

26<sup>th</sup> July, 2022


1. Nemo for the petitioner. Syed Naseer Ud Din Shah, Asst: AG alongwith Mr. Qasim Khan, Supdt for the respondents present.

2. Called several times till last hours of the court but nobody turned up on behalf of the petitioner. In view of the above, the review petition is dismissed in default.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 26<sup>th</sup> day of July, 2022.*



(Salah Ud Din)  
Member(Judicial)

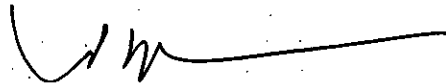


(Kalim Arshad Khan)  
Chairman

24.01.2022

Nemo for the appellant present. Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

Notice be issued to the appellant and his counsel for 11.05.2022 before D.B.

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

  
Chairman

11-5-22

*Proper DB not available the case is adjourned on 26-7-22*

*H. A. R.*  
Reader

30-12 .2020

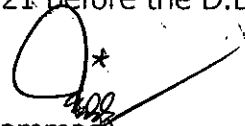
Due to summer vacation, case is adjourned to  
17-3 .2021 for the same as before.

  
Reader

17.03.2021

Nemo for the appellant. Addl. AG for the respondents present.

On the last date, the matter was adjourned on the strength of Reader's Note. Notices to the appellant/counsel shall, therefore, be issued for hearing on 19.05.2021 before the D.B.

  
(Mian Muhammad)  
Member (E)

  
Chairman

19.5.2021.

*Due to Covid 19, the case has been adjourned to 10.9.21 for the same.*

  
Reader

10.09.2021

Clerk to counsel for petitioner present.

Kabir Ullah Khattak learned Additional A.G for respondents present.

Lawyers are on general strike, therefore, case is adjourned. To come up for arguments on 24.01.2022 before D.B.

  
(Rozina Rehman)  
Member (J)

  
Chairman

29.06.2020

Due to COVID-19, the case is adjourned to 25.08.2020 for the same.

  
Reader

25.08.2020

Due to summer vacation case to come up for the same on 28.10.2020 before D.B.

  
Reader

28.10.2020

Proper D.B is on Tour, therefore, the case is adjourned for the same on 30.12.2020 before D.B.

  
Reader

12.12.2019


Petitioner absent. Lawyers are on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourn. To come up for further proceedings/arguments on 17.02.2020 before D.B. Petitioner be put to notice for the date fixed.


  
Member

  
Member

17.02.2020

Petitioner absent. Learned counsel for the petitioner absent. Mr. Kabirullah Khattak learned. Additional AG for the respondents present. Adjourned. To come up for arguments on 02.04.2020 before D.B. Petitioner be put to notice for the date fixed.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

2.4.2020

*Due to public holiday on account of COVID 19 the case is adjourned. To come up for same on 29.6.2020 as before.*





BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL

PESHAWAR

Review Petition No. 330/2019

Review in \_\_\_\_\_ Service Appeal No. 576/2018

Ali Sher Khan S/O Jehangir Khan

APPELLANT

VERSUS

Chief Secretary Government of Khyber Pakhtunkhawa & others

RESPONDENTS

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4.	Wakalatnama		

Appellant

Through,



Rehman Ullah Shah

MA, LLM

Advocate

Ibn e Abdullah Law Associates

11 Azam Tower University Road, Peshawar

Phone & Fax # 091- 570 2021

[infoila56@gmail.com](mailto:infoila56@gmail.com)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL

PESHAWAR

Review Petition no. 330/2019 (1)

Review No...../2019 in Appeal No. 576/18

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 892

Dated 28-8-2019

Ali Sher Khan S/O Jehangir Khan

Ex – Tehsildar at Hapripur, Distt Haripur

Presently Additional Assistant Commissioner (Rev) Mansehra

Office of Additional Assistant Commissioner, Mansehra, Distt Mansehra

APPELLANT

VERSUS

1. Chief Secretary  
Government of Khyber Pakhtunkhawa at Peshawar
2. Secretary Board of Revenue  
Government of Khyber Pakhtunkhawa at Peshawar
3. Senior Member Board of Revenue,  
Government of Khyber Pakhtunkhawa at Peshawar
4. Deputy Commissioner  
Office of the Deputy Commissioner at Haripur

