

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	25.05.2016	<p><u>BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR</u></p> <p>Appeal No.711/2014</p> <p>Adil Waseem Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Sectt. Peshawar etc.</p> <p><u>JUDGMENT</u></p> <p><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-</u></p> <p>Appellant with counsel and Mr. Muhammad Adeel Butt, Addl. AG alongwith Mukhtiar Ali, Superintendent for respondents present.</p> <p>2. Mr. Adil Waseem hereinafter referred to as the appellant has preferred the instant appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against order dated 23.07.2014 pertaining to his dismissal from service and order dated 10.11.2014 vide which his departmental appeal dated 06.08.2014 was rejected.</p> <p>3. Brief facts giving rise to the present appeal are that appellant, while serving as Naib Tehsildar Circle Qasba was transferred and posted as District Kanungo Peshawar vide order dated 16.04.2013. The said order was impugned by the appellant before the august Peshawar High Court Peshawar in Writ Petition No. 1328-P/2013. The Hon'ble High Court, vide judgment dated 16.05.2013, issued directions to the respondents for deciding departmental appeal</p>

25/5/16

25/5/16

preferred by the appellant. In compliance with the said order of the august Peshawar High Court, Peshawar the departmental appeal of the appellant was heard and accepted ~~and accepted~~ and consequently posting/transfer order referred to above was declared without lawful authority by the Senior Member Board of Revenue, vide order dated 20.06.2013.

4. It was on 01.08.2013 when Secretary Revenue & Estate Department charge sheeted the appellant as he had not assumed the charge of his new post in line with order of posting/transfer dated 16.04.2013. It was alleged that charge assumption report was dispatched under a forged diary number. Appellant aggrieved of the said charge sheet, also challenged the same before the august Peshawar High Court in Writ Petition No. 2350-P/2013 which was decided on 09.10.2013 with the directions to the respondents to re-enquire the afore-stated charges through Member-II Board of Revenue. There-after the appellant was departmentally proceeded against and dismissed from service vide impugned order referred to above.

5. Learned counsel for the appellant has argued that the appellant has fallen prey to hostile attitude of his superiors as he challenged his transfer order though before forums provided by law and wherein he was granted the relief. That the appellant was neither given any opportunity of participation in the enquiry proceedings conducted by Member-II as ordered by the august Peshawar High Court nor any witness examined during enquiry nor opportunity of cross-examination extended to the appellant. That even the enquiry

25.05.16

25/5/16

report was not provided to the appellant and only last page of "conclusion" was handed over to the appellant and the other part of the proceedings declined to him despite written request as evident from office letter dated 07.02.2014 (Annexure-H page-31).

6. Learned Addl. A.G for the respondents argued that the charges of fake entries against the appellant were proved during the enquiry proceedings beyond any shadow of doubt and that the order of dismissal is therefore based on proper appreciation of evidence and that after evaluating the gravity of the offence, harsh punishment in the shape of dismissal of appellant from service was passed.

7. We have heard arguments of learned counsel for the appellant and Addl A.G for respondents and perused the record including the record of enquiry which was also produced before us in original, to-day.

8. It was not disputed before us that transfer/posting order of the appellant dated 16.4.2013 was declared illegal and therefore cancelled by the departmental appellate authority as a result whereof appellant was reinstated to the post of Naib Tehsildar Circle Qasba, Peshawar where-from he was again transferred as Naib Tehsildar, Peshawar Development Authority, Peshawar. It is thus inferred that due to bias attitude the appellant was not allowed to perform his duty as Naib Tehsildar Circle Qasba Peshawar despite acceptance of his departmental appeal on sound legal grounds.

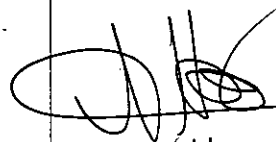
9. Record placed before us including original record of enquiry produced to-day before us would suggest that the enquiry was not

~~25.05.16.~~

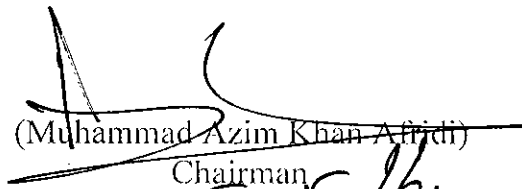
~~25/5/16~~

conducted by Member-II of the Board of Revenue in the prescribed manners and as directed by the Hon'ble High Court as he himself has neither recorded statements of any of the witnesses nor had extended any opportunity of cross-examination to the appellant but passed a very harsh order in the shape of dismissal from service of the appellant whose prima-facie guilt was resort to legal forums for redressal of his grievances.

10. In view of the above we are constrained to accept the instant appeal and by doing so we reinstate the appellant in service by setting aside the impugned order of dismissal from service of the appellant, dated 23.07.2014 and also place the respondents at liberty to conduct denovo enquiry, if need be, within a period of one month from the date of receipt of judgment of this Tribunal. In case the respondents fail to conduct denovo enquiry within the specified period of one month then it shall be deemed that the appellant has been reinstated in service with all back benefits w.e.f. 23.07.2014. Parties are left to bear their own costs. File be consigned to the record room.



(Ahmad Hassan ~~Khan~~)  
Member



(Muhammad Azim Khan Afridi)  
Chairman




25.05.16.

ANNOUNCED  
25.05.2016

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 711/2015

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	24/06/2015	<p>The present appellant initially went in Writ Petition before the Hon'ble Peshawar High Court and the Hon'ble High Court vide its order dated 16.06.2015 while treating the Writ Petition into an appeal and has sent the same to this Tribunal for decision in accordance with law. The same may be entered in the Institution register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	25-6-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>30-6-2015</u></p>
3	30.06.2015	<p>None present for appellant. Notice to appellant and his counsel be issued for preliminary hearing for 27.7.2015 before S.B.</p> <p style="text-align: right;"> CHAIRMAN</p>
4	27.7.2015	<p>Appellant with counsel present. Directed to submit appeal in proper format for preliminary hearing on 10.8.2015 before S.B.</p> <p style="text-align: right;"> CHAIRMAN</p>

10.08.2015

Appellant with counsel present. Appeal in proper format submitted today. Office is directed to scrutinize the same and thereafter fix the same before S.B.

  
Chairman

3

12.08.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Naib Tehsildar when subjected to inquiry on the allegations of forged arrival report on transfer and dismissed from service vide impugned order dated 23.7.2014 against which he preferred departmental appeal on 6.8.2014 which was rejected on 10.11.2014. That since the Service Tribunal was not functional as such appellant constrained to prefer Writ Petition which was heard and disposed of vide judgment dated 16.6.2015 converting the Writ Petition into service appeal and sending the same to this Tribunal.

That no inquiry whatsoever was conducted and appellant condemned unheard and excessive punishment awarded.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 27.10.2015 before S.B.

  
Chairman

27.10.2015

Appellant in person and Mr. Mukhtiar Ali, Supdt. alongwith Addl: A.G for respondents present. Para-wise comments on behalf of respondents No. 1 to 3 submitted. Learned Addl: A.G relies on the same for respondent No. 4. The appeal is assigned to D.B for rejoinder and final hearing for 22.02.2016.

  
Chairman

Appellant Deposited  
Security & Process Fee



22.02.2016

Counsel for the appellant and Mr. Mukhtiar Ali, Supdt  
alongwith Mr. Ziaullah, GP for respondents present.  
Arguments could not be heard due to non-availability of D.B,  
therefore, the case is adjourned to 30.03.2016 for arguments.

  
Chairman

30.03.2016

None present for appellant. Mr. Ziaullah, GP for respondents  
present. Counsel for the appellant is not in attendance. Adjourned for  
final hearing to 20.7.2016 before D.B.

Member  
(Executive)

  
Chairman

28.03.2016

Appellant in person present and submitted application for  
early hearing wherein he stated that on last dated i.e 30.03.2016  
the absence of applicant was due to mistake by clerk of counsel  
who had noted the date 31.03.2016. Application placed on file. To  
come up for arguments on 25.05.2016 instead of 20.07.2016.  
Parties informed accordingly.



Member

## BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 711 /2015

Adil Waseem ..... Appellant

VERSUS

The Govt. of KP &amp; others ..... Respondents

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3.	Charge Sheet with Statement of Allegations	01.08.2013	B	13-14
4.	Copy of Reply to Charge Sheet with Statement of Allegations	13.08.2013	C	15-16
5.	Copy of Judgment in passed in W.P.No. 2238-P/2013	09.10.2013	D	17-22
6.	Copy of Inquiry Report conducted by Respondent No.4	26.08.2013	E	23-27
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S.No.	Description of Documents	Date	Annexure	Pages
	Peshawar			
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Through

Appellant.

**Khush Dil Khan**  
**Advocate,**

Supreme Court of Pakistan  
9-B, Haroon Mansion,  
Khyber Bazar, Peshawar.  
Cell # 091-2213445

Dated: 08/08/2015

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**Service Appeal No. 7/11 /2015**

Adil Waseem,  
Naib Tehsildar,  
Presently posted as Naib Tehsildar,  
Peshawar Development Authority,  
Peshawar .....Appellant

Versus

1. The Govt. of Khyber Pakhtunkhwa  
through Chief Secretary,  
Civil Secretariat, Peshawar.
2. The Senior Member Board of Revenue,  
Revenue & Estate Department,  
Khyber Pakhtunkhwa, Peshawar.
3. The Secretary,  
Govt. of Khyber Pakhtunkhwa  
Revenue & Estate Department,  
Peshawar.
4. The Deputy Commissioner/Inquiry Officer  
District Peshawar.....Respondents

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**SERVICE APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE TRIBUNALS  
ACT, 1974 AGAINST THE IMPUGNED ORDER  
DATED 23.07.2014 (ANNEX:-I) THEREBY  
RESPONDENT NO.2 AWARDED THE MAJOR  
PENALTY OF DISMISSAL FROM SERVICE TO  
APPELLANT AGAINST WHICH HE FILED  
DEPARTMENTAL APPEAL ON 06.08.2014 (ANNEX:-  
L) BEFORE THE RESPONDENT NO.1 WHICH WAS  
REJECTED VIDE ORDER DATED 10.11.2014  
(ANNEX:-M).**

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Respectfully Sheweth,

A. It will not be out of context to mention that when the impugned order dated 23.07.2014 was passed by Respondent No.2 thereby appellant was dismissed from service so at that the Khyber Pakhtunkhwa Service Tribunal, Peshawar was not in function so he was constrained to file a writ petition No.2814-P/2014 in the Peshawar High Court, Peshawar in view of judgment of the Apex Court reported in PLD 2014 SC 232. In the preliminary hearing Notice was issued to Respondent Department and the operation of impugned order was also suspended. Later on, when the Tribunal was re-functioned, this petition was disposed of in the following terms vide Order Sheet dated 16.06.2015 (**Annex:-A**):

*“3. In this view of the matter, we, while disposing of the instant writ petition, treat it as an appeal before the Service Tribunal and direct the office to send it thereto for decision in accordance with law. In the meanwhile operation of the impugned notification shall remain suspended.”*

B. That accordingly the case was sent to this Tribunal in which first hearing was held on 27.07.2015 and appellant was directed to make the file in proper format. In compliance of aforesaid order the case is submitted accordingly for the perusal of this Hon'ble Tribunal as under:

1. That appellant initially appointed as Naib Tehsildar (BPS-14) in the Respondent Department in the year 2009 on permanent basis and presently he is performing his duties in the Peshawar

Development Authority, Peshawar. He served the Department for more than 05 years with excellent and unblemished service record.

2. That all of sudden, on 01.08.2013 a Charge Sheet with Statement of Allegations (**Annex:-B**) was issued to appellant containing the following charges which are reproduced for convenience of this Hon'ble Tribunal:-

*a) That you were transferred on 16.04.2013 and posted as District Kanungo Peshawar in the office of Deputy Commissioner, Peshawar. When the office of Commissioner, Peshawar Division inquired about charge assumption, it was reported by the Deputy Commissioner, Peshawar on 16.05.2013 that you have not yet assumed the charge of your post. Your refusal to comply with transfer orders in time falls within the mischief of insubordination and misconduct.*

*b) When your explanation was called on 22.05.2013 you sent charge assumption report under No.827-31/ADC/DC dated 16.05.2013 to Commissioner, Peshawar Division. On inquiry it reveals that this Dispatch No. was affixed on some other communication, therefore, you forged the Dispatch No. which tantamounts to cheating and misconduct.*

3. That appellant filed reply to the above referred Charge Sheet and Statement of Allegations on 13.08.2013 (**Annex:-C**) therein he totally denied the charges being false, baseless and unproved.

