

10th Nov, 2022

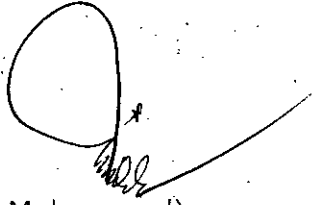
Due to public holiday on account of Allama Iqbal Day, the case is adjourned to 07.12.2022 for the same as before.


Reader

05.09.2022

Clerk of learned counsel for the petitioner present. Mr. Muhammad Riaz Khan Paindakhel Assistant Advocate General for the respondents present.

Reply/comments on behalf of respondents not submitted. Previous date was changed on the strength of Reader's Note, therefore, notices be issued to the respondents for submission of reply/comments. Adjourned. To come up for reply/comments on 03.10.2022 before S.B at Camp Court Swat.


(Mian Muhammad)
Member (E)
Camp Court, Swat


03.10.2022

Nemo for appellant.

Riaz Khan Paindakhel, learned Assistant Advocate General present. Saif Ur Rehman Superintendent for respondent No.4 present. Nemo for remaining respondents.

Representative of respondent No.4 stated that respondent No.4 relies on the reply submitted before the Hon'ble Peshawar High Court which is already placed on file. Notice be issued to appellant and remaining respondents for reply/comments for 09.11.2022 before S.B at Camp Court, Swat.

**SCANNED
KPST
Peshawar**


(Rozina Rehman)
Member (J)
Camp Court Swat


10.05.2022

Learned counsel for the appellant present and submitted an application for permission to deposit of security fee and court process fee, which is placed on file.

Application is accepted. The appellant is directed to deposit security and process fee within 03 working days from today. After the requisite deposit, notices be issued to the respondents for submission of reply/comment on 09.06.2022 before the S.B at Camp Court Swat.

*Rs-700/-
Appellant Deposited
Security & Process Fee*


*A. Hashmi
14/5/22*


(Salah-Ud-Din)
Member (J)
Camp Court Swat

9th June, 2022

Clerk of learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Saif Ur Rehman, Supdt for respondents present.

Written reply/comments not submitted. Representative of the respondents seeks time for submission of written reply/comments report. Last opportunity is given to the respondents for submission of written reply/comments. To come up for written reply/comment on 01.08.2022 before the S.B at camp court Swat.


(Kalim Arshad Khan)
Chairman
Camp Court Swat

1-8-22

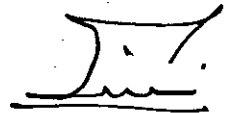
Due to summer vacation the case is adjourned to 5-9-22 for the same.



04.01.2022

Appellant in person present. Preliminary arguments heard.

Points raised need consideration, therefore, the appeal in hand is admitted to regular hearing subject to all just and legal objections. The appellant is directed to deposit security and process fee within 10 days, where-after notices be issued to the respondents for submission of written reply/comments on 07.02.2022 before the S.B at Camp Court Swat.



(Salah-Ud-Din)
Member (J)
Camp Court Swat

07.02.2022

Tour is hereby canceled. Therefore, the case is adjourned to 04.04.2022 for the same as before at Camp Court Swat.



Reader

04.04.2022

Nemo for the appellant. Mr. Riaz Ahmed Paindakhel, Assistant Advocate General present.

Previous date was changed on Reader Note, therefore, notices be issued to the respondents through registered post and to come up for submission of written reply/comments on 10.05.2022 before the S.B at Camp Court Swat.

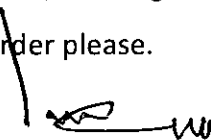

Notice also be issued to the appellant/counsel for the appellant for the date fixed.



(Salah-Ud-Din)
Member (J)
Camp Court Swat

Form- A
FORM OF ORDER SHEET

Court of _____
Case No. 7621 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	20/10/2021	<p>The present appellant initially went in Writ Petition before the Hon'ble Peshawar High Court Mingora Bench/Dar-ul-Qaza Swat and the Hon'ble High Court vide its order dated 05.10.2021 while treating the Writ Petition into an appeal and has sent the same to this Tribunal for decision in accordance with law. The same may be entered in the Institution register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to Touring S. Bench at Swat. Notices be issued to appellant/counsel for preliminary hearing to be put up there on <u>04/01/22</u></p> <p style="text-align: right;"> CHAIRMAN</p>

بعدالت جناب سروس ٹریبونل صوبہ خیبر پختونخواہ کیمپ کورٹ بمقام ضلع سوات

ثانی ملا بنام حکومت

سروس آپیل

درخواست بدیں مراد کہ من سائل نے سماعت کے نسبت رقم / سیکورٹی
تا حال جمع نہیں کی ہے لہذا اس نسبت من سائل کو وقت دیا جاوے۔

جناب عالی! درخواست ذیل عرض ہے۔

- 1- یہ کہ مقدمہ عنوان بالا عدالت حضور میں زیر سماعت ہے۔ جس میں امروز تاریخ پیشی مقرر ہے۔
- 2- یہ کہ سائل ضلع بونیر سے آیا ہوں اور امروز سائل کے پاس رقم موجود نہ ہے اس لئے سیکورٹی کی رقم جمع کرنے سے قاصر ہوں۔
- 3- یہ کہ سائل کو سیکورٹی جمع کرنے میں وقت دیا جائے اس لئے درخواست ہذا کی ضرورت لاحق ہوئی۔
- 4- یہ کہ درخواست ہذا کی منظوری میں کوئی قانونی امر مانع نہ ہے۔

لہذا استدعا ہے کہ بمنظوری درخواست ہذا حسب

متدعیہ احکامات صادر فرمائی جاوے۔

عریضہ

سائل / اپیلانٹ بذریعہ وکیل خود



The
PESHAWAR HIGH COURT
Mingora Bench/Dar-ul-Qaza
Swat

All communications should be
addressed to the Additional Registrar
of this Bench.

Office: 0946-885005
Fax: 0946-885004
E-Mail: darulqazaswat2011@gmail.com

No. 3189 / Writ Petition Branch;

Dated: 15-10-2021

To

The Registrar,
Khyber Pakhtunkhwa Service Tribunal, Peshawar. 091-9212281

Subject: Writ Petition No. 1400-M of 2019

Sani Mula _____ Petitioner

Versus

Govt. of Khyber Pakhtunkhwa & others _____ Respondents

Memo:

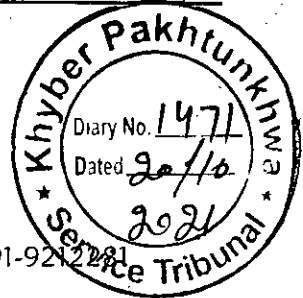
I am directed by the Hon'ble Division Bench of this Court vide judgment dated 05-10-2021 to forward herewith the original grounds of subject Writ Petition alongwith copy of Comments, C.M, Annexures, etc and certified copy of order sheets and judgment for necessary action in the light of judgment dated 05-10-2021.

S. No	Case No with Title.	Pages/ Sheets
01	W.P 1400-M of 2019 Sani Mula Vs Government of Khyber Pakhtunkhwa & others	130 Pages (1-File)

Kindly acknowledge the receipt of this letter along with its enclosures please.

Encl a.a

Additional Registrar
14/10/21



JUDGMENT SHEET

**PESHAWAR HIGH COURT, MINGORA
BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

**W.P. No. 1400-M/2019
With Interim Relief**

**SCANNED
KPST
Peshawar**

JUDGMENT

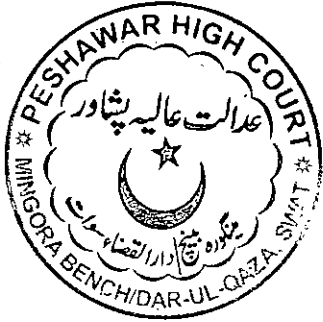
Date of hearing: **05.10.2021**

**Petitioner: - (Sani Mullah) by Syed Abdul Haq,
Advocate.**

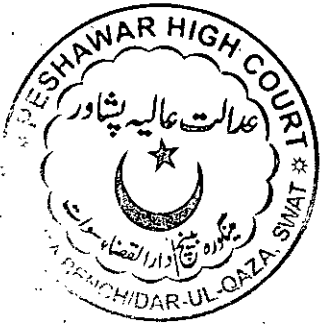
**Respondents: -(Govt: of KPK & others) by Mr.
Haq Nawaz, Astt:A.G and private respondent
No. 5 namely Zahid Tab Gul, in person.**

WIOAR AHMAD, J.- This order is directed to dispose of the petition filed by petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

2. Petitioner has contended in his writ petition that he had earlier filed a writ petition No. 1137-M of 2019 before this Court for his promotion to the post of Kanungo. Petitioner has mainly been aggrieved of promotion of respondent No. 5 namely Zahid Tab Gul due to the reason that he had not only been junior in seniority to the petitioner but he had also declared unfit for promotion by the Departmental Selection Committee (hereinafter referred to as "DPC") in its meeting held on 10.07.2019. According to stance of



the petitioner respondent No. 4 i.e. Deputy Commissioner Buner had granted promotion to other Patwaries of the department i.e. Samir Khan and Bakht Ghafoor Shah in light of this Court judgment dated 26.03.2019 rendered in W.P. No. 1145-M of 2018, who had also been junior to the petitioner in seniority. The petitioner also filed an appeal before the Commissioner Malakand Division for redressal of his grievance but to no avail. Feeling aggrieved from impugned promotion of respondent No. 5, petitioner has filed the instant writ petition with the following prayer;



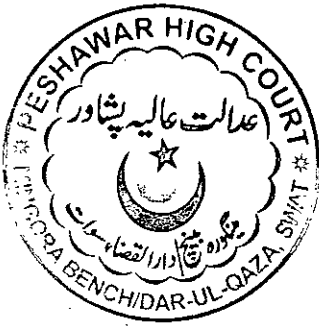
"It is, therefore, humbly prayed on acceptance of this writ petition in the light of aforementioned submissions, this Court issue appropriate writ to the concerned authority to cancel/withdraw the alleged promotion order of respondent No. 5 being illegal, against the spirit of law & issue promotion order of Petitioner being senior."

3. Comments were called from respondents, out of whom respondent No. 4 i.e. Deputy Commissioner Buner has filed his para-wise comments. Respondents have stated in the comments that Patwaries namely Sarmir Khan, Inam Ullah and Bakht Ghafoor Shah had been promoted to the posts of Kanungo in light of this Court judgment dated 26.03.2019 with effect from back date i.e. 13.11.2017, while promotion of

respondent No. 5 was differed till the next DPC. It was further contended that though the petitioner was senior as compared to respondent No. 5 but he had failed to qualify the Kanungo examination held on 13.11.2017, therefore he was not considered from promotion.

4. We have heard arguments of learned counsel for the petitioner, learned Astt: A.G. for official respondents and perused the record.

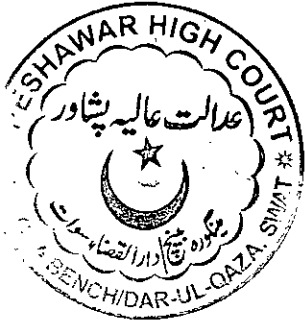
5. Perusal of record reveals that this Court vide its judgment dated 26.03.2019 had issued the following directions;



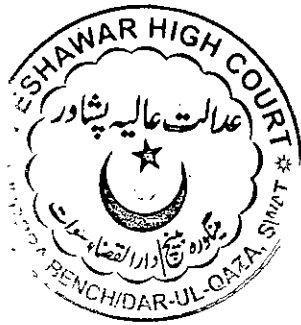
"The upshot of the above discussion is that the decision of the respondents for declaring the petitioners unfit for promotion on the ground of Voluntary Return of ill-gotten amount that too without finalizing the inquiries against them is illegal, hence, calls for interference of this Court in the circumstances. Resultantly, both these petitions are allowed in terms that the respondents shall first finalize the inquiries, if any, against the petitioners and thereafter re-constitute Departmental Promotion Committees by placing the names of the petitioners in accord with their seniority list in the working papers of the officials who are to be promoted or have been promoted out of turn/against the seniority order. In case the number of vacant posts of Kanungo is sufficient enough to absorb the already promoted Patwaris who were junior to petitioners, then the promotion of the juniors already taken place shall not be interrupted, however, in that eventuality the seniority of the petitioners, in case of their promotion, shall remain intact. The Departmental Promotion Committee shall evaluate the candidature of the petitioners strictly in accord with law and relevant rules. Needless to mention that since promotion of the petitioners had been deferred on the ground which

has already been held as illegal in light of the above discussion, so, if the respondents find the petitioners fit for promotion as a result of inquiries, their promotion orders shall be passed from the back date when meetings of the Departmental Promotion Committees were held for the first time in Districts Swat and Buner wherein the petitioners were considered as candidates but they were deferred while their juniors were promoted. Moreover, the promotion orders of the petitioners so passed shall be subject to final decision of the august Supreme Court in Suo Motu Case No. 17/2016.

The DPC has accordingly considered the date of 13.11.2017, on which date the meeting of DPC had been held for the first time in District Swat and Buner and the candidates who had been qualified by said date had been promoted with effect from the given date (claimed to be in according with the judgment of this Court). Petitioner had also been considered for promotion but it had been found that he had not qualified the Kanungo examination held on 13.11.2017. Stance of the petitioner is that at the date of promotion he had been qualified for promotion to the post of Kanungo and therefore he should have been considered for promotion, but it is important to be noted that he had been left behind and had not been promoted for the reason that he had not been having the required qualification on the particular date on which the first meeting of DPC had been held in District Swat and Buner. The department while dropping the petitioner has used the words "unfit for promotion as he has not passed the



Kanungo Examination on 13.11.2017". Though the word unfit has been used but the order as well as comments are clear in this respect that he had in-fact been dropped for not having the requisite qualification at the date of earlier DPC. Dropping a person for lack of the requisite qualification or not fulfilling the essential condition for promotion, is a question relating to eligibility and not to that of fitness. Petitioner has not been found eligible for promotion on the date when the first DPC had taken place. Now that the petitioner has been claiming that he had been eligible on the date of the DPC in which respondent No. 5 has been promoted and that he should have been promoted, is a question which can well be decided by the Khyber Pakhtunkhwa Service Tribunal being a question related to eligibility, in essence. We in the circumstance do not feel inclined to decide the instant petition on merits. While relying upon judgment of the Hon'ble Supreme Court of Pakistan rendered in the case of Muhammad Akram v/s DCO Rahim Yar Khan and others" reported as 2017 SCMR 56, the instant petition is ordered to be converted into service appeal filed before the Khyber Pakhtunkhwa Service Tribunal on the date when the petitioner had filed the instant writ petition before this Court. Office is directed to send the instant



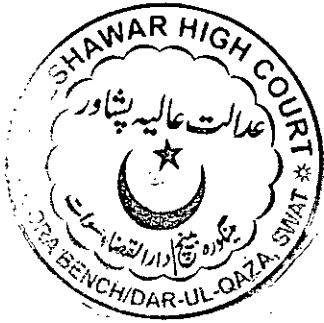
petition to the Registrar Khyber Pakhtunkhwa Service Tribunal for disposal according to law and a copy of same be also retained for the purpose of record.

ANNOUNCED

Dt: 05.10.2021

JUDGE

JUDGE



Certified to be True Copy

[Handwritten Signature]

EXAMINER

Peshawar High Court, Mingora/Dar-ul-Qaza, Swat
Authorized Under Article 07 of Qanoon-e-Shehzad Order

Office
11/10/2021

Nawab (D.B.) Hon'ble Mr. Justice Ishtiaq Ibrahim
Hon'ble Mr. Justice Wiqar Ahmad

BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH
DARULQAZA SWAT

BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH
DAR-UL-QAZA SWAT

C.M. 1212-m -M/2021 IN

W.P 1400-M/2019

SCANNED
KF 31
Peshawar

Sani Mullah.....applicant/Petitioner

VERSUS

Govt of KPK and others Respondents

INDEX

S.NO	DESCRIPTION	ANNEXURE	PAGES
1.	Copy of Application alongwith		1 - 2
2.	Copy of order Sheet		3 - 8

Applicant/Petitioner through Counsel



SYED ABDUL HAQ
HIGH COURT DARULQAZA
BAR ROOM SWAT
Cell No 03110950959

(1)

**BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH
DAR-UL-QAZA SWAT**

C.M. 1212- -M/2021 IN

W.P 1400-M/2019

**SCANNED
KPST
Peshawar**

Sani Mullah.....applicant/Petitioner

VERSUS

Govt of KPK and others Respondents

APPLICATION FOR EARLY FIXATION OF THE CASE

Respectfully Sheweth;

The facts of the instant application are, as under.

1. That initially applicant filed writ petition bearing NO. 1137-M/2019 wherein during pendency of the said writ the Junior Most was promoted to the post of *Kanoongu* so the applicant with the permission of this honourable Court filed another writ petition bearing No. 1400-M of 2019, wherein comments have submitted by the contesting respondents.
2. That the applicant petitioner is going to be retired in the 1st week of September, 2021 so if the applicant/petitioner got retired then the purpose of the writ petition ibid

would become infructuous and the applicant/petitioner would be entered to the new round of litigation.

- 3. That at the moment one post of Kanoongu is lying vacant and the applicant/petitioner is the sole candidate to be promoted, so the case may kindly be fixed at earliest.

It is, therefore, humbly prayed that on acceptance of this application the main writ petition be fixed before his retirement

Applicant/petitioner
Through
Counsel

(Signature)
SYED ABDUL HAQ,
Advocate, Supreme Court
03110950959

AFFIDAVIT

I Sani Mullah Son of Haji Mullah Resident of Dewana Baba District Buner , do hereby solemnly affirm and declare on oath that all the contents of the above application are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this honourable Court.

(Signature)
Sani Mullah

(Signature)
ADVOCATE


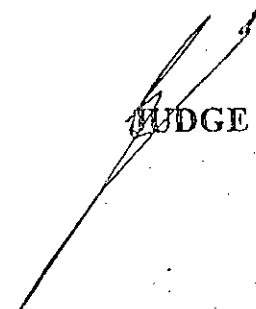

CNIC# 1501-0419146-5

PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA), SWAT

FORM OF ORDER SHEET

Court of

Case No..... of.....

	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
	14-01-2020	<p><u>W.P No. 1400-M/2019 with Interim Relief</u></p> <p>Present: Clerk of learned counsel on behalf of the petitioner.</p> <p>Mr Wilayat Ali Khan, A.A.G for the respondents.</p> <p>*****</p> <p>Let the respondent No. 4 be put on notice to file his para-wise comments within a period of fortnight. The learned A.A.G present in Court in some other cases also accepts notice of this petition, who shall procure comments of the respondent No. 4 within the aforesaid period.</p> <p style="text-align: right;"> JUDGE</p> <p style="text-align: right;"> JUDGE</p> <p style="text-align: center;"></p>

(4)

PESHAWAR HIGH COURT; MINGORA BENCH
(DAR-UL-QAZA), SWAT

FORM OF ORDER SHEET

Court of

Case No..... of.....

Serial No. of order or proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary
1	2	3
	09.02.2021	<p><u>W.P 1400-M/2019 With Interim Relief</u></p> <p>Present: <i>Syed Abdul Haq, Advocate for Petitioner.</i></p> <p><i>Mr. Razauddin Khan, A.A.G for Respondents.</i></p> <p style="text-align: center;">***</p> <p>Adjourned to a short date in office. To come up alongwith connected W.P 1137-M/2019.</p> <p style="text-align: right;"><i>[Signature]</i> JUDGE</p> <p style="text-align: right;"><i>[Signature]</i> JUDGE</p> <p style="text-align: center;"><i>[Signature]</i></p>

Office
11/2

Alim ullah*




(D.B)

HON'BLE MR. JUSTICE ISHTIAQ IBRAHIM
HON'BLE MR. JUSTICE WIQAR AHMAD

PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA), SWAT**FORM OF ORDER SHEET**

Court of

Case No..... of.....

1	Date of Order or Proceedings 2	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary. 3
	03-03-2020	<p><u>W.P No. 1400-M/2019 with Interim Relief</u></p> <p>Present: <i>Syed Abdul Haq, Advocate for the petitioner.</i></p> <p><i>Mr. Wilayat Ali Khan, A.A.G along with Saif-ur-Rahman Superintendent of the Deputy Commissioner Buner in person.</i></p> <p>*****</p> <p>The latter seeks further time to file comments on behalf of the respondent No. 4. May do so positively within next fortnight. Adjourned to 05.05.2020.</p> <p style="text-align: right;"> JUDGE</p> <p style="text-align: right;"> JUDGE</p> <p style="text-align: center;"></p>


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PESHAWAR HIGH COURT, MINGORA BENCH
(DAR-UL-QAZA), SWAT

FORM OF ORDER SHEET

Court of

Case No..... of.....