RESPONDENTS

REVIEW PETITION UNDER THE ENABLING LAWS FOR PARTIAL REVIEW  
OF THE JUDGEMENT DATED 09/07/2019 IN SERVICE APPEAL 576/2019  
BY THIS HON'BLE TRIBUNAL WHERE THE PRAYER IN APPEAL IS  
ACCEPTED WITH THE CONDITION OF DE-NOVO ENQUIRY.

PRAYER IN REVIEW.

On acceptance of this Review, the order/ judgment to the extent of the De-novo enquiry into the position of Petitioner may very graciously be set aside in the best interest of justice.

Review is within time from the date of Service of the decision, and Hon'ble Tribunal has the jurisdiction to review its decision.

Respectfully submitted as under.



1. The appellant, Ali Sher Khan S/O Jehangir Khan, posted as Tehsildar Haripur {BS – 16} at office of the Tehsildar Haripur; District Haripur filed Departmental Appeal against the subject order whereby minor penalty of withholding two increments for 2 years was imposed.
2. The appellant challenged the same before this Hon'ble Tribunal, and the Hon'ble Tribunal was please to set aside the order, but directed the authority to conduct De-novo inquiry.

{Copy of the Judgement under Review is annex as "A"}

3. That feeling aggrieved from the Judgment to the extent of De-novo inquiry, the Petitioner prefers the instant Review on the following amongst other grounds inter-alias:

GROUND OF REVIEW:

- A. That the order to the extent of De-novo inquiry is against the fact and circumstances of the case, hence liable to be reviewed and set aside in the best interest of justice.
- B. That Petitioner has no concern with the alleged irregularity; hence he has been penalized for no reasons. Hence the decision to the extent of De-novo inquiry is not in accordance with the law.
- C. That legally, no order by any authority, whether judicial or quaişi-judicial, can be made to the detriment of anyone unless and until he is given the right of hearing. Any such order would offend against the universally established principle of Auti Alterm Partem.
- D. That the principle of Natural Justice has consistently been approved by the superior courts and even by this Hon'ble Court and it has been followed to the extent that it shall be read as an integral part of the Law even it does not find mention in a particular enactment.
- E. Similarly, inquiry was conducted, and finally, the Inquiry Officer recommended a penalty in the shape of "Warning" it has recently been reported in 2019 CLC 1330 Peshawar "that there must be some new point based upon discovery of new evidence which could not with diligence have been found in the previous proceedings. In the instant case, no loss whatsoever has been incurred to the public exchequer. Hence De-

novo inquiry would amount to extra burden and mis-use of public funds.  
**Reliance on 1996 PLC (CS) 461**

- F. It has also recently been reported in 2019 PLD 111 Lhr that "S. 114 & O. XLVII, R. 1, review ---Scope---Although "review" had a very limited scope but the same did not mean abdication of the power of review in an omnibus fashion---Intent of Legislature while incorporating the power of review was that no error in the judgment/order which was so manifestly floating on the surface should be allowed to perpetuate.
- G. That the law on the subject has been violated altogether, The Respondent has adopted a harsh methods by imposing minor penalty without proceeding in accordance with the law. Hence the order and judgment to the extent of De-novo inquiry is liable to review and also set aside.
- H. That with the permission of this Hon'ble Tribunal, further grounds may be raised when the stance of the respondents comes in black and white.

**PRAYER**

It is therefore, most humbly prayed that on acceptance of the instant Review, this Hon'ble Tribunal may very graciously be pleased to set aside the Order and Judgment dated July 09, 2019 to the extent of De-novo inquiry.

Any relief which this Hon'ble Tribunal deems appropriate in law, equity may also be granted.

