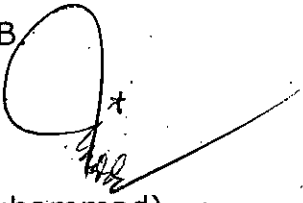
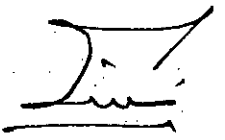


14.04.2022

Junior of learned counsel for the appellant present. Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for official respondents No. 1 to 3 present. Learned counsel for private respondent No. 4 present.

Junior of learned counsel for the appellant submitted rejoinder and requested for adjournment for arguments on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Rejoinder is placed on file. Adjourned. To come up for arguments on 24.06.2022 before the D.B.


(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

24th June 2022

Counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG alongwith Qasam Khan, Superintendent for the respondents present.

2. The former submits that he has been instructed by the appellant to withdraw this appeal. Dismissed as withdrawn. Consign.

3. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal this 24th day of June, 2022.*

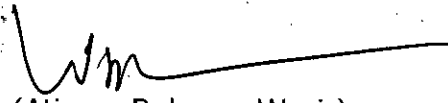

(Fareeh Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

13.01.2021

Counsel for the appellant, Mr. Muhammad Rashid, DDA alongwith Muhammad Asif, Asstt. for official respondents and counsel for private respondent No. 4 present.

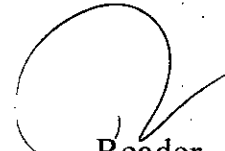
Reply on behalf of respondent No. 4 has been submitted which is placed on record. To come up for arguments before the D.B on 16.04.2021. The appellant may furnish rejoinder, within one month, if so advised.


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


Chairman

16.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 10.08.2021 for the same as before.


Reader

10.08.2021

Since, 1st Moharram has been declared as public holiday, therefore, case is adjourned to 30/12/2021 for the same as before.



Reader

30/12/2021

Due to winter vacation, the case is adjourned. To come up on 14/4/2022.


Reader

6.4.2020 Due to COVID 19, The case is adjourned to
1-7-2020 for same as before.



01.07.2020

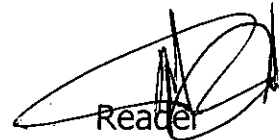
Due to COVID-19, the case is adjourned to 26.08.2020
for the same.

~~same as before~~


Reader

26.08.2020

Due to summer vacation case to come up for the
same on 02.11.2020 before D.B.


Reader

02.11.2020

Junior to counsel for the appellant and Addl. AG
alongwith Ziarat Gul, Superintendent for the respondents
present.

The Bar is observing general strike, therefore, the
matter is adjourned to 13.01.2021 for hearing before the
D.B.


(Mian Muhammad)
Member
Chairman

20.11.2019

Appellant alongwith his counsel present. Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith M/S Muhammad Arif, Superintendent and Muhammad Ali Zulqurnain, Naib Tehsildar for official respondents No. 1 to 3 and private respondent No. 4 in person present.

The case was fixed for arguments but today representatives of official respondents want to submit written reply. In this regard learned counsel for the appellant was asked as to whether he has any objection on submission of written reply as the case was already fixed for arguments. He stated that he has no objection on submitting of written reply. As such, written reply/comments on behalf of official respondents No. 1 to 3 submitted. Case to come up for rejoinder and arguments on 14.01.2020 before D.B.



(Hussain Shah)
Member



(M. Amin Khan Kundi)
Member

14.01.2020

Appellant in person and Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Arif, Superintendent for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today due to general strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourned to 27.02.2020 for rejoinder and arguments before D.B.



(Ahmad Hassan)
Member



(M. Amin Khan Kundi)
Member

27-2-20

The Learned Members
is on tour therefore case
is adjourned to 6-4-2020



Reader

10.07.2019

Counsel for the appellant and Addl: AG alongwith Mr. Mr. Muhammad Arif, Supdt for respondent no. 1 and private respondent no.4 in person present. Representative of respondents no. 2 and 3 not present.

Representative of respondent no1 states that written reply is yet to be prepared. He, therefore, requested⁸ for a short adjournment. Notice be issued to respondents no. 2 and 3 for submission of written reply/comments.

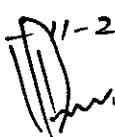
Adjourned to 04.09.2019 before S.B but as a last chance.


Chairman

04.09.2019

Counsel for the appellant and Mr. Usman Ghani District Attorney alongwith Muhammad Arif, Superintendent for respondent No. 1 present. Nemo for remaining respondents.

On previous date of hearing last opportunity was granted to the respondents for submission of written reply/comments but they have not furnished the same today, hence the appeal is posted to D.B for arguments on 20/11-2019.

Chairman 

[Faint handwritten notes and signatures at the bottom of the page]

25.03.2019

Learned counsel for the appellant present. Written reply not submitted. Syed Mudassir Pirazada Advocate submitted wakatat nama in favor of respondent No.4 and requested for time to furnish written reply. No one present on behalf of official respondents. Muhammad Arif Superintendent representative of official respondents absent. He be summoned with the direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on 24.04.2019 before S.B


Member

24.04.2019

Counsel for the appellant present. Adll: AG alongwith Mr. Javed, Assistant for official respondents present. Written reply not submitted. Requested for adjournment. Adjourned. Case to come up for written reply on 13.06.2019 before S.B.


(Ahmad Hassan)
Member

13.06.2019

Counsel for the appellant and Addl. AG alongwith Javed Assistant for official respondents present. Nemo for private respondent No. 4.

Representative of the respondents No. 1 to 3 requests for further time. Fresh notice be issued to respondent No. 4. Adjourned to 10.07.2019 as a last chance for submission of written reply of all the respondents.


Chairman 

08.02.2019

Counsel for the appellant present.

Learned counsel for the appellant contended that while passing the impugned order the judicial order dated 12.11.2009 by Addl. Commissioner, Kohat Division was disregarded on one hand and, on the other, the same was not challenged before the appropriate forum. The departmental appellate authority made an error by passing order dated 27.11.2018 which is liable to be struck down.

The appeal in hand, in view of the arguments of learned counsel and the available record, merits admission for regular hearing. Admit. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 25.03.2019 before S.B.

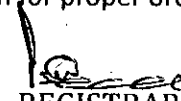


Appellant Deposited
Security & Process Fee


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 17/2019


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	07/1/2019	<p>The appeal of Mr. Wazir Muhammad resubmitted today by Mr. Zahoor Islam 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 7/1/2019</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>8-2-19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Wazir Muhammad son of Abdul Karim r/o Shah Qaiser Banda Distt. Karak received today i.e. on 26.12.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures of the appeal may be attested.
- 2- Annexures of the appeal may be flagged.
- 3- Copy of departmental appeal mentioned in para-2 of the memo of appeal is not attached with the appeal which may be placed on it.
- 4- Address of respondent no. 4 is incomplete which may be completed according to Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 5- Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.


No. 2459 /S.T,

Dt. 27-12- /2018.


REGISTRAR 27/12/18
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Zahoor Islam Khattak Adv. Pesh.

SIR:
All objections "1 to 5" are removed accordingly.
Respondent no 4 is retired now, and the address mentioned
in appeal is the address given in wait petition in page 27 of
this appeal. Respondent no 4 appears before
Honourable Peshawar High Court (Baru Bench) on
some address given in appeal.


Zahoor Islam Khattak
Advocate

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No. 17 of 2018

Wazir Muhammad Appellant

VERSUS

Senior Member Board of Revenue, Khyber
Pakhtunkhwa and others Respondents

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3.	Copy of the Office Order	"A"	9
4.	Copy of the Order along with departmental Appeal	"B"	10-15
5.	Copy of the Letters	"C"	16-18
6.	Copy of the departmental appeal	"D"	19
7.	Copy of the promotion dated 01/04/2014	"E"	20
8.	Copy of the order and departmental appeal	"F"	21-26
9.	Copy of the writ petition along with order	G	27-31
10.	Copy of the rejection order	H	32
11.	Wakalat Nama	In original	

Dated 22/12/2018

Appellant
Through
(Zahoor Islam Khattak)
Advocate,
High Court Peshawar
Cell # 0346-9083579

1)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Appeal No. 17 of 2018

Diary No. 1804

Dated 26/12/2018

Wazir Muhammad Son of Abdul Karim, R/o Shah
Qaiser Banda Tehsil Takht-e- Nusrati, District Karrak.

... .. Appellant

VERSUS

- 1- Senior Member Board of Revenue, Khyber Pakhtunkhwa.
- 2- Commissioner Kohat Division Kohat.
- 3- Deputy Commissioner District Karak
- 4- Tehsil Badshah Son of Mir Wali Shah R/o Kanda Siraj Khel, Tehsil Takht-e-Nusrati District Karak.

... .. Respondents

Filed to-day

[Signature]
Registrar
26/12/18

APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORIGINAL IMPUGNED ORDER DATED 11/12/2014 OF COMMISSIONER KOHAT WHEREBY THE DEPARTMENTAL APPEAL OF APPELLANT WAS DISMISSED VIDE DATED 27/11/2018 AND THE APPELLANT PROMOTION ORDER NO.1330/EA DATED 01/04/2014 WAS SET ASIDE.

Re-submitted to -day
and filed.

[Signature]
Registrar

7/1/19

Prayer!

On acceptance of appeal, the impugned order vide dated 27/11/2018 and dated 11/12/2014 may be set aside and the appellant promotion order may kindly be restored and the appellant may be promoted as Qanoongo with all back benefits.

2)

Respectfully Sheweth:

Brief facts leading to the instant appeal are as under:

- 1- That after retirement of one Mir Alibas Qannongo on superannuation appellant was promoted to the post of Qanoongo on 18/07/2007 in his own pay and scale. (Copy of office order No.2238-42/DOR/DK dated 18/07/2007 is annexed as Annexure "A").

