


20th Oct., 2022


Counsel for the appellant present. Mr. Kabirullah Khattak, Addl. Advocate General for the respondents present.

Learned counsel for the appellant seeks adjournment in order to further prepare the brief. Adjourned. To come up for arguments on 19.12.2022 before D.B.


(Fareeha Paul)
Member (E)

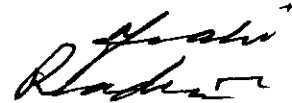

(Kalim Arshad Khan)
Chairman

23.11.2021 Proper D.B is not available, therefore, case is adjourned to 1/3/2022 for the same as before.


Reader

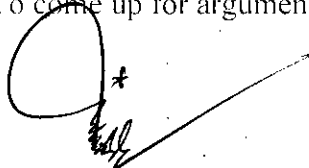
1-3-22

Due to retirement of the Hon'ble Chairman the case is adjourned on 14-6-22

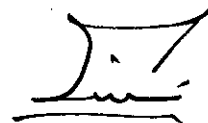

Reader

14.06.2022 Clerk of counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

Clerk of counsel for the appellant stated that learned counsel for the appellant is unable to attend the Tribunal today due to strike of Lawyers. Adjourned. To come up for arguments before the D.B on 15.08.2022.



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

15.8.22

Due to summer vacation, the case is adjourned to 20-10-22 for the same.


Reader

15.09.2021

Stipulated period passed reply not submitted.

Learned Addl, A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.

Chairman 

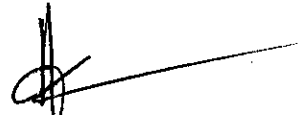
02.07.2021

Counsel for the appellant present. Preliminary arguments heard.

Points raised need consideration. The appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 23.11.2021 before the D.B.

Appellant Deposited
Security & Process Fee

8/7/21

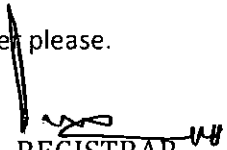
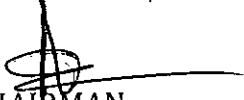

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 5189 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	07/05/2021 27/05/21	<p>The appeal of Mr. Shamsheer Khan presented today by Mr. Noor Muhammad Khattak Advocate 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 S. Bench for preliminary hearing to be put up there on <u>02/07/21</u></p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 5189 /2021

Mr. SHAMSHER KHAN V/S SMBR DEPARTMENT

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Dated: 06-05-2021

APPELLANT

Through:


NOOR MOHAMMAD KHATTAK
ADVOCATE

FLATE NO. 04, 2ND FLOOR,
JUMA KHAN PLAZA, NEAR FATA SECRETARIAT,
WARSAK ROAD, PESHAWAR,

0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____ / 2021

Mr. Shamsheer Khan, Assistant (BPS-16),
O/O Deputy Commissioner Buner.

..... **APPELLANT**

VERSUS

- 1- The Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
- 2- The Commissioner Malakand Division, at Saidu Sharif Swat.
- 3- The Deputy Commissioner, District Buner.

..... **RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED ORDER DATED 22-02-2021
WHEREBY, TWO ANNUAL INCREMENTS HAVE BEEN
FORFEITED FOR TWO YEARS AND AGAINST THE
APPELLATE ORDER DATED 08-04-2021 WHEREBY THE
DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN
DISMISSED WITH NO GOOD REASON

PRAYER:

That on acceptance of this appeal the impugned order dated 08-04-2021 may very kindly be set aside and the impugned order dated 22-02-2021 may very kindly be modified/rectified to the extent of appellant that the two increments be restored with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:

R/SHEWETH:

1. That appellant is performing services in the office of the Deputy Commissioner Buner since 31-05-1992 and was posted as Senior Clerk at District Revenue Accountant Branch of the defunct District Officer, Revenue & Estate Buner.
2. That it is important to mention he that an application was submitted before the respondent No. 3 by a lady namely Mst. Salma widow of Late Muqarab Khan, Ex-Naib Tehsildar for the retirement sanction and retirement benefits of her

husband on 07-10-2020. Copy of the application is attached as annexure.....**A.**

3. That the respondent No. 3 vide letter dated 3-11-2020 seeks the opinion of the SMBR through respondent No. 2. Copy of the letter dated 3-11-2020 is attached as annexure.....**B.**

4. That when the said application as submitted before the worthy SMBR, the worthy SMBR showed annoyance and order an inquiry into the delay for non submission of pension benefits. That the Additional Deputy Commissioner while conducting inquiry has submitted his inquiry report to the respondent No. 3 on 22-02-2021 and without providing a opportunity of personal hearing to the appellant he along with other has been recommended for forfeiture of two increments for two years. Copy of inquiry report is attached as annexure.....**C.**

5. That even then after conducting the so called inquiry no final show cause notice has been given to the appellant and in a hasty manner the impugned order dated 22-02-2021 has been passed by imposing minor penalty of forfeiture of two increments for two years. Copy of the impugned order dated 22-02-2021 is attached as annexure.....**D.**

6. That the appellant feeling aggrieved from the impugned order dated 22-02-2021, preferred departmental appeal on 16-03-2021 before the respondent No. 2. Copy of the departmental appeal is attached as annexure.....**E.**

7. That the departmental appeal of the appellant was dismissed by the impugned appellate order dated 08-04-2021. Copy of the appellate order dated 08-04-2021 is attached as annexure**F.**

8. That having no other remedies the appellant preferred present service appeal on the following grounds amongst others.

GROUND:

A- That the impugned orders dated 22-02-2021 and 08-04-2021 are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be modified/rectified.