4. That on the basis of above alleged charges, the Respondent No.2 initiated the disciplinary proceedings under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline)

Rules-2011 and appointed Respondent No.4 as Inquiry Officer. In meanwhile appellant challenged such unlawful proceedings through writ petition No.2350-P/2013, which was clubbed with an identical writ petition No.2238-P/2013 and both were disposed of through a single judgment passed in Writ petition No.2238-P/2013 vide Judgment dated 09.10.2013 (**Annex:-D**) in the following terms:

*“6. In view of the above factual aspect of the case, these writ petitions are disposed of with directions to respondents that let the charge against Petitioners be re-enquired through Member-II Board of Revenue wherein Petitioners shall be provided proper opportunity of defence and dealt with strictly in accordance with law and the rules, keeping in view the fact also that a competent forum had earlier declared the transfer orders of Petitioners as without lawful authority, where after again Petitioners are being proceeded against for the same charge. No order as to costs.”*

5. That consequently, the inquiry carried out by the Respondent No.4, its Findings dated 26.08.2013 (**Annex:-E**), Show Cause Notice dated 30.08.2013 (**Annex:-F**) issued to appellant were declared illegal and without lawful authority and became inoperative against the rights of appellant.
6. That in the aforesaid judgment the Respondent No.1 was vividly directed to re-inquire the charges against appellant through Member-II, Board of Revenue. The Respondent No.1 has failed to communicate any proceedings of the subsequent inquiry to appellant and the entire proceedings

were carried out at the back of appellant. Therefore, he filed an application for supply of requisite documents pertaining to the inquiry proceedings but only single page (Page-7) of the Inquiry Report was supplied to him against which he submitted another application on 06.02.2014 (**Annex:-G**) which was replied by the Assistant Secretary (Estt:) of the Respondent No.2 vide its letter No.Estt:V/PF/Adil Waseem/3356 dated 07.02.2014 (**Annex:-H**) with the copy of Show Cause Notice dated 31.01.2014.

7. That meanwhile the impugned order was passed on 23.07.2014 (**Annex:-I**) by Respondent No.2 thereby imposed major penalty of dismissal from service upon appellant. The appellant again submitted applications bearing Diary No.4511 and 4737 on 11.08.2014 (**Annex:-J**) for the requisite documents enabling him to file a proper departmental appeal before the appellate authority but the same was replied on 21.08.2014 vide No.Estt:V/PF/Adil Waseem/16525 (**Annex:-K**) and no document was provided to him.
8. That the appellant filed departmental appeal on 06.08.2014 (**Annex:-L**) which was rejected on 10.11.2014 (**Annex:-M**) in arbitrary manner without assigning any cogent reasons.

Hence the present appeal is submitted on the following amongst other grounds:-

**Grounds:**

- A. That the charges as leveled against the appellant in the impugned Charge Sheet with Statement of Allegations are baseless, unproved and tainted with malafide intention, which were denied by the appellant being not sustainable under the law on subject.
- B. That the impugned transfer order dated 16.04.2013 (**Annex:-N**) referred in the alleged Charge Sheet was earlier challenged by the appellant through writ petition No.1328-P/2013 in the Peshawar High Court, Peshawar which was disposed of vide Order Sheet dated 16.05.2013 (**Annex:-O**). Later on, the impugned transfer order was cancelled by Respondent No.2 vide his order dated 20.06.2013 (**Annex:-P**). Therefore, the subsequent disciplinary proceedings on basis of this charge has no legal sanctity, without lawful authority and untenable under the law and rules and liable to be set aside.
- C. That since earlier proceedings carried out by Respondent No.4 was declared as without lawful authority being biased hence of no legal effect and inoperative on the rights of appellant.
- D. That Respondent No.1 has not acted upon the judgment of the Peshawar High Court, Peshawar dated 09.10.2013 in letter and spirit and the alleged proceedings subsequently carried out by the Respondent authority are violative of the directions

of the Hon'ble High Court. Neither provided him a fair opportunity of defence nor communicated the findings of inquiry to him, thus the entire proceedings carried out at his back and he was condemned unheard thus the impugned order based on such unfair proceedings is illegal, without lawful authority, malafide and violative of the principle of natural justice and liable to be set aside.

- E. That the Page-7 of the Inquiry Report as provided to appellant on his request, the charge against appellant was found unproved as evident from Para-4 of the page referred, therefore, in such circumstances the impugned order of dismissal from service has no legal justification and not sustainable under the rules on subject and liable to be set aside.
- F. That the impugned order has been passed at the back of appellant. Neither Show Cause Notice was given to him nor personal hearing was given to him enabling him to explain his position and as such he was condemned unheard and hence the impugned order is illegal, unlawful and of no legal effect being violative of principle of natural justice and liable to be set aside.
- G. That once the transfer order being based of the impugned charge sheet was cancelled by the Respondent No.1 then the remaining charge of assumption report with wrong Dispatch Number has lost its importance and value and did not



remain as charge against appellant.

- H. That no evidence/statement of any witness has been recorded in the presence of appellant nor provided him an opportunity of cross-examination which is the mandatory right of appellant. Thus in such circumstances, the proceedings whatever be, have no legal value and not binding upon the appellant.
- I. That Respondent No.2 acted in arbitrary manner and carried out the entire proceedings against the appellant in violation of Articles-4 and 10A of the Constitution of Islamic Republic of Pakistan-1973, therefore, the impugned order based on such illegal proceedings have no legal sanctity.
- J. That the impugned punishment awarded to appellant is harsh, excessive, unfair, unjust and does not commensurate with the charges allegedly leveled against appellant and liable to be set aside.
- K. That Respondent No.1 has also not acted in accordance with law and rules on subject and rejected the departmental appeal of appellant in slipshod manner without cogent reasons and justifications, which is not sustainable under the law and liable to be set aside.

It is, therefore, humbly prayed that on acceptance of this service appeal, the impugned orders dated 23.07.2014 and 10.11.2014 may kindly be set aside and

appellant may graciously be reinstated into service with all back benefits.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through

*Khush Dil Khan*  
Appellant

*8/8/215*  
Khush Dil Khan,  
Advocate,  
Supreme Court of Pakistan

29/7  
**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.**

W.P.No. 2814-P /2014

Adil Waseem S/o Masood-ur-Rehman R/o Saleh Khana, Tehsil Pabbi, District Nowshera.....(Petitioner)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue/ Secretary Revenue and Estate Department.
2. Deputy Commissioner Peshawar Division, Peshawar.
3. Hazrat Masood Mian Ex-Member-II, Board of Revenue, Peshawar, Presently Secretary Information.
4. Fazal-e-Rehmani, The Then Senior Member, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.....(Respondents)

**WRIT PETITION UNDER ARTICLE 199**

Of the Constitution of Islamic republic of Pakistan, 1973.

May it please this Hon'ble Court:

The petitioner, while having no other efficacious and adequate remedy, very humbly seeks permission to plead his grievance and beseeches for solace as follows:

**Facts leading to this Writ Petition:**

1. That the petitioner was appointed as a Naib Tehsildar in the year 2009 where after serve Revenue Department to

**ATTESTED**



23 JUN 2015

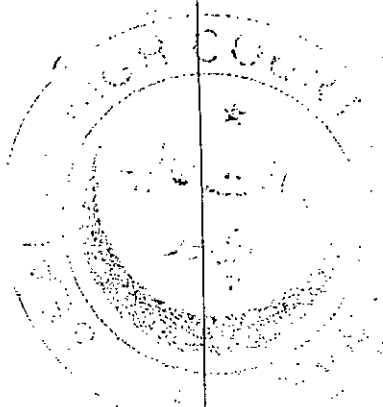
**PESHAWAR HIGH COURT PESHAWAR**  
**ORDER SHEET**

Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary
1	2
16.06.2015	<p>CM No. 761-P/2015 M in WP No. 2814-P/2014 <u>PAN.</u></p> <p>Present: Mr. Khushdil Khan, advocate for the petitioner.</p> <p>Mr. Mujahid Ali Khan, SAAG for respondents.</p> <p style="text-align: center;">*****</p> <p><b><u>WAQAR AHMAD SETH, J:-</u></b> Through instant writ petition petitioner seeks declaration of the impugned notification No. Estt: V/Adil Saseem dated 23.07.2014 illegal and without lawful authority and having no legal effect. Direct the respondent No.1 to reinstate the petitioner in service as a Naib Tehsildar PDA with all back benefits.</p> <p>2. The petitioner had filed this writ petition at the time when Khyber Pakhtunkhwa Service Tribunal having the exclusive jurisdiction to entertain such like matters was not functioning but now the Service Tribunal is functional, therefore, we, at this stage, would not like to adjudicate upon the matter, as it amounts to preempt the jurisdiction of the other forum.</p>

**ATTESTED**

**ATTESTED**  
EXAMINER  
Peshawar High Court

26 JUN 2015



3. In this view of the matter, we, while disposing of the instant writ petition, treat it as an appeal before the Service Tribunal and direct the office to send it thereto for decision in accordance with law. In the meanwhile operation of the impugned notification shall remain suspended.

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**Announced.**  
16.06.2015

21/ Wazir Ahmad Sethi  
21/ Jashid Baisaz

*[Signature]*  
JUDGE

~~CERTIFIED TO BE TRUE COPY~~  
Examiner  
Peshawar High Court, Peshawar  
Authorized under Article 87 of  
The Constitution of Pakistan Order 1984  
26 JUN 2015

No. 25559  
Date of Presentation of Application 26/06/15  
No of Pages 3P  
Copying fee  
Urgent Fee /  
Total 6-00  
Date of Preparation of Copy 26-06-15  
Date Given For Delivery 26-06-15  
Date of Delivery of Copy 26-06-15  
Received by Tahid Khan

ATTESTED

24

GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT

~~ANNEX - B~~  
ANNEX - B

P-13

CHARGE SHEET

I, Waqar Ayub, Secretary Revenue & Estate Department, Khyber Pakhtunkhwa as Competent Authority, hereby charge you Mr Adil Waseem Naib Tehsildar (BPS - 14) as follows:

1. That you while posted as Naib Tehsildar Qasba Circle, Peshawar committed the following irregularities:

a) That you were transferred on 16.04.2013 and posted as District Kanungo Peshawar in the office of Deputy Commissioner, Peshawar. When the office of Commissioner, Peshawar Division inquired about charge assumption, it was reported by the Deputy Commissioner, Peshawar on 16.05.2013 that you have not yet assumed the charge of your post. Your refusal to comply with transfer orders in time falls within the mischief of insubordination and misconduct.

b) When your explanation was called on 22.05.2013 you sent charge assumption report under No. 827-31:ADC/DC, dated 16.05.2013 to Commissioner, Peshawar Division. On enquiry it revealed that this dispatch number was affixed on some other communication. Therefore, you forged the dispatch number which tantamounts to cheating and misconduct.

By reasons of the above, you appear to be guilty of misconduct and insubordination as defined under Rule - 3 of Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule - 4 of the Rules *ibid*. Copy of fact finding enquiry report is annexed.

3. You are, therefore, required to submit your written defence within 07 days of the receipt of this charge sheet, to the Inquiry Officer, as the case may be.

4. Your written defence, if any, should reach the Inquiry Officer within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

Intimate whether you desire to be heard in person.

6. Statement of allegations is enclosed.

**ATTESTED**

*M. Waseem*  
1-8-2013  
Secretary  
Revenue & Estate Department

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ANNEX - B  
P-14

GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT

DISCIPLINARY ACTION

I, Waqar Ayub, Secretary Revenue & Estate Department, Khyber Pakhtunkhwa as Competent Authority, am of the opinion that Mr. Adil Waseem Naib Tehsildar (BPS - 14), has rendered himself liable to be proceeded against, as he committed the following acts / omissions, within the meaning of Rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

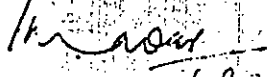
- a) That you were transferred on 16.04.2013 and posted as District Kanungo Peshawar in the office of Deputy Commissioner, Peshawar. When the office of Commissioner, Peshawar Division inquired about your charge assumption, it was reported by the Deputy Commissioner, Peshawar on 16.05.2013 that you have not yet assumed the charge of your post. Your refusal to comply with transfer orders in this falls within the mischief of insubordination and misconduct.
- b) When your explanation was called on 22.05.2013 you sent charge assumption report under No. 827-31/ADC/DC, dated 16.05.2013 to Commissioner, Peshawar Division. On enquiry it revealed that this dispatch number was affixed on some other communication. Therefore, you forged the dispatch number which tantamounts to cheating and misconduct.

2. For the purpose of inquiry against the said accused with reference to the above allegations, Syed Zaheer-ul-Islam, Deputy Commissioner, Peshawar is appointed as Inquiry Officer under Rule 10(1)(a) of the Rules ibid.