- 2- That while aggrieved from the office Order bearing No.788/DOR/EA dated 18/04/2008 by District Officer (Revenue and Estate) Collector Karak whereby two Patwaries namely Ahmad Gul and Taj Muhammad Khan was promoted as a Qanoongo on regular basis while appellant was ignored preferred departmental No.296/08 before the SMBR Peshawar, wherein the SMBR on dated 26/11/2008 accepted the appeal of the appellant as Qanoongo on regular basis from 18/04/2008. (Copy of the order and departmental appeal are annexed as Annexure "B").

3- That the Assistant Secretary (Estate) Board of Revenue through Letter No.23565/Admin-VII/Karak dated 12/09/2009 advised to District Officer (Revenue and Estate) Collector Karak for promotion of the appellant was withdrawn through Letter No.24326/Admin; VII/Peshawar dated 26/09/2009 but latter on letter No.24316/Admin - VII Peshawar dated Peshawar the 26/09/2009 was again withdrawn through another Letter No.24576/Admin-VII Peshawar dated 30/09/2009 in such the order No.23565/ Admin - VII / Karak dated 12/09/2009 was again restored. (Copies of letters are annexed as Annexure "C").

4- That as per letter No.23565/Admin-VII/Karak dated 12/09/2009 the Judicial Order of SMBR dated 26/11/2008 has been restored, after restoration of the order dated 26/11/2008 of the SMBR the appellant for strict compliance of the above said order preferred departmental appeal No.142/AC/KT of 2009 before the Addl: Commissioner Kohat Division Kohat the appeal of the appellant was accepted and directed that the appellant be promoted on regular basis from the Date of DPC w.e.f 18/04/2008. (Copy of the order dated 12/11/2009 of Addl: Commissioner Kohat Division Kohat. (Copies departmental

4)

No.142/AC/KT of 2009 is annexed as Annexure "D")

- 5- That in pursuance of the Judicial Order dated 26/11/2008 passed by the Senior Member Board of Revenue Peshawar followed the Board of Revenue Letter No.23565/Admin-VII/Karak dated 12/09/2009 and subsequent Judicial Order for strict compliance of Addl: Commissioner Kohat Division Kohat dated 12/11/2009 the appellant was promoted the office Order dated 01/04/2014. (Copy of the Office Order No.1330/DC/EA/Promotion dated 01/04/2014 is annexed as Annexure "E").
- 6- That respondent No.4 challenged the Office No.1330/DC/EA/Promotion dated 01/04/2014 of the Deputy Commissioner Karak and departmental appeal No.26/14 wherein the departmental appeal was accepted and set aside the Office Order dated 01/04/2014. (Copy of the departmental appeal No.26/14 and Office Order dated 11/12/2014 of Commissioner are annexed as Annexure "F").
- 7- That appellant has approached to Hon'ble Peshawar High Court Bannu Bench writ petition against the Order dated 11/12/2014 of the Commissioner Kohat Division Kohat which was referred with the observation to SMBR Peshawar

to considered him as a departmental appeal. (Copy of writ petition along with order is annexed as Annexure "G").

8- That the SMBR rejected the departmental appeal of the appellant on dated 27/11/2018 and order is communicated to him. (Copy of the order is annexed as Annexure "H").

9- That aggrieved from the order of Senior Member Board of Revenue Peshawar approached this Hon'ble Tribunal on the following grounds amongst others:

GROUND:

A) That the original impugned order dated 27/11/2018 is void is the result of gross illegality and violation of practice and procedure of Quram non-Judice or without jurisdiction and authority.

B) That impugned order is passed illegally while wrongly exercised jurisdiction not vested in it. Moreover, Senior Member Board of Revenue didn't exercise the relevant law on the subject.

C) That the neither the judicial for promotion of the appellant as Qanoongo dated 26/11/2008 neither SMBR nor Letter No.23565/Admin-VII Karak


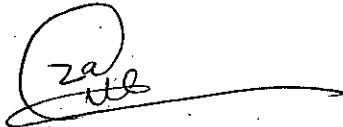
dated 12/09/2009 nor Judicial Order dated 12/11/2009 of the Addl: Commissioner Kohat Division Kohat has not been challenged and later on the order dated 01/04/2014 which passed just in compliance and pursuance of the above mentioned was challenged. So when the original order is not been challenged before the competent forum and have got finality then in salary order could not be challenged as such the Commissioner Kohat Division Kohat as well as Senior Member Board of Revenue dated 27/11/2014 wrongly exercise jurisdiction excess of his authority and such like situation this august Tribunal cannot only interfere but can quashed and declare the order Curam- non-judice or without jurisdiction.

- D) That while setting aside the order dated 01/04/2014 by respondent No.2 and which is maintained by SMBR dated 27/11/2018 has illegally exercised his authority and will balanced promotion order of the appellant was set aside.
- E) That the fundamental of the appellant is violated and the appellant was deprived from his legal rights.

- F) That the appellant is senior most in the revenue department and appellant is entitled to promotion according to the rules and regulations.
- G) That the appellant seeks leave of this Hon'ble Tribunal to rely on additional grounds at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of appeal, the impugned order vide dated 27/11/2018 and dated 11/12/2014 may be set aside and the appellant promotion order may kindly be restored and the appellant may be promoted as Qanoongo with all back benefits.

Dated 22/12/2018


Appellant
Through 
(Zahoor Islam Khattak)
Advocate,
High Court Peshawar

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No. _____ of 2018

Wazir Muhammad Appellant

VERSUS

Senior Member Board of Revenue, Khyber
Pakhtunkhwa and others

... .. Respondents

AFFIDAVIT

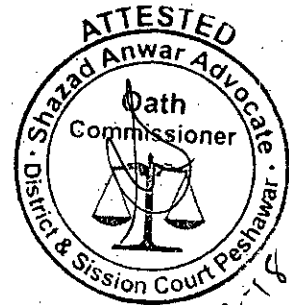
I, Wazir Muhammad Son of Abdul Karim,
R/o Shah Qaiser Banda Tehsil Takht-e- Nusrati,
District Karrak do hereby solemnly affirm and
state on oath that all contents of appeal are true
and correct to the best of my knowledge and belief
and nothing wrong has been stated by me in the
matter.


DEPONENT

CNIC # 14203 - 2046801 - 5

Identified by


Zahoor Islam Khattak
Advocate
High Court, Peshawar



26-12-18

Before the Honourable Kp Service Tribunal
Peshawar

Appel No: 17/2019

Nazir Muhammad - - Applicant
V/s - - Appellant

SMBR and others - - Respondents

Application for withdrawal
of Above mentioned ^{case} on the
ground of that grievance
of petitioner is resolved.

Respectfully Sheweth,

- 1) that the above mentioned case is pending for adjudication in which date is fixed for today.
- 2) That it is pertinent to mention here that Respondent no. 4 is retired and grievance of the petitioner is resolved.

3) That there is no legal bar of appeal
is withdrawn after resolving of
Applicant/Appellant issues.

It is therefore humbly

prayed that on acceptance

of this application the

instant appeal may be

withdrawn of so requisite
then file fresh appeal.

Dated

24-6-2022

Applicant/Appellant

Through

Zahoor 88 Lam

1 Chett a/c

OFFICE OF THE DISTRICT OFFICER (REVENUE & ESTATE)/COLLECTOR, KARAK.
OFFICE ORDER.

Dated Karak the _____/2007

No. _____/DOR/DK. On the eve of retirement of Mr. Ali Abbass Kanungo BES-9 on Superannuation pension wef 15/7/2007(FN), Mr. Wazir Muhammad Tehsil Revenue Accountant of Tehsil T/Nasrati is hereby promoted to the post of Kanungo in his Own Pay & Scale with immediate effect in the interest of public service. He is posted as Office Kanungo of Tehsil Takht-e-Nasrati against the said vacant post.

DISTRICT OFFICER,
REVENUE & ESTATE, KARAK.

~~Indst: No. 2238-42/DOR/DK.~~

Indst: No. 2238-42/DOR/DK. Dated Karak the 18/7/2007.

Copy forwarded to the:-

- 1/ Secretary, Board of Revenue MFP, Peshawar.
- 2/ District Coordination Officer, Karak.
- 3/ District Accounts Officer Karak.
- 4/ Tehsildar Takht-e-Nasrati for necessary action.
- 5/ Official Concerned for compliance.

Attested

B

Attested to be a true copy

(Signature)

(Signature)

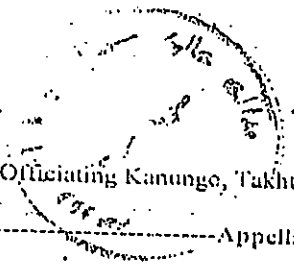
DISTRICT OFFICER,
REVENUE & ESTATE, KARAK.

2

IN THE COURT OF AHSANULLAH KHAN, SENIOR MEMBER,
BOARD OF REVENUE, NWFP.

Annexure
"B"

Case No. 296/2008
Date of Institution. 14-05-2008.
Date of Decision. 26-11-2008.



Wazir Muhammad Tehsil Revenue Accountant/Officiating Kanungo, Takht-e-Nasrati District Karak
-----Appellant.

Versus

District Officer (Revenue & Estate)/Collector, Karak
-----Respondent.

Handwritten notes and signatures in the left margin.

ORDER

This is a Departmental appeal presented by Wazir Muhammad Tehsil Revenue Accountant/Office Kanungo Takht-e-Nasrati against the order bearing No. 788/DO/EA dated 18/04/2008 passed by District Officer (Revenue & Estate)/Collector, Karak whereby two Patwaris namely M/S Ahmad Gul and Taj Mohammad were promoted as Kanungo (BPS-09) on regular basis while the appellant was ignored.