B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.

- C- That appellant was not the custodian of the Branch of District Revenue Accountant rather the District Revenue Accountant himself was responsible for all such matters.
- D- That it is important to mention here that family of the deceased had been informed verbally to provide the relevant succession certificate from the concerned senior civil judge but their application for succession was dismissed by the senior civil judge and they were directed to approach the competent civil court to determine the legal heir ship. Copy of the application and order along with relevant documents are attached as annexureG.
- E- That no charge sheet and statement of allegation has been provided to the appellant before initiating the inquiry, hence the whole procedure adopted by the respondents is doubtful and void, therefore, is to be vitiated.
- F- That the respondents acted in arbitrary and malafide manner while issuing the impugned order followed by the impugned appellate order.
- G- That no chance of personal hearing and personal defense has been provided to the appellant.
- H- That no regular inquiry has been conducted in to the matter hence the impugned order is not sustainable.
- I- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 30-04-2021

APPELLANT

SHAMSHER KHAN

THROUGH:

NOOR MUHAMMAD KHATTAK

& Kamran

**KAMRAN KHAN
ADVOCATES**

Annuve A

4

To,

The Deputy Commissioner

District Buner.

Subject: Retirement Sanction and Retirement Benefits

Sir,

With due respect it is stated that my husband named Mr. Muqarab Khan was serving in this department as Naib Tehsildar BPS(14) during his service he passed away on 02//12/2012 due to illness, but still his retirement sanction and retirement benefits are pending. Being a widow and dependent children we are in dire need of financial assistance, therefore it is requested in your honour to redress our grievance we shall be very thankful to you in this regard.

ACCA
Buner
R.D. / 8/10/2020

Yours Faithfully,

Mst. Salma widow of Late Mr. Muqarab Khan
Naib Tehsildar Gadezi

Dated: 07/10/2020

(Handwritten signature)



Annexure 5 B

OFFICE OF THE
DEPUTY COMMISSIONER
BUNER.

No. 2/2/Acctt/DC/B/ 8348-49
Dated Daggar the 3/11/2020.

To:

The Commissioner,
Malakand Division,
Saidu Sharif, Swat.

APPLICATION FOR RETIREMENT & LPR ENCASHMENT

Memo:


An application submitted by Mst. Salma Widow of Late Muqarab Khan, Ex-Naib Tehsildar Gadezai District Buner for grant of retirement from service in respect of Late Muqarab Khan, Ex-Naib Tehsildar Gadezi due to death with effect from 02-12-2012 alongwith death certificate photocopies of CNIC, Page-3 of Service Book and leave account are sent herewith.

It is requested that the case may be taken up with the Senior Member, Board of Revenue, Revenue & Estate Department, Peshawar for grant of retirement and encashment of LPR.


DEPUTY COMMISSIONER
BUNER.

Endst: NO & date even.

Copy forwarded to, District Kanungo of this office for information.


DEPUTY COMMISSIONER
BUNER.



Anxxure "C" (6)

OFFICE OF THE
ADDITIONAL DEPUTY COMMISSIONER
BUNER

PH# 0939510310
Email: adcbuner1@gmail.com

No: S8 /ADC(B)
Dated Daggar, the 22th February, 2021.

To

The Deputy Commissioner
Buner

Subject: **INQUIRY**

Reference to your office letter No.10006-09/DC/Buner/Estt: dated 11-12-2020 and to state that a detail inquiry into the subject matter was conducted by the undersigned.

BACKGROUND:

It is submitted that one Mr. Muqarab Khan, Naib Tehsildar, who died during service on 02-12-2012, and his pension case was not submitted to Board of Revenue, inspite of lapse of 8 years, which shows gross negligence on the part of dealings officials of the office of District Officer Revenue (DOR) & Estate/Deputy Commissioner Buner, as the deceased remained posted in District Buner and also a bonafid, resident of the District as well; it is added that when the application of Mst: Salma, widow of late Muqarab Khan, for grant of pension was submitted to the office of worthy SMBR on dated 03-11-2020, the worthy SMBR showed annoyance and ordered inquiry for non-submission of said pension case within time.

FINDINGS:

1. After perusal of available record and recording of statements of all concerned, It is stated that Mr. Muqarab Khan Ex: Naib Tehsildar at that time was employee of the defunct District Officer Revenue (DOR) & Estate, District Buner, it was the responsibility of the office of District Officer Revenue (DOR) & Estate (DRA Branch) to process the pension case, prior to the restoration of Magistracy System (Deputy Commissioner System) on dated 01-01-2013.
2. Prior to the restoration of Deputy Commissioner System, Mr. Hazrat Qamar (District Revenue Accountant) and Mr. Shamsheer, Nazar (DOR Office) were posted in the DRA branch, District Officer Revenue office and they did not

ADDL. DEPUTY COMMISSIONER
Buner

(7)

fulfil their prime responsibility to submit and forward the pension case of the retired employee to the quarter concerned.