3. The Inquiry Officer shall, in accordance with the provisions of the Rules ibid provide reasonable opportunity of hearing to the accused, record findings and make, within thirty (30) days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of Commissioner Office Peshawar shall join the proceedings on the date, time and place fixed by the Inquiry Officer.

ATTESTED

  
Secretary  
1-8-2013  
Revenue & Estate Department

To  
The Deputy Commissioner/  
Inquiry Officer Peshawar.

Subject: CHARGE SHEET.

R/Sir,

Para-wise reply of the charge sheet is as under:

a) That the undersign was performing his duties as Naib Tehsildar Qasba. While the District & Sessions Judge/District Returning Officer Peshawar vide letter No. 2601/DSJ/Election Cell Peshawar dated 04.04.2013 requested upon the office of Deputy Commissioner Peshawar to place two officer on his disposal for facilitation of the process of general election. In compliance of the request of District and Sessions Judge, the then Deputy Commissioner directed the undersign vide letter No. 5184/ADC(P)/EA, dated 05.04.2013 to report immediately to District & Sessions Judge/District Returning Officer Peshawar (copy attached). In compliance of the directions issued by the then Deputy Commissioner, the undersigned immediately reported before the District & Sessions Judge.

That while performing duties in election process, orders dated 16.04.2013 was issued to Naib Tehsildar Qasba for posting as District Kanango Peshawar in the office of Deputy Commissioner Peshawar. That similarly the General Election was due on 11<sup>th</sup> May 2013, the District & Sessions Judge/ Returning Officer inquired pertaining to transfer dated 16.04.2013. The then Deputy Commissioner vide letter No. 5999/DC(P)AG-I/Election, dated 24.04.2013 instructed the undersigned to continue my duties as assigned by the District Returning Officer (copy attached).

Due to the above mentioned reasons the undersigned could not assued the charge of the new post till the completion of the process of general election. It is further committed that in the entire service record the undersigned always behaved like an obedient, law abiding and willing civil servant. Hence, the subject proceedings may be filed as the undertaking can be provided on oath that no malafide was involved on part of the undersigned please.

ATTACHED

*[Handwritten signature]*  
13/08/13



b) On successful completion of the task assigned vide order No.5184/ADC(P)EA, dated 05.04.2013, the undersigned attended the office of the Deputy Commissioner on 16.05.2013 so that the posting/transfer order's copy can be obtained for an early compliance. Hence, the staff of the office of Deputy Commissioner Peshawar were provided with the charge assumption duly signed to issue/ through the dairy and dispatch branch (o/o Additional Deputy Commissioner, Peshawar). As under the instructions as per Manual of Secretariat Instructions duly notified which indicates that the dairy/dispatch branch is responsible for the issue and communication of letters etc. The dairy/dispatch was neither the mandate of the undersigned nor reflected in job description anywhere. Hence, the forgery of the dispatch number is totally disowned and denied please.

Keeping in view the above explanation, the undersigned may kindly be exonerated from the charges leveled against me for which I will be very thankful to you Sir.

Yours Obediently,

Dated 13 /08/2013

( Adil Waseem )

Naib Tehsildar Qasba Circle Peshawar.

ATTESTED

BEFORE THE PESHAWAR HIGH COURT, PESHAWARIn Re: W P No 2238/2014

Kifayatullah.....Petitioner

VERSUS

Government of Khyber Pakhtoon Khwa &amp; others.....Respondents

I N D E X

S. No	Description of documents	Annexure	Pages
1	Writ Petition		1-7
2	Affidavit		8
3	Addresses of Parties.		9
4	Copy of order in Writ Petition No. 2238-P/2013.	"A"	10-14
5	Copy of the Complaint.	"B" & B/1"	15-24
6	Copies of the show cause notice, reply and statement of petitioner.	"C" to "C/2"	25-27
7	Copies of charge sheet, appointment of Commissioner Peshawar Division, Peshawar as inquiry officer, reply and final inquiry report.	"D" to "D/3"	28-35
8	Copy of impugned order dated 26.5.2014.	"E"	36
9	Copy of departmental appeal.	"F"	37-40
10	Court fee		
11	Vakalatnama.		

Petitioner

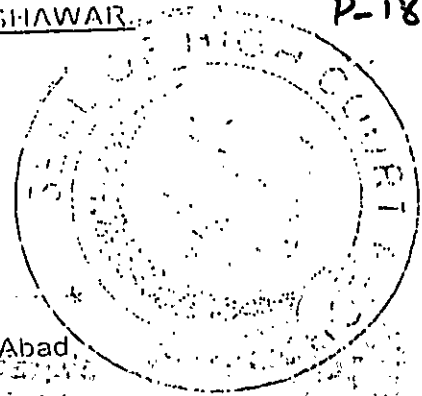
Through

Dated: - 25.6.2014

**ATTESTED**

BABAR KHAN YOUSAFZAI  
Advocate, Peshawar.  
TF-24 Deans Trade Centre,  
Islamia Road, Peshawar Cantt,  
Cell No. 0321-9040499

In Re: W P No 2238 /2013



Kifayatullah S/O Haji Akbar R/O Gulbahar No.3, Street Idress, Abad,  
Peshawar City..... Petitioner

VERSUS

1. Government of Khyber Pakhtun Khwa,  
Through Chief Secretary,  
Peshawar.
2. Govt. of K.P.K. through  
Secretary Board of Revenue, Civil Secretariat,  
Peshawar.
3. Senior Member Board of Revenue, Khyber Pakhtunkhwa, Civil Secretariat,  
Peshawar
4. Deputy Commissioner, Peshawar; Deputy Commissioner Office, Bacha  
Khan Choke Peshawar.
5. Syed Sultan Haidar Shah S/o Syed Gulzar Hussain Shah  
R/o Sheikh Abad No.3, House No. 946/14-A,  
Peshawar..... Respondents

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

FILED TODAY  
Deputy Registrar  
24 JUNE 2014

ATTESTED

ATTESTED  
EXAMINER  
Peshawar High Court  
25 JUN 2014

JUDGMENT SHEET  
PESHAWAR HIGH COURT PESHAWAR  
JUDICIAL DEPARTMENT

W.P. NO. 2238-P OF 2013

JUDGMENT

Date of hearing 9-10-2013

Appellant (Kifayatullah) By Mr. Babar Khan Yousof

Respondent (Govt. Etc.) By Mr. Waqar Ahmad Khan, Advoc. P.A.S.

MIAN FASIH-UL-MULK, J. Through this single judgment in W.P. No.2238-P of 2013, we intend to dispose of the connected Writ Petition No.2350-P/2013 also, as both are identical in nature.

2: Kifayatullah and Adil Waseem are petitioners in above noted writ petitions. They are Naib Tehsildars in the Revenue Department, who were transferred by the Deputy Commissioner, Peshawar on 16.04.2013; and posted as Head Clerk Revenue as well as District Kanungo Peshawar respectively in the office of Deputy Commissioner.

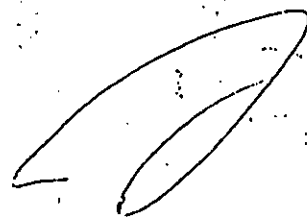
In response to a query, whether petitioners had assumed the charge in compliance with above transfer orders or not, it was reported that they had

ATTESTED

not submitted their arrival reports. The Deputy Commissioner, therefore, called explanations from both the petitioners, who then submitted their charge reports but the same were found to be entered in the back dates.

3. Meanwhile, petitioners questioned their transfer orders before this Court by filing writ petitions, which, according to them were illegal having been made during the Care-Taker Government in violation of the orders of the august Supreme Court of Pakistan. The writ petitions were, however, disposed of with directions to petitioners to seek their remedy from the Service Tribunal. Petitioners again filed writ petitions before this Court as the Khyber Pakhtunkhwa Service Tribunal being disfunctional did not entertain their appeals. The writ petitions were disposed of with directions to the appellate authority i.e. Senior Member Board of Revenue to dispose of the departmental appeals of petitioners.

ATTESTED



13  
Ultimately, the same were decided and transfer orders of petitioners were declared as without lawful authority; hence cancelled vide order dated 20.06.2013.

4. After about three and a half month of the above order, respondent No.5. filed review petitions before Senior Member Board of Revenue, which were accepted and the case was re-opened, in response to which Secretary Revenue and Estate Department issued charge sheets against petitioners and the Deputy Commissioner was made inquiry officer in the matter, who in his fact finding inquiry held the petitioners guilty of the charge, on the basis of which show-cause notices were issued against the petitioners.

5. Petitioners through instant writ petitions apprehend that the Deputy Commissioner being biased against them would not be in a position to do complete justice to petitioners.

ATTESTED

6. In view of the above factual aspect of the case, these writ petitions are disposed of with directions to respondents that let the charge against petitioners be re-enquired through Member-II Board of Revenue wherein petitioners shall be provided proper opportunity of defence and dealt with strictly in accordance with law and the rules, keeping in view the fact also that a competent forum had earlier declared the transfer orders of petitioners as without lawful authority, where after again petitioners are being proceeded against for the same charge. No order as to costs.

Announced  
09.10.2013

*Sd/- Miran Fazlul Mulik* JUDGE

*Sd/- Qasim Fazlul Mulik* JUDGE

21959

25-6-14

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1000

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25-6-14

25-6-14

*Parvinder Mahajan*

ATTESTED

Subject:

ENQUIRY INTO THE DISCIPLINARY PROCEEDINGS UNDER THE  
RULE 3 OF KHYBER PAKHTUNKHWA GOVERNMENT SERVANT  
(EFFICIENCY & DISCIPLINARY) RULES 2011 AGAINST

1. MR. KIFAYATULLAH, NAIB TEHSILDAR MOHMAND CIRCLE.
2. MR. ADIL WASEEM, NAIB TEHSILDAR QASBA CIRCLE.

ANNEX-E

P-23

BRIEF HISTORY.

An enquiry was entrusted to the undersigned as Enquiry Officer by the Board of Revenue, Government of Khyber Pakhtunkhwa, vide its order contained in letter No.Estt:V/Adil Waseem/14390, Peshawar, dated 01.8.2013, for making probe into the allegations made against Mr. Kifayatullah Naib Tehsildar Mohmand Circle and Mr. Adil Waseem Naib Tehsildar Qasba Circle regarding insubordination, cheating and misconduct. (Annexure-A)

2- The charges to be enquired by me are that both the Naib Tehsildars Kifayatullah and Adil Waseem while posted as N.T Mohmand and Qasba Circles respectively were transferred on 16.04.2013 by the competent authority as Head Clerk Revenue and District Kanungo Peshawar, in the office of the Deputy Commissioner, Peshawar, but FIRSTLY they did not take the charge (Annexure-B). When the office of the Commissioner Peshawar Division Peshawar, enquired about the charge assumption, it was reported by the Deputy Commissioner, Peshawar, on 16.5.2013 that they had not assumed the charge of the posts yet (Annexure-C). It was then reasonably presumed that they had refused to comply with the transfer orders in time and their this act was taken within the meaning of mischief of insubordination and misconduct.

3- SECONDLY, when the explanation was called on 22.5.2013, the accused officials sent their charge assumption reports against forged dispatch numbers which were allocated to some other correspondence and as such by forging the dispatch numbers and making wrong entries in the dispatch register, both the officials were considered guilty of cheating and misconduct.

4- The Commissioner Peshawar Division Peshawar asked to probe into the case of bogus and back dated charge assumption reports of the Naib Tehsildars Mr. Kifayatullah and Adil Waseem and submit report by 6.6.2013 upon which, Mr. Mohammad Fawad Additional Assistant Commissioner conducted a fact finding preliminary enquiry.

5- The Officer conducted a detailed enquiry and found the allegations true to the extent that the charge assumption reports were bogus, back dated and prepared with malafide intention. He opined that both the officials did not comply with the transfer orders and were guilty of misconduct. The probing Officer in his preliminary facts finding enquiry recommended disciplinary action against the accused officials under Rule 3 of Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 (Copy attached as Annexure-D). ①

ATTESTED

*[Signature]*  
TED



Therefore, the Board of Revenue Government of Khyber Pakhtunkhwa vide its order contained in letter No.Esst:V/Adil Waseem/14390 dated 1.8.2013 ordered the present enquiry to make probe into the allegations made against Mr. Kifayatullah and Adil Waseem Naib Tehsildars Mohmand & Qasba Circles respectively regarding insubordination, cheating & misconduct. ANNEX  
E  
P-24

In the charge sheets and statement of allegations, both the accused officials are charged separately for committing the following acts/omissions, which are reproduced as:

**"1. Mr. Kifayatullah Naib Tehsildar Mohmand Circle.**

- (a) That you were transferred on 16.4.2013 and posted as Head Clerk Revenue Peshawar in the office of Deputy Commissioner Peshawar. When the office of the Commissioner Peshawar enquired about the charge assumption, it was reported by the Deputy Commissioner Peshawar on 16.5.2013, that you have not got assumed the charge of the post. Your refusal to comply with the transfer orders in time falls within the mischief of insubordination and misconduct.
- (b) When your explanation was called on 22.5.2013, you sent charge assumption report under No.822-26/ADC/DK dated 16.5.2013 to Commissioner Peshawar Division. On enquiry it revealed that this dispatch number was affixed on some other communication. Therefore, you forged the dispatch number, which tantamounts to cheating and misconduct."

