BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT CAMP COURT SWAT

Service Appeal No. 2035/2020

Date of Institution ...18.03.2020Date of Decision ...06.12.2021

Fawad Ali S/o Shah Ramand, R/o Amnawar, Tehsil Gagra, District Buner, presently posted at Tehsil Revenue Accountant BPS-07 Daggar Buner.

VERSUS

Commissioner Malakand Division Saidu Sharif Swat and three others.

Shams ul Hadi, Advocate

Riaz Khan Paindakheil, Assistant Advocate General

For Respondents

For Appellant

(Appellant)

(Respondents)

ROZINA REHMAN ATIQ-UR-REHMAN WAZIR

MEMBER (JUDICIAL) MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant was appointed as Patwari (BPS-5) on 28-09-2011 and was working as such until 23-09-2019. The appellant was transferred and posted on regular basis as Tehsil Revenue Accountant (TRA) vide order dated 24-09-2019 by respondent No. 2, but such order was withdrawn by respondents No. 2 vide order dated 03-10-2019. Feeling aggrieved, the appellant filed departmental appeal to respondent No. 1, which was accepted and order dated 03-10-2019 of respondent No. 2 was set aside vide order dated 31-10-2019. Upon re-

consideration, respondent No. 1 withdrew his order dated 31-10-2019, thus, the order dated 24-09-2019 automatically restored and the appellant reverted back to his original position of Patwari. Feeling aggrieved, the appellant filed departmental appeal to respondent No. 3, which was rejected vide order dated 26-02-219, communicated to the appellant vide order dated 03-03-2020, hence the instant service appeal with prayers that impugned orders dated 03-10-2019, 31-10-2019 and 26-02-2019 may be set aside and order dated 24-09-2019 may be restored.

02. Learned counsel for the appellant has contended that the respondent became functus officio after passing the order dated 31-10-2019 in a capacity as the appellate forum and subsequently could not pass any order on the same subject matter; that once a legal right has been accrued from the order of the appellate forum, it could not be taken away simply through an order in its original jurisdiction; that the impugned orders were passed without affording any opportunity of hearing to the appellant and therefore, is liable to be set aside, being against the universal principle of audi-alterm-partem; that the respondents has passed a non-speaking order without giving plausible reasons and is therefore not-maintainable in the eye of law; that the impugned order was passed after the lapse of sufficient time during which the appellant has drawn salaries; that the impugned orders are against law, rules and regulations on the subject and liable to be set aside; that the impugned order is the result of mis-reading and non-reading of the law on the subject.

03. Learned Assistant Advocate General for respondents has contended that the order dated 24-09-2019 was withdrawn as it was found that rules on the subject had not been observed and was in contradiction to notification dated 23-01-2015; that as per service rules notified vide order dated 23-01-2015, the post of Tehsil Revenue Accountant is meant for promotion from amongst Naib Tehsil

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Accountant and not for transfer and due to the reason, such order was withdrawn.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant was appointed as Patwari and was working against such post until he was transfered and posted as Tehsil Revenue Accountant (TRA), but in fact, it was not a simple transfer, rather wording of the order speaks more than it. In fact the appellant was transferred on regular basis as Tehsil Revenue Accountant (TRA), which however was realized that the appellant was not only transferred but was also given promotion against such post, hence the order was withdrawn. As per service rules, notified vide order dated 23-01-2015, the post of Tehsil Revenue Accountant (TRA) is meant for promotion from amongst Naib Tehsil Accountant and not for transfer, hence the order dated 24-09-2019 was correctly withdrawn.

06. We did not notice any irregularity in the process, which does not warrant any interference, hence the instant appeal being devoid of any force is dismissed. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED 06.12.2021

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RFHMAN) MEMBER (J) MP COURT SWAT

UR-REHMAN WAZIR) MEMBER (E) CAMP COURT SWAT

ORDER 06.12.2021

Learned counsel for the appellant present. Mr. Riaz Khan Paindakhiel, Assistant Advocate General for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, instant appeal being devoid of any force is dismissed. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED 06.12.2021

(ROZIN REHMAN) MEMBER (J) CAMP COURT ŚWAT

(ATIQ-UR-REHMAN WAZIR) MEMBER (E) CAMP COURT SWAT

04.10.2021

Appellant present through counsel.

Muhammad Riaz Khan Paindakheil, learned Assistant Advocate General alongwith Saif ur Rehman Superintendent for respondents present.

Former made a request for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 06.12.2021 before D.B at Camp Court, Swat.

(Atiq ur Rehman Wazir)

(Atiq ur Rehman Wazir) (H Member(E) Camp Court, Swat Ca

(Rozina Rehman) Member(J) Camp Court, Swat 4-1 2020

Due to summer vacation, case is adjourned to 0^{4} · 3 .2021 for the same as before.

01.03.2021

Appellant present in person.

Riaz Khan Paindakheil learned Assistant Advocate General alongwith Saif ur Rehman Superintendent for respondents present.

Former made a request for adjournment as his counsel is busy before Hon'ble Peshawar High Court, Peshawar; granted. To come up for arguments on 03.05.2021 before D.B at Camp Court, Swat.

(Mian Muhammad) Member (E)

Camp Court, Swat

(Rozina Rehman)

Member (J)

Camp Court, Swat

Due to COUID-19 theofore to COME of for the same on 04/10/2021.

Park

02.11.2020

Appellant in person present. Mr. Muhammad Jan, learned DDA alongwith Saif ur Rehman Superintendent and Arif Superintendent for respondents present.

Representatives of respondent submitted written reply/comments, which is placed on file. To come up for rejoinder if any, and arguments on 04.01.2020 before D.B at Camp Court, Swat.

Member (E) Camp Court, Swat

Appent No. 2035/2020 Fawad Ali VS Govt

10.09.2020

Appellant Deposited

& Process Fea

inter V Counsel for appellant present. Preliminary arguments heard. File

Points raised need consideration. Admitted to regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to respondents for written reply/comments. To come up for written reply/comments on 02.11.2020 before S.B at Camp Court, Swat.

An application for suspension of the impugned order has been annexed with the appeal. Operation of impugned order would remain suspended till next date, if not acted upon earlier.