The appellant was inducted in Service as Junior Clerk on 18/07/1987 and later on appointed as WBN/Tehsil Revenue Accountant on 03/10/1992. He was promoted as Kanungo in his Own Pay and Scale and posted as Office Kanungo Takht-e-Nasrati vide order dated 18/07/2007.

Vide impugned order dated 18/04/2008, Two Patwaris namely M/S Ahmad Gul and Taj Mohammad were promoted as Kanungo (BPS-09) on regular basis by ignoring the appellant. Feeling aggrieved the appellant preferred the instant appeal.

Appellant present. Written arguments submitted by the learned counsel of the appellant perused. Case file examined. The appellant is Senior most Tehsil Revenue Accountant and has passed the departmental examination of Kanungo in the year 1999. The appellant is already working as office Kanungo in Own Pay Scale, which is not disputed, therefore he has the right to be considered in the Departmental Promotion Committee.

In view of the above, the appeal is accepted and the District Officer (Revenue & Estate)/Collector, Karak is directed to promote the appellant as Kanungo (BPS-09) on regular basis w.e.f 18/04/2008.

ANNOUNCED.
26-11-2008

Signature of Ahsanullah Khan
(AHSANULLAH KHAN)
SENIOR MEMBER,
BOARD OF REVENUE, NWFP.

Attested
B

Accepted to be

a true copy
29
a

... (N/RA) ...
... (DPC/DSC) ... Annexure B ... then he ...
... in the ... satisfaction of his superiors ... with
unblemished record.

2. That the appellant has sufficient experience in his field, although performing his duties as Office Kanungo, Takht-e-Nasrati vide order Annex-C, and as such he is entitled for his promotion as Kanungo BPS-9 on regular basis.

3. That seniority of the Patwaris, Ahmad Gul and Taj Muhammad, who are promoted as Kanungo, is not only doubtful but they have also been found unfit for their promotion by the successive passed DPC/DSC, and they were dropped twice for promotion.

4. That the appellant is highly qualified. He has passed Departmental Examination of Patwari, Kanungo and Naib Tehsildar.

5. That the appellant is aggrieved of the order dated 18.4.2008, hence this appeal before this Honourable Tribunal on the following grounds:

GROUND S:

A. That the impugned order is illegal, against the law and facts of the case, hence, untenable.

Attested by
9 June 2008
MPY

- B. That the DSC/ DPS has wrongly overlooked the mandatory rules provided under notification issued by the Govt of N.W.F.P. Revenue & Estate Department Service Rules vide No.27429-60/Admn dated 27.11.2001 and No.2349/Admn-1 dated 3.10.2002 and as such the entire proceedings carried out by the Committee is illegal and liable to be set aside.
- C. That the DPC/ DSC was bound to promote the appellant as Kanungo as BPS-9 on regular basis because the appellant has already been promoted as Kanungo and is performing duties as such w.e.f 18.7.2007 till date to the entire satisfaction of his superiors.
- D. That the appellant's service record is good and the officers have made recommendations for accelerated promotion in his ACRs and no adverse entry has ever been recorded in his ACRs so far nor there is any complaint against him from any quarter nor any inquiry or appeal is pending against him, therefore, he is entitled for promotion as Kanungo on regular basis.
- E. That if according to their wisdom, the Patwaris mentioned in the impugned order, who are promoted as Kanungo on regular basis for the reasons of their being senior most, the appellant who is top most senior TRA BPS-7, no fresh join seniority for the year 2007 is available on record nor produced before the DPS/DSC concerned.

*Attested
to be a
true copy
[Signature]*

is wrong. The appellant is senior to the patwaris mentioned above and he is entitled to pay and scale of the patwaris mentioned above. The appellant has submitted before the higher authorities that he is senior to the patwaris mentioned above and they were fit for the promotion.

- G. That if the patwaris mentioned were senior and fit for promotion were also bound to file an appeal to the higher authorities when their names were not considered to the post of Kanungo by the DPS and when the appellant was considered as Kanungo on his own pay and scale.
- H. That DPS/ DSC has wrongly recommended the names of both the patwaris because under the new rules issued by the Govt of N.W.F.P. R&E Department Service Rules mentioned above, the patwaris must pass F.A Examination for their appointment while the two patwaris do not possess such qualification, hence the promotion order mentioned above is illegal.
- I. That total four post of Kanungo were laying vacant with the respondent, but the DPC/ DSC recommended two names while ignoring the appellant from his promotion for no valid and just reason.
- J. That the order dated 18.4.2008 is illegal, without jurisdiction and lawful authority.
- K. That the appellant seeks leave from this Honourable Tribunal to add additional grounds at the time of arguments.

*Attached to
be a true
copy
7/10/11*

It is, therefore, most humbly prayed that on acceptance of this appeal, the impugned order dated 18.4.2008 may please be modified and the respondent may kindly be directed to promote the appellant as Kanungo BPS-9 on regular basis w.e.f 18.7.2007 or from the date of DPS meeting i.e. 12.4.2008 with all back benefits.

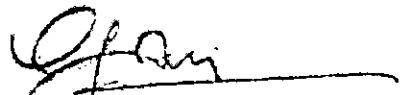
*Alleged to be
true copy*

Date: 3/5/2008

Through

Appellant

Wazir Muhammad



Lal Jan Bhattak
Advocate, Peshawar

16

GOVERNMENT OF NWFP,
REVENUE & ESTATE DEPARTMENT.

No. 23565 /Admn: VII/Karak

Peshawar dated the 12 /09/2009

Annexure

" ~~Att~~ "

" C "

To

The District Officer (Revenue & Estate)/Collector,
Karak.

Subject: APPLICATION FOR PROMOTION AS KANUNGO
(BPS-09) ON REGULAR BASIS.

Reference your letter No-1856/DOR/DK, dated 23.7.2009 on the
subject noted above.

In this connection you are advised to issue regular promotion
order of Mr. Wazir Muhammad Kanungo in light of the Judgment of the
Senior Member Board of Revenue NWFP dated 26.11.2008, against the post
caused vacant due to posting of Mr. Muhammad Arif as Naib Tehsildar.

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In case of the reversion of Mr. Muhammad Arif Naib Tehsildar,
Mr. Wazir Muhammad shall stand reverted to his parent post if no post of
Kanungo is available at that time.

Assistant Secretary (Estt)
Board of Revenue NWFP

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GOVERNMENT OF NWFP
REVENUE & ESTATE DEPARTMENT.

No. 24316 /Admn: VII/

Peshawar dated the 26 /09/2009

To

The District Officer (R&E)/Collector,
Karak

Subject: **PROMOTION OF PATWARI TO THE POST OF
KANUNGO IN DISTRICT KARAK**

Reference this Department letter No. 23565/Admn:VII/Karak,
dated 12.09/09, whereby you were advised to promote Mr. Wazir
Muhammad Patwari as Kanungo (BPS - 09) on regular basis, may be
considered as withdrawn on the grounds that the Senior Member Board of
Revenue NWFP has accepted the Review Petition of Mr. Taj Muhammad
Kanungo (BPS - 09) of District Karak (Copy enclosed).

*Attached
B*

Moreover, you are advised to consider Mr. Mursaleen Patwari
for promotion to the post of Kanungo (BPS - 09) on Acting Charge basis
through Departmental Promotion Committee meeting as he is going to retire
on 14.01.2010 against the post caused due to posting of Mr. Muhammad
Arif as Naib Tehsildar in (Own Pay & Scale) on 19.05.2006.

sd/-

Assistant Secretary (Estt)
Board of Revenue NWFP

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**GOVERNMENT OF NWFP,
REVENUE & ESTATE DEPARTMENT.**

No 24576 / Admn: VII/

Peshawar dated the 30 /09/2009

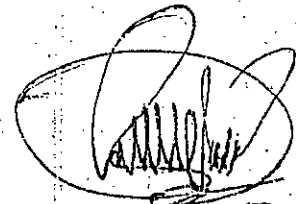
To

The District Officer (Revenue & Estate)/Collector,
Karak

Subject: **PROMOTION OF PATWARI TO THE POST OF
KANUNGO**

Please refer to the subject noted above and to state that this Department letter No. 24316/Admn:VII. Dated 26.09.2009 may be considered as withdrawn. Moreover, you are advised to take further action in the matter in light of Judgement dated 26.11.2008 and Review order dated 18.02.2009 passed by Senior Member Board of Revenue NWFP.

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Assistant Secretary (Estt)
Board of Revenue NWFP

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Amended

IN THE COURT OF ADDITIONAL COMMISSIONER KOHAT DIVISION KOHAT.

Case File No. -----142/AC/KT
Date of Institution----- 27.10.2009.
Date of Decision----- 12.11.2009.

Wazir Muhammad Tehsil Revenue Accountant/ officiating Kanungo Takht-e-Nasratti, District Karak----- (Appellant)

Versus

District Officer (R&E)/Collector, Karak----- (Respondent)

ORDER

My this order will dispose off the Departmental appeal against the order of District Officer (R&E)/Collector Karak dated 29.09.2009.

Appellant alongwith counsel present. Argument heard. Comments from respondent received, relevant record perused.

Facts of the case are that Mr. Wazir Muhammad has filed this appeal against the impugned order of District Officer (R&E)/Collector Karak bearing No. 2254/DOR dated 29.09.2009 stating therein that in spite of clear cut order made by Board of Revenue NWFP, vide No. 23565/ Admn/VII/ Karak dated 12.09.2009, the respondent is not complying the order of the competent authority. According to the learned Board of revenue letter mentioned above, judgment of Senior Member Board of Revenue NWFP dated 26.11.2008 has been restored and is valid for strict compliance and judgment dated 18.02.2009 has been washed.