Serial No. of order or proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
1	2	3
	05.05.2020	<p><u>W.P 1400-M/2019 with Interim Relief</u></p> <p>Present: Syed Abdul Haq, Advocate for the Petitioner.</p> <p>Mr. Wilayat Ali Khan, A.A.G for the official Respondents.</p> <p>Respondent No.5 in person.</p> <p style="text-align: center;">***</p> <p>The learned A.A.G states that they have filed comments today. However, the said comments are not available on file. The office shall place on file the comments. The petitioner would be at liberty to file rejoinder within a fortnight, if so advised. The respondent No.5 present before the Court states that he does not want to engage a counsel and will rely on the arguments of the learned A.A.G. Adjourned 29.06.2020.</p> <p style="text-align: right;">7 S... <u>JUDGE</u></p> <p style="text-align: right;"> <u>JUDGE</u></p>

Sabz Ali/

(D.B)

HON'BLE MR. JUSTICE SYED ARSHAD ALI
HON'BLE MR. JUSTICE WIQAR AHMAD

Handwritten signature

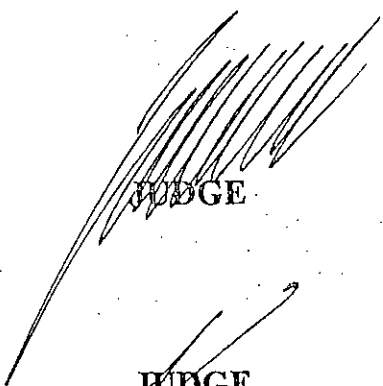
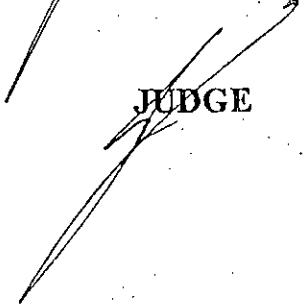

PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA), SWAT

7

FORM OF ORDER SHEET

Court of

Case No..... of.....

1	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
1	2	3
	30-09-2020	<p><u>C.M No. 1246-M/2020</u> <u>In W.P 1400/2019</u></p> <p>Present: Syed Abdul Haq, Advocate for the petitioner.</p> <p>*****</p> <p><u>ISHTIAQ IBRAHIM, J.-</u> Through this C.M, petitioner seeks early hearing of the main writ petition.</p> <p><u>2.</u> As the case is matured for arguments and the petitioner is going to be retired in near future, therefore the application in hand is allowed and office is directed to fix the main writ petition in the 1st week of November, 2020.</p> <p><u>Announced</u> <u>Dt: 30.09.2020</u></p> <p style="text-align: right;">  JUDGE  JUDGE  </p>

07/10
01/10

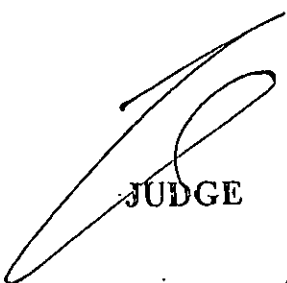
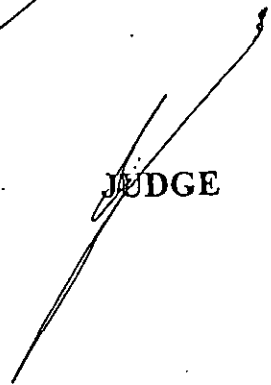

PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA), SWAT

FORM OF ORDER SHEET

8

Court of

Case No..... of.....

1	Date of Order or Proceedings 2	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary. 3
	03-11-2020	<p><u>W.P No. 1400-M/2019 with Interim Relief</u></p> <p>Present: Clerk to learned counsel for the petitioner.</p> <p>Mr. Razauddin Khan, A.A.G for the official respondents.</p> <p>*****</p> <p>As the lawyers' community is observing strike, therefore this case could not be heard. Adjourned to a short date in office.</p> <p style="text-align: right;">  JUDGE </p> <p style="text-align: right;">  JUDGE </p> <p style="text-align: right;">  </p>

Office
04/11

BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH
DAR-UL-QAZA SWAT

C.M. 1246 -M/2020 IN

Writ Petition No. 1400-M of 2019

Sani Mullaapplicant/Petitioner

VERSUS

Govt of KPK and others Respondents

APPLICATION FOR EARLY FIXATION OF THE CASE
ON THE GROUND THAT THE OFFICIAL
RESPONDENT HAS SUBMITTED THEIR COMMENTS
& THE INSTANT MATTER IS SUBJUDICE BEFORE
THIS HONOURABLE COURT SINCE 2019.

Respectfully Sheweth;

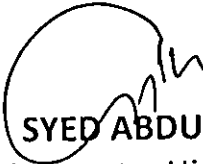
The facts of the instant application are, as under.

1. That the Petitioners initially filed writ petition bearing NO. 1137-M/2019 for the purpose of promotion. However, during the pendency of the same writ petition in spite of notice promoted the private respondents (junior then applicant/Petitioner), so the applicant/Petitioner filed the afresh Writ Petition Bearing No. 1400-M of 2019 in which the last date of hearing was 29.06.2020. (copy of last order sheet in W.P 1400-M/2019 is attached).

2. That the official respondent submitted their comments on 21.03.2020 & the case is ripe, furthermore the applicant/petitioner is going to be retired in near future, so as per demand of propriety this case may graciously be fixed early as possible.

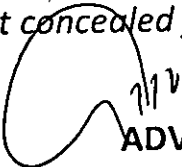
It is, therefore, humbly prayed that keeping in view the aforesaid submission the cases may please be fixed as its earliest.

Applicant/petitioner
Through
Counsel


SYED ABDUL HAQ,
Advocate, High Court
03110950959

AFFIDAVIT

I Syed Abdul Haq Advocate for applicant/Petitioner, do hereby solemnly affirm and declare on oath that all the contents of the above application are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this honourable Court.


ADVOCATE

**BEFORE THE PESHAWAR HIGH COURT, MINGORA BENCH /
DAR-UL-QAZA SWAT**

Writ Petition No. 1400-M/2019.

Sani Mullah.....Petitioner.

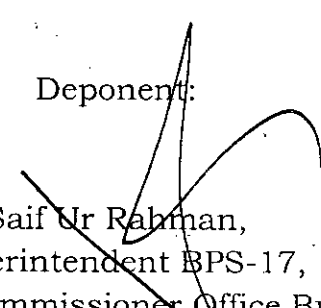
Versus

1. Government of Khyber Pakhtunkhwa Board of Revenue & Estate Department.
2. Senior Member, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
3. Commissioner, Malakand Division.
4. Deputy Commissioner, Buner.
5. Zahid Tab Gul Patwari.....Respondents.

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Deponent:


Saif Ur Rahman,
Superintendent BPS-17,
Deputy Commissioner Office Buner,
CNIC No. 15101-5155027-7.

①

**BEFORE THE PESHAWAR HIGH COURT, MINGORA BENCH /
DAR-UL-QAZA SWAT**

Writ Petition No. 1400-M/2019.

Sani Mullah.....Petitioner.

Versus

1. Government of Khyber Pakhtunkhwa Board of Revenue & Estate Department.
2. Senior Member, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
3. Commissioner, Malakand Division.
4. Deputy Commissioner, Buner.
5. Zahid Tab Gul Patwari.....Respondents.

Affidavit.

I, Saif Ur Rahman Superintendent Deputy Commissioner Office Buner, do hereby solemnly affirm and state on oath that the contents of these comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this august court.

Deponent:

Saif Ur Rahman,
Superintendent BPS-17,
Deputy Commissioner Office Buner,
CNIC No. 15101-5155027-7.

2

**BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH /
DAR-UL QAZA SWAT**

Writ Petition No. 1400-M/2019.

Sani Mullah.....Petitioner.

Versus

1. Government of Khyber Pakhtunkhwa Board of Revenue & Estate Department.
2. Senior Member, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
3. Commissioner, Malakand Division.
4. Deputy Commissioner, Buner.
5. Zahid Tab Gul Patwari.....Respondents.

Parawise Reply on Behalf of the Respondent 4.

Preliminary Objections:

1. The Petition has no grounds.
2. The Petitioner has not come to the court with clean hands.
3. The Petitioner has tried to conceal facts from the honourable court.
4. The subject matter of the petition is beyond the jurisdiction of this court.

Facts:

1. Correct to the extent of the petitioner's filing Writ Petition No. 1137-M of 2019 and the directions of the honourable court to the Respondent No. 4 for filing parawise comments which have accordingly been submitted (Annexure -A). The rest denied.
2. Denied. The Respondent No. 5 was promoted to the post of Kanungo in compliance with the orders of this honourable court in its judgment dated 26.03.2019 announced in Writ Petition No. 1145-M/2018 (Annexure-B). The pertaining words of the judgment said: "-----, so, if the respondents find the petitioners fit for promotion as a result of inquiries, their promotion orders shall be passed from the back date when the meeting of the Departmental Promotion Committees were held for the first time in Districts Swat and Buner wherein the petitioners were considered as candidates but they were deferred while their juniors were promoted. Moreover, the promotion orders of the petitioners so passed shall be subject to final decision of the august Supreme Court in Suo Moto Case No.17/2016 and as per the rules". Accordingly, 03 Patwaris namely Mr. Sarmir Khan, Mr. Inam Ullah and Mr. Bakht Ghafoor Shah (Petitioners in W. P. No. 1145-M/2018) were promoted to the post of

Kanungo on 13-11-2017 while the promotion of the fourth petitioner in the petition *ibid* i.e. Respondent No. 5 was deferred till next DPC. The petitioner though senior to the Respondent No. 5 as Patwari, stood ineligible for promotion to the post of Kanungo on 13.11.2017 i.e. the back date when the meeting of the DPC was held for the first time in District Buner. In further compliance, the respondent No. 5 was promoted to the post of Kanungo on 11-12-2019 (Minutes of the DPC Meeting dated 11-12-2019 annexed as C).

- 3. Denied. The private respondent though junior to the petitioner as Patwari was considered for promotion to the post of Kanungo on the basis of the order of this honourable court in its judgment dated 26.03.2019 announced in Writ Petition No. 1145-M/2018 (Annexure-B).
- 4. Denied. Please refer to the above paras.
- 5. Correct to the extent of seniority position in the Seniority List of Patwaris. As for the rest, please refer to Para no. 3.
- 6. Denied. Since the promotion of the respondent No. 5 was ordered in compliance with the court judgment annexed as "B", the petitioner stood ineligible for promotion on 13-11-2017 as by the time, he was not able then to qualify his Departmental Examination for the post of Kanungo.
- 7. Correct. Pertains to the record.
- 8. Correct. Pertains to the record.
- 9. Denied. Instead three Patwaris namely Mr. Sarmir Khan, Mr. Bakht Ghafoor Shah & Mr. Inam Ullah were promoted to the post of Kanungo. The petitioner stood ineligible for promotion as he had not passed his Departmental Examination for the post of Kanungo. Please refer to the (Annexure-C).
- 10. Correct. The appeal was dismissed in full observance of the law.
- 11. Denied. The petitioner had no grounds to file the current petition. As for the rest, please refer to the above paras.

Grounds:

- A. Denied. The petitioner was ineligible for promotion to the post of Kanungo on 13-11-2017 from which date, the promotion of the Respondent No. 5 was ordered. For the rest, please refer to the paras above.

- 4
- B. Strongly denied. Everything regarding the promotions has been made in full accordance with the law and in compliance with the judgment of this honourable court. No favouritism or nepotism has been observed during the process rather the rules obeyed fully.
 - C. The ground appears to be in disproportion with the facts put forth earlier by the petitioner or the compilation of the ground has been done in haste i.e. the promotion of Respondent No. 5 has already been ordered. Please refer to the *Facts 1, 2 & 3.*
 - D. Denied. There were no legal grounds which could bar the promotion of respondent No. 5.
 - E. Denied. There are no legal grounds on which the petitioner can proceed.

It is therefore requested that since the petitioner has challenged the very compliance of this court been done in the promotion process ibid and the petition being illegal with no grounds to proceed, it may be dismissed with cost.



Deputy Commissioner, Buner.

(Respondent No. 4).

**Deputy Commissioner
Buner**

5

BEFORE THE PESHAWAR HIGH COURT, MINGORA BENCH
DAR-UL-QAZA SWAT.

Writ Petition No. 1137-M/2019.

Sani Mullah.....Petitioners.

Versus

1. Secretary, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
2. Senior Member, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
3. Commissioner, Malakand Division.
4. Deputy Commissioner, Buner.
5. Zahid Tab Gul Patwari.....Respondents.

Parawise Reply on Behalf of the Respondent No 4.

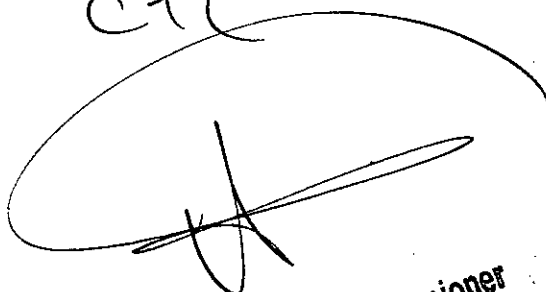
Preliminary Objections:

1. The Petition has no grounds.
2. The Petitioner has not come to the court with clean hands.
3. The Petitioner has tried to conceal facts from the honourable court.
4. The subject matter of the petition is beyond the jurisdiction of this court.

Facts:

1. No comments. Pertains to the record.
2. Correct to the extent of appointment as Patwari.
3. Denied. Mr. Sarmir Khan and Mr. Bakht Ghafoor Shah were promoted to the posts of Kanungo in compliance with the orders of this honourable court in its judgment dated 26.03.2019 announced in Writ Petition No. 1145-M/2018. The very words of the judgment said: "-----, so, if the respondents find the petitioners fit for promotion as a result of inquiries, their promotion orders shall be passed from the back date when the meeting of the Departmental Promotion Committees were held for the first time in Districts Swat and Buner wherein the petitioners were considered as candidates but they were deferred while their juniors were promoted. Moreover, the promotion orders of the petitioners so passed shall be subject to final decision of the august Supreme Court in Suo Motu Case No.17/2016 and as per the rules". Since the petitioner stood ineligible for promotion to the post of Kanungo on 13.11.2017, as ordered in the judgment ibid, he was not considered for promotion despite his seniority as Patwari hence the rest.
4. Correct to the extent of seniority position. The rest, please refer to Para-3 above.

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Deputy Commissioner
Buner

5. Pertains to the rules on the eligibility criteria for promotion to the post of Kanungo. 6
6. Correct. Pertains to the record.
7. Correct. Pertains to the record.
8. Denied. The promotion was given in compliance with judgment of this honourable court which ordered to promote the employees in question from 13.11.2017. At that very time, the petitioner stood ineligible for promotion for the fact that he had not passed the Kanungo Examination then i.e. he cleared the Kanungo Examination on 01.03.2019.
9. Correct. The appeal was dismissed in full observance of the law.
10. Denied. The petitioner had no grounds to file the current petition.

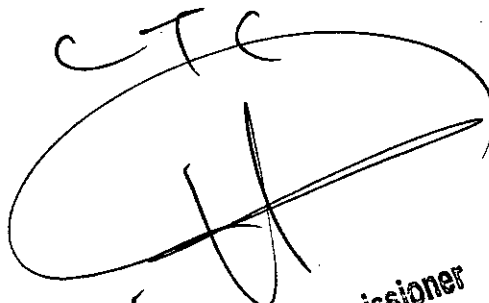
Grounds:

- A. Denied. Please refer to Paras 3 & 8 above.
- B. Strongly denied. Everything regarding the promotions has been made in full accordance with the law and in compliance with the judgment of this honourable court. No favouritism or nepotism has been observed during the process rather the rules obeyed fully.
- C. Denied. A ground pre-mature. All the official procedures are law-bound and promotions as such are made after observing law on the subject minutely hence no favouritism or malafide has been committed.
- D. Denied. There are no legal grounds on which the petitioner can proceed.

It is therefore requested that since the petitioner has challenged the very compliance of this court been done or to be done in the promotion process and the petition being illegal with no grounds to proceed, it may be dismissed with cost.


Deputy Commissioner, Buner.

(Respondent No. 4).

CTC

**Deputy Commissioner
Buner**

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

(1) W.P No. 1145-M/2018
With Interim Relief (N)

Sarmir Khan and 03 others

(Petitioners)

Versus

Deputy Commissioner, Buner and 05 others.

(Respondents)

(2) W.P No. 1247-M/2018
With Interim Relief (N)

Mir Afzal Khan and 05 others

(Petitioners)

Versus

Deputy Commissioner, Swat and 11 others

(Respondents)

Present:

*Mr. Shams-ul-Hadi, Advocate for the
petitioners.*

*Mr. Wilayat Ali Khan, A.A.G. for official
respondents.*

Date of hearing: 26.03.2019

JUDGMENT

MUHAMMAD GHAZANFAR KHAN, J.- The instant writ petition and the connected Writ Petition No. 1247-M/2018, having common questions of law and facts, are decided through this single judgment.

Petitioners in the instant petition namely

Sarmir Khan and others are Senior Patwaris in Revenue Estate Buner and presently performing

their duties against the posts of "Girdarwar/Field

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[Signature]
**Deputy Commissioner
Buner**
[Signature]

8

Kanungo". According to the narrations in the writ petition, the Board of Revenue directed the revenue authorities to execute Registries instead of mutations, however, later on the order was cancelled and, as per assertions of the petitioners, the cancellation order was not communicated to them in time, hence, they kept on levying 2.5 % as Registration Fee for some days. It is noteworthy that Mutation fee was 2% while Registration fee was 2.5%, as such, 0.5% fee in excess was being collected during that period due to cancellation of the former order. On getting knowledge about this issue, the NAB authorities directed all the District Collectors of the Province to recover 0.5% arrears from the revenue officers who have charged the amount in excess, failing which proceedings under the NAB Ordinance will be initiated against them, so, the petitioners and other revenue staff deposited the mentioned arrears in compliance with the directions of Secretary Revenue/SMBR Khyber Pakhtunkhwa. On 24.10.2016, the august Supreme Court of Pakistan in Suo Moto Case No. 17/2016 directed the Chief Secretaries of the provinces to initiate departmental proceedings against those

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Deputy Commissioner
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revenue officials who have voluntarily returned the embezzled amount under section 25 (a) of the NAB Ordinance. According to the petitioners, in response to the notices issued to them by high ups of the Revenue Department in 2003, they explained that neither they were charged under the provisions of the NAB Ordinance nor the NAB authorities had asked them through notice for voluntary deposit of the amount, so, no further proceedings were initiated against them. The petitioners have further asserted in the writ petition that during proceedings before the apex Court, a Departmental Promotion Committee was constituted on 13.11.2017 and they were hopeful for their promotion to the posts of "Field Kanungo" but vide order dated 13.11.2018 the process of their promotion was deferred on the ground of pendency of Suo Moto NAB case, however, their seniority was kept intact for future meeting of DPC. The petitioners, being aggrieved of the order dated 13.11.2017, approached the respondents through application on which an inquiry was conducted in the light of which they were exonerated from the charges of voluntarily return of amount to NAB authorities. Thereafter, the

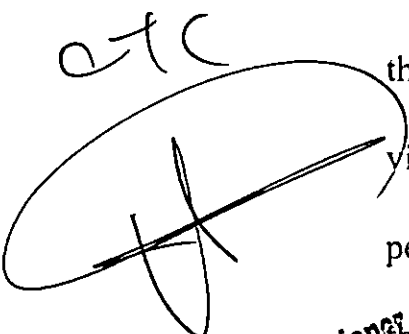
CTC

Deputy Commissioner
Buner

petitioners approached the concerned quarters for their promotion on some vacant posts of "Filed Kanungo" in Revenue Estate Buner but they were informed that their promotion cannot be made due to pendency of Suo Moto case before the apex Court, so, they challenged the actions and inactions of the respondents before this Court through Writ Petition No. 1049-M/2018 which was allowed vide judgment dated 13.11.2018 with directions to respondents to consider the petitioners for promotion according to law and rules. Now grievance of the petitioners is that the respondents vide order dated 23.11.2018 not only declared them unfit for promotion but their promotion was also further deferred. The petitioners time and again requested the respondents for withdrawal of the above said order but in vain, hence, the instant writ petition.