3. It is also worth mentioning to note, that soon after the restoration of Deputy Commissioner system, no record is available regarding handing taking of records/files between DOR (DRA Branch) and District Nazir Branch (Deputy Commissioner Office), which shows lack of coordination and non seriousness on the part of the concerned branches of Deputy Commissioner Office and District Officer Revenue(DOR) office.

RECOMMENDATION:

1. Mr. Hazrat Qamar Ex_District Revenue Accountant (DRA) is deceased, so no action can be taken against him except that stoppage/forfeiture of his pension, but that may suffer his immediate family or as deem appropriate to your good self.
2. Major penalty/ OR Minor penalty i.e forfeiture of two annual increments against Mr. Shamsheer Senior Clerk (Ex_Nazar DRO Office).
3. Censure may be issued to Mr. Bakht Raj Khan Ex_Nazar (Deputy Commissioner Office) and Mr. Shamsheer Senior Clerk Ex_Nazar (DRO Office) as there was lack of coordination among the branches.
4. Request may also be made to the office of worthy Senior Member Board of Revenue Khyber Pakhtunkhwa, Peshawar for the release of pension of the deceased employee, please.

Submitted for further orders OR as deem appropriate to your good self.

**ADDITIONAL DEPUTY COMMISSIONER/
INQUIRY OFFICER
BUNER**

ADDL. DEPUTY COMMISSIONER

February 22, 2021

OFFICE ORDER.

No. 1896-1902 /A-5/DC(B)/Estt.: Whereas, this office forwarded the "Retirement & LPR Encashment" application in respect of Mst. Salma widow of late Muqarab Khan Ex-Naib Tehsildar (died on 02.12.2012) to the Board of Revenue, Revenue & Estate Department through the office of Commissioner, Malakand Division vide this office letter No. 2/2/Acctt:/DC/B/8348-49 dated 03.11.2020.

And whereas, being aggrieved on delaying the instant case, the Board of Revenue, Revenue & Estate Department directed this office to convey the Officers / Officials guilty of the said delay.

And whereas, it was required to immediately inquire into the matter for which the Additional Deputy Commissioner (General), Buner was assigned the task vide this office letter No. 10006-09/B/DC/Buner/Estt: dated 11.12.2020.

And whereas, the Additional Deputy Commissioner (General), Buner / Inquiry Officer has now submitted his report vide his letter no. 58/ADC(B) dated 22.02.2021.

And whereas, based on the recommendations contained in the report ibid, the undersigned hereby orders the following:

1. No action can be taken against late Hazrat Qamar ex-District Revenue Accountant as his family has already suffered.
2. Forfeiture of two increments for two years is hereby imposed upon Mr. Shamsher Khan, Assistant (ex- Nazar DRO office).
3. Stoppage of pension for one year is hereby imposed upon Mr. Bakht Raj Khan, retired Private Secretary / Superintendent (ex- Nazar DCO Office) for non coordination with Mr. Shamsher Khan, Assistant (ex- Nazar DRO office).

DEPUTY COMMISSIONER, BUNER

Endst. No. & Date Even.**For Information:**

1. Commissioner, Malakand Division.
2. Additional Deputy Commissioner (General), Buner w/r to the above.
3. Additional Deputy Commissioner (Finance & Planning), Buner.
4. All the concerned.

For Further Necessary Action:

5. Assistant Secretary (Estt), Board of Revenue, Revenue & Estate Department, Peshawar w/r to his letter No. Estt:V/PF/Muqarab Khan/MKD/31195 dated 03.11.2020, with the request to process the Retirement & LPR Encashment case in respect of late Muqarab Khan Ex-Naib Tehsildar.
6. District Accountants Officer, Buner.
7. District Nazar (Local).

DEPUTY COMMISSIONER, BUNER

To The Worthy Commissioner,
Malakand Division.

Annxure "E" (9)

Subject: Departmental Appeal against the Office Order No. 1896-1902/A-5/DC(B)/Estt: Dated 22.02.2021 of the Deputy Commissioner, Buner.

Reader

50
Commissi
14/3/21

Res / Sir.

With utmost respect I, Shamsheer Khan, Assistant at Deputy Commissioner, Buner do hereby request to refer to the subject, and, the following:

1. That I have been serving in the office of Deputy Commissioner, District Buner since 31.05.1992,
2. That in 2008, I was posted as Senior Clerk at District Revenue Account Branch of the defunct District Officer, Revenue & Estate, Buner,
3. That on 07/10/2020, an application was submitted in the office of Deputy Commissioner, Buner by one of the widows of late Muqarab Khan, ex-Naib Tehsildar for the retirement sanction and other financial benefits which they claimed the family of late Muqarab Khan had yet not received (Annexed-A),
4. That as per procedure, the application was forwarded to the Board of Revenue, Revenue & Estate Department through your esteemed office vide Deputy Commissioner, Buner's letter No. 2/2/Acctt:/DC/B/8348-49 dated 03.11.2020 (Annexed-B). In response, the Board of Revenue, Revenue & Estate Department intimated the office of the Deputy Commissioner, Buner for nomination of the Officers / Officials guilty in delaying the instate case for almost a decade. Accordingly, the Deputy Commissioner, Buner directed the Additional Deputy Commissioner (General), Buner for inquiry into the case, who submitted his report on 22.02.2021 (Annexed-C).
5. That as per the recommendations contained in the report of the Inquiry Officer, besides others, the appellant has been awarded a penalty of forfeiture of two increments for two years (Annexed-D).
6. That the appellant requests this honorable court very humbly to turn void the impugned order's point No. 2 i.e. forfeiture of two increments for

two years (Annexed-D) and I, the appellant may be allowed to withdraw my increments on the following grounds:

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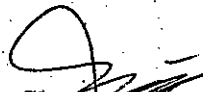
- I. That the appellant was not the custodian of the Branch of District Revenue Accountant rather the District Revenue Accountant himself was responsible for all such matters i.e. the appellant's responsibility was to merely obey the orders / directions of the branch-head. Thus being a subordinate, the appellant should not have been termed guilty of all the negligence as stated.
- II. That the family of the deceased had been informed verbally well in time that they had to approach the office of the District Officer, Revenue & Estate Department for the provision of documents necessary for the processing of benefits' cases of the employee who die during service, such as legal heirship certificate, succession certificate, death certificate etc. It should have been held understandable that the widows of the deceased were not in a position to approach the office of District Officer, Revenue & Estate Department in the soonest period of time due to the religious bindings of 'IDDAT'. Besides, the deceased employee had no major issue / child who could take the said responsibility.
- III. That the office of the defunct District Officer, Revenue & Estate Department got irrelevant with the accounts matters of the deceased employees right with the promulgation of magistracy in the district i.e. on 01-01-2013 meaning thereby the office of defunct District Officer, Revenue & Estate Buner remained functional upto a more of 29 days only after the death of the employee in question on 02-12-2012. Again, it is understandable that due to this short period, the office of the District Revenue Accountant was not able to process the case in question in the soonest period of time. As soon as the system changed, the whole record and the matters of accounts were handed over to the District Nazar Branch of the Deputy Commissioner, Buner and thenceforth, it was the responsibility of the District Nazar Section of the Deputy Commissioner Office Buner to process the case ibid.

IV. That the death certificate submitted by one of the widow of late Muqrab Khan, Ex-Naib Tehsildar was issued on 08-04-2013. (Annexed -E)

V. That Mst: Salama Widow of Muqrab Khan has filled a case titled " Salma V/S General Public and others" in the court of Senior Civil Judge Daggar Buner for grant of succession certificate / legal heirs, on the same suit Mst: Zahiroon and Mst: Aajoon have filled written reply that they are also the real wives and one Mst: Tasia is also the real Daughter of Late Muqrab Khan Ex-Naib Tehsildar, on the basis of application of the other two widows and one daughter , the suit of Mst: Salma has been dismissed, by the S/C Judge Daggar Buner on 01-02-2014. (Annexed -F)

It is, therefore very humbly prayed that on acceptance of this appeal, the Office order No. 1896-1902/A-5/DC(B)/Estt: dated 22-02-2021 of the Deputy Commissioner, Buner may be withdrawn and the appellants allowed to draw his increments as per usual.

Appellant



Shamsher Khan
Assisstant D.C Office Buner
Date: 16-03-2021

Annxure "F"

(12)

BEFORE THE COMMISSIONER, MALAKAND DIVISION
AT SAIDU SHARIF SWAT.

Case No.171/CMD

Date of Institution: 16/03/2021

SHAMSHER KHAN VERSUS DEPUTY COMMISSIONER, BUNER.

DEPARTMENTAL APPEAL AGAINST THE OFFICE ORDER NO. 1896-1902/A-5/DC(B)/ESTT. DATED 22.02.2021 OF THE DEPUTY COMMISSIONER, BUNER.

ORDER
08.04.2021

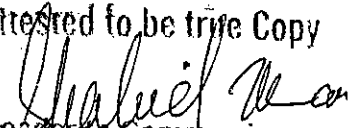
This is an appeal filed by the appellant Mr. Shamsheer Khan, Assistant in office of the Deputy Commissioner, Buner against the order No. 1896-1902/A-5/DC(B)/Estt., dated 22.02.2021 passed by the Deputy Commissioner, Buner, whereby forfeiture of two annual increments have been imposed upon him.

In memo of the appeal the appellant stated that he was serving in office of the Deputy Commissioner Buner since 31.05.1992. In the year 2008 he was posted as Senior Clerk at District Revenue Accountant Branch in office of defunct District Officer Revenue & Estate, Buner. He further stated that on 07.10.2020 an application was received in the office of Deputy Commissioner, Buner submitted by one of the widows of late Muqarab Khan ex-Naib Tehsildar for the retirement sanction and other financial benefits which they claimed had not paid to them. As per procedure the application was forwarded to Board of Revenue, Revenue & Estate Department and in response Board of Revenue Department, Khyber Pakhtunkhwa intimated office of the Deputy Commissioner, Buner for nomination of the officers/officials guilty in delaying the case for almost a decade. After that the Deputy Commissioner, Buner directed the Additional Deputy Commissioner (G), Buner for inquiring the matter who after conducting enquiry submitted his report on 22.02.2021. As per report of the inquiry officer, besides others, the appellant was awarded a penalty of forfeiture of two annual increments. Aggrieved from the said order, the appellant preferred the instant appeal.