The material available on record thoroughly perused and this court came to the conclusion that the appellant is an experienced official promoted as Kanungo in his own pay & scale and working efficiently which is evident from the record. Furthermore, according to the prescribed criteria the appellant has passed Patwar, Kanungo Departmental examinations as well as passed the Departmental examination of Naib Tehsildar which fulfills the required prescribed conditions for the purpose of promotion and appellant is entitled for regular promotion as Kanungo against the post caused vacant due to promotion of Mr. Muhammad Arif as Naib Tehsildar on 19.5.2006. Therefore, the appeal is accepted. Order of the District Officer (R&E)/Collector, Karak No. 2254/DOR dated 29.09.2009 is hereby set aside. The respondent is directed to promote the appellant as Kanungo (BPS-09) on regular basis from the date of DPC, i.e. 18.4.2008.

Attested
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Announced
12.11.2009

ATTESTED

SJ [Signature] 14/11/2009

Attested to be a true copy

[Signature]
Additional Commissioner,
Kohat Division, Kohat.

Reader to
Additional Commissioner
Kohat Division, Kohat

20) Annexure
OFFICE OF THE DEPUTY COMMISSIONER, KARAK "E"

OFFICE ORDER

Dated Karak the 2/4/2014.

No. 1339/DC/EA/Promotion.

In Pursuance of Judicial Order dated 26/11/2008

passed by the Senior Member Board of Revenue Khyber Pakhtunkhwa followed by the Board of Revenue Khyber Pakhtunkhwa letter No. 23565/Admn-II/Karak dated 12/9/2009 and subsequent judicial order dated 12/11/2009 passed by the Additional Commissioner, Kohat Division Kohat, the promotion order of Mr. Wazir Muhammad Kanoongo is reviewed and the said official will be treated as promoted on regular basis with effect from 18/4/2008.

Necessary entry to this effect shall be made in his service book and correction be made in his service record.

DEPUTY COMMISSIONER,
KARAK.

Endst: of even No. & Date.

Copy forwarded to the:-

1. All Assistant Commissioners in District Karak.
2. District Accounts Officer, Karak.
3. Official concerned.

DEPUTY COMMISSIONER,
KARAK.

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Annexure "F"

BEFORE THE HON'ABLE COMMISSIONER KOHAT
DIVISION KOHAT.

THROUGH PROPER CHANNEL

Departmental appeal No. ----- of 2014

Tehsil Bad Shah ----- Appellant

VERSUS

Deputy Commissioner Karak & an other ----- Respondents

INDEX

S. No	Description of Documents	Annexure	Page
1	Grounds of Departmental Appeal		1-3
2	Application for suspension		4-5
3	Affidavit		6
4	Copy of impugned order	A	7
5	Copy of promotion to the post of Kanoongo on regular basis	B	8
6	Copy of Judicial order of SMBR dated 26-11-2008	C	9
7	Copy of Judicial order of SMBR (Review) dated 18-02-2009	C-1	10
8	Vakalat Nama		11

Review

17/4/14

Attached B

Attested to be true copy
(22)

Attested

17/4/14
Reader to Commissioner
Kohat Division Kohat

Dated:- 16-04-2014

Appellant:- Tehsil Bad Shah

Tehsil

Through

Ullah Khan
16/4/2014
Amanullah Khan Khattak
Advocate, Karak

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(14) (22)

BEFORE THE HON'ABLE COMMISSIONER KOHAT
DIVISION KOHAT.

THROUGH PROPER CHANNEL

Departmental appeal No. ----- of 2014

Tehsil Bad Shah S/O Mir Wali Shah R/O Kanda Siraj Khel Tehsil
Takht-e-Nasrati District Karak presently office Kanoongo Takht-e-
Nasrat. (Appellant)

VERSUS

1. Deputy Commissioner Karak.
2. Wazir Muhammad S/O Abdul Karim R/O Shah Qaiser
Banda Tehsil Takht-e-Nasrati District Karak presently
Girdawar Circle Takht-e-Nasrati----- (Respondents)

*A. Ullah Khan
16/4/2014*

DEPARTMENTAL APPEAL AGAINST ORDER NO.
1330/DC/EA/PROMOTION DATED 01-04-2014 WHEREBY
RESPONDENT NO.1 HAS PROMOTED RESPONDENT
NO.2 AS KANOONGO(BPS-11) W.E.F. 18-04-2008.

Attested photocopy is annexed as Annexure "A"

Prayer in Departmental Appeal.

It is, therefore, most humbly and respectfully prayed that by
acceptance of this departmental appeal the impugned order may
very kindly be declared illegal against law & facts, without

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17/12/14
Reader to Commissioner
Kohat Division Kohat

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- c. That the impugned order has been passed without any lawful authority.
- d. That no plausible reason has been given for passing of the impugned order.
- e. That the impugned order has caused bad effect upon the seniority of the appellant as the appellant is senior to respondent No.2

So it is, therefore, most humbly and respectfully prayed that by acceptance of this departmental appeal the impugned order may very kindly be declared illegal against law & facts, without observing the codal formalities prescribed by law and rules and has got no legal effect.

Dated:- 16-04-2014

Attested

[Signature]
17/12/14
Reader To Commissioner
Kohat Division, Kohat

[Signature]
Appellant: Tehsil Bad Shah

[Signature]
16/4/2014
Through Amanullah Khan Khattak
Advocate, Karak.

Attested to be
a true copy

[Signature]

Appeal No.26/2014

Date of institution 18-04-2014

Date of decision 11-12-2014

Tehsil Bad Shah S/O Mir Wali Shah R/O Kanda Siraj Khel Tehsil Takht-e-Nasrati
District Karak presently office Kanungo Takht-e-NasratiAppellant

Versus

1. Deputy Commissioner, Karak.
2. Wazir Muhammad S/O Abdul Karim R/O Shah Qaisar Banda Tehsil Takht-e-Nasrati District Karak presently Girdawar Circle Takht-e-Nasrati... Respondents

DEPARTMENTAL APPEAL AGAINST ORDER
NO.1330/DC/EA/PROMOTION DATED 1-4-2014.

ORDER

This appeal has been filed by the appellant against the order vide NO.1330/DC/EA/promotion dated 01-4-2014 of the Deputy Commissioner, Karak whereby promotion order of Mr. Wazir Muhammad Kanungo (present respondent) has been reviewed and the said official will be treated as promoted on regular basis with effect from 18-4-2008, in pursuance of judicial order dated 26-11-2008 passed by the Senior Member Board of Revenue Khyber Pakhtunkhwa followed by the Board of Revenue Khyber Pakhtunkhwa letter No.23565/Admn-II/Karak dated 12-9-2009 and subsequent judicial order dated 12-11-2009 passed by the Additional Commissioner, Kohat Division, Kohat. Being aggrieved the appellant filed the instant appeal.

Parties present. Arguments of the learned counsels for the parties were heard. Record together with parawise/detailed comments perused.

From the perusal of material available on file it reveals that the judicial order dated 26-11-2008 has been reviewed by the Senior Member Board of Revenue Khyber Pakhtunkhwa to the effect that Wazir Muhammad may be considered for promotion as Kanungo through proper Departmental Promotion Committee strictly on merit as required under the law/rules vide order dated 18-2-2009. Besides, the Board of Revenue Khyber Pakhtunkhwa letter No.23565/Admn-II/Karak dated 12-9-2009 has also been withdrawn vide Board of Revenue letter No. (Estt)

Attended to

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Wazir

17/12/14
Reader to Commissioner
Kohat Division, Kohat

Just complied

No.24316/Admn:VII/ dated 26-9-2009. Furthermore ²⁶⁾ the Additional Commissioner is not competent authority to decide the service matter cases vide Board of Revenue letter No.Estt:VII/Misc-I/Peshawar/7360 dated 03-04-2014. It is also evident from final seniority list of Kanungoes in Kohat Division as it stood on 31-12-2013 issued by this office vide Endst: No.2257/RA/Seniority/Kanungoes/KT-Dv:/Cmr-KT dated 09-07-2014 that the appellant is senior to the respondent.

In view of the above discussion, the appeal is accepted and the impugned order of the Deputy Commissioner, Karak NO.1330/DC/EA/promotion dated 01-4-2014 is hereby set aside.

Attested

Announced
11-12-2014

[Signature]
17/12/14
Reader to Commissioner
Kohat Division, Kohat

[Signature]
COMMISSIONER,
KOHAT DIVISION, KOHAT

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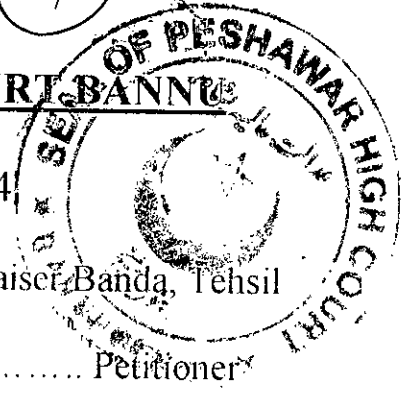
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BEFORE THE PESHAWAR HIGH COURT, BANNU BENCH

Writ Petition No. 521-13 of 2014

Wazir Muhammad S/O Abdul Karim R/O Shah Qaiser Banda, Tehsil Takht-e-Nusrati District Karak



..... Petitioner

VERSUS

- 1- Tehsil Badshah S/O Mir Wali Shah R/O Kanda Siraj Khel Tehsil Takht-e-Nusrati District Karak
- 2- Deputy Commissioner Karak
- 3- The Commissioner Kohat Division Kohat

..... Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973, AGAINST THE IMPUGNED ORDERS DATED 11-12-2014 OF THE COMMISSIONER KOHAT DIVISION KOHAT, RESPONDENT NO. 3 IN DEPARTMENTAL APPEAL NO. 26/2014 VIDE WHICH THE OFFICE ORDER OF RESPONDENT NO.2, NO. 1336/DE/EA/PROMOTION DATED 01-04-2014 WAS SET ASIDE.