3. The petitioners Mir Afzal Khan and others in the connected W.P No. 1247-M/2016, who are officials of Revenue Estate Swat, have almost the same case. Their promotion was also deferred vide order dated 11.12.2017 on the ground of pendency of Suo Moto NAB case; later on when they approached the respondents for their promotion

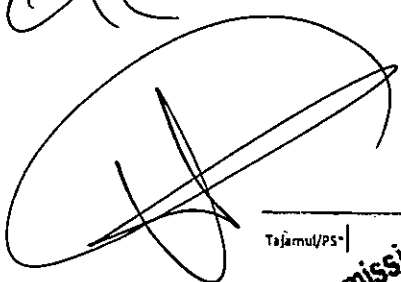
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Deputy Commissioner
Buner
T-14/PS-1

to some vacant posts of "Field Kanungo" in Revenue Estate Swat, they were declared unfit for promotion vide order dated 10.12.2018 besides their promotion was further deferred on the ground that their names are in VR list and inquiries are pending against them. The petitioners have alleged that surprisingly Respondent No.5 namely Mumtaz Ahmad was promoted despite the fact that his name was also mentioned in V.R list and inquiry was also pending against him. Being aggrieved, they have invoked the constitutional jurisdiction of this Court through W.P No. 1247-M/2018.



4. The petitioners in their respective writ petitions have prayed that the proceedings of Departmental Promotion Committees may be declared as illegal and the respondents be directed to promote the petitioners to the posts of "Filed Kanungo/ Girdawar" or reconstitute the DPC for filling the said vacant posts. They also prayed for any other remedy which this Court deems appropriate.

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Tajamu/PS-
**Deputy Commissioner
Buner**

DB: Hon'ble Mr. Justice Muhammad Ghazanfar Khan
Hon'ble Mr. Justice Syed Arshad Ali
(W.P No. 1145-M of 2018 Saimk Khan and 03 others Vs. Deputy Commissioner, Buner and 05 others)

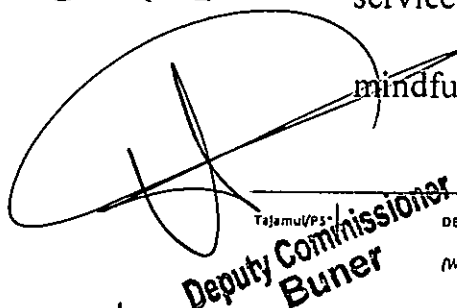
5. We have heard the arguments of learned counsel for the parties and gone through the record in light of their valuable assistance.

6. First of all, we would take up C.M No. 1619-M of 2018 in W.P No. 1145-M/2018 whereby the petitioners have sought permission for placing on file certain documents annexed with the application. Since the documents attached with the application are official record having direct nexus with the issue involved in these writ petitions, therefore, the C.M is allowed and the documents annexed with the application are considered as part and parcel of the instant writ petition.



7. Main grievance of the petitioners is that their promotion was deferred by respondents on the ground that they are involved in Voluntary Return of ill-gotten money under Section 25 (a) of the National Accountability Ordinance, 1999 which, according to order dated 24.10.2016 of the august Supreme Court in Suo Motu Case No. 17/2016, falls within the definition of "misconduct" under the service law and calls for disciplinary action. We are mindful of the bar contained in Article 212 of the

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Tajamul/PS
Deputy Commissioner
Buner

Constitution of the Islamic Republic of Pakistan, 1973 qua jurisdiction of this Court in the matters falling in terms and conditions of a civil servant, but, in essence, it is not a pure and simple case of promotion rather the petitioners have challenged the legality of the ground on which they were held as unfit for promotion. It is an admitted fact on the record that promotion of the petitioners has been withheld on the sole ground that they had returned voluntarily the ill-gained amounts under the NAB Ordinance which is the main issue involved in these petitions. The question arising at this juncture is that as to whether the Service Tribunal has got the exclusive jurisdiction to adjudicate upon the said particular issue or it is open for the High Court under Article 199 of the Constitution to entertain the matter by giving directions to respondents to act in accord with law. The answer to above question, in our opinion, is that the issue, in view of its peculiar nature, does not fall within the terms and conditions of the respondents, hence, calls for interference of this Court to adjudge the legality of withholding the petitioners' promotion on the mentioned ground. In other words, the respondents have declared the

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**Deputy Commissioner
Buner**

petitioners as unfit for promotion because of their involvement in Voluntary Return of ill-gotten amounts against which an appeal is not competent before the Service Tribunal in view of Proviso (b) (i) to Section 4 of the Khyber Pakhtunkhwa Service Tribunals Act, 1974 which reads.

"4. Any civil servant aggrieved by any final order, whether original or appellate made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him or within six months of the establishment of the appropriate Tribunal, whichever is later, prefer an appeal to the Tribunal having jurisdiction in the matter:

Provided that ----

- (a) -----
- (b) no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining-
 - (i) 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 :or
 - (ii) -----"

In such scenario, this Court has got the jurisdiction to entertain the instant petitions under Article 199 of the Constitution.

8. Reverting to the issue involved in these writ petitions, as discussed earlier, the august Supreme Court of Pakistan in Suo Motu Case No. 17/2017 observed that Voluntary Return of ill-gotten amount by a civil servant falls within the

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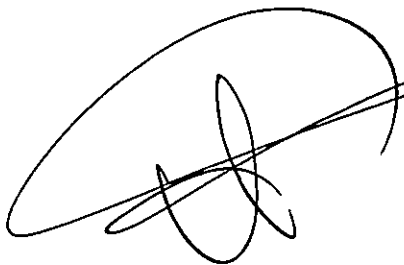
 Deputy Commissioner
 Buner

definition of "misconduct" which calls for disciplinary action under the service law. Since, the petitioners had also returned voluntarily certain amounts to NAB under Section 25 (a) of the NAB Ordinance, so, the respondents deferred their promotion on this sole ground. In this regard, first of all it is necessary to know the background and purpose of the above referred SMC No. 17/2016 which has been well highlighted by the apex Court in Para-2 of order dated 24.10.2016 which is reproduced for ready reference.

2. The Court also noticed that in terms of Section 25(a) of the Ordinance, the NAB authorities after issuance of call up notices suggest to the accused that they may opt to come forward with the offer of voluntary return of the amounts that have allegedly been acquired or earned illegally by them. Section 25 (a) (ibid) empowers the Chairman, NAB, to accept such voluntary returns made by the accused persons, the amount is deposited with NAB in installments at the discretion of the Chairman, NAB. Alarming, on payment of certain portion of the amount, such person is given clean chit by the NAB to rejoin his job. The frequent exercise of powers under Section 25 (a) (ibid) by the NAB on one side has multiplied the corruption usurping the



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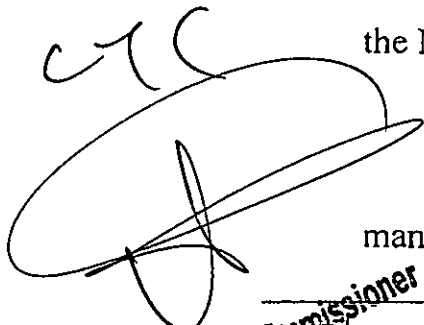


Deputy Commissioner
Buner

jurisdiction of the F.I.A and Anti-Corruption agencies and defeated the object of the Ordinance on the other hand. In this regard the matter was referred by a Bench of this Court to the Hon'ble Chief Justice of Pakistan, for examining the vires of Section 25(a) (ibid) vis-à-vis un-bridled powers of the Chairman, NAB to accept the offer of voluntary return from a person regardless of the size of the amount by any mode adopted at his discretion which falls within the domain of the judiciary.

The above observations contained in the order clearly manifests the aim of the Hon'ble apex Court i.e examining the vires of Section 25 (a) of the Ordinance ibid as well as the uncontrolled powers of the Chairman NAB while accepting the voluntary return of illegally gained money from accused. Undoubtedly, no independent case under the NAB Ordinance is pending against the petitioners neither before the NAB nor before the apex Court rather notice of an alarming issue has been taken in the Suo Motu case which has disturbed the entire scheme of the NAB Ordinance.

The nature as well as the mode and manner in which the excess amount was charged by


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petitioners and other Patwaris has already been discussed earlier. When the NAB authorities took notice of the excess amount received by revenue staff including the present petitioners in both the cases, a meeting was held in the office of Senior Member, Board of Revenue, Khyber Pakhtunkhwa on 30.04.2003 which decided to start recovery of the excess amount from concerned Revenue Staff. Minutes of the said meeting were circulated by Secretary Board of Revenue vide letter bearing Endst: No. 6687-6715/10-1/TOSD/2003 dated 03.05.2003 consequent upon which the DORs of Districts Swat and Buner issued letters to Tehsildars for making recoveries from the concerned staff who accordingly issued notices to petitioners and other concerned staff with the directions to deposit the arrears/amount otherwise in case of any action by NAB the responsibility will lie on them. So, the petitioners deposited their respective amounts. Thereafter, the august Supreme Court of Pakistan took Suo Motu action regarding voluntary return of embezzled amounts by corrupt Government/Civil servants under Section 25 (a) of the NAB Ordinance and passed the order dated 24.10.2016, Para-2 of

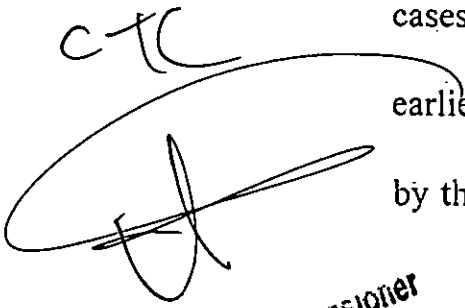
**Deputy Commissioner
Buner**

which has been reproduced above. The apex Court further observed in the said order that:-

From the reports submitted by the Federal Government and the respective Provincial Governments, it appears that no departmental action has been taken against the officers/employees of different organizations including Govt. departments, who had voluntarily returned illegally acquired monetary gains, which is very unfortunate. Once a person accused of corruption or corrupt practices volunteers to offer to return the amount he has pocketed or gained through illegal means, prima facie, cannot hold any Government/Public Office, as the very act of his offering the voluntary return falls within the definition of "misconduct" under the service law and calls for initiation of disciplinary action against the accused person(s).



In light of the above observations of the apex Court in the Suo Motu Petition, promotion of the petitioners was deferred by respondents on the ground that they are involved in Voluntary Return cases. Petitioners Sirmir Khan and others have earlier filed W.P No. 13.11.2018 which was decided by this Court vide order dated 13.11.2018. It would

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be appropriate to reproduce the relevant paras of the judgment for ready reference.

“5. The august Supreme Court of Pakistan passed an order in Suo Motu case No. 17 of 2016 directing initiation of proceedings against the persons who had entered into voluntary return under section 25 (a) of the NAB Ordinance. The department has initiated inquiry against the present petitioners and according to the petitioners, they were exonerated from the charges.

6. Be that as it may, since according to the claim of petitioners, they are senior in the seniority list, therefore, the respondents are under legal obligation to place the cases of the petitioners before the Departmental Promotion Committee with the detailed remarks regarding their ACRs, inquiries, fitness etc. It is then for the Departmental Promotion Committee to evaluate their candidature for their promotion as the same is the sole job of the said committee and the appointing authority. However, the respondents cannot withhold the names of the petitioners from placing it before the Departmental Selection Committee.

7. In view of the above, we direct the respondents to place the names of the petitioners in accordance with their seniority list in the working papers of the candidates who shall be considered for promotion to the regular post of Field

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Deputy Commissioner
Buner

Kanungo to be placed before the Departmental Promotion Committee scheduled for 19.11.2018 or any other date. However, the Departmental Promotion Committee and the appointing authority are at liberty to evaluate the candidature of the petitioners for the promotion to the post of Field Kanungo in accordance with law and rules on the subject".

9. After the above decision of this Court, meeting of the Departmental Selection/Promotion Committee was held on 23.11.2018 for District Buner, however, this time too the promotion of petitioners Sirmir Khan and others was deferred only on the ground that they are involved in Voluntary Return cases under the NAB Ordinance and no other reason was mentioned for their being unfit for promotion.

10. This Court has already passed a judgment dated 13.11.2018 in the case of petitioners Sirmir Khan etc, so, we can form no other opinion in the present case filed on the same grounds other than that mentioned in the said judgment, the relevant paras of which have already been reproduced. However, we may add that the respondents, by misinterpreting the order of the august Supreme

CTC

Deputy Commissioner
Buner

Court, have taken the same in a sense which is not in accord with the spirit of that order. The Hon'ble apex Court in its order has held in clear and unambiguous terms that Voluntary Return of illegally gained amount by persons holding Government/Public offices under the NAB Ordinance falls within the definition of "misconduct" under the service law calling for disciplinary action against such officials. In view of the above observations of the Hon'ble apex Court, it was incumbent upon the respondents to have initiated inquiries against the petitioners leading the same to its logic end but the entire record is silent about any such process by respondents except an inquiry against the petitioners in the present case which did not proceed farther than the inquiry report. To further explain our point of view at the cost of repetition, neither the inquiries against the petitioners have yet been finalized nor there is any final report/decision of the competent authority on the record to show the petitioners guilty of misconduct under the Khyber Pakhtunkhwa (Efficiency and Discipline) Rules, 2011, so, withholding/deferring the promotion of petitioners

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Buner

only on the pretext of pendency of Suo Motu case before the apex Court is not legal. It is also pertinent to mention here that Additional Deputy Commissioner, Buner was appointed as inquiry officer. He in the last Para of his report dated 30.04.2018 mentioned that:

*“d. Despite the above, both the then Patwaris and the then Revenue Officers have violated/shown laxity in implementation of the order of Board of Revenue Khyber Pakhtunkhwa”.
(emphasis applied)*

Whether receiving the charges on mutations and registries was the duty of Revenue/Tehsildars or Patwaris and whether both or either of the said categories of the revenue staff was responsible for the act of disobeying the order of Board of Revenue, these are not the questions for resolution before this Court, so, we would not involve ourselves in that factual controversy as the same will be decided by competent authority of the department after conducting the inquiry, however, the same points cannot be overlooked while deciding the instant petitions because in case the petitioners finally stand exonerated after proper inquiry, in that

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Deputy Commissioner
Buner

eventuality much water would have been flown under the bridges resulting into creation of various complications which will open so many other doors for further litigation. So, the best and legal course for the respondents in the light of the order of the Hon'ble apex Court was to hold transparent inquiries against the officials including the petitioners under the relevant service laws; only then they would be in a better position either to allow or disallow the promotion of petitioners on the basis of inquiries, so, withholding the promotion of petitioner just on the pretext of pendency of Suo Motu case without acting in accord with the order of the Hon'le apex Court is neither just nor legal. It would not be out of place to mention here that as per assertions of the petitioners, the respondents have exonerated them after inquiries, however, no final order of the competent authority is available on the entire record from which innocence or guilt of the petitioners could be ascertained.

etc

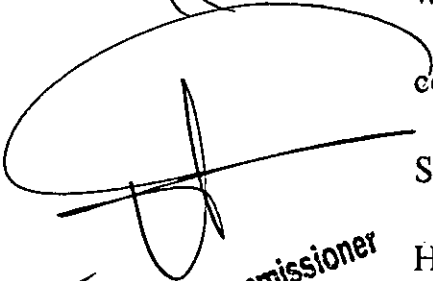
11. Similar is the case of petitioners Mir Afzal etc in the connected W.P No. 1247-M/2018 who are serving against the posts of Patwari and presently against the posts of "Field Kanungo".

Deputy Commissioner
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Their promotion has also been deferred on the same ground, as mentioned above in the connected case of petitioners Sirmir Khan etc, despite the fact that neither any inquiry has yet been finalized against them till date nor there is any order of the competent authority to show them guilty of any misconduct. Learned counsel for the petitioners have annexed certain documents with W.P No. 1145-M/2018 through C.M No. 1619-M/2018 perusal of which reveals that two Kanungos namely Hazrat Younas and Syed Zafar Ali of the office of Deputy Commissioner, Swat were promoted to the posts of Naib Tehsildars by Senior Member Board of Revenue, Khyber Pakhtunkhwa, vide order dated 05.05.2017. The said promotion order was later on withdrawn vide order dated 16.01.2018 till final judgment of Supreme Court of Pakistan in Suo Motu Case No. 17/2016. The mentioned officials filed an application before Senior Member Board of Revenue for cancellation of order dated 16.01.2018 with further prayer for constitution of an inquiry committee. Assistant Commissioner, Khwazakhela, Swat was appointed as inquiry officer in the matter. He, after completion of the process, submitted his



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Tajamu/PS*

report bearing No.219/AC/K.K/Misc. dated 21/02.2018. Paras 2, 3 & 4 of the inquiry report are important which needs to be reproduced below.

"2) Honorable Secretary-I, Board of Revenue, Revenue & Estate Department, Khyber Pakhtunkhwa sent a letter to the Secretary to Government of Khyber Pakhtunkhwa, Establishment Department vide letter No. Estt: V/PF/Suo Moto/2016 dated 23.01.2017 in which it has been clearly stated that "On 24.10.2016 the Supreme Court of Pakistan ordered that no final order from removal from service shall be used against any of the officials who have entered into voluntary return of the amount and voluntary return paid by him is less than 2.5 million".

3) Deputy Commissioner Swat sent letters to Assistant Secretary (Estab:), Board of Revenue Khyber Pakhtunkhwa vide Nos. 466/1/3/DK, 467/1/3/DK and 468/1/3/DK dated 31.03.2017 in which he clearly stated that "on the basis of Service record available in this office, there is no Departmental/ Anti-Corruption/ NAB/ Inquiry pending against Mr. Syed Zafar Ali Kanungo, and Mr. Hazrat Younas Field Kanungo Circle Barikot, District Swat".

Deputy Commissioner Swat sent a letter to Assistant Secretary (Estab) Board of Revenue, Khyber Pakhtunkhwa vide Nos. 5571/3/DK dated 08.05.2017 in which it was stated that "their names are present in

Deputy Commissioner
Buner

the NAB list and an amount of Rs.36,265/- has been returned by Mr. Syed Zafar Ali and Rs.6,885/- has been returned by Mr. Hazrat Yoimas". Afterwards, Deputy Commissioner, Swat sent a letter to Assistant Secretary (Estab:), Board of Revenue, Khyber Pakhtunkhwa vide No. 1230/1/3/DK dated 02.11.2017 in which he stated that "neither any correspondence has been made by the NAB Authorities with the above officials nor they have been arrested by the NAB authorities nor they have entered any written plea bargain, this recovery is purely on account of mutation fee which normally is pointed out during audit but the recovered amount was mistakenly deposited in the NAB recovery list/account". (emphasis applied)

With the above observations, the Inquiry Officers recommended that:

"Recommendations:

Therefore, in my opinion and in light of facts and findings of inquiry, it is recommended that the applicants may kindly be re-instated to the posts of Naib Tehsildar by the Competent authority please".

On the basis of said inquiry report, Senior Member Board of Revenue withdrew the subsequent order dated 16.01.2018 and the promotion order dated 05.05.2017 of the above said

CTC

Deputy Commissioner
Buner
Tajamul/PS*

officials was restored. The above process carried out by respondents in respect of the officials involved in Voluntary Return of amount has not been made in the case of the present petitioners and no explanation is available on the record to justify this inaction of the respondents in the cases of petitioners. We may note here that the process of inquiry conducted in the cases of above said revenue officials namely Hazrat Younas and Syed Zafar Ali was in accord with the spirit of the order dated 24.10.2016 passed by the Hon'ble apex Court in Suo Motu Case No. 17/2016 but the petitioners were also entitled for the like treatment which has not been done by the respondents in case of the petitioners for the reasons best known to them.



Similarly, District Collector, Swat vide notice/letter bearing Endst: No. 2312-76/2/4/DRPs dated 30.05.2003 with the subject (نوٹس نسبت وصولی) سُرکاری واجبات MUTATION SCAM 1994-95

informed the Patwaris mentioned in the list to deposit the government arrears uptill 31.05.2003. In the list attached with the said notice, apart from the petitioners and some other revenue officials,


Respondent No. 5 namely Mumtaz Ahmad has been

CTC

Deputy Commissioner
Buner
Tajamu/PS

mentioned at Serial No. 23 meaning thereby that he was also an accused of misconduct by voluntarily returning the amount under the NAB Ordinance. There is another document attached with the connected petition No. 1247-M/2018 as Annexure "E" bearing No. 1230/1/3/DK dated 02.11.2017 which is a letter addressed to Assistant Secretary (Estt.) Board of Revenue whereby advice/opinion has been sought by Deputy Commissioner Swat with the remarks that:

"However, it is pointed out that the names of the following Patwaris to be promoted reflects in the NAB voluntary return list".