*M*émh (1)Camp Court, Swat

Form- A

FORM OF ORDER SHEET

Court of 2020 Case No.-Order or other proceedings with signature of judge Date of order S.No. proceedings 3 2 1 The appeal of Mr. Fawad Ali presented today by Mr. Shamsul Hadi 18/03/2020 1-Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please. REGISTRAR This case is entrusted to touring S. Bench at Swat for preliminary 16 2020. 2hearing to be put up there on 04-07-7020 MAMM MEMBER 09.07.2020 Bench is incomplete. Therefore, the case is adjourned. To come up for the same on 10.09.2020, at camp court Swat. Reader

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 2035/2020

Fawad Ali.....Appellant

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Versus

Commissioner Malakand & others......Respondents

INDEX

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S. No.	Description	Annexures	Pages	
1.	Appeal		1-6	
2. ,	Affidavit		7	
3.	Stay application along with affidavit		R-10	
4.	Copy of the appointment order	A	11	
5.	Copy of the office order dated 24/09/2019	В	12	
6.	Copy of the office order dated 03/10/2019	С	13	
7.	Copies of the departmental appeal and order dated 31/10/2019	D & D1	14-16	
8.	Copy of impugned order dated 07/01/2020	E	17-	
9.	Copy of departmental appeal and	F	¦	
• • • • • • • •	impugned order dated 26/02/2019		18-25	
10.	copy of service book and pay slips	G & G 1	26-33	
11.	Wakalat nama		34	

ر على ن ه Appellant

Through

SHAMS UL HADI Advocate, high court Cell No. 0333-9337626

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. <u>2035</u>-M/2020

Khyber Pakhtukhwa Service Tribunai

Fawad Ali S/o Shah Ramand,

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and states of a

Diary No. <u>2295</u> Dated <u>18/3/2</u>020

Versus

Part. Commissioner Malakand Division Saidu Sharif Swat.

2. Deputy Commissioner Buner. Member 3. Senior Board of Revenue Khyber Pakhtunkhwa at Peshawar.

⁽¹⁾ **4**.⁽¹⁾ Assistant secretary (Estt) Board of Revenue Peshawar.

.....Respondent

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, AGAINST THE ORDERS DATED 26/02/2019 and 07/01/2020 PASSED BY THE RESPONDENT No.1 & 3

Respectfully sheweth;

Brief fact arising from the present appeal are as under:

That the appellant was appointed as Patwari on

28/09/2011 and was working as such till 23/09/2019.

(Copy of the appointment order is annexure "A").

Registrar 18/3/220

Par 4.

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2. That the services of the appellant were transferred/posted from the post of Patwari to Tehsil

Revenue Accountant (TRA) BPS-07, Tehsil Daggar, District Buner, on regular basis, vide office order bearing No. 12061-64/DC(B) dated 24/09/2019, by Deputy Commissioner, Buner.

(Copy of the office order dated 24/09/2019 as annexure "B").

3. That the order dated 24/09/2019, was withdrawn by respondent No.2 vide order dated 03/10/2019, without any notice or backing of law.

(Copy of the office order dated 03/10/2019 as annexure "C").

4. That feeling aggrieved from the withdrawal order of deputy commissioner, Buner, the appellant has preferred a departmental appeal No. 156/CMD on the ground that the order suffered from legal infirmities and therefore, was liable to be set aside, so the respondent No.1 by accepting departmental appeal of the appellant set aside the order dated 03/10/2019, through order dated 31/10/2019.

(Copies of the departmental appeal and order dated 31/10/2019 are annexure "D" & "D/1" respectively).

5. That to the great dismay and surprise of the appellant, the respondent has passed an impugned order bearing No. 39-41/156/CMD, dated 07/01/2020, whereby the previous order dated 31/10/2019 issued by the respondent was withdrawn any legal authority.
(Copy of impugned order dated 07/01/2020 as annexure "E").

6. That the appellant being aggrieved of the impugned order approaches respondent No.3 through departmental appeal but the same too was regrated vide impugned order dated 26/02/2019 which was communicated the appellant vide order dated 03/03/2020. (Copy of departmental appeal and impugned order dated 26/02/2019 as annexure "F").

7. That being aggrieved the appellant prefers this appeal on the following grounds:

GROUNDS:

A. That the respondent became functus officio after passing the order dated 31/10/2019 in a capacity as the appellate forum and subsequently could not pass any order on the same subject matter. B. That once a legal right has been accrued from the order of the appellate forum, it could not be taken away simply through an order in its original jurisdiction.

C. That the impugned order was passed without affording any opportunity of hearing to the appellant and therefore, is liable to be set aside, being against the universal principal of audi-alterm-partem.

D. That the respondent has passed a non-speaking order without giving plausible reasons and is therefore not maintainable in the eye of law.

E. That the impugned order was passed after the lapse of sufficient time during which the appellant has drawn salaries w.e.f. 28/09/2019 till date in this respect copy of service book and pay slips are enclosed as annexure" G" & "G/1" for ready reference.

F. That the impugned order is against the law; rules and regulations on the subject and hence liable to be set aside.

- G. That the appellant cannot be deprived of his legal right being permanent employee without giving him any opportunity of hearing and In the present case, the said principle was blatantly violated by the respondent and therefore the order is liable to be struck down.
- H. That the impugned order is the result of mis-reading and non-reading of the law on the subject.
- I. That the impugned order is based on mala fide intension as the same is reflecting on the surface of the order and is not based on the facts and circumstances of the case rather it seems a political victimization, besides suffering from legal lacunas.
- J. It is therefore, requested to allow the respondents to submit additional ground, case law and additional documents at the time on hearing the date fixed please.

It is, therefore very humbly prayed that on acceptance is this appeal impugned order dated 03/10/2019, 31/10/2019, and 26/02/2019 passed by respondents may kindly be set aside and earlier order dated 24/09/2019 regarding the posting of appellant as Tehsil revenue accountant BPS-

07 may kindly be restored.

Appellant Through

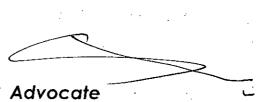
SHAMS UL HADI

Advocate, High Court

CERTIFICATE

It is certify that no such like reply has been filed earlier before this Hon'ble tribunal.

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BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No.____/2020

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 Fawad Ali
 Appellant

 CECARD
 Versus

Commissioner Malakand & others......Respondents

AFFIDAVIT

I, Shams, UI Hadi, advocate, per information of my client, do hereby solemnly affirm and declares on oath that, all the contents of this appeal are true and correct to the best of my knowledge and belief and nothing has been kept concealed or withheld from this august courts.

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DEPONENT ...

SHAMS UL HAD

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Advocate

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No.____/2020

Fawad Ali.....Appellant

Versus

Commissioner Malakand & others......Respondents

No. Aster Apple the co

APPLICATION FOR SUSPENSION OF IMPUGNED ORDER DATED 03/10/2019, 31/10/2019, AND 26/02/2019 PASSED BY RESPONDENTS AND GRANT OF STATUS QUO TILL THE DECISION OF THIS SERVICE APPEAL AND THE RESPONDENTS MAY KINDLY FURTHER BE DIRECTED NOT TO PASSED ANY ADVERSE ORDER/ACTION AGAINST THE APPELLANT.

