.

7. We have examined his arguments and also considered the letter of the Establishment Division dated 19-1-2001 but in our considered opinion the ex post facto approval of the Establishment Division would not make the circular valid and legal for the reasons that the circular itself is in conflict with the provisions of section 3(ii) read with section 9(b) of the Civil Servants Act, 1973. It may be noted that as far as the Auditor-General is concerned, he in his capacity has got no lawful authority to lay down the policy unless it is approved by the Establishment Division, its accordance with the Rules of Business as well as the relevant law on the subject.

8. Keeping in view these facts and circumstances, the Tribunal has rightly held that as far as the circular is concerned, it has got no legal backing or sanctity. Learned counsel conceded that subsequently the impugned circular issued in 1999 by the Auditor-General has been withdrawn. This fact itself proves that it had no legal value, therefore, the Government did not allow it to continue to hold the field. Learned counsel further contended that as for as the appeals filed by the respondents before the Tribunal are concerned the same were barred by time, in this behalf, it may be noted that the Service Tribunal had the jurisdiction to condone the delay if those were beyond the limitation and interference by Supreme Court in the order of the Service Tribunal, condoning the delay in filing appeal before it would not advance the cause of justice in view of the law laid down in the case of Managing Director, Sui Southern Gas Company Ltd., Karachi v. Ghulam Abbas PLD 2003 SC 724.

9. Thus, for the foregoing reasons, we see no substance in these petitions, therefore, the same are dismissed. Leave refused.

M.B.A./M-78/SC

Leave refused.

right to pre-emption as a sharer in an appendage (*shafi-i-khalit*) with the d of the neighbours who draw water for their lands from the same Government watercourse and over whose lands he does not in any way exercise the rights of a dominant tenement, nor is he even the owner of the servient tenement".

10. To the above, we would like to add one thing that in a Government watercourse not only the bed of the watercourse but also the water, belongs the Government. The wisdom involved in the principle is quite evident because when one party is a participator jointly in the flow of water or of the watercourse, it has the authority to stop such water or to interfere with the flow thereof. In order to avoid future complications in the exercise of that right, the superior right of being a '*shafi-i-khalit*' is given to a pre-emptor. In the instant case, the Government canal water and the course thereof do not belong either to the pre-emptor or to the vendee. Both receive water from the Government canal as of right exercised independently and hence none can claim superior right against the other. The ruling aforesaid was followed by this Court in case of *Pir Ghulam* (1979 SCMR 360) where it was categorically held that the right of pre-emption under the doctrine of '*shafi-i-khalit*' is not extended at all if both the lands in question are irrigated from a common channel. "Right to discharge water" from one land over another land was determined to be altogether different and distinct from receiving water from a common channel. In the instant case the pre-emptor claims to be receiving water from a common channel and cannot claim that he has a "right to discharge" water from his land to the land sold or vice versa.

11. We have already determined that the '*kassi*' in dispute receives water from '*paharpur*' canal and hence it cannot be exclusively claimed by the pre-emptor. Even if it is presumed for the sake of argument that both the properties are irrigated from the '*kassi*', still, the pre-emptor has no superior right because on the one hand it breaks the contiguity through and through and on the other hand, pre-emptor is not a participator in the right of irrigation, for, it is exercised by both the lands independent of each other. The case of pre-emptor is rather worst because he is not an owner of '*kassi*' which is located altogether in a different village.

12. Let us examine this aspect in the light of Section 6 of NWFP Pre-emption Act, 1987 which defines a '*shafi-i-khalit*' as follows:--

"Explanation:

II. "*Shafi-i-khalit* means a participator in the special rights attached to the immovable property sold, such as right of passage, right of passage of water or right of irrigation."

The very section in unambiguous terms indicates that a '*shafi-i-khalit*', in the right of irrigation attached to the property sold as a special right, must be a participator in that right. In simple words one can say that the right of

irrigation possessed by the pre-emptor should be joint with the right attached to the property sold. In the instant case, the pre-emptor has not at all been able to prove that the bed of the watercourse or the water itself are jointly owned by the pre-emptor. He could not have proved it either because the bed of the watercourse even if '*kassi*' was not the one participated or jointly owned by him, for, it belonged to the Government including the canal water running therein.

13. The aforesaid discussion brings us to an inescapable conclusion that the pre-emptor respondent in the instant case was neither contiguous owner nor a '*shafi-i-khalit*' and, therefore, was wrongly held so by the Courts below. The instant petition after conversion into appeal is hereby allowed, the impugned judgment dated 28.2.2003 of the learned High Court is set aside and the pre-emption suit brought by the respondents is hereby dismissed. Parties to bear their own costs.

(B.T.)

Petition allowed.

Handwritten signature and note: "FOR Appellant"

PLJ 2004 SC 435
[Appellate Jurisdiction]

Present : MIAN MUHAMMAD AJMAL AND SYED DEEDAR HUSSAIN SHAH, JJ.

MUHAMMAD HANIF BUKHARI and another--Appellants

versus

PRESIDENT, NATIONAL BANK OF PAKISTAN HEAD OFFICE, KARACHI and others--Respondents

C.A. Nos. 1298 & 1309 of 2000, decided on 22.3.2004.

(On appeal from the judgment/order of the Federal Service Tribunal, Islamabad, dated 31.5.1999, passed in Appeals Nos. 327(R) & 340 (R) of 1999)

Constitution of Pakistan, 1973--

Arts. 25 & 187--Discrimination--Dismissal from service--Appeals before service Tribunal failed on point of limitation--Validity--Decision of cases on merits always to be encouraged instead of non-suiting of litigants for technical reason including limitation--Matters remanded to tribunal for afresh decision on merits. [Pp. 436 & 437] A & B

Hafiz S.A. Rehman, Sr. ASC for Appellants (in both appeals)

Kh. Farooq, ACS & Mr. M.A. Zaidi, AOR for Respondents Nos. 3-5,

7-8 (in both appeals).

Date of hearing : 22.3.2004.