The name of Mumtaz Ahmad has been mentioned at Serial No.3 in the list of Patwaris who were to be promoted to the post of Kanungo and finally he as well as 09 other patwaris were promoted vide order bearing No. 1951/1/3/DK dated 10.12.2018.

It is abundantly clear from the above promotion orders that not only the respondent department has adopted double standard regarding the officials who are at par with each other on


Deputy Commissioner
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account of Voluntary Return of amount but the petitioners have also been treated with discrimination. In other words, the respondents did not withheld promotion of the above-mentioned officials though they were mentioned in the list of persons who were involved in Voluntary Return of amounts besides they have not considered pendency of the Suo Motu case before the august Supreme Court as a hurdle in their promotion on the sole ground of which the respondent department has deferred promotion of the petitioners in both the writ petitions. In short, the ground on which the petitioners were held unfit for promotion, the same ground was not considered for withholding the promotion of other officials of the same department.

12. It is pertinent to mention here that the respondents have promoted those officials who were junior to petitioners. The process of inquiries has also not been finalized despite passage of almost two years since opening of the Suo Motu Case by the Hon'ble apex Court, so, in such scenario, deferring the promotion of petitioner is not warranted under the law.

CTC

**Deputy Commissioner
Buner**

Tajamul/PS*

DB: Hon'ble Mr. Justice Muhammad Ghazanfar Khan
Hon'ble Mr. Justice Syed Arshad Ali
(V.P No. 1145-M of 2018 Sarmir Khan and 03 others Vs. Deputy Commissioner, Buner and 05 others)

13: The upshot of the above discussion is that the decision of the respondents for declaring the petitioners unfit for promotion on the ground of Voluntary Return of ill-gotten amount that too without finalizing the inquiries against them is illegal, hence, calls for interference of this Court in the circumstances. Resultantly, both these petitions are allowed in terms that the respondents shall first finalize the inquiries, if any, against the petitioners and thereafter re-constitute Departmental Promotion Committees by placing the names of the petitioners in accord with their seniority list in the working papers of the officials who are to be promoted or have been promoted out of turn/against the seniority order. In case the number of vacant posts of Kanungo is sufficient enough to absorb the already promoted Patwaris who were junior to petitioners, then the promotion of the juniors already taken place shall not be interrupted, however, in that eventuality the seniority of the petitioners, in case of their promotion, shall remain intact. The Departmental Promotion Committee shall evaluate the candidature of the petitioners strictly in accord with law and relevant rules. Needless to mention that since

etc

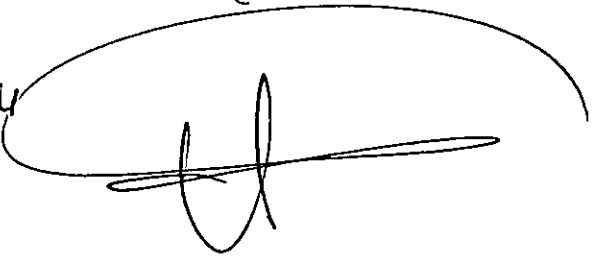
Deputy Commissioner
Buner

promotion of the petitioners had been deferred on the ground which has already been held as illegal in light of the above discussion, so, if the respondents find the petitioners fit for promotion as a result of inquiries, their promotion orders shall be passed from the back date when meetings of the Departmental Promotion Committees were held for the first time in Districts Swat and Buner wherein the petitioners were considered as candidates but they were deferred while their juniors were promoted. Moreover, the promotion orders of the petitioners so passed shall be subject to final decision of the august Supreme Court in Suo Motu Case No. 17/2016.

Announced.
Dt: 26.03.2019


JUDGE


JUDGE

Office
4/4


**Deputy Commissioner
Buner**

OFFICE OF THE DEPUTY COMMISSIONER, BUNER.

32

Minutes of the Departmental Selection / Promotion Committee Meeting.

The Departmental Selection / Promotion Committee met today i.e. on 11.12.2019 at 11:00 am in the office of the Deputy Commissioner, Buner / Chairman DSC / DPC. The following attended:

1. Muhammad Khalid, Deputy Commissioner, Buner. Chairman
2. Muhammad Ali, Addl. Deputy Commissioner, Buner. Member
3. Sher Ali Khan, Assistant to Commissioner (Rev / Gen), Malakand Division / Rep. Commissioner, Malakand Division. Member

Agenda:

To examine cases for filling up of the following vacancies lying vacant in the office of Deputy Commissioner, Buner:

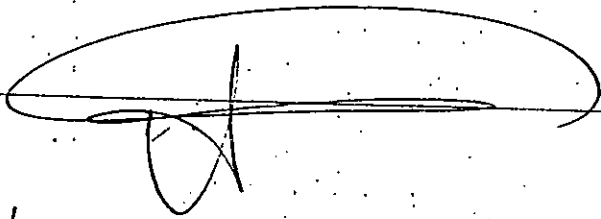
1. 05 posts of Assistant (BPS-16).
2. 01 post of Kanungo (BPS-11).

Discussion and Recommendations:

Budget copy of the office of Deputy Commissioner Buner with regard to the posts of "Assistant" and "Kanungo" reflects the following position:

No	Nomenclature of Post	Sanctioned Strength	Vacant Strength	Reason for falling vacant	Policy / Remarks
1.	Assistant (BPS-16)	23	05	<ul style="list-style-type: none">One Assistant RetiredFour Assistant Promoted to the post of Superintendent	(a) Seventy Five percent by promotion on the basis of seniority-cum-fitness from amongst the Senior Clerks with at least five years service as Junior and Senior Clerk in the offices of Deputy Commissioners and Political Agents of the district concerned; and (b) Twenty Five percent by

✓
ADC
11/12/19
ACK/s
11/12/19
J 11/12

CTC


Deputy Commissioner
Buner

					initial recruitment from amongst the candidates of the district concerned.
2.	Kanungo (BPS-11)	12	01	Retired	By promotion from amongst the senior most-cum-fit Patwaris

33

1. Promotion of Senior Clerks to the Posts of Assistant:

According to the Final Seniority List of Senior Clerks of the office of the Deputy Commissioner, Buner as stood on 29.11.2019, following are the senior-most-cum-fit Senior Clerks for promotion to the posts of Assistant:

#	Name	DOB	Date of 1 st Appointment	Date of Regular Promotion
1	Muhammad Iqbal	07-04-1970	16-05-1993	10-02-2014
2	Raham Taj	01-07-1970	04-03-1996	24-03-2017
3	Amrali Khan	10-10-1978	02-05-1996	24-03-2017
4	Sadaqat Ali	01-12-1975	28-10-1996	24-03-2017
5	Hamayun Khan	03-03-1964	12-03-1991	24-03-2017
6	Nikar Ali	03-03-1992	08-03-2010	24-03-2017

9
 HCC
 11/12/2019
 HCC/s
 " 11 12 '19
 J. 12

Following is the current eligibility position with regard to the post of Assistant in the office of the Deputy Commissioner, Buner:

Sanctioned Strength	23
Filled Strength	18
Vacant Strength	05
Promotion Quota @ 75%	17.25 thus 17 as per the rule of precision and accuracy
Initial Appointment Quota @ 25%	05.75 thus 06 as per the rule of precision and accuracy
Already promoted in the existing strength	15
Already appointed on initial appointment	03
To be promoted now	02
To be appointed on initial recruitment	03

Since CPLA No. CP.61-P/19 against Mr. Muhammad Iqbal, Senior Clerk i.e. at Serial No. 1 is pending trial in the august Supreme Court of Pakistan, his case was deferred till final decision of the august Supreme Court of Pakistan in the CPLA ibid while Mr. Raham Taj, Senior Clerk was recommended for promotion to the post of Assistant (BPS-16).

CTC

Deputy Commissioner
Buner

2. Kanungo:

In its judgment dated 26-03-2019 in Writ Petition No. 1245-M/2018 in case titled *Sarmir Khan & others VS Deputy Commissioner Buner & Others*, the Honorable Peshawar High Court issued the following orders:

"-----, so, if the respondents find the petitioners fit for promotion as a result of inquiries, their promotion orders shall be passed from the back date when the meeting of the Departmental Promotion Committees were held for the first time in Districts Swat and Buner wherein the petitioners were considered as candidates but they were deferred while their juniors were promoted. Moreover, the promotion orders of the petitioners so passed shall be subject to final decision of the august Supreme Court in Suo Motu Case No. 17/2016 and as per the rules".

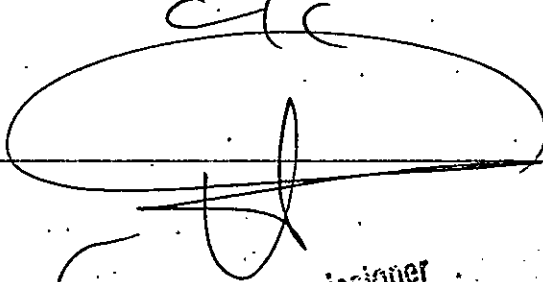
In this compliance, the office of Deputy Commissioner Buner held a meeting of the Departmental Promotion Committee on 10-07-2019 wherein promotions to the 04 Patwaris / Petitioners were recommended from the back date when the DPC Meeting had been held for the first time i.e. 13-11-2017 as per the following detail:

No.	Name	DOB	Date of appointment as Patwari	Remarks / Eligibility for promotion
1.	Inamullah	15-02-1960	01-04-1980	ACRs, Kanungo Certificate, Non-Involvement Certificate examined. Fit for promotion.
2.	Zaman Khan	15-03-1962	05-04-1981	Unfit for promotion as he hadn't passed the Kanungo Examination on 13.11.2017
3.	Javed Iqbal	01-04-1961	06-04-1981	Unfit for promotion as he hadn't passed the Kanungo Examination on 13.11.2017
4.	Sani Mula	01-01-1962	22-12-1985	Unfit for promotion as he hadn't passed the Kanungo Examination on 13.11.2017.
5.	Sarmir Khan	20-04-1959	22-12-1985	ACRs, Kanungo Certificate, Non-Involvement Certificate examined. Fit for promotion.
6.	Bakht Ghafoor Shah	16-09-1961	22-12-1985	ACRs, Kanungo Certificate, Non-Involvement Certificate examined. Fit for promotion.
7.	Zahid Tab Gul	01-02-1962	22-12-1987	ACRs, Kanungo Certificate, Non-Involvement Certificate examined. His promotion is deferred till next DPC.

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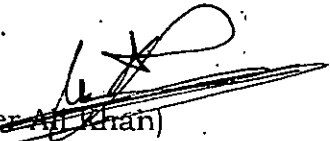
Accordingly, Promotion Orders were issued in respect of the Patwaris / Petitioners at Serial Nos: 1, 5 & 6 while promotion in respect of Mr. Zahid Tab Gul i.e. at Serial No. 7 was deferred till next DPC Meeting due to the unavailability of vacancy.

The same case for promotion to the post of Kanungo in respect of Mr. Zahid Tab Gul Patwari was, therefore, considered accordingly. He was found fit for promotion. Further in compliance of the judgment of the honourable PHC Mingora Bench /


CTC

 Deputy Commissioner
 Buner

Dar-ul-Qaza Swat in the Writ Petition. ibid, it was recommended that his promotion be considered effective from the back date i.e. 13-11-2017 subject to the final decision of the august Supreme Court of Pakistan in Suo Moto Case No. 17/2016.

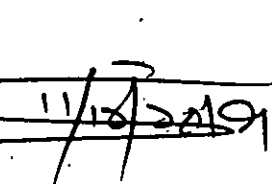
The meeting ended with thanks from the Chair.



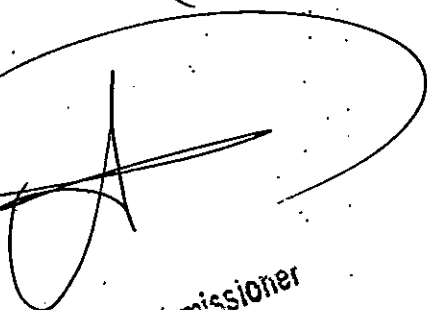
(Sher Ali Khan)
Assistant to Commissioner (Revenue), Malakand Division,
Rep. of Commissioner, Malakand Division /
Member.



(Muhammad Ali) 11/12/2019
Addl. Deputy Commissioner Buner /
Member.



(Muhammad Khalid) 11/12/2019
Deputy Commissioner, Buner /
Chairman Departmental Selection / Promotion Committee.

CTC

Deputy Commissioner
Buner

URGENT FORM

.....
.....

TITLE

Sani Mullah Petitioner

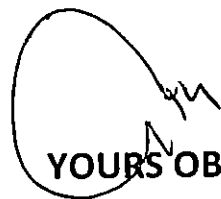
VERSUS

Govt. and others Respondents

1. Will you kindly treat the accompanying C.M as urgent and in accordance with the provisions of Rules, 9 Chapter 3-A Rules of orders of the High Court, Lahore Volume V.
2. The grounds of urgency are.

That instead of pending petition, the concern authority promoted the private respondent (though junior to the Petitioner) which is illegal & amounts to contempt, therefore, this case may kindly be fixed early to avoid any kind of loss to the petitioner.

Dated: 19/12/2019
Cell No: 03110950959


YOURS OBEDIENTLY

**IN THE PESHAWAR HIGH COURT, PESHAWAR
OPENING SHEET FOR WRIT BRANCH**

Date of Filing: _____

District: _____

Case Type: Writ Petition Nature of Original Proceeding: _____

Category Code:

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(Categories & Sub categories are given at the back of the opening sheet)

Review/ Contempt of Court in respect of: _____

Writ of:

Heabus Corpus	Prohibition	Mandamus	Quo Warranto	Certiorari
---------------	-------------	----------	--------------	------------

If Certiorari:

Forum which passed impugned order	Date	(I)nterlocutory/ (F)inal Order

Case Pertains to
 SB
 DB

Petitioner Name	Sani Mullah
Mobile No.	
Address	Resident of Dewana Baba, District Buner
CNIC No.	
Email Address	NIL

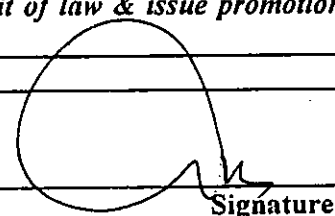
Counsel for Petitioner (s)	Syed Abdul Haq
Mobile No.	0333-9546154
Address	Dar ul Qaza Swat
CNIC No.	15306-6116430-5
Email Address	syedabdulhaqadvocate@gmail.com

Respondents	Govt of KPK & others.
Address	Peshawar.

Original Order/Action/Inaction Complained of:
 NIL

Prayer:
It is, therefore, humbly prayed on acceptance of this writ petition in the light of aforementioned submissions, this court issue appropriate writ to the concerned authority to cancel/ withdrawn the allege promotion order of respondent No.5 being illegal, against the spirit of law & issue promotion order of Petitioner being senior.

Law/Rules/governing the original proceedings/action/Inaction
 U/S 199 of Constitution of Pakistan.


 Signature

Note: Any suggestion to improve the proforma will be appreciated.

CHECK LIST

1.	Case Title: <i>Semi mala V/S Govt</i>	Yes	No
2.	Case is duly signed.	/	
3.	The law under which the Petition preferred has been mentioned.	/	
4.	Approved file cover is used.	/	
5.	Affidavit is duly attested and appended.	/	
6.	Case and Annexures are properly paged & number according to index.	/	
7.	Copies of Annexures are legible and attested. (If not, then better copies duly attested have been annexed).	/	
8.	Certified copies of all the requisite documents have been filed.	/	
9.	Certificate specifying that no case on similar grounds was earlier submitted in this court, filed.	/	
10.	Case with in time.	/	
11.	The value for the purpose of Court fee and jurisdiction has been mentioned in the relevant column.	/	
12.	Court fee in shape of Stamp Paper is affixed, (For Writ Rs.500/- For other required).	/	
13.	Power of Attorney is in proper form.		/
14.	Memo of addresses filed.	/	
15.	List of Books mentioned in the Petition.	/	
16.	The requisite number of spare copies attached. (Writ Petition-3, Nos. Civil Appeal (SB-1, SB-2) Civil Revision (SB-1, SD-2).	/	
17.	Case (Revision/Appeal/Petition etc.) is filed on the prescribed form.	/	
18.	Power of Attorney is attached by Jail Attorney (for Jail Prisoners only).		/

It is certified that formalities/documentations required in column 2 to 18 above, have been fulfilled.

Name: *Syed Abdul Haq*

Signature: *[Signature]*

Dated: *19-12-19*

FOR OFFICE USE ONLY

Case No.

Case Received.

Complete in all respect: Yes/No (if No the ground)

.....

.....

.....

Date in Court.

Signature _____

(Reader)

Dated _____

Countersigned:

BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH /

SA: 7621/2021 DARULQAZA SWAT

W.P. 1460 -M/2019

Sani MullahPetitioner


VERSUS

Govt of Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education and others Respondents

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4.	Copy of petition no.1137/2019 alongwith order dated 11.11.2019		13-21
5.	office order dated 11.12.2019 + appointment order	A	22-23
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Petitioner through Counsel


SYED ABDUL HAQ
HIGH COURT DARULQAZA
BAR ROOM SWAT
Cell No 0333-9546154

FILED TODAY

19 DEC 2019

Additional Registrar

1

BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH /
SA: 7621/2021 DARULQAZA SWAT
W.P. 1400 -M/2019

1. Sani Mula Son of Haji Mullah, Presently Serving as Halqa Patwari Banch Kara District Buner , Resident of Dewana Baba, District Buner.....Petitioner

VERSUS

- 1) Government of Khyber Pakhtunkhwa Board of Revenue & Estate Department
- 2) Senior Member Board of Revenue Khyber Pakhtunkhwa Peshawar.
- 3) Commissioner Malakand Division at Saidu Sharif Swat.
- 4) Deputy Commissioner, District Buner at Daggar.
- 5) Zahid Tab Gul, ^{% Khajal Gul} Patwari resident of Dewana Baba District Buner.

.....Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN
1973 FOR THE PURPOSE OF TO DECLARE THE OFFICE
ORDER DATED 11.12.2019, AS ILLEGAL, AGAINST THE
POLICY/RULES & INEFFECTIVE UPON THE RIGHT OF
PETITIONERS, WHEREIN RESPONDENT NO.5 (BEING
JUNIOR TO PETITIONER) TO THE POST OF KANUNGO

BPS-11.

FILED TODAY

19 DEC 2019

Additional Registrar

Respectfully Sheweth;

2

The relevant facts of the instant petition are as under.

1. That the Petitioner filed a writ petition bearing No. 1137-M of 2019 for the promotion to the post of Kanungo being senior to respondent No.5 as he was declared allegedly unfit for promotion by the departmental promotion committee vide dated 10.7.2019, wherein this honourable court on first hearing dated 11.11.2019 directed the respondent No.4 to file para-wise comments within the period of fortnight. (Copy of petition no.1137/2019 alongwith order dated 11.11.2019 is attached)
2. That the respondent No.4 was well acquainted qua the fate of the writ petition bearing No. 1137/2019 but even then he promoted the respondent NO.5 (being Junior) vide impugned office order dated 11.12.2019 (enclosed as annexure-A) so, the writ petition bearing No.1137-M of 2019 seems to be infructuous, so the Petitioner have no other adequate remedy except to file afresh petition

FILED TODAY

19 DEC 2019

Additional Registrar

3. That the private respondent is junior to Petitioner as appointed on 22-12-1987 on the post of Patwari in the same District.

4. That the respondent No.5 alongwith others filed a writ Petition bearing No. 1145-M of 2018 titled as "**Sarmir Khan vs Deputy Commissioner Buner**". It is to be mentioned here that other Petitioners in above case namely (i) Sarmir Khan, (ii) Bakht Ghafoor Shah were appointed on the same date as of Petitioner i.e. 22.12.1985, moreover, after hearing the writ petition ibid was allowed by this honourable court vide judgment order dated 26-3-2019 wherein this honourable court hold that;-

"both these Petitions are allowed in terms that the respondent shall first finalize the inquiries, if any, against the Petitioner (Sarmir & others) & thereafter re-constitute departmental promotion committee by placing the names of the Petitioners in accord with

FILED TODAY

19 DEC 2019

Additional Registrar

their seniority list in the working papers of the officials who are to be promoted or have been promoted out of turn/against the seniority order. in case the number the number of vacant posts of kanungu is sufficient enough to absorb the already promoted patwaries who were junior to Petitioners then the promotion of the juniors taken place shall not be interrupted, however, in that eventuality the seniority of the Petitioners in case of their promotion shall remain intact."