Respectfully Sheweth:-

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sa na ana ang kanang sa		
	1.	That the above service appeal is pending adjudication before this Honorable Court, with no date fixed so far.
	2.	That prima facie the appellant has a good case
		and as sanguine about it success.
· · · · · · · · · · · · · · · · · · ·		

That if the impugned orders mentioned above are not suspended then the petitioner will suffer irreparable loss

That balance of convenience also lies in favour of petitioner

It is, therefore, humbly prayed that on acceptance of this C.M impugned orders dated 03/10/2019, 31/10/2019, and 26/02/2019 passed by respondents may kindly be suspended and status quo be maintain till final decision of this service appeal and the respondents may kindly further be directed not to passed any adverse order/action against the appellant.

> مرور دعی تی Appellant Through counsel

SHAMS UL HADI Advocate, High Court

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

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Service Appeal No.____/2020

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Fawad Ali.....Appellant Versus

Commissioner Malakand & others......Respondents

AFFIDAVIT

I, Shams, UI Hadi, advocate, per information of my client, do hereby solemnly affirm and declares on oath that, all the contents of this application are true and correct to the best of my knowledge and belief and nothing has been kept concealed or withheld from this august court.

فودريمن، DEPONENT 的社会的 station practices and the stappingten ht. beach candidate SHAMS UL HADI ocate 运行总量 传统主义

ICE OF THE DISTRICT OFFICER (R & E)/COLLECTOR, BUNER.

73/42/Vol:10/DRA(B)

Dated: 2.8-09/2011

OFFICE ORDER.

Consequent upon the **recommendation of** the Departmental Promotion/Selection Committee Mr. Fawad Alí Shah S/O Shahkamand R/O Amnawur Tehsil Gagra, District Buner (Patwar Candidate) is hereby appointed as Patwari (BPS-5) on regular basis with immediate effect. He will be on probation for a period of one year. He would produce Medical Certificate (Fitness) from the Medical Superintendent District Head Quarter Hospital, Daggar Buner.

(ISMAIL KHAN) DISTRICT OFFICER, (R & E)/COLLECTOR, HUNER.

No 1034-35 /3/42/Vol:11/DRA(B)

Copy forwarded to the:
 District Coordination Officer, Buner.

2. Secretary Board of Revenue, Khyber Pakhtunkhwa Peshawar.

3. District Accounts Officer, Buner.

4. District Kanungo, Bundr.

5. Revenue Bill Clerk Local Office.

6. Official Concerned for compliance.

DISTRICT OFFICER, R& E//COLLECTOR, BUNER.

'nе Advocate

ANNEX

OFFICE OF THE DEPUTY COMMISIONER, BUNER

No. 12061-64 /DC (B)/

\$ /2019

OFFICE ORDER.

Mr.Fawad Ali Shah,Patwari is hereby **fransferred** and posted as Tehsil Revenue Accountant(BPS-07) Daggar against the vacant post on regular basis in the interest of general public with immediate effect.

Dated 24

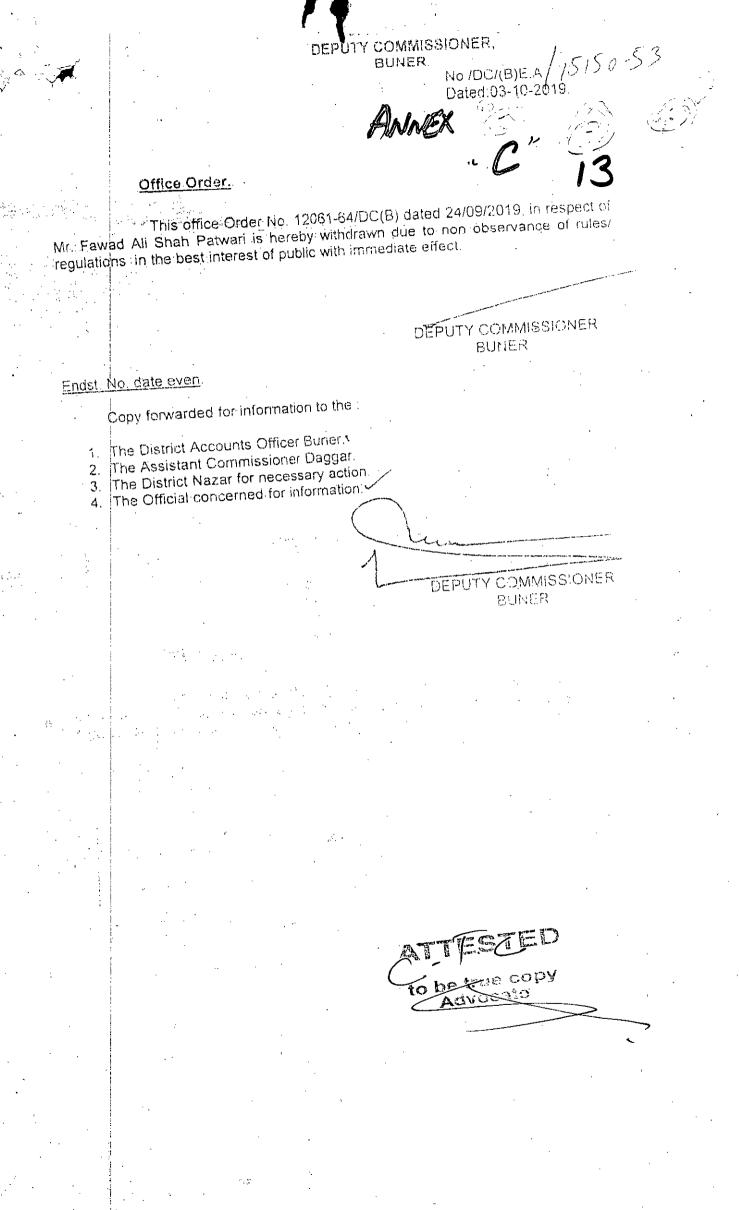
DEPÚTY COMMISIONER. BUNER 1

Endst.Nol & Date Even.

Copy forwarded to:-1 The District Accounts Officer Buner. 2 The Assistant Commissioner Daggar. 3 The District Nazar for necessary action 4 The Official concerned for strict compliance.

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ANNEX "B BEFORE THE HONORABLE COMMISSIONER MALAKAND DIVISION Fawad Ali S/O Shah Ramand R/O Amnwar Tehsil Gagra District Buner ERSUS ...(Respondent) puty Commissioner District Buner APPEAL AGAINST THE <u>OF</u> ORDER DC/BUNER NO/DC/(B)E A/15150-53 DATED 03 10-2019 OF RESPONDENTIQUE 20 VOID AB INITIO AS AGAINST THE LAW, RULES ON THE SUBJECT AND AGAINST THE

AND CIRCUMSTANCE OF THE CASE.