JUDGMENT

Syed Deedar Hussain Shah, J.--By this common judgment propose to dispose of these appeals, which are directed against a consolidated judgment of the Federal Service Tribunal, Islamabad (hereinafter referred to as the Tribunal) dated 31.5.1999, passed in Appeals Nos. 327(R) and 340(R) of 1999, respectively.

2. The appellants herein were dismissed from service on the charge of commission of irregularities/frauds. Their review petitions before the competent authority, also failed. Their writ petitions before the High Court of Azad Jammu and Kashmir, in view of Section 2-A inserted in the Service Tribunals Act, 1973, were abated on 26.3.1999. Thereafter they filed appeals before the Tribunal, which were dismissed on the point of limitation. Feeling aggrieved, they filed petitions in this Court, wherein leave to appeal was granted to consider "whether the appeals preferred by the petitioners were within time and whether under the circumstances they were entitled to condonation of delay".

3. We have heard learned counsel for the parties and minutely perused the material available on the record. In support of his contentions, Hafiz S.A. Rehman, learned counsel for the appellants has relied on Muhammad Yaqub v. Pakistan Petroleum Limited (2000 SCMR 830), Azimullah, Ex-Inspector v. Chairman, Board of Trustees, Abandoned Properties Organization, Islamabad (2001 P.L.C. (CS) 350) and Manager, Director, SSGC Ltd. v. Ghulam Abbas (PLD 2003 S.C. 724, at 734), and National Bank of Pakistan v. Alam Hussain (C.P. No. 1759/2002). Learned counsel pointed out that in the said case respondent-Alam Hussain, Head Cashier of the National Bank of Pakistan, was also charge-sheeted along with the present appellants; the competent authority imposed penalty on Alam Hussain as well as the appellants herein, therefore, the case of the present appellants is identical and at par with that of Alam Hussain. The appeal of Alam Hussain was allowed by the Tribunal and the delay was condoned, against which the bank filed petition before this Court, which was dismissed vide order dated 30.10.2002 (available at pages 3-5 of paper book Bearing No. CMA No. 306/03 in C.A. No. 1298/00).

3. On the other hand, Kh. M. Farooq, learned ASC for respondents in support of his arguments has cited Pakistan Steel Mills Corporation (Pvt) Ltd. v. Sindh Labour Appellate Tribunal (2004 SCMR 100).

4. Keeping in view the case of N.B.P. v. Alam Hussain, referred to above and the judgment rendered by this Court in the case of Manager, Director, SSGC Ltd., referred to above, wherein it has been held that "decision of the cases on merits always to be encouraged instead of not suiting the litigants for technical reason including on limitation", therefore the delay in the cases in hand is condoned.

5. It would be beneficial to refer here Articles 25 and 187 of the Constitution, which read as under:--

"25. Equality of Citizens.--(1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex alone.

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children."

"187. Issue and execution of processes of Supreme Court.--

(1) Subject to clause (2) of Article 175, the Supreme Court shall have power to issue such directions, orders, or decrees as may be necessary for doing complete justice in any case or matter pending before it, including an order for the purpose of securing the attendance of any person or the discovery or production of any document....."

6. In the interest of justice, equity, fair play, the case law referred to above, facts and circumstances and the provisions of the Constitution, we set aside the impugned judgment of the Tribunal and remand the matters to the Tribunal for afresh decision on merits without being prejudiced by its earlier judgment whereby the appeals of the appellants were dismissed.

Case remanded.

PLJ 2004 SC 437

[Appellate Jurisdiction]

Present: IFTIKHAR MUHAMMAD CHAUDHRY AND RANA BHAGWANDAS, JJ.

MUHAMMAD IQBAL CHAUDHRY and others--Petitioners

versus

SECRETARY, MINISTRY OF INDUSTRIES & PRODUCTION, GOVT. OF PAKISTAN etc.--Respondents

Civil Petitions Nos. 3837-L and 3840-L of 2002, decided on 23.2.2004.

(On appeal from the judgment/order dated 13.9.2002 passed by Federal Service Tribunal in Appeals Nos. 1748(I) & 1540(I)/1998)

Constitution of Pakistan, 1973--

Art. 185--Dismissal of appeals by Service Tribunal--Petitions for leave to appeal--Disposing of appeals in slipshod manner--Validity--Service Tribunal had not dilated upon respective contention of parties and had decided cases by just making general remarks about conduct of

VAKALATNAMA

In the Court of Service Tribunal, Khyber Pakhtunkhwa
Peshawar

1581 No. _____ of 2014

Petitioner
Plaintiff
Applicant
Appellant
Complainant
Decree-Holder

Javed Khan

VERSUS

Respondent
Defendant
Opponent
Accused
Judgment-Debtor

S.M.B.R etc

I / We Qaiser Naz, Secretary RTA Kohat the above
noted Respondent do hereby appointed and constitute,

Muhammad Zafar Tahirkheli & Ansar Ullah Khan, Advocates High Court, to appear, plead, act, compromise, withdraw or refer to arbitration for me / us as my / our counsels / advocates in the above noted matter, without any liability for his default and with the authority to engage any other Advocate / Counsel at my / our cost.

The Client / Litigant will ensure his presence before the Court on each and every date of hearing and the counsel would not be responsible if the case is proceeded ex-parte or is dismissed in default of appearance. All cost awarded in favour shall be the right of Counsel or his nominee, and if awarded against shall be payable by me/us.

I / We authorize the said Advocates to withdraw and receive on my / our behalf all sums and amounts payable or deposited on my / our account in the above noted matter.

[Handwritten Signature]

Client

Dated 27th March 2014

Office **ATIQ LAW ASSOCIATES,**
87, Al-Falah Street, Besides State Life Building,
Peshawar Cantt, Phone: 091-5279529
E-mail : zafark.associate@gmail.com

Attested & Accepted (Advocates)

[Handwritten Signatures]

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1581of 2013.

Javed Khan, Naib Tehsildar Petitioner

VERSUS

Senior Member, Board of Revenue..... Respondents

COMMENTS ON BEHALF OF RESPONDENTS NO.1&2

PRELIMINARY OBJECTIONS.