(Copy of judgment order dated 26-3-2019 is attached)

- 5.** That the Petitioner, as per seniority list of patwaries, in District Buner as prepared on 31.12.2018 reflected at Serial No.4 is senior than respondent No.5 specified below.

FILED TODAY
19 DEC 2019
Additional Registrar

S.NO	NAME OF OFFICIAL/PATWARI	DATE OF BIRTH	DATE OF APPOINTMENT
1	Sani Mullah	01.01.1962	22.12.1985
2.	Zahid Tab Gul	01.03.1962	09.07.1987

(Copy of Seniority List is enclosed as annexure-B)

6. That the Petitioner as per notification/Revenue Service Rules 2008 the criteria for the post of Kanungo is *"By promotion on the basis of seniority-cum-fitness from amongst the patwaries of the District concerned with three years of service as such & how have passed the departmental examination of Kanungo"* although, the Petitioner passed the departmental examination for the post of Kanungo on 01.30.2019 *(Copy of Rules & result is attached).*

7. That after the judgment ibid the official respondents concluded the enquiry against the Sarmir & others awarded minor penalty of forfeiture of three (3) Years under the rules as involved in Voluntary returned NAB cases *(Copy of the office order dated 20.6.2019 is attached).*

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19 DEC 2019

Additional Registrar

8. That after the official respondent vide departmental promotion committee held on 10.7.2019, promoted the others while the promotion of respondent No.5 deferred till next DPC. (*Copy of Minutes dated 10.07.2019 are attached*).
9. That after the respondent No.4 (Deputy Commissioner) promoted the two Petitioners (i.e Sarmir Khan & Bakht Ghafoor Shah) in Writ Petition 1145-M/2018 although both of them as well as the Petitioner were appointed at the same date i.e. 22.12.1985.
10. That after the Petitioner filed an appeal before the Commissioner Malakand who dismissed the same on 26.09.2019. (*Copy of order dated 26.09.2019 is enclosed*)
11. That during the pendency of the writ petition ibid instead of complete awareness the respondent No.4 promoted the private respondent vide order dated 11.12.2019, so the Petitioner have on other remedy except to file the instant petition inter alia on the following ground.

FILED TODAY
19 DEC 2019
Additional Registrar

7

GROUNDS

A. That the Petitioner was appointed on 22.12.1985 & passed the departmental examination for the post of Kanungo on 01.3.2019 but the official respondent declared him unfit for promotion & allegedly hold that the Petitioner has not passed the Kanungo Examination on .13.11.2017, although the official respondents was duty bound to consider the entitlement of Petitioner at the time of DPC which was conducted on 10.7.2019, so the Petitioner has been deprived from his vested right of promotion, hence such act is against the rules, law on the subject.

B. That the official respondent always accommodated their blue eyed on political exertion as per seniority reflected at serial no. 13-15 although the mentioned candidates are most junior to Petitioner, so the official respondent once again exercise their power not vested to them under the rules/policy. (*Copy of tentative seniority list is attached as annexure-C many be considered part of this petition*).

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19 DEC 2019

Additional Registrar

- C. That after the retirement of one Sarmir Khan on 19.4.2019 the respondent/department is intended to promote the respondent No.5 in the next departmental Committee & his name has reserved, so such clearly shows malafide & favouritism on the part of competent authority, although the Petitioner has been denied repeatedly, so such act of the official respondent is against the norms of justice, & violation fundamental rights of Petitioner guaranteed to him by the constitution.
- D. That during the pendency of the writ petition bearing 1137/2019 the impugned promotion order dated 11.12.2019 have no legal worth/effect & the act of the respondent No.4 amounts to contempt & based on malafide, lack backing of law, hence liable to be set at naught.
- E. That the petitioners seek leave of this honourable court to raise/argue any additional point at the time of arguments.

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19 DEC 2019


Additional Registrar

It is, therefore, humbly prayed on acceptance of this writ petition in the light of aforementioned submissions, this court issue appropriate writ to the concerned authority to cancel/ withdrawn the allege promotion order of respondent No.5 being illegal, against the spirit of law & issue promotion order of Petitioner being senior.

Interim Relief

It is further prayed that promotion order date 11.12.2019 of respondent No.5 be suspended, or held in abeyance till the final decision of the instant petition.

Petitioner
Through
Counsel


SYED ABDUL HAQ
Advocate High Court

FILED TODAY
19 DEC 2019

Additional Registrar

LIST OF BOOKS IN CONCERNED WRIT

- a. Constitution of Islamic Republic of Pakistan, 1973.
- b. Revenue
- c. Case Law as per need.


ADVOCATE

10

**BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH /
DARULQAZA SWAT**

W.P. 1400- -M/2019


Sani MullahPetitioner

VERSUS

Govt of Khyber Pakhtunkhwa through Secretary Elementary and
Secondary Education and others Respondents

CERTIFICATE

As per instruction of my client no such like writ petition,
earlier has been filed by the petitioners on the subject matter before
this Hon'able Court.


ADVOCATE

FILED TODAY

19 DEC 2019

Additional Registrar

BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH /
DARULQAZA SWAT

W.P. 1400 -M/2019

Sani MullahPetitioner

VERSUS

Govt of Khyber Pakhtunkhwa through Secretary Elementary and
Secondary Education and others Respondents

ADDRESSES OF THE PARTIES

PETITIONER

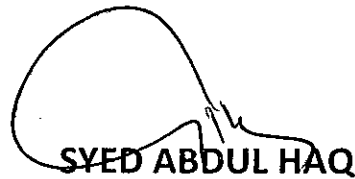
Sani Mula Son of Haji Mullah Presently Serving as Halqa Patwari
Banch Kara , Resident of Dewana Baba, District Buner.

CNIC # 15101-04191846-5- mob# 03429660779

RESPONDENTS

- 1) Government of Khyber Pakhtunkhwa Board of Revenue &
Estate Department
- 2) Senior Member Board of Revenue Khyber Pakhtunkhwa
Peshawar.
- 3) Commissioner Malakand Division at Saidu Sharif Swat.
- 4) Deputy Commissioner, District Buner at Daggar.
- 5) Zahid Tab Gul, ^{sp. uliyal bul.} Patwari resident of Dewana Baba District Buner.

Petitioner, through Counsel


SYED ABDUL HAQ

HIGH COURT DARULQAZA
BAR ROOM SWAT
Cell No 0333-9546154

FILED TODAY

19 DEC 2019

Additional Registrar

BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH /
DARULQAZA SWAT

W.P. 1900 -M/2019

Sani MullahPetitioner

VERSUS

Govt of Khyber Pakhtunkhwa through Secretary Elementary and
Secondary Education and others Respondents

AFFIDAVIT

I, *Sani Mula* Son of *Haji Mulla^a*, Resident of *Dewana Baba*,
District Buner, do hereby solemnly affirm and declare on oath
that the contents of the accompanying writ petition are true and
correct to the best of my knowledge and belief, and not has
been kept concealed from this Honourable court.

[Signature]

DEPONENT

CNIC: *15101-0419146-5*

S.No. *5404*
Certified that the above was verified on Solemn
affirmation before me on this *19* day
of *Dec* 2019 by *Sani Mulla*
S/o *Haji Mulla* R/o *Buner* who
was identified by *Self*
..... known to me.

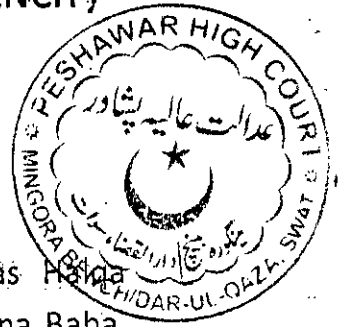
FILED TODAY
19 DEC 2019
Additional Registrar

ADDL. REGISTRAR
Peshawar High Court
Mingora Bench/Dar-ul-Qaza, Swat.

13

BEFORE THE PESHAWAR HIGH COURT MINGORA BENCH /
DARULQAZA SWAT

W.P. 1137 -M/2019



1. Sani Mula Son of Haji Mullah, Presently Serving as ~~Patwari~~
Patwari Banch Kara District Buner , Resident of Dewana Baba,
District Buner.....Petitioner

VERSUS

- 1) Government of Khyber Pakhtunkhwa Board of Revenue & Estate Department
- 2) Senior Member Board of Revenue Khyber Pakhtunkhwa Peshawar.
- 3) Commissioner Malakand Division at Saidu Sharif Swat.
- 4) Deputy Commissioner, District Buner at Daggar.
- 5) Zahid Tab Gul, ^{s/o Khajal Gul} Patwari resident of Dewana Baba District Buner.

.....Respondents

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

Respectfully Sheweth;

The relevant facts of the instant petition are as under.

1. That the petitioner is bonafide resident of District Buner & was appointed as Patwari on 22-12-1985 after

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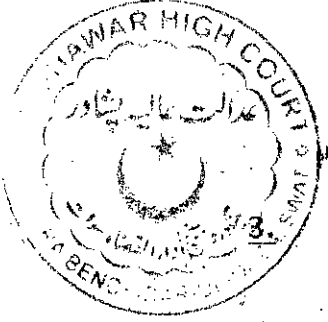
29 OCT 2019

Additional Registrar

adopting due process of law (*Copy of appointment order is enclosed as annexure-A*)

14

2. That the private respondent is junior to Petitioner as appointed on 22-12-1987 on the post of Patwari in same District.



That the respondent No.5 alongwith others filed a writ Petition bearing No. 1145-M of 2018 titled as "*Sarmir Khan vs Deputy Commissioner Buner*". It is to be mentioned here that other Petitioners in above case namely (i) Sarmir Khan, (ii) Bakht Ghafoor Shah were appointed on the same date as of Petitioner i.e. 22.12.1985, moreover, after hearing the writ petition ibid was allowed by this honourable court vide judgment order dated 26-3-2019 wherein this honourable court hold that;-

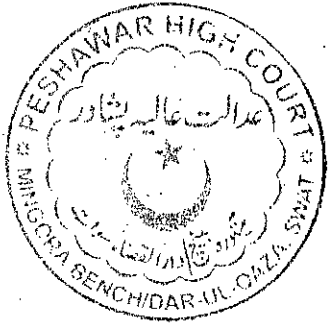
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"both these Petitions are allowed in terms that the respondent shall first finalize the inquiries, if any, against the Petitioner (Sarmir & others) &

thereafter re-constitute departmental promotion committee by placing the names of the Petitioners in accord with their seniority list in the working papers of the officials who are to be promoted or have been promoted out of turn/against the seniority order. in case the number the number of vacant posts of kanungu is sufficient enough to absorb the already promoted patwaries who were junior to Petitioners then the promotion of the juniors taken place shall not be interrupted, however, in that eventuality the seniority of the Petitioners in case of their promotion shall remain intact."



(Copy of judgment order dated 26-3-2019 is attached)

4. That the Petitioner, as per seniority list of patwaries, in District Buner as prepared on 31.12.2018 reflected at

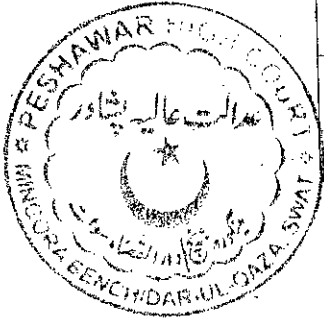
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Serial No.4 is senior than respondent No.4 specified below.

S.NO	NAME OF OFFICIAL/PATWARI	DATE OF BIRTH	DATE OF APPOINTMENT
1	Sani Mullah	01.01.1962	22.12.1985
2.	Zahid Tab Gul	01.03.1962	09.07.1987



(Copy of Seniority List is enclosed as annexure-B)

5. That the Petitioner as per notification/Revenue Service Rules 2008 the criteria for the post of Kanungo is *"By promotion on the basis of seniority-cum-fitness from amongst the patwaries of the District concerned with three years of service as such & how have passed the departmental examination of Kanungo"* although, the Petitioner passed the departmental examination for the post of Kanungo on 01.30.2019 (Copy of Rules & result is attached).

6. That after the judgment ibid the official respondents concluded the enquiry against the Sarmir & others awarded minor penalty of forfeiture of three (3) Years.

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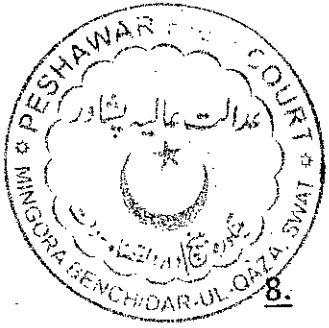
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(17)

under the rules as involved in Voluntary returned NAB cases (*Copy of the office order dated 20.6.2019 is attached*).

7. That after the official respondent vide departmental promotion committee held on 10.7.2019, promoted the others while the promotion of respondent No.5 deferred till next DPC. (*Copy of Minutes dated 10.07.2019 are attached*).



8. That after the respondent No.4 (Deputy Commissioner) promoted the two Petitioners (i.e Sarmir Khan & Bakht Ghafoor Shah) in Writ Petition 1145-M/2018 although both of them as well as the Petitioner were appointed at the same date i.e. 22.12.1985.

9. That after the Petitioner filed an appeal before the Commissioner Malakand who dismissed the same on 26.09.2019. (*Copy of order dated 26.09.2019 is enclosed*)

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29 OCT 2019

Additional Registrar

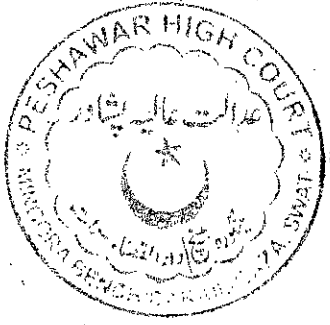
10. That the petitioner feeling aggrieved have no other remedy except to file an instant petition on the following grounds.

GROUNDS

18

A. That the Petitioner was appointed on 22.12.1985 & passed the departmental examination for the post of Kanungo on 01.3.2019 but the official respondent declared him unfit for promotion & allegedly hold that the Petitioner has not passed the Kanungu Examination on 13.11.2017, although the official respondents was duty bound to consider the entitlement of Petitioner at the time of DPC which was conducted on 10.7.2019, so the Petitioner has been deprived from his vested right of promotion, hence such act is against the rules, law on the subject.

B. That the official respondent always accommodated their blue eyed on political exertion as per seniority reflected at serial no. 13-15 although the mentioned candidates are most junior to Petitioner, so the official respondent once again exercise their power not vested to them under the rules/policy. *(Copy of tentative seniority list is attached as annexure-C many be considered part of this petition).*



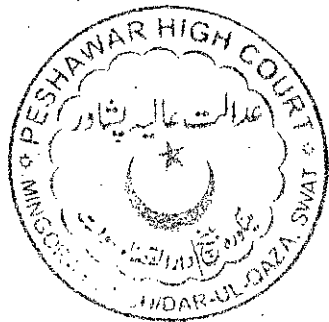
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Additional Registrar

(2)
19

C. That after the retirement of one Sarmir Khan on 19.4.2019 the respondent/department is intended to promote the respondent No.5 in the next departmental Committee & his name has reserved, so such clearly shows malafide & favouritism on the part of competent authority, although the Petitioner has been denied repeatedly, so such act of the official respondent is against the norms of justice, & violation fundamental rights of Petitioner guaranteed to him by the constitution.



D. That the petitioners seek leave of this honourable court to raise/argue any additional point at the time of arguments.

It is, therefore, humbly prayed on acceptance of this writ petition in the light of aforementioned submissions, this court issue appropriate writ to the concerned authority to consider/promote the Petitioner in the upcoming Departmental Promotion Committee

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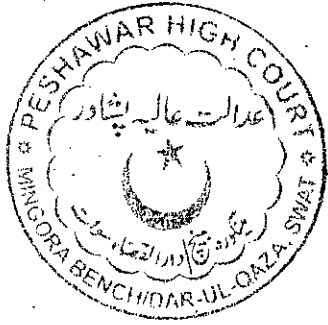
Additional Registrar


20
according to his entitlement & his
promotion order be passed from the
back date as per his eligibility.

Interim Relief

It is further prayed the official respondent be restrained to fill up the post of Kanungua falls vacant after the retirement of one Sarmir Khan (on 19.4.2019).

Petitioner
Through
Counsel




SYED ABDUL HAQ
Advocate High Court

LIST OF BOOKS IN CONCERNED WRIT

- Constitution of Islamic Republic of Pakistan, 1973.
- Revenue
- Case Law as per need.


ADVOCATE

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29 OCT 2019

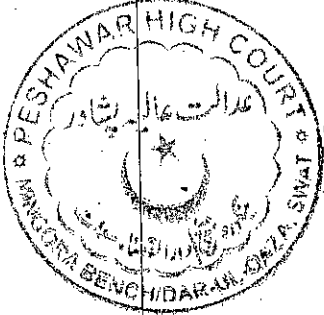

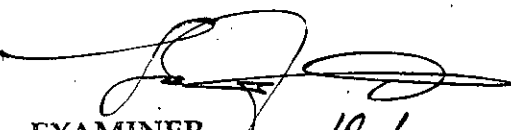
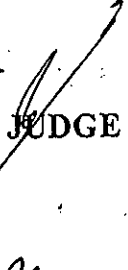
Additional Registrar

FORM OF ORDER SHEET

21

Court of

Case No. of

1	Date of Order or Proceedings 2	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary. 3
	<p>11-11-2019</p>	<p><u>W.P No. 1137-M/2019 with Interim Relief</u></p> <p>Present: Syed Abdul Haq, Advocate for the petitioner.</p> <p>Mr. Wilayat Ali Khan, A.A.G for the official respondents.</p> <p>*****</p> <p>The learned A.A.G present in Court in some other cases accepts notice on behalf of respondent No. 4 who shall file para-wise comments within fortnight.</p> <p style="text-align: right;">  JUDGE </p> <p>Certified to be true copy</p> <p style="text-align: center;">  EXAMINER Peshawar High Court, Mingora/Dar-ul-Qaza, Swat Authorized Under Article 87 of Qanoon-e-Shahadat Order:197 </p> <p style="text-align: right;">  JUDGE </p> <p>S.No <u>10</u></p> <p>Name of Applicant <u>Atiq ur</u></p> <p>Date of Presentation of Applicant <u>19/12/19</u></p> <p>Date of Completion of Copies <u>12/12/19</u></p> <p>No of Copies <u>8</u></p> <p>Urgent Fee <u>800</u></p> <p>Fee Charged <u>780</u></p> <p>Date of Delivery of Copies <u>19/12/19</u></p>

Office
12/11



ANNEXURE

OFFICE OF THE
DEPUTY COMMISSIONER, BUNER

22

Dec 11, 2019

Office Order

No. 16910-18 /C/35/DC/Buner/Estt: In pursuance of the recommendations of the Departmental Promotion Committee meeting held today, Mr. Zahid Tab Gul Patwari (PBS-09) is hereby promoted to the post of Kanungo (BPS-11). Further per the recommendations and in compliance with the judgment of honorable Peshawar High Court Mingora Bench in Writ Petition No. 1245-M/2018, he is promoted from the back date i.e. 13.11.2017 subject to final decision of the august Supreme Court of Pakistan in suo Moto Case No. 17/2016.

Terms and Conditions:

1. He will remain on probation for a period of one year.
2. He will get pay at a minimum of BPS-11 plus usual allowances as admissible under the rules and will be entitled to annual increment as per the existing policy of the Provincial Government.
3. He will be governed by the Khyber Pakhtunkhwa, Civil Servants Act-1973 and all the laws applicable to the civil servants and rules made thereunder.
4. He will for all intents and purposes be the civil servant as per the existing policy / service rules.
5. He will join his new duty at his own expenses and will not be entitled for any TA / DA upon his arrival for the new post.

(Muhammad Khalid)
DEPUTY COMMISSIONER,
BUNER.

Endst. No. & Date Even.

1. Senior Member, Board of Revenue, Govt. of Khyber Pakhtunkhwa, Revenue & Estate Department, Peshawar.
2. Registrar, Peshawar High Court Dar-ul-Qaza, Swat.
3. Commissioner, Malakand Division.
4. Additional Deputy Commissioner, Buner.
5. District Accounts Officer, Buner.
6. All the Assistant Commissioners, Buner.
7. All the Addl. Assistant Commissioners, Buner.
8. District Nazir (Local).
9. Mr. Zahid Tab Gul, Kanungo.

Attested
to be true copy

(Muhammad Khalid)
DEPUTY COMMISSIONER,
BUNER.

No. 2233 / SOS-76/3., Dated Gulkada the 21/11 / 1985.

OFFICE ORDER.