Facts Giving Rise To The Instant Department Appeal Are As Under: That the appellant is the regular official of the revenue department and is serving his duty with zeal and zest till now who has been appointed to the office Patwari on 28-09-2011 through order No/13/12/WOL:DRA (The order is attached as annexure (A).

> That the respondent through order No.12061-64/DC(B) Dated 24-09-2019 transferred and posted appellant as Tehsil revenue Accountant (BPS-07) Daggar against the vacant post on regular basis in the citrust of general public (The order is attached as annexure B)

That the appellant made sure his arrival as TRA Daggar and started performing his duty and also got his salary as TRA(The relevant document is attached as annexure C).

1. S. That the respondent in clear cut violation on rules of subject issued another order NO/DC/(B)E A/15150-53 Dated 03-10-2019 and withdrawn the previous above mentioned order dated 24-09-2019 with out any legal justification (The order is attached as annexure D).

That now the appellant assails the impugned order on the followin amongst other grounds inter alia.

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That the impugned order is against the law, rules on the subject, hence liable to be set aside.

That the impugned order is the result of Mis- reading and nonreading of the rules on the subject.

That the impugned order has been issued in a very hasty manner, hence in the clear cut violation of basic law and procedure on the subject, hence to be reversed / set a side, as void -ab - Initio.

That the appellant is regular servant and can not be deprived in such a manner without giving the opportunity and the golden principles that no body can be condemned unheard" has been violated by the respondent, therefore the impugned order is best on speculation, so to be struck down.

That the impugned order is based on malafidy and has been issued on the ill will of some political personalities, and is not a legal and realities based order, therefore has no legal effect on the rights of appellant.

That other point, will be raised with the permission of this court during arguments

Therefore, it is humbly prayed that the impugned order may kindly be set a side, and the appeal may kindly be accepted.

> Appellant Fawad ali s/o shah ramnad (TRA Daggar)

Interim Relief

ROUNDS

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C.

E.

É.

That the impugned order may kindly be suspend till the final disposal of the instant appeal

Michiel I en

Fawad ali s/o shah ramnad (TRA Daggar)

Appellant

ANNEX D/1 OURT OF COMMISSIONER MALAKAND DIVISION AT SAID SHARIF SWAT Dated: 07/10/2019 Appeal No. 156/CMD Fawad Ali Shah s/o Shah Ramand r/o Amanwar Tehsll Gagra District Bun Appella: Versus wird A CALLAR AND AND Responder Deputy Commissioner District Buner DEPARTMENTAL APPEAL AGAINST THE ORDER OF DC/BUNE NO/DC(B)E.A/15150-53 DATED 03.10.2019 ORDER A 31/10/2019 This is an appeal filed by the appellant Fawad Ali Shah s/o Shah Ramand r/ Amanwar Tehsil Gagra, District Buner against the order No. DC (B)/E.A/15150-53, date 03.10.2019 passed by the Deputy Commissioner, Buner, whereby the appellant has bee repatriated from Tehsil Revenue Accountant to Patwari. Brief facts of the case are that the appellant was serving as Patwari in Distric Buner The then Deputy Commissioner, Buner on 24.09.2019, vide order No. 12061 .64/DC(B); transferred the appellant and posted him as Telisil Revenue Accountant (BPS 07) Daggar against the vacant post on regular basis in compliance, the appellant mad his arrival as Tehsil Revenue Accountant, Daggar on 30.09.2019. On 03.10.2019, th Deputy Commissioner, Buner vide order No. DC (B)/E.A/15150-53, withdrawn th previous order passed by his predecessor, hence the instant appeal. In light of the opportunity of Personal heating given to the appellant, perusal o the comments received from respondent Le Deputy Commissioner, Buner and record o the case the instant appeal filed by the appellant is accepted. The impugned orde bearing NO. DC (B)/E.A/15150-53, dated 03.10.2019, passed by the Deput Commissioner, Buner is set aside and the order bearing No. 12061-64/DC(B), dated 24:09:2019, passed by his predecessor is restored. Accopy of this order be sent to the Deputy Commissioner Huner for compliance. 15 1924 - 1934 Announced: 31:10.2019 COMMISSIONER MALAKAND DIVISION Shalled ra an 25/11/19 Commissioner Malakand Division.

87488 P.001

BEFORE THE COMMISSIONER, MALAKAND DIVISION AT SAIDU SHARIF SWAT.

ANNEX

Pawad All Shah s/o Shah Ramand r/o Amnawar Tohsil Gagra District Bamer Appellans.

VERSUS

Deputy Commissioner, District Buner

DEPARTMENTAL APPEAL AGAINST THEORDER OF DC BUNER NO/DC(B) E.A/ 15150-53 DATED 03.10.2019

ORDER 07.01.2020

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This Court Order dated 31.10.2019, passed on the Departmental Appeal No. 156/ CMD, filed by Mr. Fawad Ali Shah s/o Shah Ramand r/o Amnawar Tehsil Gagra, District Buner being against S.No.7 of the Service Rules, notified vide Board of Revenue, Khyber Pakhtunkhwa Notification No.1942/Estt:1/ 135/SSRC, dated 23.01.2015. is hereby withdrawn.

The impugned order bearing No.DC(B)/E.A/16150-53, dated 03.10.2019, passed by the Deputy Commissioner Buner is hereby restored.

_1156/CMD, No. 39-41

Copy forwarded to:

- 1. The Deputy Commissioner, Buner, for information and compliance.
- 2. The District Accounts Officer, Buner, for information.
- 3. The appellant/ official concerned.

Commissioner Malakand Division

Commissioner Malakand Division

BEFORE THE SENIOR MEMBER BOARD OF REVENUE, KHYBER PAKHTUNKHWA, PESHAWAR

Inversion,

Appeal No.____/2020

Fawad Ali Shah S/o Shah Ramand

R/o Amnawar, Tehsil Gagra, District Buner. . . . APPELLANT

VERSUS

Commissioner, Malakand Division,

APPEAL AGAINST THE ORDER

DATED 07.01.2020 PASSED BY

THE RESPONDENT AGAINST THE

APPELLANT.

Respectfully Sheweth:

1.

Brief facts arising from the present appeal are as under:-

That the appellant was appointed as Patwari on 28.09.2011 and was working as such till 23.09.2019.

(COPY OF THE APPOINTMENT ORDER IS ANNEXURE "A").

That the services of the appellant were transferred from the post of Patwari to **Tehsil Revenue Accountant (TRA) BPS-07,** Tehsil Dagar, District Buner, on regular basis, vide office order bearing No.12061-64/DC(B), dated 24.09.2019 by Deputy Commissioner, Buner.