**INTERM RELIEF.**

By way of interm relief, operation of the referred Judgment to the extent of De-novo inquiry may kindly be suspended.

Appellant

Through:



Rehman Ullah Shah

M.A, LL.M

Advocate

Ibn e Abdullah Law Associates  
11 Azam Tower University Road, Peshawar  
Phone & Fax # 091- 570 2021  
infoila56@gmail.com

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL  
PESHAWAR

Review in \_\_\_\_\_ Service Appeal No. 576/2018

Ali Sher Khan S/O Jehangir Khan

\_\_\_\_\_ APPELLANT

VERSUS

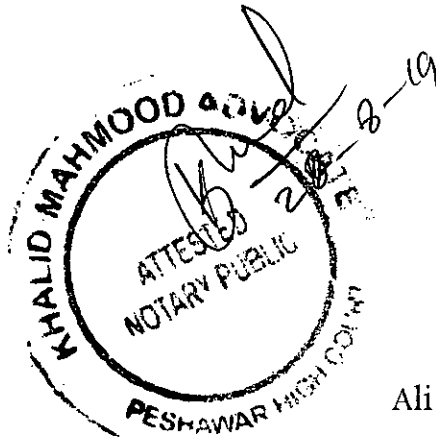
Chief Secretary

Government of Khyber Pakhtunkhwa at Peshawar & others

\_\_\_\_\_ RESPONDENTS

AFFIDAVIT

I, Ali Sher Khan S/O Jehangir Khan Distt Peshawar, do hereby solemnly affirm and declare on oath that the contents of the accompanying Appeal are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Court.



Deponent

A handwritten signature in black ink, appearing to read "Ali Sher Khan".

Ali Sher Khan S/O Jehangir Khan

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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL  
PESHAWAR

Review in \_\_\_\_\_ Service Appeal No. 576/2018

Ali Sher Khan S/O Jehangir Khan

\_\_\_\_\_ APPELLANT

VERSUS

Chief Secretary

Government of Khyber Pakhtunkhawa at Peshawar & others

\_\_\_\_\_ RESPONDENTS

MEMO OF ADDRESSES

APPELLANT

Ali Sher Khan S/O Jehangir Khan

Ex – Tehsildar at Hapripur, Distt Haripur

Presently at Additional Assistant Commissioner, Mansehra

RESPONDENTS

1. Chief Secretary  
Government of Khyber Pakhtunkhawa at Peshawar
2. Secretary Board of Revenue  
Government of Khyber Pakhtunkhawa at Peshawar
3. Senior Member Board of Revenue,  
Government of Khyber Pakhtunkhawa at Peshawar
4. Deputy Commissioner  
Office of the Deputy Commissioner at Haripur

Appellant

Through:

  
Advocates

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL  
PESHAWAR

Service Appeal No. 576.../2018



Ali Sher Khan S/O Jehangir Khan  
Ex – Tehsildar at Haripur, Distt Haripur  
Presently at Office of the Board of Revenue, Peshawar


624  
26/4/2018

APPELLANT

VERSUS

1. Chief Secretary  
Government of Khyber Pakhtunkhawa at Peshawar
2. Secretary Board of Revenue  
Government of Khyber Pakhtunkhawa at Peshawar
3. Senior Member Board of Revenue,  
Government of Khyber Pakhtunkhawa at Peshawar
4. Deputy Commissioner  
Office of the Deputy Commissioner at Haripur

**ATTESTED**

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

RESPONDENTS

Filed to-day

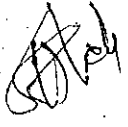
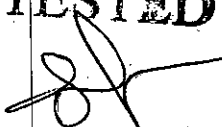

Registrar

26/4/18

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE ORDER OF RESPONDENT NO. 1 (APPELLATE AUTHORITY) DATED 27 MARCH 2018 WHEREBY ORDER OF RESPONDENT NO.3 WHILE IMPOSING A MINOR PENALTY OF WITHHOLDING TWO INCREMENTS FOR THE PERIOD OF TWO YEARS HAS BEEN UPHOLD AS A MINOR PENALTY AGAINST THE PRESENT APPELLANT

PRAYER IN APPEAL.