The appellant was provided opportunity of personal hearing and heard in detail in presence of the departmental representative of the office of Deputy Commissioner, Buner. The Para-wise comments offered by the Deputy Commissioner Buner along with case file perused. From perusal of the record this court has reached to the conclusion that appeal of the appellant is baseless and meritless because he failed during the course of hearing to convince the Court and also the charges leveled against him by the widow of ex-Naib Tehsildar are correct. Therefore, penalty imposed by the Deputy Commissioner, Buner on the appellant is upheld and the appeal is dismissed. A copy of order may be sent to the Deputy Commissioner, Buner for information.

Announced:
08.04.2021

Attested to be true Copy


Deputy Commissioner,
Malakand Division,
Saidu Sharif Swat.


COMMISSIONER MALAKAND DIVISION
Commissioner, Malakand Division.

فداکت ضابطہ سینئر سول جج صاحب اعلیٰ علامہ قاضی گوہر

۱۔ سجادہ سلمی بیوہ عبدالقدیر خان حفظم اعلیٰ صاحب پران نانا کا

نانا سجادہ سنبل سجادہ انمول دختران نانا خان صاحب خان مرصم

سنان نوید کے تعلق سے سجادہ گوہر بہن سجادہ ماروٹش نانا کا

سنان - وراثت

بنام عہد نامہ

دو وقت بمقام عطا یسی صاحب تین سہ ماہی

ضابطہ ذیل میں ہے۔

۱۔ یہ کہ نور سائمن متوفی خان محمد مال میں کنیت

دیونیا آفٹر کنیت تھا۔

۲۔ یہ کہ متوفی مذکور مورخ ۱۲/۱۲/۵۱ کو گورنمنٹ کینیڈا ہسپتال

ت و رہیں دوران علاج حق رسید ہو گا۔ - سمنڈرگ کف ہے۔

۳۔ یہ کہ متوفی کے اہل خانہ کو تعلیمی اخراجات و ذمہ داریاں زلدگی پوری کرنے

اور متوفی کے پروویڈنٹ فنڈ اور پنشن کی رقم کی وصولی کی ضرورت ہے

۴۔ جسے غیر منظور و منظورہ جائیداد کے کنٹریکٹ میں و غیرہ سے تعلق ذمہ داریوں

سنا ہے۔ جو کثیر سند جائیداد کے اجراء کے ممکن نہ ہے۔

Senior Civil Judge
Buner at Daggar.

۵۔ یہ کہ متوفی کے خیر خواہوں کے دیگر رسمی اور قانونی درجہ نہ ہیں۔ سمنڈرگ کف ہے۔

صرف سائمن ہی خداداد وارثان متوفی مذکور ہیں۔ ایڈیج کتاب کو نہیں کو تسلیم کرنے کے

بوجود بالا تصدیق اور ہمت کی اسد علی جلالہ۔

سنا کہ قندیں کی جاتی ہے۔

سمنڈرگ کف اور سنا کہ قندیں

اکہ سجادہ سلمی بیوہ عبدالقدیر خان سنان نوید کے

15101-7637202-2

اکہ سجادہ سلمی بیوہ عبدالقدیر خان سنان نوید کے
15101-7637202-2

مورخ ۱۲/۵/۱۳

نور سائمن
سنان نوید

ATTESTED
Oath Commissioner,
District Court, Buner.

مہاراجہ کیل ان ہاؤسنگ ڈیولپمنٹ اور ایسٹایٹس میں مصروف
ہونے کی وجہ سے ملے ملتوں سے برائے ہی مورث

2014-2-1 کو درج ذیل سے
Ijaz Rashid
Senior Civil Judge / Ala illaqa Qazi
Buner at Daggar

سائلہ مسماة سلمیٰ ہمراہ وکیل خود حاضر۔ وکیل مسماة ظاہرون حاضر۔ مسماة ظاہرون ہمراہ مسماة تاسیہ نے درخواست
برائے شمولیت بطور ساکنان از درخواست جانشینی زیر غور دائر کی ہے۔ جواب درخواست شامل مسل ہو کر بحث سماعت شد۔ ریکارڈ
ملاحظہ کیا گیا۔