PRAYER IN WRIT PETITION

ON ACCEPTANCE OF THE INSTANT WRIT PETITION AND TO SET ASIDE THE IMPUGNED ORDER DATED 11-12-2014 IN DEPARTMENTAL APPEAL NO. 26/2014 BY HE RESPONDENT NO. 3 BEING VIDE, ILLEGAL, CORAM-NON-JUDICEOR WITHOUT JURISDICTION AND AUTHORITY AND IN EXCESS OF JURISDICTION.

AB

Filed Today

22 DEC 2014

Additional Registrar

Respectfully sheweth:-

BRIEF FACTS

1. That after retirement of one Mr. Ali Abbas Kanungo BPS-09 on superannuation on 15-07-2007, the petitioner (Tehsil Revenue Accountant of Tehsil Takht-e-Nusrati) was promoted to the post of Kanungo on 18-07-2007 in his own pay and scale. Copy of the office

ATTESTED

EXAMINER
Peshawar High Court
Bannu Bench

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order No. 2238-42/DOR / DK dated Karak the, 18-07-2007 is enclosed as Annexure "A".

2. That while aggrieved from the office order bearing No. 788/DOR / EA dated 18-04-2008 by District Officer (Revenue and Estate) Collector Karak whereby two patwaries namely Ahmed Gul and Taj Muhammad Khan was promoted as Kanungo on regular basis while the petitioner was ignored, preferred departmental appeal No. 296/08 before the Senior Members Board of Revenue Peshawar (SMBR) wherein the Senior Member Board of Revenue (SMBR) on 26-11-2008 accepted the appeal of the petitioner and directed to promote the petitioner as Kanungo on regular basis from 18-04-2008. Copy of the order and departmental appeal No. 296/08 dated 26-11-2008 of SMBR is enclosed as Annexure "B".

3. That the Assistant Secretary (Estate) Board of Revenue through letter No. 23565 / Admn VII/Karak dated 12-09-2009 advised to the District Officer (Revenue and Estate) collector Karak for promotion of the petitioner was withdrawn through letter No. 24326/Admn:VII/Peshawar dated the 26/09/2009 but letter on letter No. 24326/Admn:VII/Peshawar dated the 26/09/2009 was again with drawn through another letter No.24576/Admn:VII/Peshawar dated the 30/09/2009 and as such the order No. 23565 / Admn VII/Karak dated 12-09-2009 was again restored. Copies of the letters Nos. 23565 / Admn VII/Karak dated 12-09-2009 & No. 24326/Admn: VII/Peshawar dated the 26/09/2009 & No.24576/Admn:VII/Peshawar dated the 30/09/2009 are enclosed as annexure "C".

4. That as per letter No. 23565 / Admn VII/Karak dated 12-09-2009 the judicial order of the senior member board revenue dated 26.11.2008 has been restored, after restoration of the order dated 26.08.2008 of SMBR the petitioner for strict compliance of the above said order preferred departmental appeal No. 142/AC/KT of 2009 before the additional commissioner Kohat division Kohat, the appeal of the petitioner was accepted and directed that the petitioner be promoted on regular basis from the date of DPC with effect from 18.04.2008. Copy of order dated 12.11.2009 of additional commissioner Kohat

AB

Filed To
22 DEC
Additional Registrar

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EXAMINER
Peshawar High Court
Bannu Bench

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division Kohat in departmental appeal No. 142/AC/KT of 2009 is enclosed as annexure "D".

5. That in pursuance of the judicial order 26.11.2008 passed by the senior member board of revenue Khyber pakhtunkhwa followed by the board of revenue letter No. 23565 / Admn VII/Karak dated 12-09-2009 and subsequent judicial order for strict compliance of the additional commissioner Kohat division Kohat dated dated 12.11.2009, the petitioner was promoted through office order dated 01.4.2014. Copy of the office order No. 1330/DC/EA/Promotion dated 01-04-2014 is enclosed as Annexure "E".
6. That respondent No.1 challenged the office order No. 1330/DC/EA/Promotion dated 01-04-2014 of the Deputy Commissioner Karak in departmental appeal No. 26/14, wherein, the departmental appeal was accepted and set aside the office order dated 01-04-2014. Copy of departmental appeal No. 26/14 of the respondent No.1 along with order dated 11-12-2014 of the Commissioner Kohat Division Kohat is enclosed as Annexure "F".
7. That order dated 11-12-2014 of the Commissioner Kohat Division Kohat is void, erroneous, illegal, coram-non-judice or without jurisdiction and authority and in excess of jurisdiction, hence, the constitutional jurisdiction of this august court is invoked inter alia on the following grounds:-

AB

GROUND

- 1- That the impugned order dated 11-12-2014 in departmental appeal of respondent No.1 is void, result of gross illegality, in violation of the practice and procedure of law, coram-non-judice or without jurisdiction and authority and in excess of jurisdiction.
- 2- That the impugned order is passed illegally while wrongly exercised jurisdiction not vested.

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22 DEC
District Registrar

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EXAMINER
Peshawar High Court
Bannu Bench

- 3- That the neither the judicial order for promotion of the petitioner as Kanungo dated 26-11-2008 of neither Senior Member Board of Revenue (SMBR) nor letter No. 23565 / Admn VII/Karak dated 12-09-2009 nor judicial order dated 12.11.2009 of the additional commissioner kohat division kohat has not been challenged and letter on the order dated 1.4.2014 which was passed just in compliance and pursuance of the above mentioned orders was challenged, so when the original order has not been challenged within time before the competent forum and have got finality than the ancillary orders could not be challenged as such the commissioner Kohat Division Kohat has wrongly executrices the jurisdiction and exercise jurisdiction in excess of his authority, in such like situation this august court can not only interfere but can quash and declare the order coram-non-judice or without jurisdiction and in excess of jurisdiction.
- 4- That while setting aside the order dated 1.4.2014 by the respondent No.3 categorically neglected that the judicial orders are of higher forum or parallel jurisdiction whatsoever could not be interfered.
- 5- That counsel for the petitioner may please be allowed to argue further legal and factual grounds during course of arguments.

Therefore, it is humbly prayed that the instant writ petition may kindly be accepted and the impugned orders dated 11-12-2014 of respondent No.3 may please be set aside while declaring the same void, illegal, coram-non-judice or without jurisdiction and authority and in excess of jurisdiction and to restore the order dated 01-04-2014.

Filed To
22 DEC 2014
Additional Registrar

Dated: 22/12/2014

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[Signature]

Your humble Petitioner

Waziir Muhammad
Through Counsel

Bashir-ur-Rehman Burki
Advocate Bannu

ATTESTED
[Signature]
EXAMINER
Peshawar High Court
Bannu Bench

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31

PESHAWAR HIGH COURT, BANNU BENCH

FORM OF ORDER SHEET

Date of Order or proceedings (1)	Order or other proceedings with signature of Judge(s). (2)
30-10-2018	<p><u>W.P No.521^B of 2014</u></p> <p>Mr. Bashir-Ur-Rehman Burki Advocate for petitioner.</p> <p>Mr. Shahid Hameed Qureshi AAG for official respondents.</p> <p>∴</p> <p><u>SHAKEEL AHMAD. J---</u> At the very outset, learned counsel for the petitioner stated at the Bar that he would not press the instant Writ Petition, provided the same be treated as departmental appeal and sent to the Senior Member Board Revenue Peshawar for decision in accordance with <u>law.</u></p> <p>2- Learned Additional A.G appearing on behalf of the respondents expressed his no objection on the request of the learned counsel for the petitioner.</p> <p>In view of the above, the instant Petition is treated as departmental appeal and sent to the Senior Member Board Revenue Peshawar for decision in accordance with law. Order accordingly.</p> <p>Announced 30-10-2018</p>

Accepted to
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Office
10/31/18

Sd/-Mr. Justice Muhammad Nasir Mahmood

Sd/-Mr. Justice Shakeel Ahmad J

CERTIFIED TO BE TRUE COPY

Examiner

Peshawar High Court Bannu Bench
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1988

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BEFORE THE SENIOR MEMBER BOARD OF REVENUE
KHYBER PAKHTUNKHWA

Wazir Muhammad Appellant

Annex H

Versus

Tehsil Badshah and other Respondents

ORDER

The instant Departmental Appeal was filed by Mr. Wazir Muhammad Kanungo office of the Deputy Commissioner, against the order of Commissioner Kohat dated 11.12.2014 whereby the appeal of Tehsil Badshah Kanungo was accepted and the order of Deputy Commissioner, Karak dated 01.04.2014 was set aside.

Facts of the case are that the promotion order dated 03.07.2012 of the present appellant was reviewed by Deputy Commissioner Karak wherein retrospective seniority was given to the present appellant with effect from 18.04.2008. The said order was challenged by the respondent Tehsil Badshah before the Commissioner Kohat (Appellate Authority) whereby the order of Deputy Commissioner Karak was set aside, on the ground that in the inter-seniority of Patwaris and in the seniority list of Kanungo for the year 2013, Mr. Tehsil Badshah was senior to Mr. Wazir Muhammad. Against the said order Mr. Wazir Muhammad filed writ petition before the Peshawar High Court, which has been remanded to the Senior Member Board of Revenue to treat the same as departmental appeal for decision in accordance with law.

Perusal of record reveals that since there was no disclosure of new facts and no opportunity was given to the Respondent before review of the order, hence Deputy Commissioner Karak was not justified to review the order, of his predecessor. The order of Commissioner Kohat dated 11.12.2014 is based on facts and law, hence maintained and the appeal having no legal grounds is dismissed.