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(COPY OF THE OFFICE ORDER DATED 24.09.2019 IS ANNEXURE "B").

That the said Deputy Commissioner, Buner has withdrawn the order dated 24.09.2019 in respect of the appellant, vide office order bearing No.DC/(B) E.A/15150-53, dated 03.10.2019.

(COPY OF THE OFFICE ORDER DATED 03.10.2019 IS ANNEXURE "C").

That feeling aggrieved from the withdrawal order of Deputy Commissioner, Buner, the appellant has preferred a Departmental Appeal No.156/CMD on the ground that the order suffered from legal infirmities and therefore, was liable to be set aside by the respondent. The respondent was pleased to pass an order dated 31.10.2019, whereby the departmental appeal was accepted by setting aside

FEB

the impugned order and restored the appellant on the post of Tehsil Revenue Accountant (TRA).

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(COPIES OF THE DEPARTMENTAL APPEAL AND ORDER DATED 31.10.2019 ARE ANNEXURE "D" & "D/1" RESPECTIVELY).

That to the great dismay and surprise of the appellant, the respondent has passed an order bearing No.39-41/156/CMD, dated 07.01.2020, whereby the previous order issued by the respondent was withdrawn without any legal authority.

(COPY OF ORDER DATED 07.01.2020 IS ANNEXURE "E").

That the appellant being aggrieved of the impugned order approaches this esteemed forum for setting aside the impugned order dated 07.01.2020, on the following grounds, inter alia;

<u>GROUNDS:</u>

A

5.

6.

That the respondent became functus officio after passing the order dated 31.10.2019 in a capacity as the Appellate Forum and subsequently could not pass any order on the same subject matter. That once a legal right has been accrued from the order of the Appellate Forum, it could not be taken away simply through an order in its original

jurisdiction.

B.

C.

D.

E.

F

G:

That the impugned order was passed without affording any opportunity of hearing to the appellant and therefore, is liable to be set aside, being against the universal principle of *audi-alteram-partem*.

That the respondent has passed a non-speaking order without giving plausible reasons and is therefore not maintainable in the eye of law.

That the impugned order was passed after the lapse of sufficient time during which the appellant has drawn salaries w.e.f. 28.09.2019 till date, in this respect copy of Service Book and Pay Slips are enclosed as annexure **"F" & "F/1"** for ready reference.

That the impugned order is against the law, rules and regulations on the subject and hence liable to be set aside.

That the appellant cannot be deprived of his legal right being permanent employee without giving him

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any opportunity of hearing and in the present case, the said principle was blatantly violated by the respondent and therefore the order is liable to be struck down.

That the impugned order is the result of mis-reading and non-reading of the law on the subject.

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That the impugned order is based on malafide intention as the same is reflecting on the surface of the order and is not based on the facts and circumstances of the case rather it seems a political victimization, besides suffering from legal lacunas.

That once an order passed and acted upon which creates valuable rights could not be rescinded or withdrawn under the principle of *locus poenitentiae*.

That any other ground/ point will be submitted/ raised at the time of arguments by the appellant.

It is, therefore, most humbly prayed that on acceptance of this appeal, the impugned order dated 07.01.2020 of the respondent may kindly be set aside and the appellant may be ordered to be restored as Tehsil Revenue Accountant (TRA) as per the order of the respondent dated 31.10.2019. Any other relief, which this Honourable Forum deems appropriate, may also be given in the facts and circumstances of the case.

INTERIM RELIEF:

By way of interim relief, operation of the impugned order dated 07.01.2020 may kindly be suspended till the final disposal of the accompanying appeal.

Appellant

Through

LAJBAR KHAN KHALIL Advocate, High Court, Peshawar

Dated: 14.01.2020

AFFIDAVIT

I, Fawad Ali Shah S/o Shah Ramand, do hereby solemnly affirm and declare on oath that the contents of the **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Forum:

Advocate

DEPONENT MIC ISYO/->1>0191-5 03339>08901

б

Mr. Fawad Ali Shah Son of Shah Ramand, Resident of Amanwar, Tehsil Gagin, District Buner.

Your Departmental Appeal has been processed/examined and filed by the

DEPARTMENTAL APPEÁL

competent authority.

SUBJECT:

No. & Date Even.

Copy forwarded to the:-

 Commissioner Malakand Division Saidu Sharif at Swat with reference to his letter No. 218/156/CMD dated 14.02.2020.

2. Deputy Commissioner Buner with reference to his letter 719/F/28/DC/Buner/Estt:" dated 07.01.2020.

Office Of the DC Bun 16 Dairy No ... Srandh. Signature... 2-3-20 .

be true cop0V02

Assistant Sourceary (Esu:)

Assistant Secretary (Esti-



OFFICE OF THE DEPUTY COMMISSIONER, BUNER

No. 2575-77/F/28/DC/Buner/Estt: March 03, 2020.

Mr. Fawad Alı Shah, Patwari (NOK OPS Daggar)

Subject: Departmental Appeal

Memo:

) ,

Please refer to the subject.

Enclosed find herewith the letter of the Assistant Secretary (Estt) Revenue & Estate Department's letter No. Estt:VII/Fawad Ali/C.Case/7(.54-56 dated 26.02.2020 addressed to you with a copy to this office and Commissioner Malakand Division wherein your appeal has been examined and filed 1 y the competent authority, for information.

Endst. No. & Date Even.

For Information:

1 Commissioner, Malakand Division.

2. Assistant Secretary (Estt), Board of Revenue, Peshawar.

A

DEPUTY COMMISSIONER, BUNER.

DEPUTY COMMISSIONEE BUNER.

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(For use in Police Department only) Heirs: 2 received back dated verification Roll No. Left Thumb Impression Passed SSC(A) Exam: 2004 from BISES/Sharf Swat under Kall. Na 197719 Date Mart Gorblained 486/850 20 "C" Grade Qualification UNah Eram 2009 from Diretonate of Land Records English ntaske obtained 295/590 District Officer Revenue & Estates/Collector, Buner at Daggar. B.L. Or B.A. Pushto A Exam (A) 2006 from passed 315 E S/Sharef Ervert Under Kall, 190" 55442. Marks obtained 523/1100 Pleadership examiantion DIVILION 77._ Training School Final examiantion Plan drawing ··· District. Revenue & Estates/Collector Passer PrivB. A Exam: 2.009 from University the qualification of plaladand under Marks abtained 247, 15.50 . m T Div Keent doclased on by Deci 2009 **Court Duties** District Officer, Revenue & Eucaces/Collectore Reserve Duties Buner at Daggan, 5 N.D. Line in he drawn under the qualification possessed. In O Trivesdie