**"Mr. Adil Waseem Naib Tehsildar, Qasba Circle Peshawar.**

- (a) That you were transferred on 16.4.2013 and posted as Head Clerk Revenue Peshawar in the office of Deputy Commissioner Peshawar. When the office of the Commissioner Peshawar enquired about the charge assumption, it was reported by the Deputy Commissioner Peshawar on 16.5.2013, that you have not got assumed the charge of the post. Your refusal to comply with the transfer orders in time falls within the mischief of insubordination and misconduct.
- (b) When your explanation was called on 22.5.2013, you sent charge assumption report under No.827-31/ADC/DK dated 16.5.2013 to Commissioner Peshawar Division. On enquiry it revealed that this dispatch number was affixed on some other communication. Therefore, you forged the dispatch number, which tantamounts to cheating and misconduct."

**PROCEEDINGS**

Immediate after the receipt of enquiry order, the charge sheets/statement of allegations were served upon the accused officials on 02.08.2013, wherein the accused were required to put their written defence within seven days of the receipt of charge sheets before the enquiry officer, otherwise it would be presumed that they have nothing to offer in their defence and ex-parte proceedings would be undertaken. They were also asked to intimate whether they desire to be heard in person or otherwise. On 13.08.2013, both the accused officials appeared in person, submitted their written statements (Annexure-E & Annexure-F). In the meantime, the dispatch clerk Mr. Imran was also called who presented the dispatch register. Both the accused officials and dispatch Clerk were examined/cross examined in the light of record in presence of all. (2)

**ATTESTED**

A. In response to the charge that why did they not take the charge of the posts of their new assignments, they contended that their services had been placed on the disposal of District & Sessions Judge Peshawar vide letter No.5184/ADC(P)/EA dated 05.04.2013 for facilitating the election process and as such they reported to his office.(Annexure-G). They further stated that in the meantime, they were transferred on 16.04.2013 but through another order vide letter No.5999/DC(P)AG-I/Election dated 24.04.2013, they were instructed to continue their election duties with the District Returning Officer/District & Session Judge Peshawar, in the large public interest.

According to them, being on duty in the office of District & Session Judge Peshawar, they were not supposed to take the charge of their new places of posting vide ibid orders till completion of the election process.

B. While responding to 2<sup>nd</sup> charge, they categorically denied the charge and said that it was the responsibility of dispatch clerk to properly register their charge assumption reports which according to them they had handed over to the staff of office of the Additional Deputy Commissioner Peshawar. To cut short they did not own the charge of forgery of dispatch number.

STATEMENT OF DISPATCH CLERK (MR.IMRAN)

Mr. Imran, dispatch clerk, A.D.C. Office Peshawar, in the presence of accused officials, recorded his statement and said that Mr.Kifayatullah Naib Tehsildar came to his office on 23.05.2013 and asked him to enter the charge assumption reports in back date i.e 16.05.2013 but he refused to do so on the advice of his senior namely Haji Siddique. He further maintained that he refused to obey the illegal request of accused official and left the office for getting some photocopies. On his return, he found that the charge assumption reports had been entered against wrong dispatch numbers on 16.05.2013, which were already allocated to other correspondence. According to him there are ample chances that it was done by the accused official.

EXAMINATION OF RECORD.

The Dispatch Clerk also produced the dispatch register. It was confirmed by the examination of dispatch register that endorsements No.822-26/ADC/DC in respect of charge assumption report of Mr. Kifayatullah and No.827-31/ADC/DC in respect of charge assumption report of Mr. Adil Waseem have already been allocated to other correspondence. Endorsement/Dispatch No.821-823 issued to office orders of Mr.

3

ATTESTED

Arshed & Younis Naib Qasids, and dispatch No.824 is issued to a letter addressed to

ANNEX-E

P-26

Tehsildar Peshawar titled application for correction of girdawari, 825 to a summon addressed to Tehsildar Peshawar and 826 to a notice addressed to Tehsildar. The entry was found false and forged to cheat the high-ups.

### DISCUSSION.

From perusal of the charge sheets, statement of allegations, replies thereto by the accused officials, statement of dispatch clerk and examination of the record, the questions/discussion generate that:-

Firstly, whether the accused officials deliberately did not comply with the transfer orders or otherwise?

Secondly, why the need arose to enter the charge assumption reports in back date?

It is an admitted fact that an officer or official can not remain unaware of his transfer orders and it is also true that Govt. servants are quite conscious of the service rules, policies and principles. Being astonished by an official on knowing that he has been transferred to some other position and that too not through the office where he has been assigned additional duty, is just a deceitful statement by the accused officials. No sooner did the officer/officials come to know, that they have been transferred, they either take over/hand over the charge or relinquish/assume, as the case may be and in the instant case their plea that as they were on duty with District Returning Officer and were not supposed to take the charge is totally absurd. The fact is proved as both the defiant officials lodged civil suits in the court of Mr. Mohammad Irfan Civil Judge Peshawar on 18.4.2013. Copies attached as Annexure-'H' & 'J'.

Their arguments are inappropriate and unreasonable. They were supposed to take the charge of the posts against which they had to draw their salaries. Further more, they were directed by the then Deputy Commissioner to continue their additional assignment i.e election duty and were not barred to take the charge of the posts of new positions.

The fact that they did not bother to assume the charge is further augmented by the statement of the dispatch clerk where they turn up on 23<sup>rd</sup> May once matter was ordered to be enquired.

Now coming to the second question as to what forced them to submit their charge assumption reports on 16<sup>th</sup> May 2013, and why they wanted to have dispatch nos. on that very day only, the answer is quite simple. Firstly the Deputy Commissioner had reported on 16<sup>th</sup> May 2013, that they had not assumed their charges and secondly, the office of the Commissioner Peshawar Division has enquired about the compliance of the orders. When they failed to force the dispatch clerk's hand, they themselves hurriedly and dishonestly entered their charge assumption reports against wrong dispatch numbers, taking advantage of absence of dispatch clerk and thus committed another blatant misconduct.

ATTESTED

(4)  
D.C./E.O.

FINDINGS :

Both the charges stand proved against the accused officials because they were supposed to take the charge well in time, comply with the orders and then keep on performing additional duties with District Returning Officer at the same time. Their contention is not correct that they were not aware of their postings and were on election duty thinking nothing of their transfer orders.

As far as the charge of back dated entry of their charge assumption reports is concerned, their reply that it was not their responsibility and they knew nothing about it, is not convincing. As discussed earlier, in first attempt, they tried to exert pressure or influence the dispatch clerk and on his refusal, they did that what was not justified. The statement of the dispatch clerk supports the attribution of wrong entries by the accused officials for their gain by corrupting the record on one hand and deceiving the bosses on the other.


RECOMMENDATIONS.

It is deduced from the facts, record and statements that both the officials are found guilty of insubordination, misconduct and cheating. One of the following major penalties is recommended please:-

1. Compulsory retirement.
2. Dismissal from service.

Enquiry report containing 5 pages and 9 annexure are enclosed.

Dated 26.08.2013

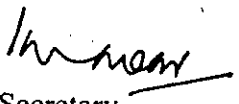
  
Deputy Commissioner,  
Peshawar.  
(Enquiry Officer)

**ATTESTED**

## SHOW CAUSE NOTICE

1. I, Waqar Ayub, Secretary Revenue & Estate Department, under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 serve you, Mr. Adil Waseem, Naib Tehsildar that an inquiry conducted against you, an opportunity was given to be heard in person and written defence vide communication dated 02.08.2013.
2. After going through the findings of the Inquiry Officer, the material on record and other connected papers including your defence before the Inquiry Officer, I am satisfied that you have committed gross misconduct on the following counts:
  - a) That while you were transferred on 16.04.2013 and posted as District Kanungo Peshawar in the office of Deputy Commissioner, Peshawar and when the office of Commissioner, Peshawar Division inquired about charge assumption, it was reported by the Deputy Commissioner, Peshawar on 16.05.2013 that you have not yet assumed the charge of your post. Your refusal to comply with transfer orders in time falls within the ambit of insubordination and misconduct.
  - b) That when your explanation was called on 22.05.2013 you sent charge assumption report under No. 827-31/ADC/DC dated 16.05.2013 to Commissioner, Peshawar Division. On enquiry it reveals that this dispatch number was affixed on some other communication. Therefore, you forged the dispatch number which tantamounts to cheating and misconduct.
3. As a result thereof, I, as Competent Authority, have decided to impose one or more major penalties indicated in Rule 4(b)(ii) (iii) and (iv) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.
4. You are therefore required to show cause as to why the aforesaid penalty should not be imposed upon you. Furthermore, you are directed to appear on 11.09.2013 at 9.00 am before the undersigned for personal hearing.
5. If no reply to this Notice is received within seven days of its delivery, it shall be presumed that you have no defence to put in, and ex-parte action shall be taken against you.

Copy of finding Inquiry Report is enclosed.

  
Secretary 30-8-2013

No.Estt: V/Adil Waseem/15558  
Peshawar dated 30/08/2013  
Mr Adil Waseem, Naib Tehsildar, Peshawar.

**ATTESTED**

Dated. 6/2/13<sup>x</sup>  
14

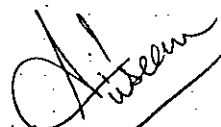
The Senior Member Board of Revenue  
Khyber Pakhtunkhwa, Peshawar.

Subject: Request for Provision of missing page  
of Inquiry report.

Respected sir,

It is submitted that I have  
received the Inquiry report of Member  
Board of Revenue on 6-2-14, But  
report consist of only one page (Page 7).  
Therefore it is requested that Page 8  
may be provided so that a reply  
may be furnished in time.

**ATTESTED**

  
Adil Khaseem  
NT DDA

proper on the part of both the accused to delay their arrival in anticipation of favorable orders.

### CONCLUSIONS :-

1. Analysis of the record and statements has led to the conclusion that the entries regarding arrival of both the accused have been made on the same date and probably by the same person.
2. The entries have actually been made on 22.05.2013 on the page of dispatch register pertaining to 16.05.2013. It has been established from the fact that the numbers assigned to both the arrival reports had already been allotted to other correspondence / communication, thus fabrication and forging of entries has taken place which is a conduct unbecoming of Government servant and a gentleman also being prejudicial to good order or service discipline (Copy of E&D Rules annexed as V).
3. Although the accused had not relinquished charge in writing or submitted arrival report for their new duties, yet they had not attested any mutation as Revenue officer during the period 16.04.2013 to 30.06.2013.
4. The statements of all the eye witnesses establish the fact that Kifayatullah, NT (one of the accused) directly approached the office staff and made his utmost efforts to get the arrival entered in back date. He appears to have adopted an intimidatory attitude to get this illegal job done. Adil Waseem, NT (one of the accused) has not been witnessed by any person to make an entry in the register or ask anyone for doing so. However, the fact that both the entries were made in similar manner in similar handwriting leads to the conclusion that Adil Waseem acquiesced in the illegal act of Kifayatullah. He seems to have abetted the act by handing over his arrival report to Kifayatullah who managed to get it entered in the back date. Thus both the accused officials, i.e. Kifayatullah Naib Tehsildar and Adil Waseem Naib Tehsildar have been found guilty of misconduct.
5. The officials of ADC office who were the custodians of the record have failed to perform their duty because without their ignorance and careless attitude it would have been impossible for an outsider to make an entry in the dispatch register. In worst scenario this may be a case of connivance by the concerned staff.
6. Kifayatullah, NT (one of the accused) has played more overt role in the whole process whereas the role of Adil Waseem, NT (accused) seems that of a collaborator. Had Kifayatullah refused to oblige Adil Waseem he would have been unable to get his arrival entered.

**ATTESTED**

*ANNEX-H P-31*  
GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT

No. Estt:V/Adil Waseem/ 3356

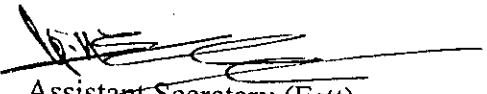
Peshawar dated the 07/02/2014

To

Mr. Adil Waseem,  
Naib Tehsildar, PDA,  
PDA Complex Hayatabad.

SUBJECT: TO PROVIDE THE COPY OF INQUIRY CONCLUSION PAGE 8.