1. That the appeal is barred by law as an employee appointed in Settlement Operation on contract basis cannot claim Seniority over regular Naib Tehsildar of Revenue & Estate Department.
2. The appellant has no locus standi to bring the present Appeal.
3. The appeal is bad for non-joinder/mis-joinder of necessary parties.
4. That the appellant has no cause of action.
5. That the appellant has been estopped by his own conduct to file the present appeal.

ON FACTS

1. No comments pertain to record.
2. Correct to the extent that both the appellants and present respondent No.4 were promoted as Naib Tehsildar in the year, 2006 & 2001 respectively. The orders were challenged in Service Tribunal by M/S Abdul Samad and Hameed Khan Assistant office of the Commissioner, Kohat. On acceptance of their appeals, M/S Abdul Samad and Hameed Khan were promoted as Naib Tehsildar on regular basis while the regular orders of the present appellant and respondent were modified and converted into Acting Charge basis according to judgment of Service tribunal dated 19.05.2008
3. No comments.
4. Correct, however, there was no vacant post of Naib Tehsildar on the share of Ministerial Quota in Kohat Division.
5. No comments.
6. Incorrect. No malafide has been committed as the respondent promoted in the year, 2001, while the appellant Mr. Javed Khan was promoted in the year, 2006. (Annexure A&B). The appellant was required to challenge the same order within stipulated period, which he did not do so and the order got its finality
7. Incorrect. The judgment of Service Tribunal was fully implemented by promoting M/S Abdul Samad and Hameed Khan on regular basis while the order of present appellant and respondent were modified as per judgment of Service Tribunal. So far, seniority of the appellant is concerned; it merits to mention that the respondent was promoted in the year, 2001 while the appellant was promoted in the year, 2006. The appellant had not challenged the order which got its finality. Consequently the respondent was promoted as Tehsildar on the basis of their seniority and now a PMS-17 Officer, but the appellant had not assailed any order at any forum.
8. Incorrect. The representation of the appellant was examined under the rules and rightly rejected.

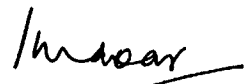
GROUND.

- A. Incorrect. M/S Qaiser Naz etc were promoted through Departmental Promotion Committee on the basis of seniority list of Naib Tehsildar issued for the year, 2008, which was not challenged by the appellant in any forum, therefore; appeal/representation of the appellant examined and rightly rejected.
- B. Incorrect. No discrimination has been done. The officials mentioned in the para were senior and were rightly promoted as Naib Tehsildar.
- C. Incorrect. The appellant has no concern with the seniority of Respondent No.2.
- D. All promotion have been made on the basis of seniority according to law/rules.
- E. Correct, but on his own turn.
- F. Incorrect. The appellant has been treated according to the judgment of Service Tribunal dated 19.05.2008.
- G. Incorrect. Reply has already been given in above paras and preliminary objections.
- H. No comments. However, the respondent seeks permission to advance further grounds at the time of arguments.

In view of the above, the service appeal has no merits and may be dismissed with costs.



Respondent No.3



Respondent No.1 ²⁷⁻³⁻²⁰¹⁴

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA

Service appeal No.1581/2013

Javed Khan, Naib TehsildarPetitioner

Versus

Senior Member, Board of Revenue and others.....Respondents

AFFIDAVIT

I Mir Qasim, Assistant Secretary (Lit:II), Board of Revenue, do hereby solemnly affirm and declare on oath that the contents of the comments are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'able Court.


DEPONENT

(18/4)

OFFICE OF THE COMMISSIONER,
KOHAT DIVISION, KOHAT.

No. 1376-47/AG-I

Dated: 17 April, 2001.

ORDER.

In pursuance of recommendations of DP/SC meeting held on 7th April, 2001, the following officials of subordinate service as defined in rule-2(13)(a) of West Pakistan Tehsildari & Naib Tehsildari Services Rules 1962 read with Govt. Servants (Appointment, Promotion and Transfer) Rules, 1989, are hereby selected/promoted as Naib Tehsildars (BPS-14) on regular basis with immediate effect on usual terms & conditions :-

1. Mr. Amir Muhammad, Kanungo, District Karak
2. Mr. Rahim Dad, Kanungo, District Kohat.
3. Syed Muhammad Qaba Qausain, Assistant DC Office Kohat
4. Mr. Haider Hussain, Assistant, Commissioner's Office, Kohat
5. Mr. Qaisar Naz, Junior Clerk, DC Office Kohat.

The appointment of M/S Syed Muhammad Qaba Qausain, Haider Hussain and Qaisar Naz will be subject to the successful completion of prescribed pre-service Settlement / Revenue training.

They are placed under training for a period of six months and directed to report to Deputy Commissioner, Kohat immediately for under going six months Settlement/Revenue training of equal duration.

(AMJAD NAZIR)
COMMISSIONER,
KOHAT DIVISION, KOHAT.

Encls: No. 1376-47 /AG-I.

Dated Kohat the: 17 April, 2001.

Copy forwarded to the: -

- 1) Secretary, Board of Revenue, NWFP Peshawar.
- 2) Deputy Commissioners, Kohat/Karak/Hangu.
- 3) Political Agents, Kurram/Orakzai.
- 4) District Accounts Officers, Kohat/Karak.
- 5) Officials concerned.
- 6) Office order file.

FOR COMMISSIONER,
KOHAT DIVISION, KOHAT.

100

GOVERNMENT OF N.W.F.P.
REVENUE AND ESTATE DEPARTMENT.

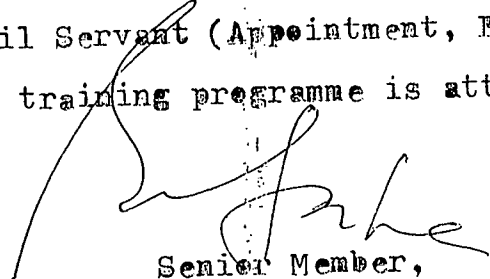
PESHAWAR DATED THE 03/11/2006.