The following 33 persons belonging to Swat District who are Matriculates and have passed the Patwar School Examination held in December, 1985 are appointed temporarily on purely adhoc basis as Patwaris in Swat Settlement against existing temporary vacancies with effect from the date of posting/assuming charge after obtaining Medical Fitness Certificate from the Medical Superintendent, Swat, Saidu Sharif. Their services may be terminated at any time without notice or assign any reason :-

S.No.	Name of Patwari Candidate.
1.	Abdul Jabbar s/o Azizur Rehman r/o Sara Handi - Katal.
2.	Abdul Nasir s/o Abdul Malik r/o Katal.
3.	Abdul Rahim s/o Jasmir Mian r/o Madyan - Bahawal.
4.	Ahmed Khan s/o Fatah Khan r/o Mingalad - Katal.
5.	Akbar Hussain s/o Sahibzada r/o Kookarwa - Bahawal.
6.	Akbar Ahmad s/o Tancoosh r/o Mingalwar - Bahawal.
7.	Balidat Ghafur Shah s/o Saichamat Shah r/o Mawa Ellay Panjora-Bu.
8.	Faiz Nasser s/o Miran Shah s/o Phashta Baha - Tuner.
9.	Faisal Munir s/o Abdul Hanan r/o Nowgira - Bahawal.
10.	Fazal Akbar s/o Shah Gul Ambar r/o Ghaleral - Matla.
11.	Fazal Ali s/o Shah Laban Mian r/o Chitor - Bahawal.
12.	Fazal Ghafur s/o Amir Mahasud Mian r/o Gharebada.
13.	Gul Nasser s/o Bakht Zair r/o Bacha Akad Patabpur - Khyaza Khola.
14.	Habib Ahmed s/o Ainullah r/o Kookarwa - Bahawal.
15.	Habibullah s/o Mohiullah r/o Mingora - Bahawal.
16.	Haerud. Shor s/o Bakht Akbar r/o Tikdarsa - Khussa Khola.
17.	Hussain Ahmad s/o Johanda r/o Saidu Sharif - Bahawal.
18.	Ihsanullah s/o Faqir Zada r/o Bihar - Khaza Khola.
19.	Khadin Khan s/o Alam Zeb r/o Sara Handi - Katal.
20.	Lal Bahid s/o Khan Toti r/o Saidu Sharif - Bahawal.
21.	Mohammad Karim s/o Rehmat Gul r/o Kura Handi - Katal.
22.	Mohammad Khan s/o Imrakat r/o Ghaleral - Matla.
23.	Mohammad Kalim s/o Hamrat Umar r/o Nowgira - Matla.
24.	Mianabullah s/o Wali Mola r/o Mulyari - Tuner.
25.	Maid Ali s/o Ilshah Didi r/o Panjora - Bahawal.
26.	Muful Meluk s/o Kharonay r/o Amankot - Bahawal.
27.	Sani Mulla s/o Haji Mullah r/o Mulyari - Tuner.
28.	Sar Mir Khan s/o Bahadur Khan r/o Karapa - Tuner.
29.	Shamsul Huda s/o Manzarey r/o Kotli - Katal.
30.	Sherif Khan s/o Afrin Khan r/o Ser - Chahbagh.
31.	Sher Akbar s/o Khairati r/o Amankot - Bahawal.
32.	Siraj Ahmed s/o Mohiullah s/o Ghali - Madyan - Bahawal.
33.	Wali Mulla s/o Jhan Mulla s/o Bahawal - Katal.

Saidu Sharif, 21.12.85
O.S.D. Settlement Swat.

No. 2234 - 41 / SOS-76/3., Dated 21/11 / 1985.

Copy forwarded for information and necessary action to :-

- 1- The Extra Assistant Settlement Officer, Swat.
- 2- The District Accounts Officer, Swat.
- 3- All four Settlement Tahsildars, Swat.
- 4- Office Nazir.
- 5- Office Kanungs.
- 6- Personal Files/Officials concerned.

[Handwritten signature]

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O.S.D. Settlement Swat.

23A

23A

Better copy of page No: 12

OFFICE OF THE OFFICER ON SPECIAL DUTY, SETTLEMENT SWAT, SAIDU SHARIF.

No. 2233/SOS-76/3., dated Gulkada the 21/12/1985.

Office order:

The following 33 persons belonging to swat district who are matric outlets and have passed the patwar school examination held in December, 1985 are appointed temporarily on purely adhoc basis as patwaris in swat settlement against existing temporary vacancies as effect from the date of posting/assuming charge after obtaining medical fitness certificates from the medical superintendent swat saidu sharif. Their serious may be terminated at any time without notice or assigning any reason.

- | S.No. | Name of Patwari Candidate |
|-------|---|
| 1. | Abdul Jabbar S/o Aziz ur Rahman R/o Bara Bandi, Kabal. |
| 2. | Abdul Nasir S/o Abdul Malik R/o Kabal. |
| 3. | Abdul Rahim S/o Jamair Mian R/o Madyan, Bahrain. |
| 4. | Ahmad Khan S/o Fateh Khan R/o Ningolai Kabal. |
| 5. | Akbar Hussain s/o sahi baada r/o koobrae babuzai. |
| 6. | abrar ahmad s/o fanoosh r/o minglawar. |
| 7. | bakht ghafar shah s/o sakhawat shah r/o nawa Kiley panjpao. |
| 8. | faiz nazar s/o miras shah r/o Khaista baba Buner. |
| 9. | Faizul hanan S/o Abdul Hanan R/o nawagai Buner. |
| 10. | Fazal Akbar S/o Shah Gul Ambar R/o Gwalera Matta Swat. |
| 11. | FAzal Ali S/o Shah Laban Mian R/o Chitor babozai. |
| 12. | Fazal Ghafar S/o Amir Mahmood Mian R/o Charbagh. |
| 13. | Gul Nasar S/o Bakht Zar R/o badha Abad Fatehpur Khawazakhela. |
| 14. | Habib Ahmad S/o Ainullah R/o Kookaree Babuzai. |
| 15. | Habib Ullah S/o Mohib ullah R/o Mingora Babozai. |
| 16. | hasrat Sher S/o Bakht Afsar R/o Tikadara Khwazakhela. |
| 17. | Hussain Ahmad S/o Jehandad R/o Saidu Sharif babuzai. |
| 18. | Ihsanullah S/o Faqir Zada R/o Bihar Khwazakhela. |
| 19. | Khadim Khan S/o ALam Zeb R/o Bara bandi Kabal. |
| 20. | Lal Wahid S/o Khan Toti R/o Saidu Sharif Babazai, |
| 21. | Mohammad karim S/o Rahmat Gul R/o Kuga Bandi Kabul. |
| 22. | Mohammad Khan S/o barakai R/o Gwalera Matta. |
| 23. | Mohammad Salim S/o nasrat Umar R/o Roringar Matta. |
| 24. | Niamat Ullah S/o wali Mola R/o Kulyari Buner. |
| 25. | said Ali S/o Ilahi Dad R/o Panjigram Babuzai. |
| 26. | saif Maluk S/o Kharonay R/o Amankot babozai. |
| 27. | Sani Mullah S/o Haji Mullah R/o Kulyari Buner. |
| 28. | Sar Mir Khan S/o Bahadur Khan R/o karapa Buner. |
| 29. | Shamsul Huda S/o Manzaray R/o Kotli Kabal. |
| 30. | Sharif Khan S/o Afrin Khan R/o Sor Charbagh. |
| 31. | Sher Akbar S/o Khairati R/o Amankot Babozai. |
| 32. | Siraj Ahmad S/o Mohibullah R/o Chail Madyan Bahrain. |
| 33. | Tali Mand S/o Jan Bakht R/o Bidahara Kabal. |

O.S.D Settlement Swat.

No. 2234-41/SOS-76/3.,

dated 21/12/1985

Copy forwarded for information and necessary action to:-

1. The extra assistant sellement officer swat.
2. The district accounts officer swat.
3. All fout seelement tehsildars swat.
4. Office Nazir.
5. Office Kanungo.
6. Personal files/officials concerned.

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O.S.D Settlement Swat.
Saidu Sharif Gulkada.

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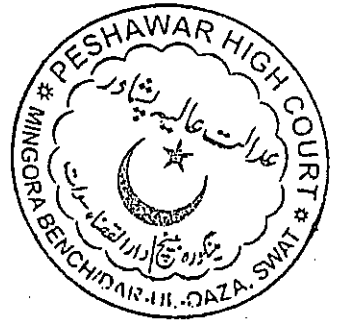
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BEFORE THE PESHAWAR HIGH COURT, MINGORA BENCH.

W.P No. 1145-m OF 2018.

1. Sarmir Khan.
2. Bakht Ghafoor Shah.
3. Zahid Tab Gul.
4. Inamullah



Presently the working against the posts of "Field Kanungo" (Own Pasy & Scale) at Daggar, Bunir.....Petitioners.

VS

1. Deputy Commissioner, Bunir.
2. Commissioner,
Malakand Division Saidu Sharif, Swat.
3. Senior Member Board of Revenue,
Khyber Pakhtunkhwa, Civil Secretariat Peshawar.

4. Shafiz ur Rehman.
5. Nasib Zai.
6. Noor Farooq presently working against the posts Gardawars at revenue estate Bunir.....Respondents.

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 AGAINST THE IMPUGNED OFFICE ORDER DATED;23.11.2018 THROUGH WHICH RESPONDENTS No.4 to 6 WERE PROMOTED TO THE POSTS OF GARDAWAR/FIELD KANUNGO.

----- **FILED TODAY**

Respectfully Sheweth:

Brief facts of the case are as under:

FACTS:

1. That the petitioners are senior Patwari of revenue state Bunir and as such presently working against the posts "Gardawar/Filed Kanungo" on the basis of own pay scale. (Copies Seniority list and office order are annexure-A)
2. That in the year 1994/95 Board of Revenue of the province

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03 DEC 2018

Examiner
Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

Additional Registrar

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JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

(1) W.P No. 1145-M/2018
With Interim Relief (N)

Sarmir Khan and 03 others

(Petitioners)

Versus

Deputy Commissioner, Buner and 05 others

(Respondents)

(2) W.P No. 1247-M/2018
With Interim Relief (N)

Mir Afzal Khan and 05 others

(Petitioners)

Versus

Deputy Commissioner, Swat and 11 others

(Respondents)

Present:

*Mr. Shams-ul-Hadi, Advocate for the
petitioners.*

*Mr. Wilayat Ali Khan, A.A.G. for official
respondents.*

Date of hearing: 26.03.2019

JUDGMENT

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Examiner
Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

MUHAMMAD GHAZANFAR KHAN, J.- The

instant writ petition and the connected Writ Petition

No. 1247-M/2018, having common questions of law

and facts, are decided through this single judgment.

2. Petitioners in the instant petition namely

Sarmir Khan and others are Senior Patwaris in

Revenue Estate Buner and presently performing

their duties against the posts of "Girdarwar/Field



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Examiner

Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

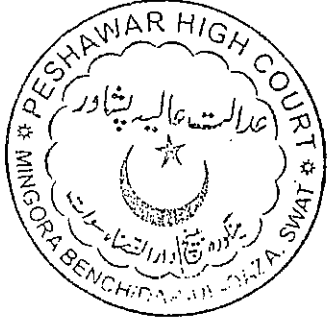
REC-7
10/10/2016

10/10/2016

Kanungo". According to the narrations in the writ petition, the Board of Revenue directed the revenue authorities to execute Registries instead of mutations, however, later on the order was cancelled and, as per assertions of the petitioners, the cancellation order was not communicated to them in time, hence, they kept on levying 2.5 % as Registration Fee for some days. It is noteworthy that Mutation fee was 2% while Registration fee was 2.5%, as such, 0.5% fee in excess was being collected during that period due to cancellation of the former order. On getting knowledge about this issue, the NAB authorities directed all the District Collectors of the Province to recover 0.5% arrears from the revenue officers who have charged the amount in excess, failing which proceedings under the NAB Ordinance will be initiated against them, so, the petitioners and other revenue staff deposited the mentioned arrears in compliance with the directions of Secretary Revenue/SMBR Khyber Pakhtunkhwa. On 24.10.2016, the august Supreme Court of Pakistan in Suo Moto Case No. 17/2016 directed the Chief Secretaries of the provinces to initiate departmental proceedings against those



revenue officials who have voluntarily returned the embezzled amount under section 25 (a) of the NAB Ordinance. According to the petitioners, in response to the notices issued to them by high ups of the Revenue Department in 2003, they explained that neither they were charged under the provisions of the NAB Ordinance nor the NAB authorities had asked them through notice for voluntary deposit of the amount, so, no further proceedings were initiated against them. The petitioners have further asserted in the writ petition that during proceedings before the apex Court, a Departmental Promotion Committee was constituted on 13.11.2017 and they were hopeful for their promotion to the posts of "Field Kanungo" but vide order dated 13.11.2018 the process of their promotion was deferred on the ground of pendency of Suo Moto NAB case, however, their seniority was kept intact for future meeting of DPC. The petitioners, being aggrieved of the order dated 13.11.2017, approached the respondents through application on which an inquiry was conducted in the light of which they were exonerated from the charges of voluntarily return of amount to NAB authorities. Thereafter, the



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petitioners approached the concerned quarters for their promotion on some vacant posts of "Filed Kanungo" in Revenue Estate Buner but they were informed that their promotion cannot be made due to pendency of Suo Moto case before the apex Court, so, they challenged the actions and inactions of the respondents before this Court thorough Writ Petition No. 1049-M/2018 which was allowed vide judgment dated 13.11.2018 with directions to respondents to consider the petitioners for promotion according to law and rules. Now grievance of the petitioners is that the respondents vide order dated 23.11.2018 not only declared them unfit for promotion but their promotion was also further deferred. The petitioners time and again requested the respondents for withdrawal of the above said order but in vain, hence, the instant writ petition.



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Examiner
Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

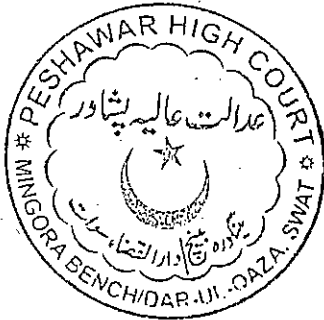
3. The petitioners Mir Afzal Khan and others in the connected W.P No. 1247-M/2016, who are officials of Revenue Estate Swat, have almost the same case. Their promotion was also deferred vide order dated 11.12.2017 on the ground of pendency of Suo Moto NAB case; later on when they approached the respondents for their promotion

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Tajamul/PS*

DB: Hon'ble Mr. Justice Muhammad Ghazanfar Khan
Hon'ble Mr. Justice Syed Arshad Ali
(W.P No. 1145-M of 2018 Sarmir Khan and 03 others Vs. Deputy Commissioner, Buner and 05 others)

to some vacant posts of "Field Kanungo" in Revenue Estate Swat, they were declared unfit for promotion vide order dated 10.12.2018 besides their promotion was further deferred on the ground that their names are in VR list and inquiries are pending against them. The petitioners have alleged that surprisingly Respondent No.5 namely Mumtaz Ahmad was promoted despite the fact that his name was also mentioned in V.R list and inquiry was also pending against him. Being aggrieved, they have invoked the constitutional jurisdiction of this Court through W.P No. 1247-M/2018.



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4. The petitioners in their respective writ petitions have prayed that the proceedings of Departmental Promotion Committees may be declared as illegal and the respondents be directed to promote the petitioners to the posts of "Filed Kanungo/ Girdawar" or reconstitute the DPC for filling the said vacant posts. They also prayed for any other remedy which this Court deems appropriate.

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Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

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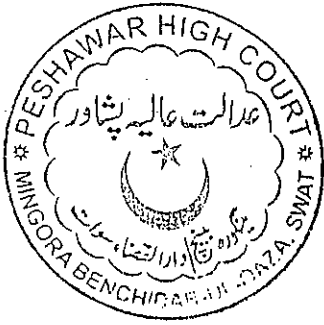
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- 6 -

5. We have heard the arguments of learned counsel for the parties and gone through the record in light of their valuable assistance.

6. First of all, we would take up C.M No. 1619-M of 2018 in W.P No. 1145-M/2018 whereby the petitioners have sought permission for placing on file certain documents annexed with the application. Since the documents attached with the application are official record having direct nexus with the issue involved in these writ petitions, therefore, the C.M is allowed and the documents annexed with the application are considered as part and parcel of the instant writ petition.

7. Main grievance of the petitioners is that their promotion was deferred by respondents on the ground that they are involved in Voluntary Return of ill-gotten money under Section 25 (a) of the National Accountability Ordinance, 1999 which, according to order dated 24.10.2016 of the august Supreme Court in Suo Motu Case No. 17/2016, falls within the definition of "misconduct" under the service law and calls for disciplinary action. We are mindful of the bar contained in Article 212 of the



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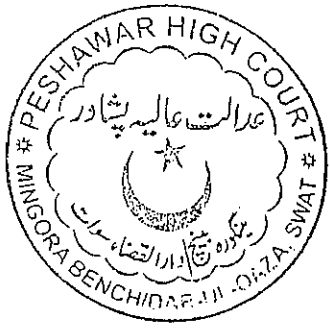
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Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

Tajamu/PS

DB: Hon'ble Mr. Justice Muhammad Ghazanfar Khan
Hon'ble Mr. Justice Syed Arshad Ali
(W.P No. 1145-M of 2018 Sarmir Khan and 03 others Vs. Deputy Commissioner, Buner and 05 others)

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Constitution of the Islamic Republic of Pakistan, 1973 qua jurisdiction of this Court in the matters falling in terms and conditions of a civil servant, but, in essence, it is not a pure and simple case of promotion rather the petitioners have challenged the legality of the ground on which they were held as unfit for promotion. It is an admitted fact on the record that promotion of the petitioners has been withheld on the sole ground that they had returned voluntarily the ill-gained amounts under the NAB Ordinance which is the main issue involved in these petitions. The question arising at this juncture is that as to whether the Service Tribunal has got the exclusive jurisdiction to adjudicate upon the said particular issue or it is open for the High Court under Article 199 of the Constitution to entertain the matter by giving directions to respondents to act in accord with law. The answer to above question, in our opinion, is that the issue, in view of its peculiar nature, does not fall within the terms and conditions of the respondents, hence, calls for interference of this Court to adjudge the legality of withholding the petitioners' promotion on the mentioned ground. In other words, the respondents have declared the



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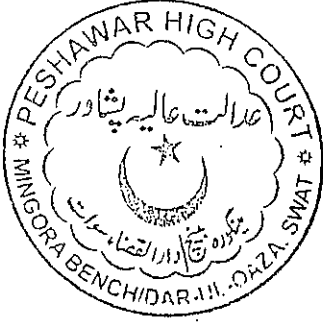
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petitioners as unfit for promotion because of their involvement in Voluntary Return of ill-gotten amounts against which an appeal is not competent before the Service Tribunal in view of Proviso (b) (i) to Section 4 of the Khyber Pakhtunkhwa Service Tribunals Act, 1974 which reads.



“4. Any civil servant aggrieved by any final order, whether original or appellate made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him or within six months of the establishment of the appropriate Tribunal, whichever is later, prefer an appeal to the Tribunal having jurisdiction in the matter:

Provided that ----

- (a) -----
- (b) no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining-
 - (i) 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 :or
 - (ii) -----”

In such scenario, this Court has got the jurisdiction to entertain the instant petitions under Article 199 of the Constitution.

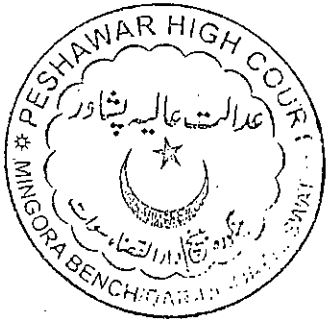
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Peshawar High Court Bench
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8. Reverting to the issue involved in these writ petitions, as discussed earlier, the august Supreme Court of Pakistan in Suo Motu Case No. 17/2017 observed that Voluntary Return of ill-gotten amount by a civil servant falls within the



definition of "misconduct" which calls for disciplinary action under the service law. Since, the petitioners had also returned voluntarily certain amounts to NAB under Section 25 (a) of the NAB Ordinance, so, the respondents deferred their promotion on this sole ground. In this regard, first of all it is necessary to know the background and purpose of the above referred SMC No. 17/2016 which has been well highlighted by the apex Court in Para-2 of order dated 24.10.2016 which is reproduced for ready reference.