مختصر حالات مقدمہ یوں ہے کہ مسماة سلمیٰ بیوہ مقرب خان نے ہمراہ پسران و دختران (نابالغان) مقرب خان
درخواست بمراد عطا کی جانشینی سرٹیفکیٹ بابت ترکہ متوفی مقرب خان بصورت provident fund وپیشن دائر کی تھی۔
جس میں یکطرفہ شہادت قلمبند ہوئی تھی۔ اسی دوران مسماة ظاہرون بیوہ دوم مقرب خان نے ہمراہ مسماة تاسیہ دختر مقرب خان
درخواست زیر غور دائر کی مسماة سلمیٰ وغیرہ کی جانب سے طلاق نامہ مورخہ 10.05.2008 کی فوٹو نقل پیش کرتے ہوئے یہ
موقف اختیار کیا گیا کہ مقرب خان متوفی نے اپنی حیات میں مسماة ظاہرون کو طلاق تلاش دے کر نکاح سے آزاد کر دیا تھا۔ لہذا
مسماة ظاہرون متوفی مقرب خان کے ترکہ میں بطور وارث حقدار نہ ہے۔ تاہم مسماة تاسیہ کو ساکنان بھی متوفی مقرب خان کا
وارث تسلیم کرتے ہیں۔ بدوران بحث انتقال وراثت متوفی مقرب خان بحوالہ نمبر 2827 مہدقہ 26.09.2013 پیش کیا
گیا۔ جس سے یہ بھی عیاں ہوا کہ متوفی مقرب خان کی تیسری بیوہ مسماة نجون بھی زندہ موجود ہے۔ جسے بھی شامل درخواست
جانشینی نہ کیا گیا ہے۔ مسماة ظاہرون کی جانب سے طلاق نامہ سے صریح انکار کیا گیا ہے۔

حالات وواقعات سے عدالت اس نتیجہ پر پہنچی ہے کہ مسماة ظاہرون کا متوفی مقرب خان کی بیوہ ہونا یا طلاق یافتہ ہونا
زیر نزاع ہے جس کا فیصلہ کاروائی جانشینی میں نہیں کیا جاسکتا۔ اسی طرح درخواست جانشینی دیگر ورثا متوفی مقرب خان بھی شامل
نہ ہے۔ اس صورتحال میں مناسب ہے کہ فریقین تنازعہ کے فیصلہ کیلئے عدالت ایلوئی میں دعویٰ دائر کر کے دادرسی حاصل کرے
اور بعد ازاں درخواست جانشینی دائر کی جاسکتی ہے۔ اس بابت فیصلہ بحوالہ 2013 OLC 406 کے متعلقہ حصہ زیر نظر میں نقل
کیا جاتا ہے۔

(a) Succession Act (XXXIX of 1925)---

---Ss. 373 & 372---Succession certificate---Procedure---Dispute over legal
heirs---Applicant had filed application for succession certificate, which was
dismissed on ground that civil court could only determine issues relating to status of

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01-02-20

Ijaz Rashid
Senior Civil Judge
Buner at Daggar

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legal heirs---Contention of the applicant was that even in case of dispute, Succession Certificate could still be granted under S.373, Succession Act, 1925---Validity---Section 373 of the Act related to extent of share of an applicant and was irrelevant in present case---Proceedings under the Succession Act, 1925 being summary in nature could not help in determining the issue of status of a party hence in the event of dispute regarding status of a party, the proper course would be for parties to approach the competent civil court for declaration of such disputed status and then resort to course provided under the Succession Act, 1925---Applicant, in the present case, had claimed that one of the interveners who appeared in the proceedings and claimed to be legal heir was not the actual wife of the deceased and that the deceased had divorced one of his wives, which issues could not be determined in succession proceedings---Impugned order whereby parties had been directed to resort to civil court regarding determination of disputed issues did not suffer from any illegality of infirmity---Appeal was dismissed, in circumstances [p. 410] A & B

(b) Succession Act (XXXIX of 1925)---

---Ss. 373 & 372---Succession certificate---Nominee is not entitled as owner of the amount subject-matter in the succession matters but is only a representative and legal, duty bound to receive the amount and distribute amongst legal heirs. [p. 411] C

لہذا مندرجہ بالا بحث و ہدایات کی روشنی میں درخواست جانشینی خارج کی جاتی ہے۔ خرچہ کے بابت کوئی حکم نہ ہے۔

مسئل بعد از ترتیب و تکمیل داخل دفتر ہو۔

حکم سنایا گیا۔

01.02.2014

ajaz

اعجاز رشید

سینئر سول جج راعلی علاقہ قاضی بونیر
Senior Civil Judge,
Buner at Daggar.

لہذا ان جناب کینیڈا سول جج صاحب اور اعلیٰ علاقہ قاضی صاحب بمقام ڈاکٹر ضلع لونیہ

صحتہ مسلمی وغیرہ ساکنان نوکیلی تحصیل ڈاکٹر ضلع لونیہ (سائلان)

(بناک)

عوام الناس

(سول ایسٹ)

درخواست بعد شامل فرمانے سائلان صحابان دل ظاہر دن بیوہ (د) تاثیرہ دستہ مقوی
مقدرب خان در مقدمہ اور درخواست جائینی سرٹیفیکٹ بعنوان باہ ہز کردہ سائلان

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Sgt Bunc
21-12-51

جناب عالی! سائلان بزدلیوں و کین خود حسب ذیل عرفی ہیں۔

دل بیوہ مقدمہ اور درخواست بعنوان باہ عدالت حضور میں زیر جو بیوہ کو کٹر جس میں آج کی تاریخ
12.013 21 ہستی مقدمہ ہے۔