O R D E R

No. 158 /Admn:I/196. In pursuance of Senior Member, Board of Revenue, N.W.F.P. judgement dated 14-12-2005 Mr. Javed Khan-I Junior Clerk D.C.O. Office Kohat is hereby selected as Naib Tehsildar (BS-14) with immediate effect on regular basis on the following terms and condition against Ministerial Quota with immediate effect..

2/ His appointment as Naib Tehsildar will be subject to the successful completion of prescribed training and passing of Kanungo certificate examination within three months after completion of Settlement training.


3/ On appointment/selection he will undergo the requisite training as laid down in the West Pakistan Tehsildari and Naib Tehsildari Training Rules, 1969 for a period of 6 months, after completion of Settlement/Revenue Training shall remain on probation for a period of two years as per provision laid in Para-15(1) of the N.W.F.P. Civil Servant (Appointment, Promotion and Transfer) Rules, 1989. The training programme is attached.


Senior Member,
Board of Revenue, N.W.F.P.

No. 159-67 /Admn:I/196.

Copy forwarded to the :-

- 1- District Officer(R&E)/Collector, Kohat and Chitral.
- 2- Settlement Officer, Chitral.
- 3- Principal Revenue Training Academy Karak.
- 4- Accountant General, NWFP, Peshawar.
- 5- District Accounts Officer, Karak, Kohat & Chitral.
- 6- Budget & Accounts Officer, Board of Revenue, NWFP, Peshawar.
- 7- Official concerned.
- 8- Personal file.
- 9- Office order file.


Secretary,
Board of Revenue, N.W.F.P.

23-5-14



OFFICE OF THE
COMMISSIONER PESHAWAR DIVISION
PESHAWAR

No: Appeal:1581/2013/AR 3611
Dated 24.03.2014

To

The Registrar,
Government of Khyber Pakhtunkhwa,
Service Tribunal, Peshawar.

Subject

APPEAL NO.1581/2013 TITLE JAVED KHAN VS THE SMBR PESH

I am directed to refer to the subject appeal preferred by the Appellant namely Mr. Javed Khan Naib Tehsildar pending before the Hon'ble Service Tribunal, Khyber Pakhtunkhwa and Asking for para-wise comments on the appeal from Respondent No.2(Commissioner Peshawar Division) in which next date of hearing is fixed as 28.03.2014.

In this connection, it is submitted that the Provincial Government has withdrawn powers of posting/transfer/service matters/promotion & seniority of Naib Tehsildars, Tehsildars etc from Divisional Commissioner and assigned to the Board of Revenue, Khyber Pakhtunkhwa. As far as promotion /seniority of the appellant is concerned, it was entertained before revival of Commissioner offices in 2008 by the Board of Revenue. Hence this office has no such record to comment upon in the instant appeal. Rather Board of Revenue, Khyber Pakhtunkhwa is in a better position on the basis of record available with them in the instant appeal of the appellant to offer comments thereon.

Assistant to Commissioner (R/GA)
Peshawar Division Peshawar

No: Appeal:1581/2013/AR

Copy forwarded to the:

1. Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
2. Senior Government Pleader, Service Tribunal Khyber Pakhtunkhwa.
3. PS to Commissioner Peshawar Division.

Assistant to Commissioner (R/GA)
Peshawar Division Peshawar

Put up to the Court
with relevant appeal for
further proceedings.

Reader
concerned

31/3/14

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

P.B. II

No.

Appeal No. *1581* of 20 *13*

Tauqeer Khan Appellant/Petitioner

Versus

The SMBR Pesh. Respondent

Respondent No. *2*

Notice to: *The Commissioner Pesh. Division Pesh*

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration the above case by the petitioner in this Court and notice has been ordered to issue. You hereby informed that the said appeal/petition is fixed for hearing before the Tribunal on *28-3-2014* at 8.00 A.M. If you wish to urge anything against appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by Advocate, duly supported by your power of Attorney. You are, therefore, required to file this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that default of your appearance on the date fixed and in the manner aforementioned, appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in address. If you fail to furnish such address your address contained in this notice which address given in the appeal/petition will be deemed to be your correct address, and future notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide

office Notice No. dated

Given under my hand and the seal of this Court, at Peshawar this *10/11*

Day of *Jan* 20*14*.

AC(R) *Sy*

Sy

Sy
Registrar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No. 1581 /2013

MR. JAVED KHAN

V/S


SMBR, K.P. AND OTHERS.

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3.	Copy of Promotion Order	- B -	06
4.	Copy of Judgment (19.5.2008)	- C -	07-12
5.	Copy of Order (14.3.2009)	- D -	13-14
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APPELLANT
JAVED KHAN

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Appeal No. _____/2013

Mr. Javed Khan, DRA,
Revenue Department, Peshawar.

APPELLANT

VERSUS

1. The Senior Member Board of Revenue, Khyber Pakhtunkhwa,
Peshawar.
2. The Commissioner, Peshawar Division, Peshawar.
3. The Assistant Secretary Establishment, Revenue Department,
Peshawar.
4. Mr. Qaisar Naz, Secretary, RTA, Kohat.

RESPONDENTS

.....

APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST
THE ORDER DATED 22.11.2013 WHEREBY THE APPEAL OF
THE APPELLANT FOR PROMOTION AS NAIB TEHSILDAR
AND THEN TO TEHSILDAR FROM THE DATE WHEN HIS
JUNIOR OF THE APPELLANT WERE PROMOTED HAS BEEN
REJECTED FOR NO GOOD GROUNDS.

.....