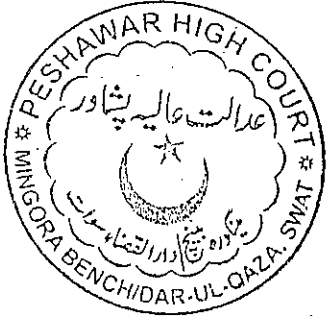


2. The Court also noticed that in terms of Section 25(a) of the Ordinance, the NAB authorities after issuance of call up notices suggest to the accused that they may opt to come forward with the offer of voluntary return of the amounts that have allegedly been acquired or earned illegally by them. Section 25 (a) (ibid) empowers the Chairman, NAB, to accept such voluntary returns made by the accused persons, the amount is deposited with NAB in installments at the discretion of the Chairman, NAB. Alarminglly, on payment of certain portion of the amount, such person is given clean chit by the NAB to rejoin his job. The frequent exercise of powers under Section 25 (a) (ibid) by the NAB on one side has multiplied the corruption usurping the

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jurisdiction of the F.I.A and Anti-Corruption agencies and defeated the object of the Ordinance on the other hand. In this regard the matter was referred by a Bench of this Court to the Hon'ble Chief Justice of Pakistan, for examining the vires of Section 25(a) (ibid) vis-à-vis un-bridled powers of the Chairman, NAB to accept the offer of voluntary return from a person regardless of the size of the amount by any mode adopted at his discretion which falls within the domain of the judiciary.



The above observations contained in the order clearly manifests the aim of the Hon'ble apex Court i.e examining the vires of Section 25 (a) of the Ordinance ibid as well as the uncontrolled powers of the Chairman NAB while accepting the voluntary return of illegally gained money from accused. Undoubtedly, no independent case under the NAB Ordinance is pending against the petitioners neither before the NAB nor before the apex Court rather notice of an alarming issue has been taken in the Suo Motu case which has disturbed the entire scheme of the NAB Ordinance.

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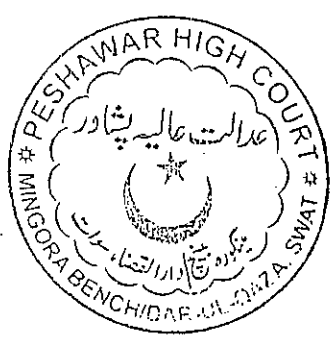
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The nature as well as the mode and manner in which the excess amount was charged by

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petitioners and other Patwaris has already been discussed earlier. When the NAB authorities took notice of the excess amount received by revenue staff including the present petitioners in both the cases, a meeting was held in the office of Senior Member, Board of Revenue, Khyber Pakhtunkhwa on 30.04.2003 which decided to start recovery of the excess amount from concerned Revenue Staff. Minutes of the said meeting were circulated by Secretary Board of Revenue vide letter bearing Endst: No. 6687-6715/10-1/TOSD/2003 dated 03.05.2003 consequent upon which the DORs of Districts Swat and Buner issued letters to Tehsildars for making recoveries from the concerned staff who accordingly issued notices to petitioners and other concerned staff with the directions to deposit the arrears/amount otherwise in case of any action by NAB the responsibility will lie on them. So, the petitioners deposited their respective amounts. Thereafter, the august Supreme Court of Pakistan took Suo Motu action regarding voluntary return of embezzled amounts by corrupt Government/Civil servants under Section 25 (a) of the NAB Ordinance and passed the order dated 24.10.2016, Para-2 of



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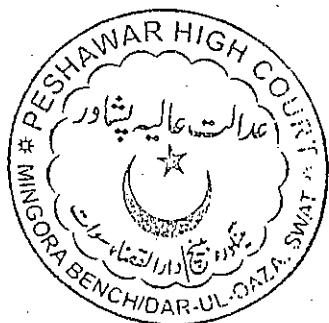
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which has been reproduced above. The apex Court further observed in the said order that:-

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From the reports submitted by the Federal Government and the respective Provincial Governments, it appears that no departmental action has been taken against the officers/employees of different organizations including Govt. departments, who had voluntarily returned illegally acquired monetary gains, which is very unfortunate. Once a person accused of corruption or corrupt practices volunteers to offer to return the amount he has pocketed or gained through illegal means, prima facie, cannot hold any Government/Public Office, as the very act of his offering the voluntary return falls within the definition of "misconduct" under the service law and calls for initiation of disciplinary action against the accused person(s).

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In light of the above observations of the apex Court in the Suo Motu Petition, promotion of the petitioners was deferred by respondents on the ground that they are involved in Voluntary Return cases. Petitioners Sirmir Khan and others have earlier filed W.P No. 13.11.2018 which was decided by this Court vide order dated 13.11.2018. It would

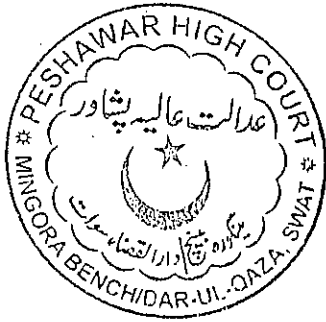
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be appropriate to reproduce the relevant paras of the judgment for ready reference.



“5. The august Supreme Court of Pakistan passed an order in Suo Motu case No. 17 of 2016 directing initiation of proceedings against the persons who had entered into voluntary return under section 25 (a) of the NAB Ordinance. The department has initiated inquiry against the present petitioners and according to the petitioners, they were exonerated from the charges.

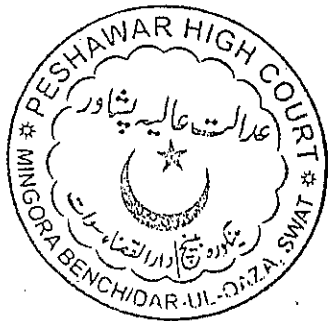
6. Be that as it may, since according to the claim of petitioners, they are senior in the seniority list, therefore, the respondents are under legal obligation to place the cases of the petitioners before the Departmental Promotion Committee with the detailed remakes regarding their ACRs, inquiries, fitness etc. It is then for the Departmental Promotion Committee to evaluate their candidature for their promotion as the same is the sole job of the said committee and the appointing authority. However, the respondents cannot withhold the names of the petitioners from placing it before the Departmental Selection Committee.

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Peshawar High Court Bench
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7. In view of the above, we direct the respondents to place the names of the petitioners in accordance with their seniority list in the working papers of the candidates who shall be considered for promotion to the regular post of Field

Kanungo to be placed before the Departmental Promotion Committee scheduled for 19.11.2018 or any other date. However, the Departmental Promotion Committee and the appointing authority are at liberty to evaluate the candidature of the petitioners for the promotion to the post of Field Kanungo in accordance with law and rules on the subject".



9. After the above decision of this Court, meeting of the Departmental Selection/Promotion Committee was held on 23.11.2018 for District Buner, however, this time too the promotion of petitioners Sirmir Khan and others was deferred only on the ground that they are involved in Voluntary Return cases under the NAB Ordinance and no other reason was mentioned for their being unfit for promotion.

10. This Court has already passed a judgment dated 13.11.2018 in the case of petitioners Sirmir Khan etc, so, we can form no other opinion in the present case filed on the same grounds other than that mentioned in the said judgment, the relevant paras of which have already been reproduced. However, we may add that the respondents, by misinterpreting the order of the august Supreme

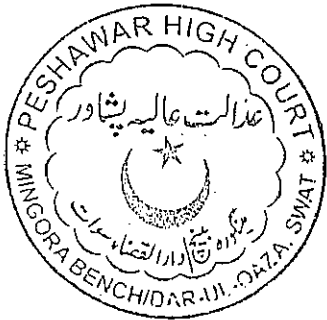
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Mingora Dar-ul-Qaza, Swat.

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Court, have taken the same in a sense which is not in accord with the spirit of that order. The Hon'ble apex Court in its order has held in clear and unambiguous terms that Voluntary Return of illegally gained amount by persons holding Government/Public offices under the NAB Ordinance falls within the definition of "misconduct" under the service law calling for disciplinary action against such officials. In view of the above observations of the Hon'ble apex Court, it was incumbent upon the respondents to have initiated inquiries against the petitioners leading the same to its logic end but the entire record is silent about any such process by respondents except an inquiry against the petitioners in the present case which did not proceed farther than the inquiry report. To further explain our point of view at the cost of repetition, neither the inquiries against the petitioners have yet been finalized nor there is any final report/decision of the competent authority on the record to show the petitioners guilty of misconduct under the Khyber Pakhtunkhwa (Efficiency and Discipline) Rules, 2011, so, withholding/deferring the promotion of petitioners



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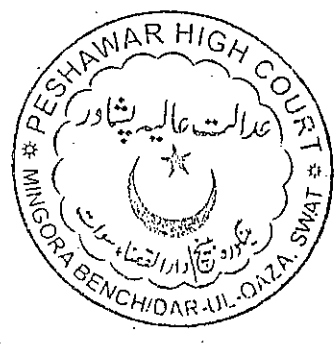
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Peshawar High Court Bench
Mingora Dar-ul-Qad, Swat.

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only on the pretext of pendency of Suo Motu case before the apex Court is not legal. It is also pertinent to mention here that Additional Deputy Commissioner, Buner was appointed as inquiry officer. He in the last Para of his report dated 30.04.2018 mentioned that:



"d. Despite the above, both the then Patwaris and the then Revenue Officers have violated/shown laxity in implementation of the order of Board of Revenue Khyber Pakhtunkhwa".
(emphasis applied)

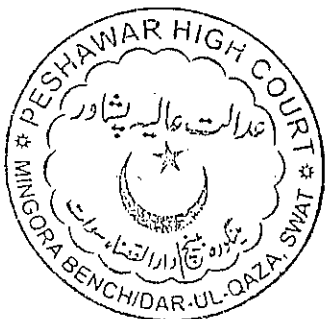
Whether receiving the charges on mutations and registries was the duty of Revenue/Tehsildars or Patwaris and whether both or either of the said categories of the revenue staff was responsible for the act of disobeying the order of Board of Revenue, these are not the questions for resolution before this Court, so, we would not involve ourselves in that factual controversy as the same will be decided by competent authority of the department after conducting the inquiry, however, the same points cannot be overlooked while deciding the instant petitions because in case the petitioners finally stand exonerated after proper inquiry, in that

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Peshawar High Court Bench
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Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

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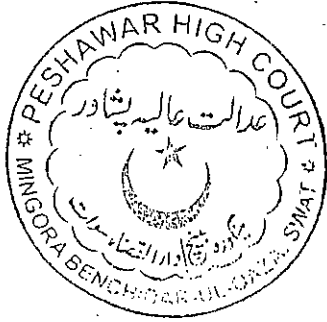
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eventuality much water would have been flown under the bridges resulting into creation of various complications which will open so many other doors for further litigation. So, the best and legal course for the respondents in the light of the order of the Hon'ble apex Court was to hold transparent inquiries against the officials including the petitioners under the relevant service laws; only then they would be in a better position either to allow or disallow the promotion of petitioners on the basis of inquiries, so, withholding the promotion of petitioner just on the pretext of pendency of Suo Motu case without acting in accord with the order of the Hon'le apex Court is neither just nor legal. It would not be out of place to mention here that as per assertions of the petitioners, the respondents have exonerated them after inquiries, however, no final order of the competent authority is available on the entire record from which innocence or guilt of the petitioners could be ascertained.

II. Similar is the case of petitioners Mir Afzal etc in the connected W.P No. 1247-M/2018 who are serving against the posts of Patwari and presently against the posts of "Field Kanungo".

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Their promotion has also been deferred on the same ground, as mentioned above in the connected case of petitioners Sirmir Khan etc, despite the fact that neither any inquiry has yet been finalized against them till date nor there is any order of the competent authority to show them guilty of any misconduct. Learned counsel for the petitioners have annexed certain documents with W.P No. 1145-M/2018 through C.M No. 1619-M/2018 perusal of which reveals that two Kanungos namely Hazrat Younas and Syed Zafar Ali of the office of Deputy Commissioner, Swat were promoted to the posts of Naib Tehsildars by Senior Member Board of Revenue, Khyber Pakhtunkhwa, vide order dated 05.05.2017. The said promotion order was later on withdrawn vide order dated 16.01.2018 till final judgment of Supreme Court of Pakistan in Suo Motu Case No. 17/2016. The mentioned officials filed an application before Senior Member Board of Revenue for cancellation of order dated 16.01.2018 with further prayer for constitution of an inquiry committee. Assistant Commissioner, Khwazakhela, Swat was appointed as inquiry officer in the matter. He, after completion of the process, submitted his

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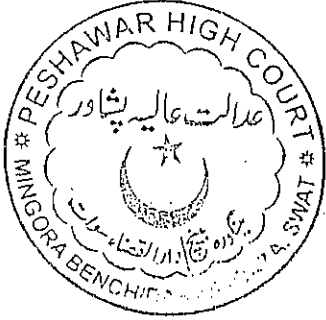
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Peshawar High Court Bench
Mingora Dar-ul-Qadhi, Swat.

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report bearing No.219/AC/K.K/Misc dated 21/02.2018. Paras 2, 3 & 4 of the inquiry report are important which needs to be reproduced below.



"2) Honorable Secretary-I, Board of Revenue, Revenue & Estate Department, Khyber Pakhtunkhwa sent a letter to the Secretary to Government of Khyber Pakhtunkhwa, Establishment Department vide letter No. Estt: V/PF/Suo Moto/2016 dated 23.01.2017 in which it has been clearly stated that "On 24.10.2016 the Supreme Court of Pakistan ordered that no final order from removal from service shall be used against any of the officials who have entered into voluntary return of the amount and voluntary return paid by him is less than 2.5 million".

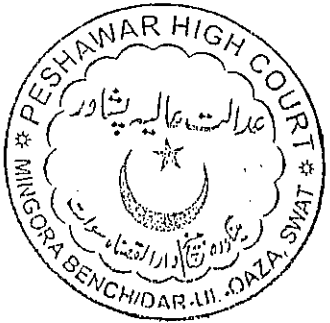
3) Deputy Commissioner Swat sent letters to Assistant Secretary (Estab:), Board of Revenue Khyber Pakhtunkhwa vide Nos. 466/1/3/DK, 467/1/3/DK and 468/1/3/DK dated 31.03.2017 in which he clearly stated that "on the basis of Service record available in this office, there is no Departmental/ Anti-Corruption/ NAB/ Inquiry pending against Mr. Syed Zafar Ali Kanungo, and Mr. Hazrat Younas Field Kanungo Circle Barikot, District Swat". Deputy Commissioner Swat sent a letter to Assistant Secretary (Estab) Board of Revenue, Khyber Pakhtunkhwa vide Nos. 5571/3/DK dated 08.05.2017 in which it was stated that "their names are present in

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Examiner
Peshawar High Court Bench
Mingora Dar-ul-Qa.a, Swat.

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the NAB list and an amount of Rs.36,265/- has been returned by Mr. Syed Zafar Ali and Rs.6,885/- has been returned by Mr. Hazrat Younas". Afterwards, Deputy Commissioner, Swat sent a letter to Assistant Secretary (Estab:), Board of Revenue, Khyber Pakhtunkhwa vide No. 1230/1/3/DK dated 02.11.2017 in which he stated that "neither any correspondence has been made by the NAB Authorities with the above officials nor they have been arrested by the NAB authorities nor they have entered any written plea bargain, this recovery is purely on account of mutation fee which normally is pointed out during audit but the recovered amount was mistakenly deposited in the NAB recovery list/account". (emphasis applied)

With the above observations, the

Inquiry Officers recommended that:

"Recommendations:

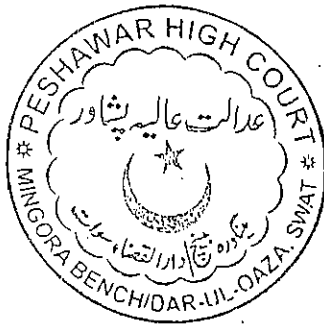
Therefore, in my opinion and in light of facts and findings of inquiry, it is recommended that the applicants may kindly be re-instated to the posts of Naib Tehsildar by the Competent authority please".

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Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

On the basis of said inquiry report,

Senior Member Board of Revenue withdrew the subsequent order dated 16.01.2018 and the promotion order dated 05.05.2017 of the above said

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officials was restored. The above process carried out by respondents in respect of the officials involved in Voluntary Return of amount has not been made in the case of the present petitioners and no explanation is available on the record to justify this inaction of the respondents in the cases of petitioners. We may note here that the process of inquiry conducted in the cases of above said revenue officials namely Hazrat Younas and Syed Zafar Ali was in accord with the spirit of the order dated 24.10.2016 passed by the Hon'ble apex Court in Suo Motu Case No. 17/2016 but the petitioners were also entitled for the like treatment which has not been done by the respondents in case of the petitioners for the reasons best known to them.

Similarly, District Collector, Swat vide notice/letter bearing Endst: No. 2312-76/2/4/DRPs dated 30.05.2003 with the subject (نوٹس نسبت وصولی) MUTATION SCAM 1994-95 سرکاری واجبات

informed the Patwaris mentioned in the list to deposit the government arrears uptill 31.05.2003. In the list attached with the said notice, apart from the petitioners and some other revenue officials, Respondent No. 5 namely Mumtaz Ahmad has been

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Peshawar High Court Bench
Mingora Dar-ul-Qad, Swat.

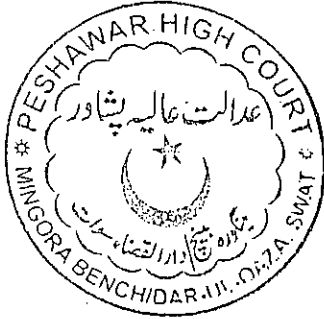
Tajamu/PS*

DB: Hon'ble Mr. Justice Muhammad Ghazanfer Khan
Hon'ble Mr. Justice Syed Arshad Ali
(W.P No. 1145-M of 2018 Sarim Khan and 03 others Vs. Deputy Commissioner, Buner and 05 others)

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mentioned at Serial No. 23 meaning thereby that he was also an accused of misconduct by voluntarily returning the amount under the NAB Ordinance. There is another document attached with the connected petition No. 1247-M/2018 as Annexure "E" bearing No. 1230/1/3/DK dated 02.11.2017 which is a letter addressed to Assistant Secretary (Estt:) Board of Revenue whereby advice/opinion has been sought by Deputy Commissioner Swat with the remarks that:

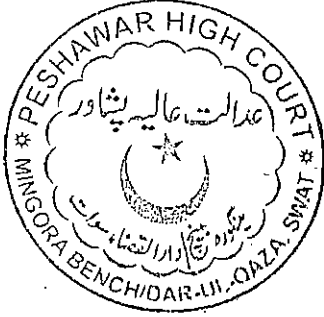


"However, it is pointed out that the names of the following Patwaris to be promoted reflects in the NAB voluntary return list".

The name of Mumtaz Ahmad has been mentioned at Serial No.3 in the list of Patwaris who were to be promoted to the post of Kanungo and finally he as well as 09 other patwaris were promoted vide order bearing No. 1951/1/3/DK dated 10.12.2018.

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Peshawar High Court Bench
Mingora Dar-ul-Qa. Swat.

It is abundantly clear from the above promotion orders that not only the respondent department has adopted double standard regarding the officials who are at par with each other on



account of Voluntary Return of amount but the petitioners have also been treated with discrimination. In other words, the respondents did not withheld promotion of the above-mentioned officials though they were mentioned in the list of persons who were involved in Voluntary Return of amounts besides they have not considered pendency of the Suo Motu case before the august Supreme Court as a hurdle in their promotion on the sole ground of which the respondent department has deferred promotion of the petitioners in both the writ petitions. In short, the ground on which the petitioners were held unfit for promotion, the same ground was not considered for withholding the promotion of other officials of the same department.

ATTESTED

Examiner
Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat

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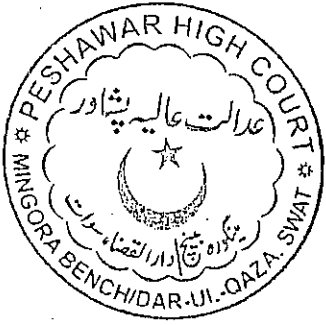
12. It is pertinent to mention here that the respondents have promoted those officials who were junior to petitioners. The process of inquiries has also not been finalized despite passage of almost two years since opening of the Suo Motu Case by the Hon'ble apex Court, so, in such scenario, deferring the promotion of petitioner is not warranted under the law.