دل بیوہ سائلہ صحتہ ظاہر دن مقوی مقدرب خان کی بیوہ ہے جن کے لہل سے بیرون از دیہ
زندگی ڈونک پیدا ہو کر جس میں سائلہ تاثیرہ زندہ وصیاق ہے جبکہ صبی اکبر خشاف غوث
(نقوان CNIC بطور ثبوت لف ہوا ہے)

دل بیوہ من سائلان مذکورہ مقوی مقدرب خان کے جائیز اور قانونی و شرعی و زمانہ ہونے کے
ناطے مقوی مذکورہ کے ترکم میں تا حد حصص خود شرعی حقداران و مالکان ہو کر مقوی کے
منقول جائیداد میں مفادات و امینتہ ہیں۔ یہیں وہ شمولت سائلان مذکورہ ہز کردہ
سائلان در مقدمہ اور درخواست باہ میں (نشان ضروری، عطای قانون و ضابطہ اور شرعیہ و انصاف ہے۔

دل بیوہ سائلان (مسلمی وغیرہ) نے عدالت حضور سے مذکورہ باہ لائق چھانے ہوئے غلط
خلاف حقیقت و واقعات اور خلاف شرعیہ و انصاف اور دھوکہ دیی و فرار سے اکیلے طور
منقول جائیداد مقوی کے ماتن عدالت حضور سے سرٹیفیکٹ فدرال بعنوان باہ حاصل کرنا چاہتے
ہیں۔ جو کہ حقوق من سائلان پر غیر مؤثر اور کالعدم ہے۔

دل بیوہ سائلان (صحتہ مسلمی وغیرہ) کا مذکورہ باہ فعل غلط خلاف قانون، خلاف
ضابطہ و شرعیہ اور خلاف حقیقت، واقعات و انصاف ہو کر جس کے سائلان کو

(جاری)

نام قابل تلافی نقصان پہنچے گا قوی از حدیث موجود ہے

دلائل دیگر دلائل بوقت حث ہر کسی جاہلی

کفذا علی لاف باہ الہ عایہ کم مقلو دی در خواست
ہذا فی ملک لندن کو بزورہ سالکان شامل کرنے
کہ حکم صادر فرمایا جائے

صحت بیان کرنا ہوں
کہ جملہ حرات باہ
تاہر علم و یقین با کفل
درست و صحیح ہیں

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Gyasi
S. J. B. S. S.
21-12-13

صیغہ

السرا لک ایڈووکیٹ ہائی کورٹ



عبد السلام ولد عبد الغفار (فما، صی سالکان)

ATTESTED
Wali
advocate
Oath Commissioner
Distt Court Daggar Buner
No. 1058 Date 21/12/13

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

_____ OF 2021

Mr. Shamsheer Khan (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

SMBR DEPARTMENT (RESPONDENT)
(DEFENDANT)

I/We Shamsheer Khan
Do hereby appoint and constitute, **NOOR MOHAMMAD KHATTAK**
Advocate, Peshawar to appear, plead, act, compromise, withdraw
or refer to arbitration for me/us as my/our Counsel/Advocate in the
above noted matter, without any liability for his default and with the
authority to engage/appoint any other Advocate Counsel on my/our
cost. I/we authorize the said Advocate to deposit, withdraw and
receive on my/our behalf all sums and amounts payable or deposited
on my/our account in the above noted matter.

Dated. ____/____/2021

CLIENT(S)

ACCEPTED

NOOR MOHAMMAD KHATTAK

15401-0705985-5

BC-08-0853

&

KAMRAN KHAN

AFRASIAB KHAN WAZIR

HAIDER ALI

ADVOCATES

OFFICE:
Flat No.4, 2nd Floor,
Juma khan plaza near (FATA) Secretariat
Warsak Road, Peshawar.
Mobile No. 0345-3-9383141

“B”

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

58

No.

Appeal No..... 5189 of 20 21

Recd

..... Shamshar Khan Appellant/Petitioner

Versus

..... S.M.B.A K.P.A. Pesh Respondent

Respondent No..... 3


Notice to: - The Deputy Commissioner, Dist: Buner

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on..... 23/11/2021 at 8.00 A.M. If you wish to urge anything against the appellent/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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

Copy of ~~appeal~~ is attached. ~~Copy of appeal has already been sent to you vide this~~ office Notice No..... dated.....

Given under my hand and the seal of this Court, at Peshawar this..... 9th Day of..... July 20 21


 Registrar,
 Khyber Pakhtunkhwa Service Tribunal,
 Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.

"B"

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

SB

No.

Recd

Appeal No. S189 of 20 21

Shamsher Khan Appellant/Petitioner

Versus

SMBR KPB Pesh. Respondent

Respondent No. 2

Notice to: The Commissioner Malakand Division, at
Saidu Sharif Swat.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 23/11/2021 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

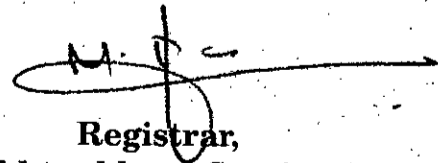
Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition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

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No.....dated.....~~

Given under my hand and the seal of this Court, at Peshawar this 9th

Day of July 20 21

(for reply)



Registrar,
 Khyber Pakhtunkhwa Service Tribunal,
 Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.