I am directed to refer to your application dated nil, on the subject and to say that relevant portion of the Inquiry Report has already been handed over to you, remaining portion of the report cannot be provided.

  
Assistant Secretary (Estt)

**ATTESTED**



SHOW CAUSE NOTICE

1. I, Waqar Ayub, Secretary Revenue & Estate Department, under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 serve you, Mr. Adil Waseem, Naib Tehsildar that an inquiry was conducted against you, wherein an opportunity was given to be heard in person and written defence.
2. In light of the judgment of Peshawar High Court dated 05.12.2013 delivered in writ petition No.2350-P of 2013, the enquiry was conducted by Member-II, Board of Revenue. After going through the findings of the Inquiry Officer, the material placed on record and other connected papers including your defence before the Inquiry Officer, I am satisfied that you have committed gross misconduct on the following counts:
  - a) That in order to show that you had taken charge of the post of District Kanungo Peshawar to satisfy query of Commissioner, Peshawar whether transfer orders issued by his office on 16.04.2013 have been complied with or not, you connived with Kifayatullah Naib Tehsildar to approach the dispatch clerk of Deputy Commissioner office to enter your charge report in back date.
  - b). When the dispatch clerk did not oblige, you got the charge reports fraudulently entered in the dispatch register in date of 16.05.2013. However, while doing so, dispatch numbers assigned to the charge reports were the same that had already been incorporated to earlier dispatched letters. Thus committing fraud/forgery, an act unbecoming of a gentleman.
  - c). The commission of the aforementioned acts is fortified by the fact that you continued to receive pay of the post from which you were transferred i.e. Naib Tehsildar Qasba Circle till 30.06.2013.
3. As a result thereof, I, as Competent Authority, have decided on the recommendation of the enquiry officer to impose major penalty indicated in Rule 4(b) (ii) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.
4. You are therefore called upon to show cause as to why the aforesaid penalty should not be imposed upon you. Furthermore, you are instructed to appear on 11.02.2014 <sup>at 10-00</sup> am before the undersigned for personal hearing.
5. If no reply to this Notice is received within seven days of its delivery, it shall be presumed that you have no defence to put in, and ex-parte action shall be taken against you.

Copy of finding Inquiry Report is enclosed.

No.Estt: V/Adil Waseem/ 2868  
Peshawar dated 31/01/2014  
Mr Adil Waseem, Naib Tehsildar, Peshawar

*Imran*  
Secretary

**ATTENDED**

(37) (46)

ANNEX-I

P-33

GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT  
Peshawar dated 23 /07/2014

~~ANNEX-I~~

NOTIFICATION

No. Estt: V/Adil Waseem/\_\_\_\_\_. Whereas Mr. Adil Waseem, Naib Tehsildar PDA Peshawar was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules 2011, for the charges, mentioned in the Charge Sheet & Statement of Allegations dated 31/10/2013;

AND WHEREAS, Hazrat Masaud Mian, Member -- II Board of Revenue was appointed as Inquiry Officer to probe charges leveled against the said official and submit findings and recommendations.

AND WHEREAS, the Inquiry Officer after having examined the charges, evidence produced before him and statement of accused official, submitted his report whereby the charge of cheating by affixing wrong number on the charge assumption report in order to cover non relinquishment of charge of post after issuance of transfer order stands proved.

AND THEREFORE, I, Waqar Ayub, Senior Member Board of Revenue/Secretary Revenue & Estate Department after having examined the charges evidence produced, statement of accused official, findings of Inquiry Officer and after personal hearing of the accused official concur with the findings and recommendation of the Inquiry Officer.

NOW THEREFORE, while considering cheating to be conduct unbecoming of Government Servant and gentlemen, and conduct prejudicial to good order and service discipline, i.e getting entered false number and date in the Dispatch Register on back dated charge relinquishment report which tantamounts to misconduct. I as Competent Authority, in exercise of power conferred under Rule 4(b)(iii) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 impose the major penalty of dismissal from service upon Mr. Adil Waseem Naib Tehsildar PDA.


Sd/-  
Senior Member /Secretary

No. Estt: V/Adil Waseem/ 15530-35  
Copy forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa.
2. Commissioner, Peshawar Division, Peshawar.
3. Deputy Commissioner, Peshawar.
4. Private Secretary to Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
5. Official concerned.
6. Personal file

ATTESTED

12 Oct  
ATTESTED

  
Assistant Secretary (Estt.)

DY No. 4511 ANNEX-J

Dated 11-8-14.

P-34

To

The Assistant Secretary,  
Board of Revenue,  
Khyber Pakhtunkhwa, Peshawar.

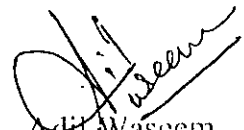
**Subject: PROVISION OF INQUIRY REPORT.**

It is submitted in your honour that an inquiry has been conducted by Member-II, Board of Revenue against the under signed Naib Tehsildar, wherein major penalty has been imposed against the undersigned.

It is requested to kindly provide a copy of the inquiry report, which is required in connection with representation appeal, filed by the undersigned.

Thanks,

**ATTESTED**

  
Adil Waseem,  
Naib Tehsildar.

D/NO. 4737 ANNEX-J  
Dated 11-8-14 P-35


The Senior Member,  
Board of Revenue,  
Khyber Pakhtunkhwa, Peshawar.

Subject: PROVISION OF INQUIRY REPORT.

It is submitted in your honour that an inquiry has been conducted by Member-II, Board of Revenue against the under signed Naib Tehsildar, wherein major penalty has been imposed against the undersigned.

It is requested to kindly provide a copy of the inquiry report, which is required in connection with representation appeal, filed by the undersigned.

Thanks,

  
Adil Waseem,  
Naib Tehsildar.

**RECEIVED**

ANNEX-K P-36

GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT


No.Estt:V/PF/Adil Waseem/ 16525  
Peshawar dated 21/08/2014

To

Mr. Adil Waseem,  
Ex-Naib Tehsildar.

SUBJECT: - PROVISION OF INQUIRY REPORT.

I am directed to refer to your application dated nil on the subject and to state that copy of finding was provided to you in accordance with Rules. However, a copy of the relevant portion of the Inquiry Report is again enclosed; remaining portion of the report cannot be provided.

  
Assistant Secretary (Estt.)

★  
**ATTESTED**

To

The Chief Secretary Khyber Pakhtunkhwa,

**SUBJECT: APPEAL AGAINST THE ORDER NO. ESTT: V/ADIL WASEEM/15530-35 DATED 23-07-2014 OF SENIOR MEMBER/SECRETARY REVENUE & ESTATE DEPARTMENT PESHAWAR.**

Respected sir:

It is submitted as under

1. That the appellant was appointed as Naib Tehsildar(BPS-14) in Revenue Department on 27.02.2009.
2. That the appellant performed his duties on different posts as a Naib Tehsildar. i.e. Khyber Agency, Commissioner House Peshawar and was presently posted as Naib Tehsildar Land Acquisition PDA.
3. That during the last General election 2013, the Appellant was placed at the disposal District Returning Officer (District and Session judge) Peshawar for facilitation in the process of General Election 2013 vide letter NO:5184/ADC (P) EA dated: 05/04/2013. Meanwhile (during the era of caretaker government) on 16/04/2013 the petitioner was transferred and posted as District Kanungo in Deputy Commissioner Office Peshawar.
4. That soon thereafter on 24/04/2013 vide letter NO: 5999/Deputy Commissioner(P)AG-I/Election the appellant was instructed/directed to continue his election duties with the District Returning Officer (District & Session judge Peshawar) in the larger public interest.
5. That the appellant remained busy in election duty till 14 May 2013 and on 15<sup>th</sup> May 2013 approached the new officer for assumption of charge but informed by the staff that there is no need of assumption in writing as the salary of the appellant is not disturbed and the posting of the appellant is with in the same Deputy Commissioner office. But when the appellant came to know that ADC has replied in writing to Commissioner Peshawar that the appellant has not yet assumed his charge, thus the charge assumption report was submitted in writing on 16<sup>th</sup> May 2013.
6. That thereafter on 01/08/2013 a disciplinary action was launched against the appellant and charge against the appellant was that the appellant dis-obeyed the transfer order dated 16/04/2013, did not assume the charge at the new post and affixing wrong number on the charge assumption report.

**ATTESTED**

7. That taking disciplinary action and enquiry against the appellant was due to malafidy & personal grudges of the Senior Member and the enquiry officer who was appointed by the Senior Member was highly biased.

8. That charge against the appellant was not proved through the independent evidence nor is any documentary evidence available on record against the appellant it is pertinent to mention that the inquiry against the appellant must be conducted by independent officer of some other department other then revenue department.

9. That after findings and recommendations of the enquiry officer the Senior Member imposed the major pernalty of dismissal from service upon the appellant which is against the law and illegal exercise of powers.

It is there fore humbly preyed that on acceptance of this appeal the order dated 23/07/2014 of Senior Mmber /Secretary Revenue & Estate Department Peshawar may kindly be set aside and the appellant may be reinstate with all back benefits.

Appellant

Dated 06/08/2014

①  
*[Handwritten signature]*  
7-8-14

*[Handwritten signature]*  
Adil Waseem  
S/o Masoodur Rehman  
R/O Saleh Khana,  
Tehsil Pabbi  
District Nowshera.

*[Handwritten signature]*  
**ATTESTED**

GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT

No.Estt:V/PF/Adil Waseem/ 22038  
Peshawar dated 10 /11/2014

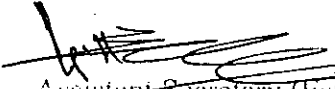
To

Mr. Adil Waseem,  
S/O Masoodur Rehman,  
Ex-Naib Tehsildar  
Resident of Saleh Khana,  
Tehsil Pabbi District Nowshera.

SUBJECT: - APPEAL AGAINST THE ORDER NO.ESTT:V/ADIL  
WASEEM/15530-35 DATED 23-07-2014 OF SENIOR MEMBER/  
SECRETARY REVENUE & ESTATE DEPARTMENT  
PESHAWAR.

Your appeal dated 06/08/2014 submitted before Chief Secretary,  
Khyber Pakhtunkhwa has been examined and rejected by the Competent Authority.

ATTESTED

  
Assistant Secretary (Estt.)  
10



OFFICE OF THE  
COMMISSIONER PESHAWAR DIVISION  
PESHAWAR.

Dated Peshawar the, 16/04/2013.

OFFICE ORDER

No:2-2(AR)Vol:VI/2012

The following posting/transfer amongst Naib Tehsildars in Peshawar Division is hereby ordered with immediate effect and in the interest of public service.

S.No.	Name of Officials	From	To
1.	Mr. Sultan Haider Naib Tehsildar (BPS-14)	Reader to Commissioner Pesh.	Naib Tehsildar Circle Mohmand vice S.No.2
2.	Mr. Kifayat Khan Naib Tehsildar (BPS-14)	Naib Tehsildar Circle Mohmand	Head Clerk (Revenue) Peshawar.
3.	Mr. Adil Waseem Naib Tehsildar (BPS-14)	Naib Tehsildar Circle Qasba	District Kanungo Peshawar.
4.	Mr. Muhammad Ibrar Naib Tehsildar (BPS-14)	District Kanungo, Peshawar.	Naib Tehsildar, Circle Qasba vice S.No.3 above.

Sd/-

COMMISSIONER  
PESHAWAR DIVISION PESHAWAR

No: 3738-43/2-2(AR)Vol.VI/2012

Copy forwarded to the:

1. Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
2. Accountant General Khyber Pakhtunkhwa.
3. Deputy Commissioner, Peshawar.
4. Officials concerned for compliance.
5. Office order file.
6. Personal file.

ATTESTED

Sd/-

( MUHAMMAD AMIN )  
ASSTT: TO COMMISSIONER(REV:/GA)  
PESHAWAR DIVISION PESHAWAR



OFFICE OF THE  
COMMISSIONER PESHAWAR DIVISION  
PESHAWAR.

Dated Peshawar the, 16/04/2013.

OFFICE ORDER

No: 2-2(AR) Vol. VI/2012.

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S.No	Name of Officials	From	To
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2	Mr. Kifayat Khan Naib Tehsildar (BPS-14)	Naib Tehsildar Circle Mohmand	Head Clerk (Revenue) Peshawar
3	Mr. Adil Warazem Naib Tehsildar(BPS-14)	Naib Tehsildar Circle Qasba	District Kanungo Peshawar
4	Mr. Muhammad Ibrar Naib Tehsildar(ACB)	District Kanungo Peshawar	Naib Tehsildar, Circle Qasba vice S.No. 3 above

-Sd-

COMMISSIONER

PESHAWAR DIVISION PESHAWAR

No: 3738-43 /2-2(AR) Vol. VI/2012

Copy forwarded to the:

1. Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
2. Accountant General Khyber Pakhtunkhwa.
3. Deputy Commissioner, Peshawar.
4. Officials concerned for compliance.
5. Office order file.
6. Personal files.