3 lote. The ontrios in this page should be renewed or re-attested at least every five years and the signature to lines 9 and 10 should be dated. Name: <u>Mr. Fawad Ali Shah</u> Race: <u>Afgham</u> Residence: Vill: Amnawar P.O& Teh: Daggar Distt. Buner Father's name and residence: Shahramand. Date of birth by Christian era as IInd Feb: N. H& Eighty Seven nearly as can be ascertained: (02-02-1987). 5-8 Exact height by measurement: Bersonal marks for identification: - Nel-2m4 casds Left hand thumb and finger impression of (Non-Gazetted) officer: Little Finger Ring Finger Middle Finger Fore Finger Thumb 8 h Signature of Government Servant: Signature and designation of the Head of the Office, or other Attesting District Officer. Officer. Revenue & Estates/Collector, unce at Darrar. Copy to bel المحر فالأرائة

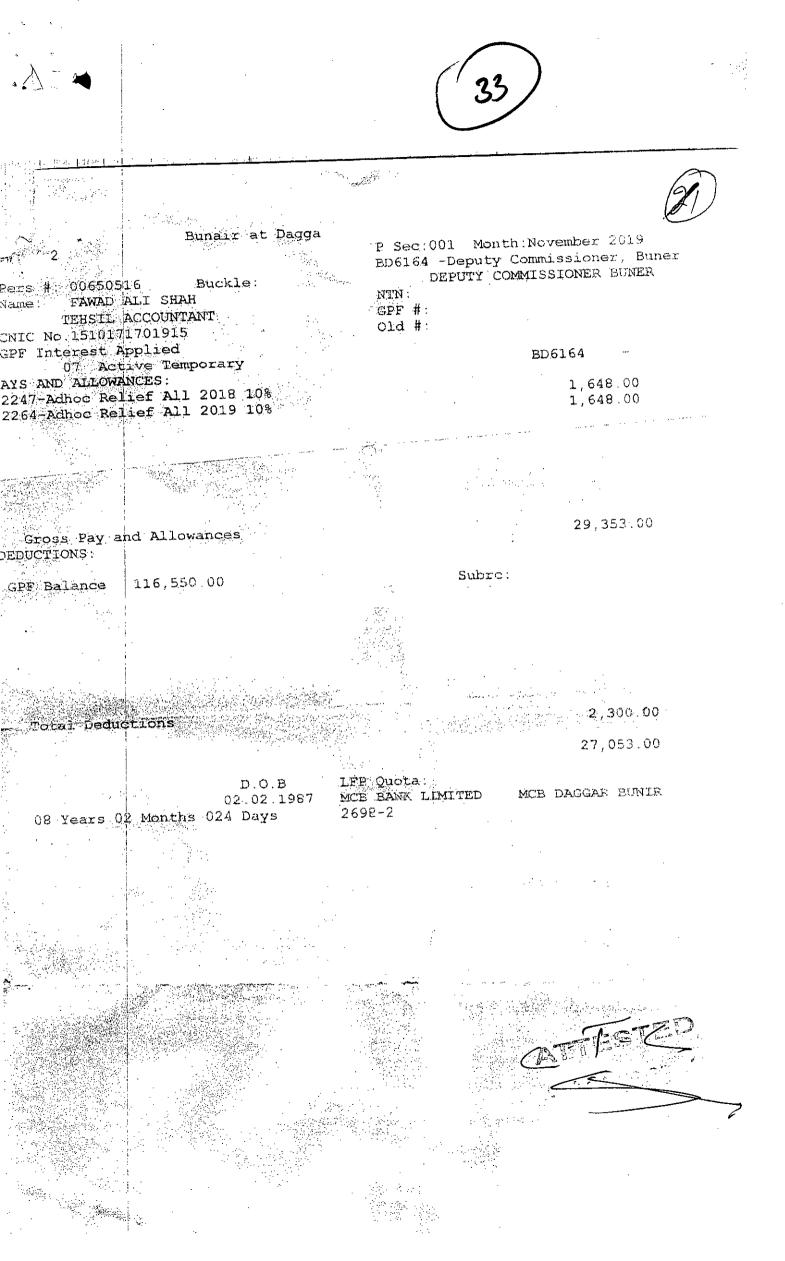
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all ley Jud W-e ĆŌ 3 10 12 13 Leive on 0 3 Reason of Reference to 201 lermination o Acare of average pay epig lour scittas for which they attre and Designation Signature of the Signature of recorded punishat the head of the office sechas . Date of in an at the office the head of the ment or censure conter altesting officer Incating of other or praise of the Correnment termitation of pura भेषत, dutation salary is debitably to or other attesting or praise of the in directation of appointment. Datates. ¢I another Government officer, diamits V. columns 1 to 8 facse Governmy til IQ €IC 1 laken Priod writen in unger BUNER F.S. Arrent of By Fallewinners 31-2 on directal COMMISSIONER untif . 1 = m to BUMER civil Endge IT. Durin 4ht fuid R. 160-62 MMISSIONE Ci B NER min Some deis 30 Accentant 2 to Telisic Renue Accentant 2 to Tordon 10.12061-64 DC (B) dated 2 4/9/2019. ISSIONER DEPUTY COMINISTION 1165 10 danhussioner. DER BUNER. 45 (à 2519 12061-64/0C(B) EA profer states & 4/9/2019 is with drawn with 522 office order NO. DC/B.IEA/15150-53 1 Miel dated 3/10/2019 2 order 260. De /13 / EA 15150-55 Actor 2 /10 2019 ed as Ralwar 10090 UTY COMINISSIONER tote To Copy

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and the second 12 15 14 13 12 11 10 LOAVO Allocation of period of Reference to any Reason of leave on average pay upto Signature of recorded punish-Nature noitenimation End Designation Signature of the four months for which leave the head of the ment or censure **a**nd such as Date of head of the office salary is debilable to another Government ad of the office or praise of the duration affice of other termination of promotion, attesting officer or other attesting attesting officer Government 0Í transfer, appointment, officer Servant. leave dismissal, ne al Government lo ni 119 8 elt') lakon. Period t Servard which debilable Restored as TRABPS-07 W.e.b 24/09/201916 de Commu'ssion Malatine Division order DEPUTY COMMISSION B 31/2019. mound de and ħ DEPUTY COMMISSIONER ١ 2 いたいたいないというというという ¢.,.