On acceptance of this appeal, this Honourable Tribunal may very graciously be pleased to set aside the impugned Order dated March 27, 2018. And, similarly the appellant may very graciously be allowed to receive the said increments in the best interest of justice.

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	<p>09.07.2019</p> <p></p> <p><b>ATTESTED</b></p> <p></p> <p>EXAMINER Khyber Pakhtunkhwa Service Tribunal, Peshawar</p>	<div data-bbox="1149 277 1452 579" style="text-align: right;">  </div> <p style="text-align: center;"><b>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AT CAMP COURT ABBOTTABAD</b></p> <p style="text-align: center;">Appeal No. 576/2018</p> <p style="text-align: center;">Date of Institution ... 26.04.2018 Date of Decision ... 09.07.2019</p> <p>Ali Sher Khan S/O Jehangir Khan Ex-Tehsildar at Haripur, District Haripur Presently at Office of the Board of Revenue, Peshawar.</p> <p style="text-align: right;">-----Appellant</p> <p>Chief Secretary Government of, Khyber Pakhtunkhwa, Peshawar and three (03) others</p> <p style="text-align: right;">-----Respondents</p> <p><b>Mr. Amin Khan Kundi.....Member(J)</b> <b>Mr. Hussain Shah.....Member(E)</b></p> <p style="text-align: center;"><u>JUDGMENT</u> <u>HUSSAIN SHAH, MEMBER:</u> - Learned counsel for the appellant and Mr. Muhammad Bilal Khan learned Deputy District Attorney on behalf of the respondents present.</p> <p>2. This judgment shall also disposes off the service appeal No. 600/2018 preferred by Dilnawaz Khan Vs Government having the same facts and grounds with similar prayer.</p> <p>3. As per facts of the Memo of Appeal the appellant was serving in Revenue Department as Tehsildar. The appellant was imposed minor penalty of withholding of two annual increments for a period of two years vide order dated 08.01.2018 on the allegation of not obeying the direction of superior officer and attesting the mutation in violation of rules. The appellant filed departmental appeal on</p>

06.02.2018 which was rejected on 27.03.2018, hence the present service appeal on 26.04.2018.

4. The learned counsel for the appellant contended that neither proper inquiry was conducted nor opportunity of personal hearing and defense was provided to the appellant. The inquiry officer had recommended minor penalty of warning but, instead, the competent authority bypassed the recommendations of the inquiry officer without noting the reason and the minor penalty of withholding of two increments for a period of two years was imposed. He further contended that the competent authority in the impugned order had noted that the charges/allegations leveled against the appellant had been proved in the inquiry report by the inquiry officer which is not based on correct position because the findings of the inquiry report as recorded by the inquiry officer are different. The learned Counsel referred to the findings in the inquiry report where in the inquiry officer has recorded regarding the first charge/allegation leveled against the appellant that the mutation no. 11223 was entered on 18.02.2015, verified on 18.03.2015 and accepted on 19.03.2015, which is three months prior to the direction passed by the Deputy Commissioner on the application of the complainant and as such the allegation/charge no.1 has not been proved. As regarding the second charge/allegation the inquiry officer recorded that the said mutation was attested on 19.03.2015 where as the taxes/fee were deposited on 26.08.2016 meaning thereby that the appellant deposited the taxes/fee as a corrective measure after the initiation of the

**ATTESTED**

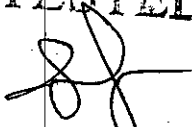
  
**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

disciplinary action. As such the second charge/allegation stands partially proved. Further contended that the inquiry officer was required to record the statements of the complainant, the alleged land owner and his wife in the presence of the appellants and the appellants were given the opportunity to cross examine the witnesses. Further contended that as required under the statutory provision the copy of inquiry report was not provided to the appellant alongwith the show cause notices so they could defend themselves on the informed grounds. The learned counsel pleaded that in view of the above grounds/facts the appeal may be accepted and the impugned order dated 27.03.2018 be set-aside and the appellant may be allowed to receive the said increments in the best interest of justice.