(MUSTAFA ALI)

ASST. TO COMMISSIONER (REV./CA)  
PESHAWAR DIVISION PESHAWAR.

ATTESTED

ATTESTED

19  
PESHAWAR HIGH COURT, PESHAWAR.

FORM 'A'  
FORM OF ORDER SHEET

~~ANNEX-0~~

P-41

Date of order.	Order or other proceedings with the order of Judge
16.5.2013.	<p><u>W.P. 1328-P of 2013.</u></p> <p>Present: Mr. Babar Khan Yousafzai, advocate for petitioner.</p> <p>-----</p> <p><u>DOST MUHAMMAD KHAN, C.J.</u>- Petitioner has question his transfer order dated 16.4.2013 on various grounds and because this constitutional petition has been filed as the Provincial Services Tribunal according to the petitioner is not fully functional after the judgment of the Hon'ble Supreme Court in the case of <u>Sheikh Riaz-ul-Haq Vs. Federation of Pakistan</u> and because the Ordinance No.2 of 2013 promulgated by the Governor, Khyber Pakhtunkhwa is not in conformity with the principle and ratio laid down by the Hon'ble apex court, hence no forum to seek redress for the petitioner is available, therefore, this petition has been filed here.</p> <p>2. Once under Article 212 of the Constitution of Pakistan, 1973 and under the provision of Service Tribunal Act, 1974 a forum with exclusive jurisdiction has been provided for the redressal of grievances of a particular class of person like</p>

ATTACHED

civil servant, then temporary non-functional of the said forum would not reinvest jurisdiction in this court.

3. The proper course for the petitioner is to file a constitutional petition seeking direction from this court that the Provincial Government shall comply with the judgment of the Hon'ble apex court in full without pick and choose and the Provincial Services Tribunal must be constituted according to the procedure laid down by the Hon'ble apex court on the strength of principle laid down by it in the above mentioned judgment and in that way the petitioner would be able to get remedy from the newly constituted Services Tribunal.

With these observations, this petition is disposed of.

ATTESTED

~~CHIEF JUSTICE~~

JUDGE

1/5  
2015

BEFORE THE COURT OF SENIOR MEMBER BOARD OF  
REVENUE KHYBER PAKHTUNKHWA

1. Kifayatullah Naib Tehsildar  
2. Adil Waseem Naib Tehsildar ..... Appellants

Versus  
Commissioner, Peshawar Division Peshawar ..... Respondent

DEPARTMENTAL APPEAL / REPRESENTATION AGAINST THE  
ORDER DATED 16.04.2013 PASSED BY COMMISSIONER  
PESHAWAR DIVISION PESHAWAR.

My this single order will dispose of the above mentioned two identical appeals / representations against the order dated 16.04.2013 issued by Commissioner, Peshawar Division whereby M/S Kifayatullah Naib Tehsildar was posted as Head Clerk (Revenue) and Adil Waseem was posted as District Kanungo Peshawar.

Peshawar High Court vide their Judgement dated 04.06.2013 remanded the case of the appellants with the observations that the departmental appellate authority, who earlier rejected the Representations of the Petitioners shall revisit the matter, if not already decided and grievances of the Petitioners be resolved in light of the Supreme Court Judgement dated 09.05.2013 whereby all the appointments, transfers and postings which has been made by the Caretaker Government, has been declared void ab initio, null and void and without lawful authority.

Perusal of the available record reveals that the posting / transfer orders were issue during the Caretaker Government, therefore in light of Judgement of Peshawar High Court dated 04.06.2013 passed in Writ Petition No. 1407-P/2013 and Hon'ble Apex Supreme Court of Pakistan the posting / transfer orders dated 16.04.2013 of Commissioner, Peshawar is without lawful authority and is therefore cancelled. Appeals / Representations are accepted.

Announced  
Dated 20.06.2013

**ATTESTED**  
*[Signature]*  
Reader to  
Senior Member:  
Board of Revenue,  
Khyber Pakhtunkhwa

*[Signature]*  
Senior Member

WAKALAT NAMA

IN THE COURT OF K.P. Service Tribunal Peshawar

Adil Waseem

Naib Tahsildar Appellant(s)/Petitioner(s)

VERSUS

Govt. K.P. through

Chief Secretary & others

Respondent(s)

I/We Adil Waseem do hereby appoint  
**Mr. Khush Dil Khan, Advocate** Supreme Court of Pakistan in the above  
mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

**AND hereby agree:-**

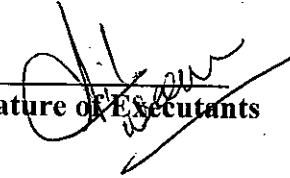
- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this \_\_\_\_\_

Attested & Accepted by



**Khush Dil Khan,**  
Advocate,  
Supreme Court of Pakistan

  
Signature of Executants

9-B, Haroon Mansion  
Khyber Bazar, Peshawar  
Off: Tel: 091-2213445

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No: 711/2015

Adil Waseem S/O Masood-ur-Rehman R/O Saleh Khana, Tehsil Pabbi, District

Nowshera..... Petitioner

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Senior Member, Board of Revenue Khyber Pakhtunkhwa and others..... Respondent

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS**

**PRELIMINARY OBJECTIONS.**

1. That the appellant has got no cause of action.
2. That the appellant has not come to the tribunal with clean hands.
3. That the instant appeal is barred by law.

**ON FACTS**

1. Pertains to record.
2. The appellant was transferred and posted as District Kanungo Peshawar vide Commissioner Peshawar Division order dated 16.04.2013, but he intentionally delayed assuming charge of new assignment and started approaching to get the transfer order cancelled. The appellant assumed the charge., when Commissioner Peshawar Division called his explanation on 22.05.2013 i.e. after 5 weeks. In order to show prompt implementation of the transfer order, the appellant got entered the charge report in the dispatch register in back date under No. 827-31 which was allotted to another communication by the dispatcher on 16.05.2013. on the basis of which charge sheet was issued to the appellant.
3. Pertains to record.
4. Correct to the extent that on the basis of Judgment of Peshawar High Court Peshawar the matter was re-enquired through Member Board of Revenue -- II, who also held the appellant responsible and recommended major penalty upon the appellant.
5. As in Para – 4 above.
6. Incorrect. The appellant has been given proper opportunity of hearing and after adopting proper procedure, major penalty of removal from service was issued upon the appellant.
7. Incorrect. Finding of enquiry was provided to the appellant.
8. Incorrect. Departmental appeal of the appellant was filed after due consideration.

**GROUNDS.**

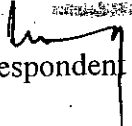
- A. Incorrect. Charge sheet was issued to the appellant strictly under the rules, and the allegation leveled against the appellant stands proved during the proceeding.

Incorrect. The second enquiry was conducted through Member – II Board of Revenue on the basis of judgment/order of the Hon'ble Peshawar High Court.

As in "B" above.

- D. Incorrect. Enquiry was conducted against the appellant on the basis of Judgment of Peshawar High Court Peshawar and the appellant was provided all kind of opportunities of defence.
- E. Incorrect. The charge leveled against the appellant stand proved during inquiry and dismissal order was issued on the basis of recommendation of enquiry officer.
- F. Incorrect. Proper show cause notice was issued and opportunity of personal hearing was given to the appellant.
- G. Incorrect as in Para – 2 of the facts.
- H. Incorrect. All the proceedings have been carried out under Khyber Pakhtunkhwa Government Servant (E&D) Rules, 2011 and all codal formalities were fulfilled.
- I. Incorrect. The respondent have acted according to constitution, law and rules.
- J. Incorrect. Penalty was imposed upon the appellant on the basis of recommendation of Inquiry Officer which is commensurate with the charge.
- K. Incorrect. The proceedings have been carried out in accordance with rules.

It is prayed that Appeal having no merit, may be dismissed with costs.

  
Respondent No. 1,2,3.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 711/2015

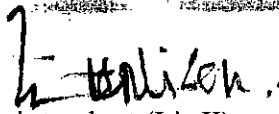
Adil Wasim S/O Masood ur Rehman R/O Saleh Khana, Tehsil Pabbi, District  
Nowshera..... Appellant

VERSUS

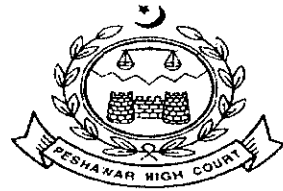
Senior Member Board of Revenue, Khyber Pakhtunkhwa & Others ..... Respondents

AFFIDAVIT

I Mukhtiar Ali, Superintendent (Lit-II), Board of Revenue Khyber Pakhtunkhwa do hereby solemnly affirm that the contents of the written reply are true and correct to the best of my knowledge and belief information provided to me and nothing has been deliberately concealed from this Hon'able Tribunal.

  
Superintendent (Lit-II)  
Board of Revenue

**THE  
PESHAWAR HIGH COURT  
PESHAWAR**



Ph: No. 091-9210149-158  
Ext: No. 394

No. 1504 /Judl:

Dated Peshawar the 23/6 2015

**From**

The Additional Registrar (J),  
Peshawar High Court,  
Peshawar.

A.W. Service

Diary 530

Dated 24/6/15

**To**

✓ The Registrar,  
KPK Service Tribunal,  
Peshawar.

**Subject**

**Writ Petition No. 2814-P/2014.**

**Adil Waseem s/o Masood-ur-Rehman**

**-----Petitioner**

**Versus**

**Govt. of Khyber Pakhtunkhwa & others**

**-----Respondents**

\*\*\*\*\*

**Memo:**

I am directed to send herewith the titled case in original alongwith all annexures & copy of order dated 16-06-2015, passed by Division Bench of this Court, for compliance (**Writ Petition (original) is attached**).

**ADDITIONAL REGISTRAR (J)**

**Endst: No. & even dated:**

**Copy forwarded to:**

1. The S.M.B.R/Secretary Revenue & Estate Deptt. KPK, Peshawar.
2. The Deputy Commissioner, Peshawar Division, Peshawar.
3. Mr. Hazrat Masood Mian Ex-Member-II, Board of Revenue, Peshawar, presently Secretary Information.
4. Mr. Fazal-e-Rehmani, The then SMBR, KPK, Peshawar.

**ADDITIONAL REGISTRAR (J)**

**Encl:**

**Copy of order.**

240

**PESHAWAR HIGH COURT PESHAWAR**  
**ORDER SHEET**

<b>Date of Order or Proceedings</b>	<b>Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary</b>
1	2
16.06.2015	<p data-bbox="641 516 1372 592"><u>CM No. 761-P/2015 M in WP No. 2814-P/2014 PAN.</u></p> <p data-bbox="641 630 1421 718">Present: Mr. Khushdil Khan, advocate for the petitioner.</p> <p data-bbox="820 756 1421 844">Mr. Mujahid Ali Khan, AAG for respondents.</p> <p data-bbox="820 919 966 945" style="text-align: center;">*****</p> <p data-bbox="633 1020 1429 1625"><b><u>WAQAR AHMAD SETH, J:-</u></b> Through instant writ petition petitioner seeks declaration of the impugned notification No. Estt: V/Adil Saseem dated 23.07.2014 illegal and without lawful authority and having no legal effect. Direct the respondent No.1 to reinstate the petitioner in service as a Naib Tehsildar PDA with all back benefits.</p> <p data-bbox="633 1663 1429 2280">2. The petitioner had filed this writ petition at the time when Khyber Pakhtunkhwa Service Tribunal having the exclusive jurisdiction to entertain such like matters was not functioning but now the Service Tribunal is functional, therefore, we, at this stage, would not like to adjudicate upon the matter, as it amounts to preempt the jurisdiction of the other forum.</p>

3. *In this view of the matter, we, while disposing of the instant writ petition, treat it as an appeal before the Service Tribunal and direct the office to send it thereto for decision in accordance with law. In the meanwhile operation of the impugned notification shall remain suspended.*

**Announced.**

16.06.2015

  
JUDGE

  
JUDGE

**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.**

*Service Appeal No. 711/2015*

W.P. No. 2814-P/2014

Adil Waseem .....(Petitioner)

**VERSUS**

Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue/ Secretary Revenue and Estate Department and others.....(Respondents)

**INDEX**

S.No	Description of Documents	Annex	Pages
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4.	Copies of notifications	A&B	10-11
5.	Copy of Notification No. 5184/ADC (P) EA dated 05/04/2013	C	12
6.	Copy of notification No. 5999/DC(P)AG-I/Elections dated 24/04/2014	D	13
7.	Copy of the order dated 16/05/2013	E	14-22
8.	Copy of the departmental order dated 20/06/2013	F	23
9.	Copy of charge sheet, show cause notice and disciplinary proceeding	G & G/1	24-31
10.	Copy of Writ Petition No. 2238-P/2013	H	32
11.	Copy of order dated 09/10/2013	H/1	33-36
12.	Copy of C.P.L.A No. 670-P/2013	I	37-45
13.	Copy of notification No. Estt: V/Adil Waseem dated 23/07/2014	J	46
14.	Court Fee		
15.	Wakalat Nama		

Petitioner

Through

Dated: 13/09/2014

*Daniyal Khan Chamkani*  
**Daniyal Khan Chamkani**

Advocate High Court,  
Peshawar.