P Sec 001 Month November 2019 Bunair at Dagga BD6164 -Deputy Commissioner, Buner DEPUTY COMMISSIONER BUNER ers #: 00650516 Buckle: NTN: GPF #: ame: FAWAD ALI SHAH TEHSIL ACCOUNTANT NIC No. 1510171701915 01d #: PF Interest Applied BD6164 07 Active Temporary YS AND ALLOWANCES: 16,480.00 1,589 00 2001-Basic Pay 1,932-00 1000-House Rent Allowance 1,900,000 1210 Convey Allowance 2005 1,000 00 1300 Medical Allowance 367.00 2148-15- Adhoc Relief All-2013 250.00 2199-Adhoc Relief Allow 010% 2211-Adhoc Relief All 2016 10% 2224-Adhoc Relief All 2017 10% 1,291.00 1,648.00 29,353.00 Gross Pay and Allowances Subre: DEDUCTIONS : 1,010,00 GPF Balance 116,550.00 500.00 690.00 s no second 3501-Benevolent Fund 4004-R. Benefits & Death Comp: and a constant of the second 2,300:00 Total Deductions 27 053.00 D.O.B LFP Quota: 4 02.02.1987 MCB BANK LIMITED MCB DAGGAR BUNIR 08 Years 02 Months 024 Days 2698-2 ally subjects white an shekara shekara 1935. 2.5 3. GASS 4 and the second л



بعدالت کر میں کر بیونا کے در -میں کار کاری صفح ۲۰ منجانب قوار دیکی بنام کر کسیک و کس دعوي جرم باعث تحركرا نكه مقدمه مندرجه بالامين اين طرف في واسط پيروي وجواب دي و كل كاروائي متعلقدان مقام سروس لريبول - مع الماري المريد مقرر کرکے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیاط ہوگا۔ نیز وکیل صاحب کو راضی نامہ وتقرر ثالث و فیصلہ پر حلف دینے جواب دی اورا قبال دعویٰ اور درخواست ہر شم کی تصدیق زراس پر دستخط کرنے کا اختیار ہوگا نیز بصورت یہ عدم پیروی یا ڈگری ایک طرف یا اپیل سی برامدہوگی اور منسوخ ڈائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ بصورت ضرورت مذکور کے نسل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو آپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ ی^د اور صاحب مقرر شده کو بھی جملہ مذکورہ بالااختیارات حاصل ہوئے اور اسکا ساختہ برواخته منظور وقبول ہوگا اور دوران مقدمہ میں جو خرچہ دہر جانہ التوانے مقدمہ کے سبب سے ہا گا اسکے مستحق دکیل صاحب ہوئے۔ نیز بقایا دخرچہ کی دصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ ہر ہو یا حد سے باہر ہو تو وکیل صاحب یابند نه ہوئے کی بیروی مقدمہ مذکورلہذا وکالت نامہ کھ دیا ک سندر ہے المرقوم do 0 / 2 r. 20 العبيد كرواه ننيده العبيد بمقام المصلح الم مردس مريم على الخامنظور ب

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 2035/2020.

Fawad Ali.....Appellant / Petitioner.

<u>Versus</u>

- 1. Commissioner, Malakand Division.
- 2. Deputy Commissioner, Buner
- 3. Senior Member, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.

Parawise Reply on Behalf of the Respondents No. 1 to 4.

Preliminary Objections:

- A. The appeal is time-barred.
- B. The appeal has no grounds.
- C. The appellant has not come to the court with clean hands.
- D. The appellant has tried to conceal facts from the august Tribunal.

Facts:

- 1. No comments. Pertains to the record.
- 2. The order in question has straightaway been withdrawn vide this Office Order No. DC/(B)/E.A.15150-53 dated 13.10.2019 (Annexure-A). Vide annexure, the pervious order was reviewed and it was found out that rules / regulations on the subject had not been observed in its issuance as laid down in the Government of Khyber Pakhtunkhwa, Revenue & Estate Department vide notification No. 1942/Estt:I/135/SSRC, dated 23.01.2015 (Annexure-B).
- 3. Denied. The order in question was withdrawn since in complete contradiction with the rules on subject (Annexure-A). "Better late than never", the order was withdrawn to avoid any future complications. As regards the issuance of notice to the appellant or affording the opportunity of personal hearing the orders such passed were in violation of the prescribed course of procedure and rules on the subject. It was therefore held expedient to withdraw them so that future legal complications could be checked well in time. The orders were void by rules hence the appellant cannot claim the legal rights.
- 4. Correct to the extent that the Respondent No. 1 honored the appeal however the same deficiency was noticed in his office as well and on the same lines as prescribed in para-2 above, the order was withdrawn with the following remarks:

"This Court Order dated 31.10.2019, passed on the Departmental Appeal No. 156/CMD, filed by Mr. Fawad Ali Shah s/o Shah Ramand r/o Amnawar Tehsil Gagra, District Buner being against S. No. 7 of the Service Rules, notified vide Board of Revenue, Khyber Pakhtunkhwa Notification No. 1942/Estt:I/135/ SSRC, dated 23.01.2015, is hereby withdrawn. The impugned order bearing No. DC(B)/E.A/15150-53, dated 03.10.2019, passed by the Deputy Commissioner Buner is hereby restored (Annexure-C)"

5. Denied. Pease refer to the para-4.

6. Correct. Senior Member, Board of Revenue, Khyber Pakhtunkhwa / Respondent No. 3 processed / examined the departmental appeal of the appellant. The same was filed since considered baseless (Annexure-D).

7. The appeal is hence baseless with reply to the following grounds:

Grounds:

- A. Denied. The order in question has straightaway been withdrawn vide this Office Order No. DC/(B)/E.A.15150-53 dated 13.10.2019 (<u>Annexure-A</u>). It had been issued in violation of the Service Rules notified by the Government of Khyber Pakhtunkhwa, Revenue & Estate Department vide notification No. 1942/ Estt:I/135/SSRC, dated 23.01.2015 (<u>Annexure-B</u>).
- B. Denied. Please refer to Para-A and reply of facts.
- C. Denied. Please refer to the Para-A and reply of facts.
- D. Denied. Please refer to the Para-A and reply of facts.
- E. Strongly denied. No record is available regarding the subject.
- F. Denied. Please refer to the Para-A.
- G. Denied. Please refer to the above paras of facts and grounds.
- H. Denied. Please refer to the Para-A.
- I. Denied. Please refer to the above paras of facts and grounds.
- J. Denied. Please refer to the above paras. The appellant desires to get benefits for which he is not entitled.

It is requested that since the appeal is baseless having no legal grounds, it may be dismissed with cost.

Deputy Commissioner, Buner Respondent-2.

Assistant Secretary (Estt), Board of Revenue. Respondent-4.

Senior Member, Board of Revenue. Respondent-3.

Commissioner, Malakand Division Respondent-1.

Office Order.

This office Order No. 12061-64/DC(B) dated 24/09/2019; in respect of Mr. Fawad Ali Shah Patwari is hereby withdrawn due to non observance of rules/ regulations in the best interest of public with immediate effect.