"B"

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

SB

No.

Appeal No. 5189 of 2021.

Shamsher Khan Appellant/Petitioner

Versus

S.M.B.R. KPK Pesh: Respondent

Respondent No. 1

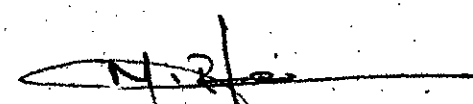
Notice to: The Senior Member Board of Revenue
KPK Peshawar

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 23/11/2021 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No. dated~~

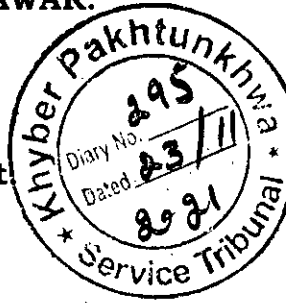
Given under my hand and the seal of this Court, at Peshawar this 9th Day of July 2021.


Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
SERVICE APPEAL NO. 5189/2021.

Mr. Shamsheer Khan, Assistant (BPS-16),
O/O Deputy Commissioner Buner. -----Appellant



VERSUS

1. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
2. The Commissioner Malakand Division, at Saidu Sharif Swat.
3. The Deputy Commissioner, District Buner.

----- Respondents.

Subject:- PARAWISE COMMENTS ON BEHALF OF RESPONDENTS 1 TO 3.

PRELIMINARY OBJECTIONS:-

1. That the appeal is not based on facts.
2. That the appellant has got no cause of action and locus standi to file the appeal.
3. That the appeal is not maintainable in the present form.
4. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
5. That the appellant is estopped by his own conduct to file this appeal.
6. That the appeal is barred by law and limitation.
7. That the appellant has not come to this Honorable tribunal with clean hands.

FACTS:-

1. Correct, but the appellant has not come to this Honorable tribunal with clean hands.
2. Correct, but the appellant has concealed the facts from this Honorable tribunal.
3. Correct. The respondent no:3 sought the opinion of worthy Senior Member Board of Revenue in the matter.
4. Incorrect. The proper inquiry was conducted by the Additional Deputy Commissioner (G) Buner and the appellant was given full opportunity of personal hearing but he didn't turn up for recording his statement.
5. Incorrect. The appellant was found clearly indulged in negligence and case of negligence against him was proved in the inquiry conducted by the Additional Deputy Commissioner (G) Buner.
6. No Comments. Pertains to record.
7. The departmental appeal of the appellant was found unsatisfactory and hence rightly rejected by the appellate authority.

Answers to the grounds mentioned by the applicant are as under:

*Comes for the
Appellant
Next date
01-3-2022*

Ca

ANSWERS TO THE GROUNDS:


- A- The appellant was rightly punished according to Law, Rules & Facts and according to natural justice.
- B- According to Article-4 and 25 of the constitution of Islamic Republic of Pakistan every citizen has to be dealt with according to law and every citizen is equal in the eyes of law, so the applicant was dealt with according to the law and rules on the subject without any discrimination.
- C- Incorrect. The applicant was the custodian of the branch as he was dealing in the entire accounts matter at that time. Being the responsible official dealing with accounts has also the responsibility to provide the necessary documents required in all such cases.
- D- Correct to the extent that the succession certificate from the competent court is a requirement in such like cases. Rest of para is not related to the respondent.
- E- Incorrect. All necessary formalities have been fulfilled and the appellant has been given the opportunity for defense. Hence, the procedure adopted was not doubtful and void in any way.
- F- Incorrect. No malafide whatsoever has been done with the appellant but his case was processed according to the law & rules.
- G- Incorrect. The opportunity of defense was provided to the appellant, but he failed.
- H- Incorrect. Proper inquiry was conducted and the inquiry report is attached for ready reference. **Vide (Annexure-A)**.
- I- More grounds and proofs at the time of hearing if required will be provided by the representative of this office.

It is prayed that the appeal of the appellant being devoid of merit may please be dismissed and rejected please.

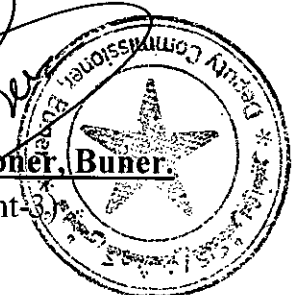

Senior Member,

Board of Revenue, Revenue & Estate Department,
Govt. of Khyber Pakhtunkhwa, Peshawar.

(Respondent-1)


Commissioner, Malakand Division.
(Respondent-2)
Commissioner Malakand Division.


Deputy Commissioner, Buner.
(Respondent-3)



BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 5189/2021

Shamsher Khan

vs

SMBR & others

AFFIDAVIT

I, Saif ur Rehman, Superintendent Deputy Commissioner Office, Buner do hereby affirm that the contents of this para wise comments are true and correct and nothing has been concealed from this Honorable Tribunal.

identified by
M. Saif

Saif ur Rehman
DEPONENT

Additional Advocate General
Khyber Pakhtunkhwa
Services Tribunal Peshawar

for