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER
DATED 22.11.2013 MAY BE SET ASIDE AND THE
RESPONDENTS MAY BE DIRECTED TO CONSIDER THE
APPELLANT FOR PROMOTION AS NAIB TEHSILDAR AND
THEN TO TEHSILDAR POST FROM THE DATE WHEN HIS
JUNIOR RESPONDENT NO.4 WAS PROMOTED WITH ALL
CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH
THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE
THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

1. That the appellant joined the Revenue Department as Junior Clerk in the year 1985 whereas the respondent No.2 joined the same post in the year 1986, meaning that the respondents No.2 was junior to the appellant. Copy of the Seniority list of the year 2000 of D.C. office Kohat is attached as Annexure-A.
2. That in the year 2006, the appellant was regularly promoted as Naib Tehsildar with the condition of passing exam and training which the appellant did successfully. Copy of promotion order is attached as Annexure-B.
3. That then a dispute arose for the regular promotion to the post of Naib Tehsildar in the year 2006 which went before the KPK Service Tribunal in Appeal No.3/2006. The said dispute was amongst the Abdus Sammad, Hamid Khan, Syed Mohammad Qaba Hussain, Qaiser Naz and the appellant.
4. That the said appeal was decided by the August Tribunal on 19.5.2008 and decided the issue as "The official respondents were legally bound to consider the seniority of appellant and private respondents and to appoint the senior most officials on regular basis while the junior should be appointed on acting charge basis or till the arrival of recommendees of the Public Service Commission. The appeal was partially accepted and the official respondents were directed to sort out the seniority, appoint/promote the senior on regular basis as Naib Tehsildar and the juniors may be regularized as Naib Tehsildar when vacancy are available for them". Copy of the Judgment is attached as Annexure-C.
5. That in the light of the Judgment of the Service Tribunal, the Revenue Department passed an order on 14.3.2009, whereby, Abdus Sammad, Hameed Khan, and Haider Hussain were promoted as Naib Tehsildar on regular basis with effect from 10.4.2001 and 3.1.2006, respectively, while the appellant and respondent No.2 Qaisar Naz promotion order of regular one were modified as on acting charge basis with the condition that the appellant and the respondent No.2 would be considered for regular promotion when vacancies when the vacancies occurred in the quota of Kohat Division. Copy of the order is attached Annexure-D.

By order dated 14.3.2009, the respondent No.2

to the appellant and Haider Hussain was also promoted on regular basis who was already stood promoted on regular basis with effect from 3.1.2006 vide order dated 14.3.2009. Thus the appellant name was omitted from promotion order was due to malafide for not showing vacancy for him. Copy of the Order is attached as Annexure-E.

7. That as the above order was passed in violation of the Judgment of the Tribunal, therefore the appellant went for execution of the Tribunal Judgment through Execution Petition No.121/2009. The said petition was finally heard on 12.10.2013, the Tribunal was kind enough to hold that since the appellant was respondent in main appeal so he can not file Execution Petition, however, if any order affecting his seniority and promotion rights, he may avail other legal remedies available to him under the law. Copy of Tribunal's order is attached as Annexure-F.
8. That after the observation of the Honourable Tribunal, the appellant filed representation before the Respondent No.1 but the same has been rejected for no good grounds on 22.11.2013, hence the present appeal, on the following grounds amongst the others: Copy of Appeal and Rejection Order are attached as Annexure-G and H.

GROUND:

- A) That not considering the appeal of the appellant for promotion as Naib Tehsildar and Tehsildar from the date when his junior were promoted and the rejection order dated 22.11.2013 are against the law, rules, norms of justice and material on record, therefore, not tenable.
- B) That the appellant has been discriminated on the basis of non availability of vacancy, while at the same time, Mr. Mohammad Shoaib, Naik Mohammad, Mohammad Arshad, Zafar Iqbal and Nawab Gul, all junior to the appellant, have been promoted on regular basis after the Judgment of the Tribunal and the appellant has been kept on acting charge till date.
- C) That due to arbitrary in-action of the Revenue Department the appellant's seniority as well as promotion rights have Respondent No 2 is also

D) That the seniority and promotion is vital for all Government Servants and according to the Supreme Court Judgments the same should not be affected by the Department in an arbitrary manner.

E) That the appellant's record is good and no adverse entry communicated to the appellant till date which also proves that the appellant along with training also has good record and fully eligible for promotion as Naib Tehsildar on regular basis.

F) That the appellant has not been treated according to the Judgment of the Tribunal and subsequent order based on the Judgment of the Tribunal.

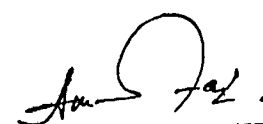
G) That the rejection order dated 22.11.2013 is the total violation of the Judgment of this Honourable Tribunal dated 19.5.2008 as well as observation of the Honourable Tribunal dated 2.10.2013, therefore, not sustainable, otherwise the factors of limitation is not attracted in the matter of pay, pension and promotion.

H) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that the appeal of the appellant maybe accepted as prayed for.


APPELLANT
JAVED KHAN

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.



**OFFICE OF THE
COMMISSIONER PESHAWAR DIVISION
PESHAWAR**

No. WP/Notices/Summons/Vol.III/3673
Dated 26.03.2014

To

**The Deputy Commissioner,
Peshawar.**

Subject: **APPEAL NO. 1085/2012 TITLE IFTIKHAR VERSUS DRO PESHAWAR.**

I am directed to enclose herewith a copy of notice, received from Khyber Pakhtunkhwa, Service Tribunal, Peshawar, wherein the date 31.03.2014 has been fixed for hearing before the Tribunal.

It is therefore, requested that a well versed representative may kindly be deputed to pursue/defend the case on behalf of Commissioner Peshawar Division Peshawar till final decision of the case and provide all possible help/assistance/written statement etc if required to the court.

The representative so authorized, shall also be responsible to get certified copy of judgment/order from the said court whenever, announced and send to quarter concerned for necessary action.

Assistant to Commissioner (Rev/GA)
Peshawar Division Peshawar

No. WP/Notices/Summons/Vol.III/3674-76

Copy forwarded to the:

1. Registrar, Khyber Pakhtunkhwa, Service Tribunal Peshawar.
2. Government Pleader, Khyber Pakhtunkhwa, Service Tribunal, Peshawar.
3. PS to Commissioner Peshawar Division.