OFFICE OF THE DEPUTY COMMISSIONER, BUNER.

DEPUTY COMMISSIONER BUNER

No /DC/(B)E.A /15/50-

Dated:03-10-2019.

Endst. No. date even.

Copy forwarded for information to the :

- 1. The District Accounts Officer Buner.
- 2. The Assistant Commissioner Daggar.
- 3. The District Nazar for necessary action.
- 4. The Official concerned for information.

DEPUTY COMMISSIONER

DEPUTY COMMISSIONER BUNER

GOVERNMENT DE KHYBER PÅKHTUNKHWA BOARD OF REVENUE /REVENUE AND ESTATEDEPARIMENT (TEUSILDAR, NAIB TEUSILDAR / SUBORDINATE REVENUE SERVICE RULES, 2008)

NOTIFICATION

a. 1942/Estr:1/135/SSRC. In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtuni I way. Civil Servants (Appointment, Promotion and ransfer) Rules, 1989 read with the Cabinet Division Notification No. SRO. 457(1)/2001 dated 28th June, 2001 and in supercession of all previous rules issued in this behalf, ansfer) Rules, 1989 read with the Cabinet Division Notification No. SRO. 457(1)/2001 dated 28th June, 2001 and in supercession of all previous rules issued in this behalf, ansfer) Rules, 1989 read with the Cabinet Division Notification No. SRO. 457(1)/2001 dated 28th June, 2001 and in supercession of all previous rules issued in this behalf, ansfer) Rules, 1989 read with the Cabinet Division Notification No. SRO. 457(1)/2001 dated 28th June, 2001 and in supercession of all previous rules issued in this behalf, ansfer) Rules, 1989 read with the Cabinet Division Notification No. SRO. 457(1)/2001 dated 28th June, 2001 and in supercession of all previous rules issued in this behalf, and the Revenue and Estate Department, qualification and other and Estate Department, in consultation with the Establishment and the Finance Department, hereby lays down the method of Revenue and Estate Department specified in minimum specified in column 3 to 7 of the Appendix to this Notification and applicable to posts born on the cadle strength of Revenue and Estate Department specified in minimum specified in column 3 to 7 of the Appendix to this Notification and applicable to posts born on the cadle strength of Revenue and Estate Department specified in the specified in column 3 to 7 of the Appendix to this Notification and applicable to posts born on the cadle strength of Revenue and Estate Department specified in the specified in t

olumn 2 of the said appendix:-

APPENDIX

<u>I</u> 3.No	2 Nomenclature of the post	3 Appointing Authority	4 Minimum Qualification for appointment by initial recruitment or	5 Minimum Qualification for appointment by promotion	6 — Age limit	7 Method of recruitment
·····	Tehsildar (BPS 16)	Administrative Secretary (SMBR)	by transfer	Detered	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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······································	Member / Members Boar of Revenue Inspector of	Secretary		5	6	By transfer from anningst the Tehsildars
,	Naib Tchsildar (BPS 14)	(SMBR) Administrative Secretary (SMBR)	Second class Graduation from any University recognized by the Higher Education Commission	Deleten	21 30 years For initial recruitment	 By transfer from amongst the Tehsi dars (a) Fifty precent 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 Kamingos 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 Muharrits of the offices of Political Agents with atleast ten years service.";
	District Kanungo	Administrative	-		······	
	(Saddar Kanungo) (BPS 14)	SMBR)				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
. F	Head Clerk Revenue BPS – 14)				I (By transfer from amongst Naib Tehsildar (Deleted) Post has been abolished)

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	6,	Kanungo	District			•• - •		
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		Accountant	Collector	· · · · ·			1 .	By promotion on the basis seniority-cum-fitness from amongst the Naib Tehsil Accountants having three (03) years service as and
-					ł			Accountants having three (03) years service as such.
	<u>s.</u>	Patwari	District	Intermediate or	·		[
	•	(BPS – 09)	Collector -	equivalent	· -		18 to 35	"By initial appointment from amongst the Patwar passed candidate entered in the Tehsil patwar condidate projects
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-				qualification, who	<u></u>			district concerned.
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Copy torwarded for information and necessary action to the:-

Secretary to convernment of Khyber Pakhtunkhwa Establishment Department.

Seen fary to Government of Khyber Pakhtunkhwa Finance Department.

27 80000

Registral Peshawar High Court.

υ.

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

DEPUTY SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA REVENUE & ESTATE DEPARTMENT

BEFORE THE COMMISSIONER, MALAKAND DIVISION AT SAIDU SHARIF SWAT.

Fawad Ali Shah s/o Shah Ramand r/o Amnawar Tehsil Gagra District Buner

..... Appellant.

VERSUS

DEPARTMENTAL APPEAL AGAINST THEORDER OF DC BUNER NO/DC(B) E.A/15150-53 DATED 03.10.2019

<u>ORDER</u> 07.0<u>1.2020</u>

This Court Order dated 31.10.2019, passed on the Departmental Appeal No. 156/ CMD, filed by Mr. Fawad Ali Shah s/o Shah Ramand r/o Amnawar Tehsil Gagra, District Buner being against S.No.7 of the Service Rules, notified vide Board of Revenue, Khyber Pakhtunkhwa Notification No.1942/Estt: I/ 135/SSRC, dated 23.01.2015. is hereby withdrawn.

The impugned order bearing No.DC(B)/E.A/NS150-53, dated 03.10.2019, passed by the Deputy Commissioner Buner is hereby restored.

No. 39-41 /156/CMD,

Commissioner Malakand Division

Copy forwarded to:

1. The Deputy Commissioner, Buner, for information and compliance.

2. The District Accounts Officer, Buner, for information.

3. The appellant/ official concerned.

Mice of the DC Bunst.

Dairy Mo . 2. 2. tomor

Branch.

SIANS

Commissioner Malakand Division

GOVERNMENT OF KHYBER PAKHTUNKHWA, BOARD OF REVENUE, REVENUE & ESTATE DEPARTMENT. Peshawar dated the 2/(02/2019)

Mr. Fawad Ali Shah Son of Shah Ramand, Resident of Amanwar, Tehsil Gagra, District Buner.

DEPARTMENTAL APPEAL. SUBJECT:

Your Departmental Appeal has been processed/examined and filed by the

competent authority.

Τo

Assistant Secretary (Est)

Assistant Socretary (Esu:)

No. & Date Even.

Copy forwarded to the :-

1. Commissioner Malakand Division Saidu Sharif at Swat with reference to his letter No.

2. Deputy Commissioner Buner with reference to his letter 719/F/28/DC/Buner/Estidated 07.01.2020.

Office Of The DC Bunch Dairy No . 16 Branch. Signatu 3-20