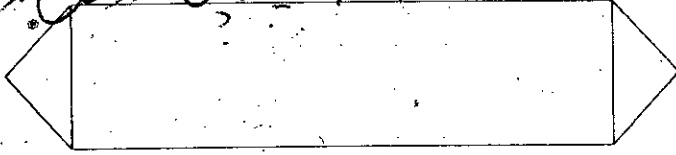
Announced
27.11.2018

M. F. Alam
Fakhr Alam
Senior Member

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بعدالت خدا - صدیقین سے پہلے نبی رسول ﷺ



موزعہ
مقدمہ
دعویٰ
جرم

26 نومبر

2018ء پنجاب
بنام

وزیر عدالت

سید محمد اسرار علی آف ریسرچ سوسائٹی
ریسٹائنٹ

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
مقام لیتا ہے۔ کیلئے **ظہور اسلام خدائے بندوں** کے اصرار سے
رہ کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا۔ نیز
صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
رت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضعی دعویٰ اور درخواست ہر قسم کی تصدیق
میں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ بند ہے۔




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26 نومبر 2018ء


Accepted
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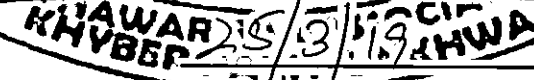
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  	سرور ادیل ایڈووکیٹ: کے بی بار کونسل ایسوسی ایشن نمبر: BC-09-1969 رابطہ نمبر: 0345-9645854
پشاور بار ایسوسی ایشن، خیبر پختونخواہ	

بعدالت جناب: کے بی کے سرور شروع بنیہل پشاور

منجانب: رہبانہ ٹٹ 4 تحصیل بادشاہ بنام 	دعویٰ: علت نمبر: سرور ادیل مورخہ: جرم: تھانہ:
باعت تحریر آنکہ	

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
 آن مقام کو حاکم کے لیے سید صدیق سید سید سید سید سید سید سید سید سید سید سید سید سید سید سید سید
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کے طرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اپیل نگرانی و نظرتانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
 مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا سناختہ پر داختم منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے
 المرقوم:


 25/3/

العہد العہد العہد العہد العہد العہد العہد العہد العہد العہد
 مقام کو حاکم

نوٹ: اس وکالت نامہ کی فوٹوکاپی ناقابل قبول ہوگی۔

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Appeal No. 17 of 2019

Wazir Muhammad..... (Petitioner)

Versus.

SMBR: Etc..... (Respondent)

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Dated. _____/2019

**RESPONDENT NO. 1, 2 & 3
THROUGH
DEPONENT**

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Appeal No. 17 of 2019

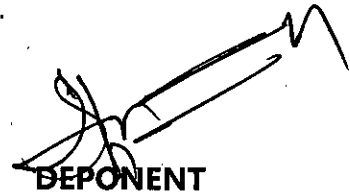
Wazir Muhammad..... (Petitioner)

Versus

SMBR: Etc..... (Respondent)

Affidavit.

I, Shañ Behram Additional Assistant Commissioner-I Karak, do hereby solemnly affirm and declare on Oath that the content of the accompanying reply are true and correct to the best of my knowledge and belief and nothing been concealed from this Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar.



DEPONENT

(2)

OFFICE OF THE DEPUTY COMMISSIONER KARAK

POWER OF ATTORNEY

Mr. Shah Behram Additional Assistant Commissioner-I Karak of this office is hereby deputed and authorized to deliver Para-wise comments of "Appeal No 17 of 2019" Wazir Muhammad Vs Government" in the Service Tribunal Khyber Pakhtunkhwa Peshawar.


Deputy Commissioner
Karak

No. 4579 /DC/EA.

Dated 23/12 /2019

Appeal No.17 of 2019.

Wazir Muhammad.....(Petitioner)

Versus

1. Senior Member Board of Revenue
Khyber Pakhtunkhwa Peshawar & Others.....(Respondents)
2. Deputy Commissioner, Karak.....(Respondent)

Subject: Para-wise comments in Appeal No.17 of 2019 on behalf of Respondents No.1, 2 & 3.Respectfully Sheweth:**PRELIMINARY OBJECTIONS.**

1. That the appeal is rejected by the SMBR on 27-11-2018.
2. That the appellants has no cause of action.
3. That the appellants has not come to the Hon'ble Tribunal with clean hands.

Facts:-

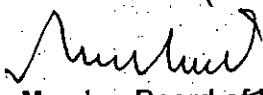
1. Para No.1 is correct to the extent that the appellants was promoted to the post of Kanungo in his own pay as per office order (**Annex-I**) while on 18/04/2008, the District Officer Revenue & Estate /Collector Karak promoted 02 No of Patwaris to the post of Kanungo as per recommendation of DPSC (**Annex-II**) and the appellants was ignored being junior.
2. Para No.2 correct to the extent that his appeal against office order DOR&E Karak dated 18/04/2008 was accepted by the SMBR on the grounds that he is senior most Tehsil Revenue Accountant and his passed departmental examination in the year 1999 and is already working as Office Kanungo in his own pay & scale. Therefore, the DOR & E Karak is directed to consider him in DPSC for regular promotion to the post of Kanungo (BPS-09)- (**Annex-III**) which was not entertain able at that time.
3. Para No.3 is correct. The directions issued by Board of Revenue, NWFP vide letter 23565/Admn/VII.Karak dated 12/09/2009 and No.26316/Admn/VII dated 26/09/2009 were withdrawn simultaneously vide Assistant Secretary (Estt), Board of Revenue, NWFP vide letter No.24576/Admn/VII dated 30/09/2009 (**Annex-IV**) and advised the DOR & E Karak to take further action in light of Judgment dated 26/11/2008 (**Annex-III**).
4. Para No.4 is incorrect as the appellants has violated the rules by approaching the Court of Additional Commissioner Kohat Division Kohat which is not competent authority to decide service matter and pass directions for implementation of SMBR order dated 26/11/2008 (**Annex-III**) to the respondent. Therefore, the judicial order of the said court dated 12/11/2009 is void and has no value in the face of law (**Annex-V**)
5. Para No.5 is incorrect as the appellants was promoted illegally vide officer order dated 01/04/2014 by DC Karak in compliance of SMBR Judicial Order dated 26/11/2008 and Addl. Commissioner Kohat judicial order dated 12/11/2009- (**Annex-VI**).
6. Para No.6 is correct to the extent that DC Karak office order (**Annex-VI**) were set aside vide order dated 11/12/2014 (**Annex-VII**)
7. Para No. is correct to the extent that the appellants challenged the Commissioner Kohat order dated 11/12/2014 in the Hon'ble Peshawar High Court Bannu Bench for remedy. The Court referred the case to the SMBR, Board of Revenue, Peshawar to consider as departmental appeal. The SMBR rejected the departmental appeal of appellants vide order dated 27/11/2018 (**Annex-VIII**)
8. Para No.8 is correct.
9. No comments.

Grounds:-


- A. Incorrect. The original order dated 27/11/2018 is based on facts and has been passed in accordance with law/rules.
- B. Incorrect. The order is legal and in jurisdiction of the court being appellate authority.
- C. Incorrect. The respondents No.1, 2 & 3 have passed orders in accordance with law and are based on justice.
- D. Incorrect. As stated in para (B), SMBR is the competent forum to exercise his authority while rejecting the appellant case vide order dated 27/11/2018.
- E. No comments.
- F. Incorrect. The appellant has been promoted to the post Kanungo on the basis of Seniority-Cum-Fitness and will be considered as per rules /law in due course of time.
- G. No Comments.

Prayers:-

It is humbly prayed that in light of above facts and grounds, the appeal of the appellant may kindly be dismissed please.


 Senior Member Board of Revenue
 Khyber Pakhtunkhwa
 (Respondent No.1)


 Deputy Commissioner
 Karak
 (Respondent No.3)


 Commissioner Kohat Division
 Kohat
 (Respondent No.2)

OFFICE OF THE DISTRICT OFFICER, REVENUE & ESTATE /
COLLECTOR, KARAK.

(6)
(Annex)

Dated: 18/4/2008

OFFICE ORDER.

No. 788 /DOR/EA. In pursuance of the recommendations of the Departmental Promotion and Selection Committee meeting held on 12.4.2008 in the office of the undersigned, the following appointment and promotions are ordered in the Revenue Department Karak in the interest of Public service with immediate effect :-

S. No.	Name	Remarks.
✓ 1.	Mr. Ahmed Gul, Patwari.	Promoted as Kanungo (BPS-09) on regular basis.
✓ 2.	Mr. Taj Muhammad, Patwari.	-do-
3.	Mr. Mursaleen Khan, Patwari	Promoted as TRA (BPS-07) on regular basis.
4.	Mr. Miftah-ur-Rehman S/O Sami Ullah R/O Chokara Tehsil T/Nasrati District Karak.	Appointed as Patwari (BPS-05) on regular basis.
5.	Mr. Anwar Hussain S/O Lal Daud Khan R/O Ahmed Abad Tehsil T/Nasrati District Karak.	-do-
5.	Mr. Khurshid Iqbal S/O Abdul Muhammad Dilsoz R/O Shah Qaiser Banda Tehsil T/Nasrati Distt: Karak	-do-

Attest

Attest

Deputy Commissioner
Karak

(Initials of even No. & Date)

[Signature]
District Officer,
Revenue & Estate / Collector, Karak.

- Copy forwarded to:-
1. The Secretary Board of Revenue NWFP, Peshawar.
 2. The District Coordination Officer, Karak.
 3. The District Accounts Officer, Karak.
 - 4/6. The Tehsildars Karak, B.D.Shah & T/Nasrati.
 - 7/12. Officials concerned.
 13. The Distt: Kanungo, Local Office, Karak.

[Signature]
District Officer,
Revenue & Estate / Collector, Karak

IN THE COURT OF AHSANULLAH KHAN, SENIOR MEMBER,
BOARD OF REVENUE, NWFP.

Case No. 296/2008
Date of Institution. 14-05-2008.
Date of Decision. 26-11-2008.

Wazir Muhammad Tehsil Revenue Accountant/Officiating Kanungo, Takht-e-Nasrati District Karak
Appellant.