5. The learned Deputy District Attorney contested the facts, grounds of the appeal and the arguments of the learned counsel for the appellants on the basis of the parawise comments of the respondent department and stated that during the disciplinary proceedings all the formalities as required under the relevant law were fulfilled. He also argued that it is correct that the taxes/fee were deposited by the appellants but after a lapse of one year and that too after disciplinary proceedings initiated against them. Had they deposited the said taxes/fee in the treasury at the due time then the situation would have been different. He pleaded that the appeal carry no merits as such the same may be dismissed with cost.

6. Arguments heard. File Perused.


**ATTESTED**

  
**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar



7. The Tribunal examined the record on file, arguments and counter arguments of both the parties. The controversy regarding mutation no.11223 arisen when one Mr. Gulab Khan submitted a complaint to Deputy commissioner Haripur after three months of the attestation of mutation, and then to the Chief Minister of Khyber Pakhtunkhwa. The reply of the appellant to the show cause notice, handed over to the Tribunal at bar states that the complainant also filed on 06.07.2015 a suit against the decision of central government of Pakistan, Privatization Commission dated 17.01.1991 which was dismissed on 04.05.2016 by the Civil Judge-IV on the ground that the suit was time barred by twenty four 24 years. His appeal against the decision of the Civil Judge-IV was also dismissed by the Additional Session Judge-III Haripur on 18.05.2017. It has been further noted in the reply that the cancellation of gift mutation and the report of the inquiry officer was challenged by the alleged owner (Mr. Malak Qayyum, Mst. Nusrat Shaheen) and Khasra No. 1731/1232 in a Writ Petition No. 1111-A/2015 which was filed by the Hon'ble High Court on the ground of maintainability and being pre-mature. It is also noted that the competent authority in the impugned order wrongly stated that the charges/allegations, leveled against the appellant, proved by the inquiry officer. Similarly the inquiry officer had recommended that the appellant be warned/censured but the competent authority imposed the penalty of withholding of two increments for two years. The Tribunal also took into notice the deficiency on the part of the competent authority of

**ATTESTED**

  
**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

not providing the copy of inquiry report alongwith the final show cause notices which is mandatory.

8. In view of the above discussion this present service appeal is dispose off set-aside the impugned order dated 27.03.2018 and directs the respondent department that a De-novo inquiry be conducted within ninety (90) days after the receipt of this judgment. Parties are left to bear their own cost. File be consigned to the record room.

*Muhamamad Amin*

(M. AMIN KHAN KUNDI)  
MEMBER

*Hussain Shah*

(HUSSAIN SHAH)  
MEMBER  
At Camp Court Abbottabad

Certified to be true copy

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

ANNOUNCED  
09.07.2019

Date of Presentation of Application 5-8-2019

Number of Words 2400

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Total 280

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Date of Completion of Copy 5-8-2019

Date of Delivery of Copy 5-8-2019

قیمت 50 روپے	22852	PESHAWAR BAR ASSOCIATION PBA		
ایڈوکیٹ: Rehman ullah shah		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل/ ایسوسی ایشن نمبر: BC 10-0541				
رابطہ نمبر: 03335493948				

بعدالت جناب: Before The Khyber Pakhtunkhwa Services Tribunal Peshawar

مخانب:	دعویٰ:
علت نمبر:	علت نمبر:
مورخہ:	Review
جرم:	
تھانہ:	
Ali sher Khan بنام Chief Secretary etc	
<b>باعث تحریر آنگہ</b>	

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

آن مقام Peshawar کیلئے Rehman ullah shah کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیار حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ الٹوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم:

العبد \_\_\_\_\_ گواہ شد \_\_\_\_\_ العبد

مقام \_\_\_\_\_ کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

Attested  
Accepted

Rehman ullah shah  
L.L.M  
Advocate

Ali Sher