**Chamkani Law Chamber**

Zabeel Palace Hotel,

G.T. Road, Peshawar.

Cell: 0314-9160522

**FILED TODAY**

Deputy Registrar

13 SEP 2014

**RE-FILED TODAY**

Deputy Registrar

16 SEP 2014

①

**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.**

*Service Appeal No. 711/2015*

W.P.No. *2814-P*/2014

Adil Waseem S/o Masood-ur-Rehman R/o Saleh Khana, Tehsil Pabbi, District Nowshera.....(Petitioner)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue/ Secretary Revenue and Estate Department.
2. Deputy Commissioner Peshawar Division, Peshawar.
3. Hazrat Masood Mian Ex-Member-II, Board of Revenue, Peshawar, Presently Secretary Information.
4. Fazal-e-Rehmani, The Then Senior Member, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.....(Respondents)

**WRIT PETITION UNDER ARTICLE 199**

Of the Constitution of Islamic republic of Pakistan, 1973.

May it please this Hon'ble Court:

The petitioner, while having no other efficacious and adequate remedy, very humbly seeks permission to plead his grievance and beseeches for solace as follows:

**Facts leading to this Writ Petition:**

1. That the petitioner was appointed as a Naib Tehsildar in the year 2009 where after serve Revenue Department to

FILED TODAY

Deputy Registrar

13 SEP 2014

the satisfaction of his superior and rendered meritorious service in the respondents department.

2. That on 15/02/2013 the petitioner was transfer from Mohmand Circle, Peshawar to Qasba Circle, Peshawar, through notification No. 2-2(AR)Vol.VI/2012, where after within two months the petitioner was again transfer from Naib Tehsildar Circle Qasba to District Kanungo, Peshawar through Office Order No. 2-2(AR)Vol.VI/2012 dated 16/04/2013. (Copies of notifications are attached as annexure "A" and "B" respectively).
  
3. That on 05/04/2013 vide notification the Deputy Commissioner Peshawar, deputed through Notification No. 5184/ADC (P) EA, the services of the petitioner was assigned for the General Election of 2013. (Copy of Notification No. 5184/ADC (P) EA dated 05/04/2013 is attached as annexure "C").
  
4. That in the compliance of the order of District and Session Judge/ District Returning Officer, Peshawar, the Deputy Commissioner through office order No. 5999/DC(P)AG-I/Elections dated 24/04/2013 assign the services of the petitioner was continue with the disposal of District and Session Judge/ District Returning Officer, Peshawar, in the General Election 2013 for the larger of Public Interest. (Copy of notification No. 5999/DC(P)AG-I/Elections dated 24/04/2014 is attached as annexure "D").

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Deputy Registrar  
13 SEP 2014

5. That the transfer dated 16/04/2013 was challenged by the petitioner before the Hon'ble Peshawar High Court, Peshawar, and in Writ Petition No. 1328-P/2013 and the case was disposed off on the direction that the Provincial Government of Khyber Pakhtunkhwa shall comply the judgment of apex Court/ Supreme Court of Pakistan in the light of the Judgment of "Sheikh Riaz ul Haq..VS...Federation of Pakistan". (Copy of the order dated 16/05/2013 is attached as annexure "E").
6. That the petitioner filed a departmental appeal against the transfer order dated 16/04/2013 before The Then Senior Member, Board of Revenue, Khyber Pakhtunkhwa, Peshawar, the grievances of the petitioner was redressed and the Transfer Order of the petitioner on 16/04/2013 was consider unlawful and set aside. (Copy of the departmental order dated 20/06/2013 is attached as annexure "F").
7. That the respondent No. 1 explained from the petitioner about his absentia from the office due to the reason why the petitioner not took a charge assumption and the matter was already decided by the then Respondent No. 4 and the case was reopen and the charge sheet disciplinary action had taken against the petitioner and show cause notice was given to the petitioner on dated 30/08/2013. (Copy of charge sheet, show cause notice and disciplinary proceeding are attached as annexure "G" and "G/1").
8. That the respondent No. 2 recommendation of inquiry was challenged by the petitioner before this Hon'ble Court, in Writ Petition No. 2350-P/2013 and which the petitioner was aggrieved that the Inquiry Officer/ Deputy

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Commissioner being biased against the petitioner and there is no hope for proper and fair inquiry possible in the presence of Deputy Commissioner/ Inquiry Officer. (Copy of Writ Petition No. 2238-P/2013 is attached as annexure "H").

9. That in Writ Petition No. 2350-P/2013 of this Hon'ble Court, directed the respondents to re-inquired in the matter through Member-II, Board of Revenue and a proper opportunity provided to the petitioner according to law and rules. (Copy of order dated 09/10/2013 is attached as annexure "H/1").
10. That the respondents aggrieved from order dated 09/10/2013 challenged the same in the August Supreme Court of Pakistan C.P.L.A No. 670-P/2013, which is still pending before August Supreme Court. (Copy of C.P.L.A No. 670-P/2013 is attached as annexure "I").
11. That the respondent No. 3 after conduct the inquiry and the petitioner was dismissed from the post of Naib Tehsildar PDA vide notification No. Estt: V/Adil Waseem dated 23/07/2014 by the respondent No. 1. (Copy of notification No. Estt: V/Adil Waseem dated 23/07/2014 is attached as annexure "J").
12. That the petitioner is gravely dissatisfied and aggrieved from the acts, omission and decision on part of the respondents, thus while having no other adequate and efficacious remedy, is constrained to invoke the

Constitutional Jurisdiction of this Hon'ble Court on the following grounds and reasons amongst others:

**Grounds warranting this Writ Petition:**

- A. Because the impugned notification No. Estt: V/Adil Waseem dated 23/07/2014 is illegal, unlawful, without lawful authority, hence liable to be set aside.
- B. Because the impugned action of the respondent No. 1 to re-initiate inquiry is based on malafide and personal grudge on the reason that the then S.M.B.R (respondent No. 4) is already decided the case in the favour of petitioner and reopen the same case by the respondent No. 1 has violation of Article 13 (a) of the Constitution of Islamic Republic of Pakistan, 1973.
- C. Because the petitioner has never disrespect or disobedience to any transfer order, but the action of the respondent No. 1 tantamount to victimization of the petitioner for no fault of him, rather the action comes within the mischief of double jeopardy and also violation of the principal of natural justice "*Memo Debet Bis Puniri Pro uno Delicto*" (No man ought be punished twice for the same offence).
- D. Because the petitioner was treated in discriminatory manner and due to the connivance of the respondent No. 1, the proposed summary.

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Deputy Registrar

13 SEP 2014

E. Because the impugned notification issued by the respondent No. 1 violates numerous constitutional rights guaranteed under Article 4, 13 (a), 25 and 27 of the Constitution of Islamic Republic of Pakistan, 1973.

F. That on one hand the respondents department and the Government of Khyber Pakhtunkhwa, **being aggrieved** by the judgment of this Hon'ble Court and challenged the same in the August Supreme Court of Pakistan while on the other hand they also start an inquiry and terminate the petitioner from service on malafide.

G. Any other ground or reasons, at the time of hearing will be argued with the permission of the Court.

It is, therefore, most humbly prayed, that on acceptance of the instant Writ Petition, this Hon'ble Court may very magnanimously hold, declare and order that:

- i. Declare the impugned notification No. Estt: V/Adil Waseem dated 23/07/2014 is illegal and without lawful authority and having no legal effect.
- ii. Direct the respondent No. 1 to re-instate the petitioner on service as a Naib Tehsildar PDA with all back benefits.
- iii. Any other relief, nor specifically prayed, may also graciously be granted, if appears just, necessary and appropriate.

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iv. **Interim Relief:**

The operation of the impugned notification No. Estt: V/Adil Waseem dated 23/07/2014 by the respondent No. 1 may kindly be suspended and the petitioner services may kindly be re-instate as a Naib Tehsildar PDA, till the final disposal of this Writ Petition.

Petitioner

Through

Dated: 13/09/2014

  
**Danial Khan Chamkani**  
Advocate High Court,  
Peshawar.


**CERTIFICATE:**

Certified on instructions of my client that petitioner has not previously moved this Hon'ble Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 regarding the instant matter.

  
**ADVOCATE**

**LIST OF BOOKS:**

1. Constitution of Islamic Republic of Pakistan, 1973
2. Any other law books according to need.

  
**FILED TODAY**  
Deputy Registrar  
13 SEP 2014

  
**ADVOCATE**

8

**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.**

W.P.No. 2814-P/2014

Adil Waseem .....(Petitioner)

**VERSUS**

Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue/ Secretary Revenue and Estate Department and others.....(Respondents)

**AFFIDAVIT**

I, Adil Waseem S/o Masood-ur-Rehman R/o Saleh Khana, Tehsil Pabbi, District Nowshera, do hereby solemnly affirm and declare on oath that the contents of the **Writ Petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

17201-1197801-5

*Adil Waseem*

**DEPONENT**

**Identified by:**

*Daniyal Khan Chamkani*  
**Daniyal Khan Chamkani**  
Advocate High Court,  
Peshawar.

No. <u>2814-P/2014</u> Certified that the above was verified on solemnly affirmation before me in office, this <u>13th</u> day of <u>Sep</u> 20 <u>14</u> by <u>Adil Waseem</u> s/o <u>Masood-ur-Rehman</u> <u>Nowshera</u> who was identified by <u>Daniyal Khan Chamkani</u> Who is personally known to me:  <p style="text-align: right;"><i>[Signature]</i> Oath Commissioner Peshawar High Court, Peshawar</p>
---

FILED TODAY  
Deputy Registrar  
13 SEP 2014

**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.**

W.P.No. 28th P/2014

Adil Waseem .....(Petitioner)

**VERSUS**

Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue/ Secretary Revenue and Estate Department and others.....(Respondents)

**ADDRESSES OF PARTIES**

**PETITIONER:**

Adil Waseem S/o Masood-ur-Rehman R/o Saleh Khana, Tehsil Pabbi, District Nowshera.

**RESPONDENTS:**

1. Government of Khyber Pakhtunkhwa through Senior Member Board of Revenue/ Secretary Revenue and Estate Department.
2. Deputy Commissioner Peshawar Division, Peshawar.
3. Hazrat Masood Mian Ex-Member-II, Board of Revenue, Peshawar, Presently Secretary Information.
4. Fazal-e-Rehmani, The Then Senior Member, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.

Petitioner

Through

Dated: 13/09/2014

*Danial Khan Chamkani*  
**Danial Khan Chamkani**  
Advocate High Court,  
Peshawar.

~~FILED TODAY~~  
~~Deputy Registrar~~  
13/SEP 2014

Amir A'

(10)

Amir A'

OFFICE OF THE  
COMMISSIONER PESHAWAR DIVISION  
PESHAWAR.

Dated Peshawar the, 15/02/2013

OFFICE ORDER

No. 2-2/AR/Vol.VI/2012.

The following mutual posting/transfer amongst Naib Tehsildars in Peshawar Division is hereby ordered with immediate effect and in the interest of public service.

S.No	Name of Officials	From	To
1	Mr. Adil Waseem Naib Tehsildar (BPS-14)	Naib Tehsildar, Circle Mohmand Peshawar.	Naib Tehsildar, Circle Qasba, Peshawar
2	Mr. Kifayatullah Khan	Naib Tehsildar, Circle Qasba, Peshawar	Naib Tehsildar Circle Mohmand, Peshawar vice S.No.1 above

-Sd-

COMMISSIONER  
PESHAWAR DIVISION PESHAWAR

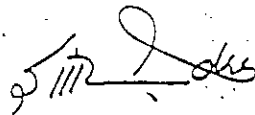
No: 1495-1507/2-2/AR/Vol.VI/2012

Copy forwarded to the:

1. Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
2. Accountant General Khyber Pakhtunkhwa.
3. Deputy Commissioner, Peshawar.
4. Officials concerned for compliance.
5. Office order file.
6. Personal files.