Versus

District Officer (Revenue & Estate)/Collector, Karak
Respondent.

ORDER

This is a Departmental appeal presented by Wazir Muhammad Tehsil Revenue Accountant/Office Kanungo Takht-e-Nasrati against the order bearing No. 788/DO/EA dated 18/04/2008 passed by District Officer (Revenue & Estate)/Collector, Karak whereby two Patwaris namely M/S Ahmad Gul and Taj Mohammad were promoted as Kanungo (BPS-09) on regular basis while the appellant was ignored.

The appellant was inducted in service as Junior Clerk on 18/07/1987 and later on appointed as WBN/Tehsil Revenue Accountant on 03/10/1992. He was promoted as Kanungo in his Own Pay and Scale and posted at Office Kanungo Takht-e-Nasrati vide order dated 18/07/2007.

Vide impugned order dated 18/04/2008, two Patwaris namely M/S Ahmad Gul and Taj Mohammad were promoted as Kanungo (BPS-09) on regular basis by ignoring the appellant. Feeling aggrieved the appellant preferred the instant appeal.

Appellant present. Written arguments submitted by the learned counsel of the appellant perused. Case file examined. The appellant is Senior most Tehsil Revenue Accountant and has passed the departmental examination of Kanungo in the year 1999. The appellant is already working as office Kanungo in Own Pay Scale, which is not disputed, therefore he has the right to be considered in the Departmental Promotion Committee.

In view of the above, the appeal is accepted and the District Officer (Revenue & Estate)/Collector, Karak is directed to promote the appellant as Kanungo (BPS-09) on regular basis w.e.f 18/04/2008.

ANNOUNCED.
26-11-2008

AHSANULLAH KHAN,
SENIOR MEMBER,
BOARD OF REVENUE, NWFP.

Attested to be a
true copy
Law

Attested

B
Attested

Attested

Deputy Commissioner
Karak

Answer-II

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8

GOVERNMENT OF NWFP
REVENUE & ESTATE DEPARTMENT

No. 24576 / Admn: VII/

Peshawar dated the 30 / 09 / 2009

To

The District Officer (Revenue & Estate)/Collector,
Karak

Subject: PROMOTION OF PATWARI TO THE POST OF
KANUNGO

Please refer to the subject noted above and to state that this
Department letter No. 24316/Admn:VII. Dated 26.09.2009 may be
considered as withdrawn. Moreover, you are advised to take further action
in the matter in light of Judgement dated 26.11.2008 and Review order
dated 18.02.2009 passed by Senior Member Board of Revenue NWFP.

Attested
B

Attested

Abdullah
Deputy Commissioner
Karak

Assistant Secretary (Estt)
Board of Revenue NWFP

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True copy

Faris

(Annex-V)

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(19)

IN THE COURT OF ADDITIONAL COMMISSIONER KOHAT DIVISION KOHAT

Case File No. 142/AC/KT
Date of Institution 27.10.2009
Date of Decision 12.11.2009

Wazir Muhammad Tehsil Revenue Accountant/ officiating Kanungo Takht-e-Nasratti, District Karak (Appellant)
Versus
District Officer (R&E)/Collector, Karak (Respondent)

ORDER

My this order will dispose off the Departmental appeal against the order of District Officer (R&E)/Collector Karak dated 29.09.2009.

Appellant alongwith counsel present. Argument heard. Comments from respondent received, relevant record perused.

Facts of the case are that Mr. Wazir Muhammad has filed this appeal against the impugned order of District Officer (R&E)/Collector Karak bearing No. 2254/DOR dated 29.09.2009 stating therein that in spite of clear cut order made by Board of Revenue NWFP, vide No. 23565/ Admn/VII/ Karak dated 12.09.2009, the respondent is not complying the order of the competent authority. According to the learned Board of Revenue letter mentioned above, judgment of Senior Member Board of Revenue NWFP dated 26.11.2008 has been restored and is valid for strict compliance and judgment dated 18.02.2009 has been washed.

Attested

Attested

Deputy Commissioner
Karak

Attested
B

The material available on record thoroughly perused and this court came to the conclusion that the appellant is an experienced official promoted as Kanungo in his own pay & scale and working efficiently which is evident from the record. Furthermore, according to the prescribed criteria the appellant has passed Parwar, Kanungo Departmental examinations as well as passed the Departmental examination of Naib Tehsildar which fulfills the required prescribed conditions for the purpose of promotion and appellant is entitled for regular promotion as Kanungo against the post caused vacant due to promotion of Mr. Muhammad Arif as Naib Tehsildar on 19.5.2006. Therefore, the appeal is accepted. Order of the District Officer (R&E)/Collector, Karak No. 2254/DOR dated 29.09.2009 is hereby set aside. The respondent is directed to promote the appellant as Kanungo (BPS-09) on regular basis from the date of DPC, i.e. 15.4.2008.

Announced
12.11.2009

ATTESTED

S/ [Signature] 14/11/2009

Reader to
Additional Commissioner
Kohat Division Kohat

[Signature]
Additional Commissioner,
Kohat Division, Kohat.

Attested

9 face to

[Signature]

10 Annex

20 Annex

OFFICE OF THE DEPUTY COMMISSIONER, KARAK

OFFICE ORDER

No. 1330/DC/EA/Promotion

Dated Karak the 2/4/2014

In Pursuance of Judicial Order dated 26/11/2008 passed by the Senior Member Board of Revenue Khyber Pakhtunkhwa followed by the Board of Revenue Khyber Pakhtunkhwa letter No 23565/Admn-II/Karak dated 12/9/2009 and subsequent judicial order dated 12/11/2009 passed by the Additional Commissioner, Kohat Division Kohat, the promotion order of Mr. Wazir Muhammad Kanoongo is reviewed and the said official will be treated as promoted on regular basis with effect from 12/4/2009.

Necessary entry to this effect shall be made in his service book and correction be made in his service record.

DEPUTY COMMISSIONER, KARAK

attested

Endst: of even No. & Date.

Copy forwarded to the:-

Deputy Commissioner Karak

- 1. All Assistant Commissioners in District Karak.
- 2. District Accounts Officer, Karak.
- 3. Official concerned.

DEPUTY COMMISSIONER, KARAK

Attested

R

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true copy

Carak

Muhammad

Annex-V

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11

IN THE COURT OF THE COMMISSIONER, KOHAT DIVISION, KOHAT

Appeal No. 26/2014

Date of institution 18-04-2014
Date of decision 11-12-2014

Tehsil Bad Shah S/O Mir Wali Shah R/O Kanda Siraj, Khel Tehsil Takht-e-Nasrati, District Karak presently office Kanungo Takht-e-Nasrati Appellant

Versus

- 1. Deputy Commissioner, Karak.
- 2. Wazir Muhammad S/O Abdul Karim R/O Shah Qaisar Banda Tehsil Takht-e-Nasrati District Karak presently Girdawar Circle Takht-e-Nasrati... Respondent

DEPARTMENTAL APPEAL AGAINST ORDER NO. 1330/DC/EA/PROMOTION DATED 1-4-2014.

ORDER

This appeal has been filed by the appellant against the order vide NO.1330/DC/EA/promotion dated 01-4-2014 of the Deputy Commissioner, Karak whereby promotion order of Mr. Wazir Muhammad Kanungo (present respondent) has been reviewed and the said officer will be treated as promoted on regular basis with effect from 18-4-2008. Pursuance of judicial order dated 26-11-2008 passed by the Senior Member Board of Revenue Khyber Pakhtunkhwa followed by the Board of Revenue Khyber Pakhtunkhwa letter No.23565/Admn-II/Karak dated 12-9-2009 and subsequent judicial order dated 12-11-2009 passed by the Additional Commissioner, Kohat Division, Kohat. Being aggrieved the appellant filed the instant appeal.

Parties present. Arguments of the learned counsel for the parties were heard. Record together with parwise/detailed comments perused.

From the perusal of material available on file it reveals that the judicial order dated 26-11-2008 has been reviewed by the Senior Member Board of Revenue Khyber Pakhtunkhwa to the effect that Wazir Muhammad may be considered for promotion as Kanungo through proper Departmental Promotion Committee strictly on merit as required under the law/rules vide order dated 18-2-2009. Besides, the Board of Revenue Khyber Pakhtunkhwa letter No.23565/Admn-II/Karak dated 12-9-2009 has also been withdrawn vide Board of Revenue letter No.

Attested
Abdullah
Deputy Commissioner
Karak

Attested
to be a true copy

Qureshi
17/12/14
Reader to the Commissioner

916

Just complied

No.24316/Admn:VII/ dated 26-9-2009. Furthermore the Additional Commissioner is not competent authority to decide the service matter cases vide Board of Revenue letter No.Estt:VII/Misc-I/Peshawar/7360 dated 03-04-2014. It is also evident from final seniority list of Kanungoes in Kohat Division as it stood on 31-12-2013 issued by this office vide Endst. No.2257/RA/Seniority/Kanungoes/KT-Dv./Cmr-KT dated 09-07-2014 that the appellat is senior to the respondent.

In view of the above discussion, the appeal is accepted and the impugned order of the Deputy Commissioner, Karak NO.1330/DC/EA/promotion dated 01-4-2014 is hereby set aside.

Attested

Announced
11-12-2014

17/12/14
Reader to Commissioner
Kohat Division

COMMISSIONER,
KOHAT DIVISION, KOHAT

Attested

Deputy Commissioner
Karak

29
17-12-2014
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M.P.S
17-12-2014
17-12-2014

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BEFORE THE HONOABLE KPK SERVICE TRIBUNAL PESHAWAR.

Service Appeal No 17/19

Wazir Muhammad S/o 'Abdul Karim

Appellant.