Assistant to Commissioner (Rev/GA)
Peshawar Division Peshawar



OFFICE OF THE
COMMISSIONER PESHAWAR DIVISION
PESHAWAR

No. 3637 Reader FCR
Date: 26.03.2014

To

The Director General,
Excise & Taxation,
Khyber Pakhtunkhwa, Peshawar.


Subject: **RECOVERY OF PROPERTY TAX OUTSTANDING AGAINST THE OWNERS OF KARKHANO MARKET.**

I am directed to refer to your letter No. 5734/E&T/Karkhano-Market dated 25.02.2014 on the subject noted above and to ask you to provide list of Association of Karkhano Market to arrange meeting with the association please.


ASSISTANT TO COMMISSIONER (R/GA)
PESHAWAR DIVISION PESHAWAR

No. 3638 Reader FCR

Copy forwarded to PS to Commissioner, Peshawar Division Peshawar.


ASSISTANT TO COMMISSIONER (R/GA)
PESHAWAR DIVISION PESHAWAR



**OFFICE OF THE
COMMISSIONER PESHAWAR DIVISION
PESHAWAR**

No. WP/Notices/Summons/Vol.III/3673
Dated 26.03.2014

To

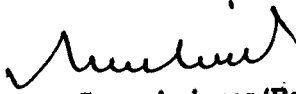
**The Deputy Commissioner,
Peshawar.**

Subject: **APPEAL NO. 1085/2012 TITLE IFTIKHAR VERSUS DRO PESHAWAR.**

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It is therefore, requested that a well versed representative may kindly be deputed to pursue/defend the case on behalf of Commissioner Peshawar Division Peshawar till final decision of the case and provide all possible help/assistance/written statement etc if required to the court.

The representative so authorized, shall also be responsible to get certified copy of judgment/order from the said court whenever, announced and send to quarter concerned for necessary action.


Assistant to Commissioner (Rev/GA)
Peshawar Division Peshawar

No. WP/Notices/Summons/Vol.III/3674-76

Copy forwarded to the:

1. Registrar, Khyber Pakhtunkhwa, Service Tribunal Peshawar.
2. Government Pleader, Khyber Pakhtunkhwa, Service Tribunal, Peshawar.
3. PS to Commissioner Peshawar Division.


Assistant to Commissioner (Rev/GA)
Peshawar Division Peshawar

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 1581/2013

Javed Khan.

VS

Revenue Deptt:

REJOINDER ON BEHALF OF APPELLANT.

R.SHEWETH.

PRELIMINARY OBJECTIONS:

1 – 5. All objections raised by respondents are incorrect and baseless. Rather the respondents are stopped to raise any objection due to their own conduct.

FACTS:

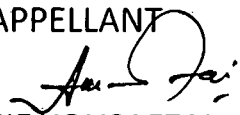
- 1- No comments endorsed by respondents which means that they have admitted para-1 of the appeal as correct.
- 2- Not denied by respondents, so no comments.
- 3- No comments endorsed by respondents which means that they have admitted para-3 of appeal as correct.
- 4- Not denied by respondents so no comments.
- 5- No comments endorsed by respondents which means that they have admitted para-3 of appeal as correct.
- 6- Incorrect while para-6 of appeal is correct. The respondents on one hand showed no vacancy while on the other hand promoted junior one which is malafide on the part of respondents.
- 7- Not replied according to contents of the para-7 of appeal. Therefore para-7 of appeal is correct. More over no order of juniors was ever communicated to appellant therefore the contention of respondents is incorrect.
- 8- Partially admitted correct by respondents. More over the appeal of appellant was not rejected according to law and rules because

not challenging any un-communicated seniority list does not debar the appellant from his rights of promotion according to section 9 of the Civil Servants act.

GROUND:

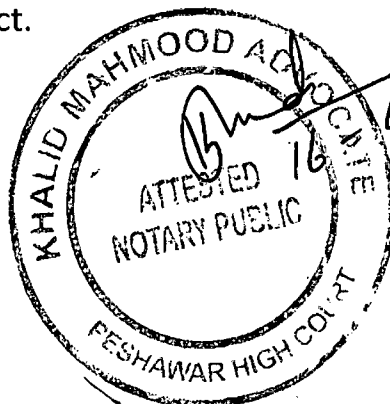
- A- Incorrect while para-A of appeal is correct. More over the appellant cannot be deprived from his rights on the basis of un-communicated seniority list and especially when the appellant's career was in the knowledge of the respondent Deptt:
- B- Incorrect while para-b of appeal is correct.
- C- Not replied accordingly, therefore the contention of respondents Deptt: is incorrect while para-C of appeal is correct.
- D- Incorrect while para-D of appeal is correct.
- E- Admitted correct by respondents so no comments.
- F- Incorrect while p[ara-F of appeal is correct.
- G- Incorrect while para-G of appeal is correct.
- H- Legal.

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

APPELLANT
THROUGH; 
M.ASIF YOUSAFZAI
ADVOCATE.

AFFIDAVIT.

It is affirmed that the contents of appeal and rejoinder are true and correct.




DEPONENT.

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No: 1581 / /2013

Javed Khan

VERSUS

SMBR etc

=====
RESPONDENT NO 4's REPLY
=====

RESPECTFULLY SHEWETH,

Preliminary Objections:

1. The appellant has got no locus standi, much less any cause of action.
2. The appeal in hand is badly time barred, hence liable to be dismissed summarily.
3. The appellant's writ petition No.527/04 and Civil Petition No.735/04 on the same subject mater has already been dismissed.

Para Wise Reply

1. Denied in detail. While disposing of Writ Petition No.527/04 titled "Javed Khan-1 Vs Board of Revenue etc" the Peshawar High Court in its judgment dated 09-03-2004 is held that

"Though Qaisar Naz, respondent No.6, as per the seniority list attached with the writ petition, is junior to the petitioner, yet his appointment is also not open to any exception in the writ jurisdiction of this Court, because the petitioner asserts his right of promotion on account of his seniority but the Rules do not provide selection / promotion of the Naib Tehsildars on the basis of seniority. The relevant provisions of Rule 5 of the West Pakistan Tehsildar and Naib Tehsildari Rules, 1962 provide as under:-

"5. Method of recruitment – (1) Recruitment to the Service shall be made by the following methods:-

I. In the case of Naib Tehsildars – (a) fifty percent of the vacancies shall be filled by initial recruitment; and

(b) the remaining vacancies shall be filled by selection on merit from the subordinate service in the Division where the vacancies occur, preference being given to persons with Settlement experience."