Tajamul/PS-

DB: Hon'ble Mr. Justice Muhammad Ghazanfer Khan
Hon'ble Mr. Justice Syed Arshed Ali
(V.P. No. 1145-M of 2018 Sarmir Khan and OJ others Vs. Deputy Commissioner, Buner and OS others)

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13. The upshot of the above discussion is that the decision of the respondents for declaring the petitioners unfit for promotion on the ground of Voluntary Return of ill-gotten amount that too without finalizing the inquiries against them is illegal, hence, calls for interference of this Court in the circumstances. Resultantly, both these petitions are allowed in terms that the respondents shall first finalize the inquiries, if any, against the petitioners and thereafter re-constitute Departmental Promotion Committees by placing the names of the petitioners in accord with their seniority list in the working papers of the officials who are to be promoted or have been promoted out of turn/against the seniority order. In case the number of vacant posts of Kanungo is sufficient enough to absorb the already promoted Patwaris who were junior to petitioners, then the promotion of the juniors already taken place shall not be interrupted, however, in that eventuality the seniority of the petitioners, in case of their promotion, shall remain intact. The Departmental Promotion Committee shall evaluate the candidature of the petitioners strictly in accord with law and relevant rules. Needless to mention that since



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Examiner
Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

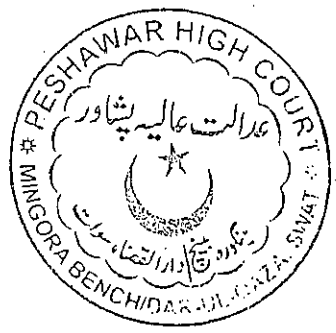
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promotion of the petitioners had been deferred on the ground which has already been held as illegal in light of the above discussion, so, if the respondents find the petitioners fit for promotion as a result of inquiries, their promotion orders shall be passed from the back date when meetings of the Departmental Promotion Committees were held for the first time in Districts Swat and Buner wherein the petitioners were considered as candidates but they were deferred while their juniors were promoted. Moreover, the promotion orders of the petitioners so passed shall be subject to final decision of the august Supreme Court in Suo Motu Case No. 17/2016.



Announced.
Dt: 26.03.2019

[Signature]
JUDGE

Certified to be true copy

[Signature]
05-04-19
EXAMINER

Peshawar High Court, Mingora/Dar-ul-Qaza, Swat
Authorized Under Article 87 of Qanoon-e-Shahadat Oder.1984

4/4

[Signature]
JUDGE

S.No..... 26
Name of Applicant..... *[Signature]*
Date of Presentation of Applicant..... 26.03.19
Date of Completion of Copies..... 26.04.19
No of Copies..... 26
Urgent Fee.....
Fee Charged..... 52/-
Date of Delivery of Copies..... 26.04.19

[Signature]

no to be copy

"B" "B" (50) (50)


TENTATIVE SENIORITY LIST OF PATWARIS IN DISTRICT BUNER AS STOOD ON 31/12/2018

S. No	Name Of Patwari	Date of Birth	Date of Appointment	Remarks
1.	Mr. Inamullah	15/02/1960	01/04/1980	-
2.	Mr. Zaman Khan	05/04/1981	15/03/1962	-
3.	Mr. Javid Iqbal	06/04/1981	01/04/1961	-
4.	Mr. Sani Mullah	01/01/1962	22/12/1985	-
5.	Mr. Sarmir Khan	20/04/1959	22/12/1985	-
6.	Mr. Bakht Ghafoor Shah	16/09/1961	22/12/1985	-
7.	Mr. Zahid Tab Gul	01/03/1962	09/07/1987	-
8.	Mr. Muslim Khan	09/01/1986	30/11/2007	-
9.	Mr. Yousaf Ali Shah	30/03/1980	30/08/2008	-
10.	Mr. Sarbali Khan	18/10/1986	30/08/2008	-
11.	Mr. Gul Shaid Khan	19/04/1982	30/08/2008	-
12.	Mr. Fatch Muhammad Khan	15/04/1984	30/08/2008	-
13.	Mr. Javid Ahmad	16/04/1979	30/08/2008	-
14.	Mr. Iikhar Ahmad	16/04/1979	05/03/2009	-
15.	Mr. Muhammad Younas	01/03/1988	30/07/2009	-
16.	Mr. Muhammad Alam	01/03/1989	30/07/2009	-
17.	Mr. Asif Iqbal	12/01/1990	18/08/2009	-
18.	Mr. Muhammad Irfan	24/06/1987	28/09/2009	-
19.	Mr. Shakil Ahmad	20/03/1988	28/09/2009	-
20.	Mr. Intiaz Shah	16/04/1980	28/09/2009	-
21.	Mr. Israj Khan	20/03/1985	28/09/2009	-
22.	Mr. Azmat Ali	04/01/1988	19/10/2009	-
23.	Mr. Dil Raj Khan	02/02/1983	19/10/2009	-
24.	Mr. Shamshad Ali	02/04/1988	19/10/2009	-
25.	Mr. Iikhar Ali	02/01/1985	19/10/2009	-
26.	Mr. Sardar Ali	01/03/1982	19/10/2009	-
27.	Mr. Ihsan Ali	04/04/1990	30/08/2010	-
28.	Mr. Akhtar Ali Shah	01/09/1980	30/08/2010	-
29.	Mr. Abid Ali Khan	02/11/1987	30/08/2010	-
30.	Mr. Fawad Ali Shah	02/02/1987	28/09/2011	-
31.	Mr. Murad Ali	01/01/1988	20/12/2011	-
32.	Mr. Gul Sher Khan	04/03/1985	20/12/2011	-
33.	Mr. Sabz Ali Khan	17/05/1989	20/12/2011	-
34.	Mr. Bakht Sher	20/04/1988	20/12/2011	-
35.	Mr. Said Imran	09/01/1989	20/12/2011	-
36.	Mr. Kaman Afsar	13/04/1989	20/12/2011	-
37.	Mr. Abdul Mujeeb	13/04/1989	20/12/2011	-
38.	Mr. Shakil Khan	15/04/1988	20/12/2011	-
39.	Mr. Muneer Ahmad	13/04/1990	28/12/2012	-
40.	Mr. Anwar Ali	28/03/1980	28/12/2012	-
41.	Mr. Muhammad Ali	15/12/1990	28/12/2012	-
42.	Mr. Tilwat Khan	15/04/1981	18/12/2013	-
43.	Mr. Said Amjad Hussain Shah	02/01/1989	18/12/2013	-
44.	Mr. Sajid Ali	07/04/1989	18/12/2013	-
45.	Mr. Altaf Ali	05/01/1986	18/12/2013	-
46.	Mr. Shahid Ali	12/12/1989	18/12/2013	-
47.	Mr. Dawa Khan	07/11/1988	18/12/2013	-
48.	Mr. Sahib Zada	05/02/1986	18/12/2013	-
49.	Mr. Shamsul Arafin	01/03/1987	20/12/2013	-

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50.	Mr. Gulzar Khan	10/04/1989	10/08/2015	-
51.	Mr. Salar Shah	20/05/1989	10/08/2015	-
52.	Mr. Mohambar	15/04/1988	10/08/2015	-
53.	Mr. Arshad Subhan	03/02/1992	10/08/2015	-
54.	Mr. Said Ali	10/03/1988	10/08/2015	-
55.	Mr. Sajid Ali Shah	19/04/1986	10/10/2016	-
56.	Mr. Zia Ur Rahman	01/03/1984	10/10/2016	-
57.	Mr. Manzor Akbar	10/04/1983	10/10/2016	-
58.	Mr. Zain Ul Abideen	02/04/1990	10/10/2016	-
59.	Mr. Alyas Ali	10/04/1982	10/10/2016	-
60.	Mr. Kusar Ali	03/01/1989	14/11/2016	-
61.	Mr. Muhammad Tariq	12/03/1991	05/05/2017	-



DEPUTY COMMISSIONER,
BUNER


No. 1151/87
DC/Buner/Estt/S.I.

Dated: 11.03.2019

1. Commissioner, Malakand Division.
2. Additional Deputy Commissioner, Buner.
3. All Assistant Commissioners, Buner.
4. Officials concerned for recording their objections against the above list, if any, within fifteen days.


DEPUTY COMMISSIONER,
BUNER




10/10/2016

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE/REVENUE AND ESTATE DEPARTMENT

(TEHSILDAR, NAIB TEHSILDAR / SUBORDINATE REVENUE SERVICES, 2008)

NOTIFICATION

Peshawar, dated 23-01-2015

No. 1942/Estt/135/SSRC. In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 read with the Cabinet Division Notification No. SRO. 457(1)/2001 dated 28th June, 2001 and supersession of all previous rules issued in this behalf, the Revenue and Estate Department, in consultation with the Establishment and the Finance Department, hereby lay down the method of recruitment, qualification and other conditions specified in column 3 to 7 of the Appendix to this Notification and applicable to posts born on the establishment strength of Revenue and Estate Department specified in column 2 of the said appendix:-

APPENDIX

1	2	3	4	5	6	7
S.N.	Nomenclature of the post	Appointing Authority	Minimum Qualification for appointment by initial recruitment or by transfer	Minimum Qualification for appointment by promotion	Age limit	Method of recruitment
1.	Tehsildar (BPS 16)	Administrative Secretary (SMBR)	Second class Graduation from any University recognized by the Higher Education Commission	Deleted	21 - 30 years For initial recruitment	(a) Twenty percent by initial recruitment; and (b) Sixty percent by promotion, on the basis of joint seniority-cum-fitness from amongst Naib Tehsildars, District Revenue Accountants, District Kanungos and Sub-Registrar with at least five years service. (c) Twenty percent by promotion on the basis of joint seniority-cum-fitness from amongst Assistants of the office of Board of Revenue, offices of Commissioners, Deputy Commissioners and Political Agents having five years service as such.

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GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE/REVENUE AND ESTATE DEPARTMENT
TEHSILDAR, NAIB TEHSILDAR/SUBORDINATED REVENUE SERVICE RULES, 2008
Notification

Peshawar dated 23-01-2015

lo. 1942/Estt:I /135/SSRC. In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa, civil servants (appointment, promotion and transfer) rules 1989 read with the cabinet division notification No. SRO 457(1)/2001 dated 28th June, 2001 and in suppression of all previous rules issued in this behalf the revenue and estate department in consultation with the establishment and the finance department hereby lays down the method of recruitment qualification and other conditions specified in column 3 to 7 of the appendix to this notification and applicable to posts born in the cadre strength of revenue and estate department specified in column 2 of the said appendix:-

Appendix—

1. S.No	2. Nomenclature of the post	3. Appointing authority	4. Minimum qualification for appointment by initial recruitment or by transfer	5. Minimum qualification for appointment by promoting	6. Age limit	7. Method of recruitment
1	Tehsildar (BPS 16)	Administrative secretary (SMBR)	Second class graduation from any university recognized by the higher education commission	Deleted	21-30 years for initial recruitment	(a) Twenty percent by initial recruitment: and (b) Sixty percent by promotion on the basis of joint seniority-cum-fitness from amongst Naib Tehsildars district revenue accountant's district kanungo and Sub-registrar with at least five years' service. (c) Twenty percent by promotion on the basis of joint seniority-cum-fitness from amongst assistants of the office of board of revenue offices of commissioners deputy commissioners and political agents having five years' service as such.

	2	3	4	5	6	7
	Reader to Senior Member / Members Board of Revenue	Administrative Secretary (SMBR)				By transfer from amongst the Tehsildars
1-B	Inspector of Stamps	Administrative Secretary (SMBR)				By transfer from amongst the Tehsildars
2.	Naib Tehsildar (BPS 14)	Administrative Secretary (SMBR)	Second class Graduation from any University recognized by the Higher Education Commission	Deleted	21 - 30 years For initial recruitment	(a) Fifty percent by initial recruitment, through NWFP Public Service Commission based on the result of a Competitive Examination conducted by it in accordance with syllabus, and (b) twenty five percent by promotion on the basis of Seniority - cum - fitness from amongst Kanungos with at least Five Years Service as such, who have passed the Departmental Examination of Naib Tehsildar. (c) fifteen percent by promotion, on the basis of joint Seniority - cum - fitness from amongst Senior Clerks of the office of Board of Revenue, Commissioners and Deputy Commissioners Offices in the Division concerned; and (d) Ten percent by promotion on the basis of seniority cum fitness from amongst Junior Clerks as Political Machine of the offices of Political Agents with atleast ten years service.;
3.	District Kanungo (Saddar Kanungo) (BPS 14)	Administrative Secretary (SMER)				By promotion on the basis of seniority cum fitness, from amongst the Kanungo of the concerned District with at least three years service as such
4.	Head Clerk Revenue (BPS - 14)					By transfer from amongst Naib Tehsildar (Deleted) (Post has been abolished)

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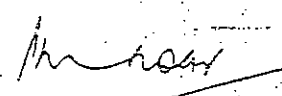
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1	2	3	4	5	6	7
1A	Reader to senior member/ members board of revenue	Administrative secretary (SMBR)				By Transfer from amongst the tehsildars
1B	Inspector of stamps	Administrative secretary (SMBR)				By Transfer from amongst the tehsildars
2	Naib Tehsildar (BPS 16)	Administrative secretary (SMBR)	Second class graduation from any university recognized by the higher education commission	Deleted	21-30 years for initial recruitment	<p>(a) Fifty percent by initial recruitment through NWFP public service commission based on the result of a competitive examination conducted by it in accordance with syllabus and</p> <p>(b) Sixty percent by promotion on the basis of joint seniority-cum-fitness from amongst kanungo with at least five years service as such who have passed the departmental examination of Naib Tehsildar.</p> <p>(c) Fifteen percent by promotion on the basis of joint seniority-cum-fitness from amongst senior clerks of the office of board of revenue commissioners and deputy commissioner's office in the division concerned and</p> <p>(d) Ten percent by promotion on the basis or seniority cum fitness from amongst Junior clerks as political members of the office of political agents with at least ten years service..</p>
3	District kanungo (Saddar Kanungo) BPS - 14	Administrative secretary (SMBR)				
4	Head Clerk revenue BPS-14					By Transfer from amongst the tehsildars (deleted post has been abolished)

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	2	3	4	5	6	7
	District Revenue Accountant (BPS 14)	Administrative Secretary (SMBR)	-	-	-	By promotion, on the basis of seniority-cum-fitness, from amongst the Tehsil Accountant of the district with at least three years service as such.
6.	Kanungo (BPS - 11)	District Collector	-	-	-	By promotion, on the basis of seniority-cum-fitness, from amongst the Patwaris and Naib Office Kanungos of the district concerned with three years service as such and who have passed the Departmental examination of Kanungo.
7.	Tehsil Accountant	District Collector	-	-	-	By promotion on the basis seniority-cum-fitness from amongst the Naib Tehsil Accountants having three (03) years service as such.
8.	Patwari (BPS - 09)	District Collector	Intermediate or equivalent qualification, who have passed the Patwar Examination.	-	18 to 35	By initial appointment from amongst the Patwar passed candidate entered in the Tehsil patwar candidate register maintained by District Collector of the district concerned.
9.	Naib Tehsil Accountant Naib Tehsil Office Kanungo	District Collector	-	-	-	By transfer from amongst the Patwaris.


 SECRETARY TO GOVERNMENT
 REVENUE AND ESTATE DEPARTMENT

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/Adinn.III/296/Amendment

Copy forwarded for information and necessary action to the:-

1. Secretary to Government of Khyber Pakhtunkhwa Establishment Department.
2. Secretary to Government of Khyber Pakhtunkhwa Finance Department.
3. Secretary to Government of Khyber Pakhtunkhwa Law Department.
4. Secretary Khyber Pakhtunkhwa Public Service Commission.
5. Registrar Peshawar High Court.
6. Accountant General Khyber Pakhtunkhwa.
7. All Commissioners / Political Agents in Khyber Pakhtunkhwa.
8. All District Officers (R&E)/Collectors, in Khyber Pakhtunkhwa.
9. Private Secretary to Minister for Revenue Khyber Pakhtunkhwa.
10. Controller, Government Printing Press Peshawar with the request to publish the above notification in the official Gazette and supply 50 printed copies thereof to the undersigned for record.

DEPUTY SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
REVENUE & ESTATE DEPARTMENT



GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE AND ESTATE DEPARTMENT
PHONE # 091-9210057
FAX # 091-9213989
E-MAIL: LANDRECORD.KPK@GMAIL.COM

Facebook ID: www.facebook.com/landrecord.kpk Twitter ID: @Landrecord.kpk

Peshawar dated the 20/03/2019

NOTIFICATION.

No. 3984 /LR-I/20-DEK/2018-19. In pursuance of the provision contained in Rules-5 (a) and 8 of the instructions for conducting the Departmental Examination for the post of Kanungos, final result of 846 candidates appeared in the Departmental Examination of Kanungos held on 03/10/2018 to 04/10/2018 in the Community Hall (Examination Hall) of F.G Colony, Hassan Ghari Near Shami Road, Peshawar and on the recommendations of the committee constituted vide Notification No. LR-I/Kgo. Exam/Result/2019/ 3019-25, dated, 01/03/2019, is hereby declared as per attached result sheet. The Result Sheet is duly signed by the Committee members.



DIRECTOR LAND RECORDS,
KHYBER PAKHTUNKHWA

Endst No. 3985-4023 /LR-I/20-DEK/2018-19

Copy for information and necessary action is forwarded to the:-

- 1) All the Deputy Commissioners in Khyber Pakhtunkhwa.
- 2) Settlement Officers, Nowshera, Abbottabad, Mansehra and Chitral.
- 3) Principal, Revenue Academy, Peshawar.
- 4) Assistant Secretary (Estab:-) Board of Revenue, Khyber Pakhtunkhwa.
- 5) Private Secretary to Senior Member, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.


DIRECTOR LAND RECORDS,
KHYBER PAKHTUNKHWA


Assistant
to the Land Record



FS



DIRECTORATE OF LAND RECORDS KHYBER PAKHTUNKHWA

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Issue No. _____

Departmental Examination of Kanungo Certificate

This is to certify that Mr. Sani Mullah S/O Haji Mullah

having CNIC No. 15/01-041-9146-5 Domicile BURKH has passed

the Departmental Examination of Kanungo in the year 2016/2018-19 under

Roll No. 130/486 In parts/as a whole. In parts

Prepared By: _____

Verified By: _____

Countersigned By: _____

Name: Ghulam Juman

Name: Ghulam Wali

Name: _____

Designation: S/O

Designation: S/O

Designation: _____

Signature: [Signature]

Signature: [Signature]

Signature: [Signature]

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Govt. Land Office, Peshawar



Office Order

As per the inquiry conducted by the Additional Deputy Commissioner Buner vide endorsement no. 88/ADC(B) dated 30.04.2018, the following Revenue Officials of this office were found responsible for laxity in the implementation of the order of Board of Revenue, involved in Voluntary returned NAB cases:

S. #	Name of Officials	Designation	BPS	Date of Appointment	Date of Retirement	Remarks
1.	Miraj Muhammad	Kanungo	BPS-11	16.12.1982	09.08.2021	In-service
2.	Mumtaz Muhammad	Kanungo	BPS-11	06.04.1981	15.11.2020	In-service
3.	Inam Ullah	Patwari	PBS-09	01.04.1980	14.02.2020	In-service
4.	Zahid Tab Gul	Patwari	PBS-09	09.07.1987	28.02.2021	In-service
5.	Bakht Ghafoor Shah	Patwari	PBS-09	22.12.1985	15.09.2021	In-service
6.	Sarmir Khan	Patwari	PBS-09	22.12.1985	19.04.2019	Retired
7.	Abdul Malik	Kanungo	BPS-11	06.04.1981	07.11.2018	Retired
8.	Siraj Muhammad	Kanungo	BPS-11	08.04.1981	19.05.2018	Retired

In compliance with the letter No. SO(PSE)ED/1-25/2019/KC dated 15.05.2019 of the Government of Khyber Pakhtunkhwa Establishment Department received through the Board of Revenue, Revenue & Estate Department's letter No. Estt:V/PF/Suo Moto/F.2/2016/20588-629 dated 31.05.2019, the officials above are hereby awarded minor penalty of "Forfeiture of three (03) years" as provided in rule 4(a(ii)) of the Government of Khyber Pakhtunkhwa Efficiency & Disciplinary Rules, 2011.


Necessary entries be made in the services book / service file.


DEPUTY COMMISSIONER,
BUNER.

Endst. No. & Date Even.

For Information and Necessary Action:

1. Senior Member, Board of Revenue, Revenue & Estate Department, Peshawar.
2. Secretary, Establishment Department, Khyber Pakhtunkhwa, Peshawar.
3. Commissioner, Malakand Division for information.
4. Additional Deputy Commissioner, Buner.
5. All Assistant Commissioners in Buner.
6. All Additional Assistant Commissioners in Buner.
7. District Accounts Officer, Buner.
8. District Nazar (Local) Buner.
9. Official concerned.


DEPUTY COMMISSIONER,
BUNER.