Versus

**Senior Member Board of Revenue KPK
Commissioner Kohat Division Kohat.
Deputy Commissioner Karak
Tehsil Badshah S/o Mir Wali Shah Karak**

Respondent.

Reply for and on behalf of Respondent No-4.

Respected Sheweth,

Facts Reply:-

- 1:-Facts Para No- 1, is Correct to the extent that the appellant Tehsil Revenue Accountant in his own pay scale .
- 2:-That Para No 2 is correct to the extent that two patwari namely Ahmed Gul & Taj Muhammad Khan were promoted on regular basis and the appellant prefer departmental representation against the order of DOR vide dated 26-11-2008 which was accepted while rest of the para is incorrect the appellant conceals the material facts that the said accepted representation order was set a side in review petition filed by Taj Muhammad V/s Wazir Muhammad vide dated 18-02-2009. feeling aggrieved the appellant filed writ petition No-658/2009 in which directions issued to approach to honourable tribunal and appellant filed service appeal bearing No-701/2009 which was withdrawn on dated 2014 (Copy annexed as annexure A).
- 3:-That Para No-3 of the Fact is incorrect that no such order of restoration of appellant were issued actually the appellant mis- interpreted the letter bearing No-24576 dated 30-09-2009 (copy annexed as annexure B)
- 4:-That Para No-4: of Facts is incorrect on the basis that appellant was never promoted and the order of Additional commissioner vide order No-433 dated 04-03-2010 directed to DOR Karak regarding promotion that all the promotions shall be on merit and on the basis of seniority list as well as the in the light of order dated 03-04-2014 letter N0-7360 which speaks that the Additional Commissioner is not competent authority to decide the service matter cases and the appellant never ever challenge the seniority list before any forum and the cader of the appellant were changed from TRA to Patwari in 2005 and according seniority list the name of the appellant was placed at serial No-35 and in case No-185/2006 RAC-I Bannu the name of the appellant was place at serial No-9 .(Copies annexed as annexure C)
- 5:-That Para No-5 is incorrect on basis that the appellant vide office order No-1330/DC/EA/Karak dated 02-04-2014 which challenged by the respondent No-4 before Commissioner Kohat Division and the appeal was accepted in favour of respondent No-4 (Copy is annexed as annexure D)
- 6:-That the Para No-6 al ready discussed in Para 5 of the reply hence needs no comments.

7:-That Para No-7,the appellat conceal the fact that the respondent No-1 dismissed the appeal of the appeal.

8:-That the Para -8 & 9 is has no concern with respondent No-4 hence no comments.

Reply to reply of grounds:-

1:-That the Para No-A of the grounds is incorrect because the order dated 26-11-2008 was reviewed by respondent No-1 in review petition No-95/2009 dated 18-02-2009 in case title Taj Muhammad Vs DOR etc hence the order is based on sound reason.(Copy annexed as annexure E).

2:- That Para No- of the ground of appellat is in correct because the order is legal and in jurisdiction of the court being appellat authority and being competent authority .

3:-That Para No-C of the grounds of appellat is incorrect on the basis that the original order was challenged before the commissioner Kohat Division Kohat and were set a side (Copy annexed as annexure F)

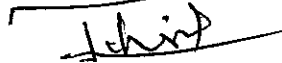
4:- That Para No- D of the grounds of appellat is incorrect the respondent No-1 is competent authority and competent forum to exercise his authority while rejecting the appellat case vide order dated 27-11-2018 but one thing does not appeal to a prudent mind that at the time of order dated 26-11-2008 in appeal No-296/-at that time respondent No-1 was competent authority and at the time of order dated 27-11-2018 the respondent No-1 was not competent authority then how could it be possible that the illegal exercise has been made.

5:- That Para No- E of the grounds of appellat is incorrect on the basis that the appellat is initially appointed as Additional Wasil Baqi Nawveez and having no knowledge of Revenue Department.

6:- That Para No- F of the grounds of appellat is incorrect on basis that appellat has been promoted according to rules illegally promoted and same will discuss at the time of arguments .

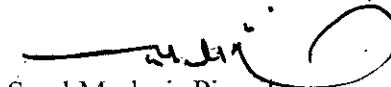
7:- That Para No- G of the grounds of appellat is incorrect on the basis that appellat prefer writ petition before Peshawar High Court Peshawar in the year 2009 then prefer service appeal bearing No-701 dated 2009 and the same was withdraw in the year 2014 then again on the same footing appellat approach to High court in a writ petition No- 521/B 2014 and then in 2018 again directed the appellat to approach to the SMBR then the same was again dismissed and now the appellat prefer instant service appeal which is not maintainable on the basis of res judicata.(Copy annexed as annexure G)

It is humbly pray that the instant service appeal devoid of the merits may graciously be dismissed .



Respondent No-4

Through



Syed Mudasir Pirzada
Advocate District Courts
Kohat



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 17/2017

Wazir Muhammad.....(Appellant)

V E R S U S

The Senior Member Board of Revenue &
others.....(Respondents)

REJOINDER TO THE WRITTEN
COMMENTS OF RESPONDENTS NO. 1
TO 4 ON BEHALF OF THE APPELLANT.

Respectfully Sheweth:

Preliminary objections:

The all preliminary objections raised by the respondents No. 1 to 4 in their reply are irrelevant to the fact of the case illegal, wrong and incorrect and are denied in every detail. The appeal does not suffer from any formal defect whatsoever.

REPLY ON FACTS:

1. Para No.1 of the reply is incorrect while the that of the appeal is correct, appellant was appointed on

03/10/1992 on regular basis, and then promoted accordingly the whole Para is denied, appellant there after promoted in own pay scale on 18/07/2007. Hence the Para is denied.

2. Para No. 2 of the reply is incorrect, while that of the appeal is correct, that the appellant aggrieved from the order District Officer (Revenue and Estate / collector Karak, and the appeal of the appellant was accepted on 26/11/2008 with the direction that the appellant may be promoted as Qanongo on regular basis with effect from 18/04/2008, hence the para is denied.

3. Para No. 3 of the appeal is correct, actually respondent No.4 misinterpreted the letter of regular promotion, because in letter issued on 12/09/2009 the appellant was promoted on 12/09/2009, but respondents are reluctant to implement it.

4. Para No.4 of appeal is correct, that appellant was promoted by the Additional Commissioner Kohat vide Order dated 12/11/2009, so upon promotion

of the appellant is on merit, so objection of the respondent No.4 is illegal and liable to be set aside.

5. That Para No.5 of the appeal is correct, the respondent No.4 has not challenged the promotion order while letter on the same competent authority deviate from their original stance taken in favour of the appellant the that is the reason order dated 27/11/2013 is misapplication of mind, and do not attract to prudent mind, hence whole Para is denied.

6. Para No.6 of the reply is incorrect. Appellant while promoted as Qanongo has all the relevant qualification and experience for promotion.

7. Para No.7 is incorrect. Appellant was promoted accordingly because the Para is admitted by the respondents because appellant is highly qualified and the MA Decree Senior most and passed departmental examination of Qanongo in the year 1999.

8. Para No.8 of the comments is incorrect while that of appeal is correct. Because the Para is admitted by the respondents appellant is regularly promoted in DPC meeting to the post of Qanongo we from 03/07/2012 but later on implementation Court order of SMBR Peshawar dated 26/11/2008 and BOR of Rev: LTR No.23565/Admn: II Karak dated 12/09/2009 and subsequent Court appellant promotion was treated w.e.f. 18/04/2008 but later on the withdrawal order is illegal and against the law. Para No.9 of the comments is incorrect. While that of the appeal is correct because the Para is admitted by the respondents because the directions issued by the Board of Revenue NWFP vide Letter No. 23565/Admn/VII Karak.

REPLY ON GROUNDS:

A. Para "A" of the grounds of reply is incorrect while that of the appeal is correct. The order passed by the respondents on 27/11/2018 is illegal and withdrawal of promotion order is against law and is liable to be set aside.

B. Para "B" of the reply of grounds is incorrect, while that of appeal is correct, when the service of the appellant is regularized, there withdrawal order of the authority is illegal, and having no legal footing.

C. Para "C" of the grounds of the reply is incorrect, while that of appeal is correct. The order of respondent No. 1, 2 and 3 are unfair, and they have facilitated respondent No. 4, now when the respondent No. 4 is retire, they are still ignoring to regularize the services of the appellant.

D. Para "D" of the reply is incorrect, while that of the appeal is correct. The respondent has rejected the departmental appeal as per direction of Peshawar High Court, Bannu Bench, and withdrawal of promotion order is against law and liable to be set aside.

E. Para "E" of the reply is admitted by the respondent by replying no comments.

F. Para "F" of the reply is incorrect, while that of appeal is correct, the appellant is senior most in the


revenue department, and his services is already regularized, so it will be in the interest of justice, if promotion order of appellant is restore.

It is, therefore, humbly prayed that on acceptance of this rejoinder, the appeal of the appellant may be accepted.


Appellant

Through

Dated: 10/04/2021


Zahoor Islam Khattak
Advocate High Court,
Peshawar.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. 17/2017

Wazir Muhammad
Appellant

VERSUS

The Senior Member Board of Revenue others
Respondents

AFFIDAVIT

I, Wazir Muhammad S/o Abdul Karim Resident of Shah Qasier Banda PO Bogara Tehsil Takht-e-Nasrati District Karak do hereby solemnly affirm and declare on oath that the contents of the accompanying rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

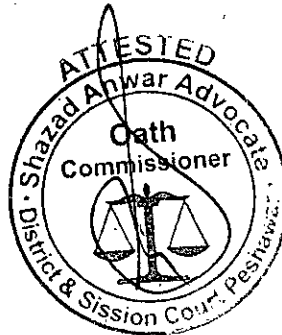


DEPONENT
CNIC # 14203-2046801-5

Identified by



Zahoor Islam Khattak
Advocate
High Court Peshawar



10.04.2024