The Minutes of the Departmental Promotion Committee, attached with the comments, indicates that Qaisar Naz, respondent No.6, was considered for promotion because he had successfully completed sensitive tasks assigned to him in a very confidential manner in F.R. Kohat in the best interest of public and administration and that he was the only minority member of the Ministerial staff in Kohat Division. Anyhow, this shows his selection by the Departmental Selection Committee on merits as provided by the Rules but otherwise also we cannot assume the job of the Departmental Selection Committee in writ jurisdiction and, therefore, the same is liable to be dismissed for the reasons stated above.

4. Accordingly, the writ petition in hand is hereby dismissed in limine.

**Sd/ Malik Hamid Saeed
Sd/ Qazi Ihsanullah Qureshi,
Judges"**

Dated: 9.3.2004.

(Copy annexed "R-1".)

The matter of seniority has been settled by the Hon'ble Peshawar High Court Peshawar, which cannot be re-agitated at this belated stage after the passage of 10 years of the said order. The claim of the appellant is incorrect and is liable to be dismissed.

2. Needs no reply.
3. Denied. The matter is settled and does not need any further probe.
4. Needs no reply.
5. Needs no reply.
6. Denied. The order dated 11-06-2006 was not challenged u/s 4(a) of Khyber Pakhtunkhwa Service Tribunal Act, 1974, before the appellate authority and then u/s 4 before the Service Tribunal, Khyber Pakhtunkhwa Peshawar.

The said order is thus gain finality and the present appeal is badly time barred, liable to be dismissed on this account alone.

7. The judgment of Service Tribunal Khyber Pakhtunkhwa Peshawar dated 12-10-2013 in Execution Petition No.121 / 2009, can by no means allow the appellant the condonation of delay. The appellant did not approach the proper forum at the relevant time and hence his appeal merits dismissal.

In addition to above, the petitioner had withdrawn his civil petition No.735 of 2004, from the Supreme Court of Pakistan vide order dated 13-06-2005, to approach the Provincial Service Tribunal for the redress of his grievance. However, the petitioner took more than 8 years to file the present appeal and is badly hit by the law of limitation. **(Copy annexed "R-2")**

8. Denied. The appellant's departmental appeal was correctly rejected.

Reply to the Grounds

All the grounds taken in paras "A to H" are incorrect, baseless assertions, devoid of logic or sense, and liable to be ignored for want of legal justification.

As discussed in paras 1, 6 & 7 above, the matter has been adjudicated by the Hon'ble Peshawar High Court, Peshawar. The appeal in hand is badly time barred and is liable to be dismissed.

In view of the above, the appeal merits dismissal and may be dismissed with cost throughout.

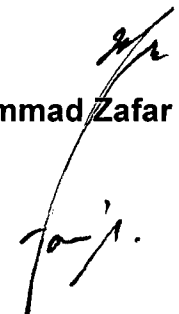


Respondent No.4,

Through:

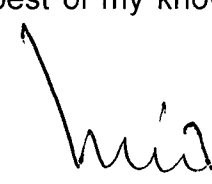
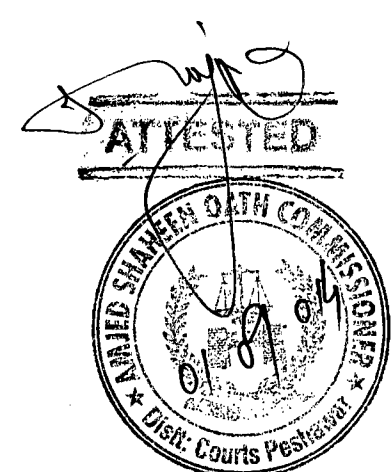
(Muhammad Zafar Tahirkheli)
Advocate

Peshawar, dated:
29th June, 2014



AFFIDAVIT

I, Qaisar Naz, the Respondent No.4, do hereby solemnly affirm and declare on Oath that contents of this reply are true and correct to the best of my knowledge and nothing has been concealed from this Hon'ble Court.


DEPONENT

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

"R"

Javed Khan-I

Javed Khan-I
S/o Mir Ahmad Shah
Presently Reader to EAC-II,
Kohat.



Petitioner

VERSUS

1. Board of Revenue through its Secretary NWFP, Peshawar.
 2. Commissioner Kohat Division, Kohat. *D.C.O*
 3. Deputy Commissioner, Kohat.
 4. Syed Muhammad Qaba Qausain,
 5. Haider Hussain,
 6. Qaisar Naz
- Newly Promoted Naib Tehsildars
C/O Deputy Commissioner,
Kohat.

Respondents

PETITION UNDER ARTICLE 199 OF THE CONSTITUTION
OF ISLAMIC REPUBLIC OF PAKISTAN.

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EXAMINER
Peshawar High Court

Respectfully Sheweth:

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

1. That petitioner who service joined as Junior clerk in the Office of Deputy Commissioner Kohat on 20.05.1985, is Graduate and is presently servicing as Moharrir to EAC-II, Kohat.
2. That Respondent No.4 Syed Muhammad Qaba Qausain, was Assistant in Deputy Commissioner Office Kohat. His date of birth is 19.03.1951 while respondent No.5 Haider Hussain, Assistant Commissioner Office Kohat was junior to the petitioner as Junior Clerk. He superseded petitioner and was promoted as Assistant. Respondent No.6 Qaisar Naz was junior to the petitioner

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**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT**

W.P. No. 527 of 2007
(Motion)

Date of hearing 9/3/2009 **JUDGMENT**
Appellant Javed Khan by Mr. O.M. Anwar Advocate
Respondent None for respondents

MALIK HAMID SAEED, J.- The appointment order dated 10.4.2001 issued by the Commissioner Kohat Division, Kohat, whereby Syed Muhammad Qaba Qausain, Haider Hussain and Qaisar Naz, respondents No. 4 to 6 alongwith two others have been selected/promoted as Naib Tehsildars from the quota of Revenue Staff/Ministerial Staff, has been challenged by Javed Khan, Petitioner in this Writ Petition, on the grounds that Syed Muhammad Qaba Qausain, respondent No.4 was not eligible to be appointed as Naib Tehsildar under the West Pakistan Tehsildari and Naib Tehsildari Service Rules, 1962, being above 50 years of age, which provides the age of a person to be promoted as Naib Tehsildar as less than 50 years on the first January of the year and that the appointment of Haider Hussain and Qaisar Naz, respondents No.5 and 6 is illegal because they were juniors to the petitioner.

2. In the comments, the respondents have denied the assertion of the petitioner and have stated that the appointment of respondents No.4 to 6 has been made strictly in accordance with the Rules and no illegality has been committed by the Departmental Selection Committee in this regard.


3. Perusal of Rule 6 (b) of the West Pakistan Tehsildari and Naib Tehsildari Rules, 1962 provides that no person shall be

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EXAMINER
Peshawar High Court

appointed to the Service unless " in the case of appointment made otherwise, he is less than fifty years of age on the 1st January of the year in which the appointment is made". The seniority list of the Establishment of Deputy Commissioner's Office, Kohat (Annexure:A) reveals that Syed Mohammad Qaba Qausain's date of birth is 19.3.1951. The appointment order was issued on 10.4.2001, hence on age factor was involved in his case up to 31.12.2001 and under the Rules he was entitled to be appointed as Naib Tehsildar. So far as the case of Haider Hussain, respondent No.5 is concerned, not only he is senior to the petitioner in service, but on the date of issuance of the impugned order he was already holding the post of Naib Tehsildar on temporary basis. Though Qaisar Naz, respondent No.6, as per the seniority list attached with the writ petition, is junior to the petitioner, yet his appointment is also not open to any exception in the writ jurisdiction of this Court, because the petitioner asserts his right of promotion on account of his seniority but the Rules do not provide selection/promotion of the Naib Tehsildars on the basis of seniority. The relevant provisions of Rule 5 of the West Pakistan Tehsilidar and Naib Tehsildari Rules, 1962 provide as under:-

"5. Method of recruitment - (1) Recruitment to the Service shall be made by the following methods:-

- I. In the case of Naib Tehsildars - (a) fifty per cent of the vacancies shall be filled by initial recruitment; and
- (b) the remaining vacancies shall be filled by selection on merit from the subordinate service in the Division where the vacancies occur, preference being

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 Peshawar High Court

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given to persons with Settlement experience."

....."

The Minutes of the Departmental Promotion Committee, attached with the comments, indicates that Qaisar Naz, respondent No.6, was considered for promotion because he had successfully completed sensitive tasks assigned to him in a very confidential manner in F.R. Kohat in the best interest of public and administration and that he was the only minority member of the Ministerial staff in Kohat Division. Anyhow, this shows his selection by the Departmental Selection Committee on merits as provided by the Rules but otherwise also we cannot assume the job of the Departmental Selection Committee in writ jurisdiction and, therefore, the same is liable to be dismissed for the reasons stated above.

4. Accordingly, the writ petition in hand is hereby dismissed in limine.

Sd/ Malik Hamid Saeed
Sd/ Qazi Muhammad Qureshi
Judges.

Dated: 9.3.2004.

3/04

Please issue

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Examiner
Peshawar High Court Peshawar
authorised Under Section 75 Acts Ord

4/11/04 Registrar
16/3/04

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Examiner
Peshawar High Court Peshawar
authorised Under Section 75 Acts Ord

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43/05
R2

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Mr. Justice Iftikhar Muhammad Chaudhry
Mr. Justice Hamid Ali Mirza
Mr. Justice Faqir Muhammad Khokhar

CIVIL PETITION NO. 755 OF 2004.

(On appeal against the judgment dated 09-03-2004
passed by the Peshawar High Court, Peshawar, in
Writ Petition No. 527 of 2001)

Javed Khan Petitioner

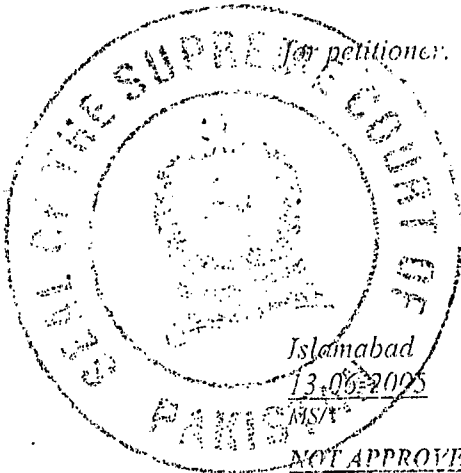
Versus
Board of Revenue & others Respondents.

For the petitioner : Dr. Babar Awan, ASC
Respondents : Not represented.
Date of hearing : 13-06-2005.

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, J.- Learned counsel stated that permission be accorded to him to withdraw instant petition as petitioner contemplates to approach the Provincial Service Tribunal for redressal of his grievance as according to him the Service Tribunal being the competent forum had jurisdiction to determine the eligibility or otherwise of the candidates for the appointment of Naib Tehsildar from the quota of Revenue Staff/Ministerial Staff.

Dismissed as withdrawn in view of the statement of learned counsel



NOT APPROVED FOR REPORTING.

Handwritten signatures and notes in the right margin, including names like 'Mr. Justice Iftikhar Muhammad Chaudhry' and 'Mr. Justice Hamid Ali Mirza'.

Certified to be True Copy

Superintendent
Supreme Court of Pakistan
Islamabad

Handwritten signature and date '13/6/05' at the bottom left.