Issued to all:

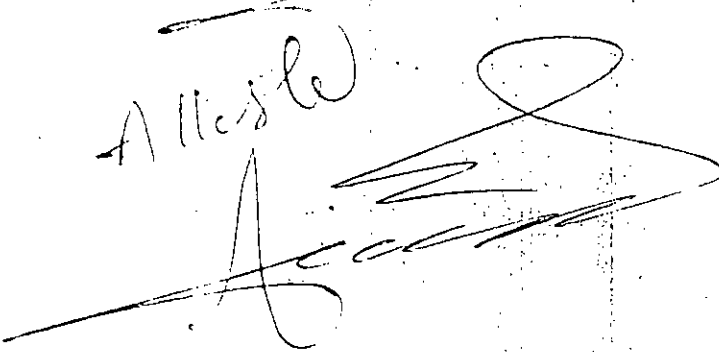
o/c



(SHAMA NIAMAT)

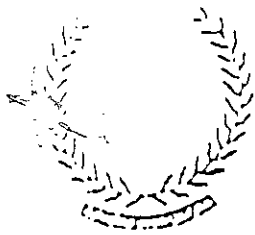
ASSTT: TO COMMISSIONER (REV./GA)  
PESHAWAR DIVISION PESHAWAR.

Attended



R. D. P.

Annex B' (11) Announcements



OFFICE OF  
DEPUTY COMMISSIONER  
PESHAWAR

No. 5104/1 /ADC(P)EA  
Dated Pesh: the 25/04/2013

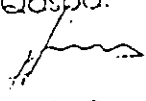
✓  
The District & Sessions Judge/  
District Returning Officer,  
Peshawar.

Subject: FACILITATION IN THE PROCESS OF GENERAL ELECTIONS 2013.

Reference your letter No. 2601/DSJ/Election, Cell Peshawar,  
dated 04.04.2013 on the subject cited above.

The following Naib Tehsildars are placed at your disposal till the  
completion of election process please:

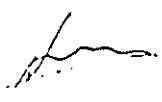
1. Mr. Kifayatullah, Naib Tehsildar Mohmand.
2. Mr. Adil Waseem, Naib Tehsildar Qasba.

  
Additional Deputy Commissioner  
Peshawar.

Encl: No. 5185-86 /ADC(P)EA

Copy forwarded to the:

1. Commissioner Peshawar Division Peshawar for information.
2. Naib Tehsildars concerned for information and with the  
directions to report to District & Sessions Judge / District Returning  
Officer Peshawar immediately.

  
Additional Deputy Commissioner  
Peshawar.

  
District Returning Officer.



Annex C



OFFICE OF THE  
COMMISSIONER PESHAWAR DIVISION  
PESHAWAR.

Dated Peshawar the, 16/04/2013

OFFICE ORDER

No: 2-2(AR)Vol.VI/2012.

The following posting/transfer amongst Naib Tehsildars in Peshawar Division is hereby ordered with immediate effect and in the interest of public service.

S.No	Name of Officials	From	To
1	Mr. Sultan Haider Naib Tehsildar(BPS-14)	Reader to Commissioner Pesh.	Naib Tehsildar Circle Mohmand vice S.No. 2
2	Mr. Kifayat Khan Naib Tehsildar (BPS-14)	Naib Tehsildar Circle Mohmand	Head Clerk (Revenue) Peshawar.
3	Mr. Adil Warisem Naib Tehsildar(BPS-14)	Naib Tehsildar Circle Qasba.	District Kanungo Peshawar.
4	Mr. Muhammad Ibrar. Naib Tehsildar(ACB)	District Kanungo, Peshawar	Naib Tehsildar, Circle Qasba vice S.No. 3 above

-Sd-

COMMISSIONER  
PESHAWAR DIVISION PESHAWAR

No: 3738-43 /2-2(AR)Vol.VI/2012

Copy forwarded to the:

1. Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
2. Accountant General Khyber Pakhtunkhwa.
3. Deputy Commissioner, Peshawar.
4. Officials concerned for compliance.
5. Office order file.
6. Personal files.

(MUSLIMAMIN)  
ASST. TO COMMISSIONER (REV./GA)  
PESHAWAR DIVISION PESHAWAR.

D. Col.  
ATTACHED

(13)

OFFICE OF THE  
DEPUTY COMMISSIONER PESHAWAR.  
No. 5999 /DC(P)/AG-1/Elections  
Dated Peshawar the 24/04 /2013



The District & Session Judge/  
District Returning Officer,  
Peshawar.

*Amex - D*

SUBJECT: FACILITATION IN THE PROCESS OF GENERAL ELECTIONS 2013.

Kindly refer to your letter No.260/DSJ/Election Cell Peshawar, dated 04.04.2013 and this office letter No.5184/ADC(P)/AG-1, dated 05.04.2013 wherein two Naib Tehsildars Kifayatullah & Aadil Waseem were deputed/placed at the disposal of the District Returning Officer/District & Session Judge Peshawar for the forthcoming election duties.

The Election Commission of Pakistan has desired making of administrative changes at every level including the revenue staff. Postings/transfers of various officers were ordered by the competent authority wherein the above mentioned two Revenue Officers were transferred and posted in District Peshawar enabling them to continue their duties as assigned by the District Returning Officer/District & Session Judge, Peshawar. Both the Officers have been instructed/directed to continue their election duties with the District Returning Officer/District & Session Judge, Peshawar in the larger public interest.

*[Signature]*  
Deputy Commissioner,  
Peshawar. *24/13*

No. 6000-02 /DC(P)/AG-1

Copy forwarded to the:-

1. Commissioner, Peshawar Division Peshawar.
2. Mr. Kifayatullah H.C Revenue, Commissioner's office Peshawar.
3. Mr. Aadil Wasim, District Kanungo, DC's Office Peshawar.

With the instructions to continue their duties as assigned by the District Returning Officer, Pesh.

*[Signature]*

*[Signature]*  
Deputy Commissioner,  
Peshawar. *24/13*

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Annex - D

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IN THE PESHAWAR HIGH COURT, PESHAWAR

Annex E

W.P No. 1328-P/2013

Adil Waseem S/o Masood ur Rehman  
R/o Saleh Khana, Tehsil Pabbi, Distt Nowshera.....Petitioner

**V E R S U S**

1. Govt of KPK  
Through Secretary Board of Revenue,  
Civil Secretariat, Peshawar
  2. Senior Member Board of Revenue, KPK,  
Civil Secretariat, Peshawar
  3. Commissioner, Peshawar,  
Commissioner House, The Mall, Peshawar Cantt
  4. Muhammad Ibrar,  
District Kanoongo/ Naib Tehsildar Circle Qasba,  
Tehsil Building, Peshawar
- .....Respondents

14/5/13

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

Respectfully Sheweth:

*[Signature]*

Briefly the facts of the case are as under:

FILED TODAY  
Deputy Registrar

1. That the petitioner was appointed as Naib Tehsildar in the Revenue Department on 27.02.2009 on Deceased Son Quota. (Copy of appointment order is Annexure "A").
2. That the petitioner was initially posted as Naib Tehsildar, Khyber Agency, where he performed his duties for three months and was then transferred to Commissioner House, Peshawar. The petitioner after three months was posted as Naib Tehsildar Daudzai Circle, Peshawar on 06.10.2010. (Copy of the order dated 07.10.2010 is Annexure "B").
3. That vide office order dated 15.01.2013, the petitioner was posted as Naib Tehsildar Circle Mohmand, Peshawar, where he performed his duties for exactly one month and then on 15.02.2013, he was again transferred as Naib Tehsildar Circle Qasba, Peshawar. Copies of the orders dated 15.01.2013 and 15.02.2013 are annexed herewith as Annexure "C" & "D" respectively).
4. That the petitioner moved representation to the competent authority (respondent No.2) against the transfer order dated 15.02.2013, which still pending. Copy of the representation/ appeal is Annexure "E").
5. That the District & Sessions Judge/ District Returning Officer. Peshawar vide letter dated 04.04.2013

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required the Deputy Commissioner, Peshawar to assign two officers not below the rank of Naib Tehsildar at the disposal of District Judiciary for the arrangements of vehicle/ transportation of election materials, thus the petitioner alongwith was placed at the disposal of District & Sessions Judge/ Returning Officer, Peshawar vide letter dated 05.04.2013. Copies of the office order dated 04.04.2013 is Annexure "F" and that of office order dated 05.04.2013 is Annexure "G").

6. That in sheer violation of law, rules and regulations respondent No.3 without any authority issued letter dated 16.04.2013 wherein the petitioner was again transferred and was posted as District Kanoongo, Peshawar. (Copy of the impugned order dated 10.04.2013 is Annexure "H").

7. That the respondent No.4 was posted as Naib Tehsildar Circle Qasba, Peshawar who belongs to the cadre of District Kanoongo and thus posting him as Naib Tehsildar is not only illegal but also against the law.

8. That the petitioner aggrieved from this illegal acts of the respondents, knocked the doors of this Honourable Court in writ petition No.1092-P of 2013 titled "Adil Waseem Vs Govt of KPK and others" but

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the same was dismissed alongwith other connected petition to approach the competent forum.

9. That it was very correctly observed by this Honourable Court but as the competent authority for an employee is Provincial Service Tribunal, the same is established under KPK Service Tribunals Act, 1974 was disfunctioned.
10. That Provincial Service Tribunal is disfunctioned in light of the decorum of the Honorable Apex Court in the case titled "Sheikh Riazul Haq Advocate Vs Federation of Pakistan etc" until further order.
11. That in the last three months, the petitioner has been transferred from one post to another and every month i.e. three times and thus is mortally aggrieved of the impugned transfer order, hence prefers this constitutional petition, for the following amongst other grounds:

GRUNDS:

A. That according to Notification dated 20.09.2011 respondent No.3 is not the empowering authority to pass the impugned order dated 16.04.2013 without prior consultation with the Revenue & Estate Department and thus respondent No.3 by assuming the powers not vested in him passed an illegal, unlawful order which is without lawful authority and

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without jurisdiction. (Copy of the notification dated 20.09.2011 is Annexure "I").

B. That vide Notification dated 26.03.2013, issued by Election Commission of Pakistan banning the transfer and posting of civil servants after the issuance of schedule of election till the completion thereof. Para No.iii and iv of the said notification is reproduced as under:

- iii. Bulks transfers/ postings of the civil servants shall not be made after the issuance of schedule of election till the completion thereof.
- iv. Individual transfers/ posting of civil servants shall also not be made after the issuance of schedule of election except under exceptional circumstance, in exigency of services and in public interest, with prior approval of the Election Commission.

Thus the order of respondent No.3 is also in clear violation of the direction issued by the Election Commission of Pakistan and may please be declared accordingly.

C. That the posting of respondent No.4 is based on political consideration as he has close ties with political figures and his appointment may give undue advantage in the forthcoming general election to his political favourites. A letter dated 28.02.2012 is annexed herewith as Annexure "J").

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- D. That the posting of petitioner in a different and low cadre post i.e. District Kanoongo and thus the same will adversely affect the promotion prospects of petitioner by posting him as District Kanoongo not only practically taking him out of the seniority list of Naib Tehsildar but infact repatriating him to lower and different cadre post.
- E. That according to Notification dated 20.09.2011 issued by the Secretary to Govt Revenue & Estate Department, the minimum posting period for Tehsildar and Naib Tehsildar is one year and in case the transfer is made before on year period, prior permission of Revenue & Estate Department is required. furthermore, officers/ officials belonging to other cadres will not be posted as Tehsildar and Naib Tehsildar. Thus, the impugned transfer orders of petitioner is prima facie violative of aforesaid notification dated 20.09.2011.
- F. That the petitioner is being treated unequally against the law and he is being deprived of equal protection of law.
- G. That through the impugned transfer order dated 16.04.2013, the respondents have violated the fundamental rights of the petitioner as guaranteed by the Constitution of Pakistan.



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It is, therefore, humbly prayed that the impugned transfer order dated 16.04.2013, whereby the petitioner has been transferred and posted as District Kanoongo, Peshawar and instead respondent No.3 without lawful authority appointed / posted respondent No.4 as Naib Tehsildar may please be declared as illegal, unlawful and without jurisdiction and be declared accordingly.

Any other remedy which deems fit by this Honourable Court may also be granted in favour of petitioner.

INTERIM RELIEF:

By way of interim relief, the operation of the impugned transfer order dated 16.04.2013 may please be suspended, till the final disposal of the writ petition.

Petitioner

Through

*[Signature]*  
Babar Khan Yousafzai  
Advocate, Peshawar

Date: 09.05.2013

CERTIFICATE:

That earlier a writ petition No.1092-P/13 has been filed before this Honourable Court.

*[Signature]*  
ADVOCATE

LIST OF BOOKS:

1. Constitution of Islamic Republic of Pakistan, 1973
2. Any other law books according to need

*[Signature]*  
ADVOCATE

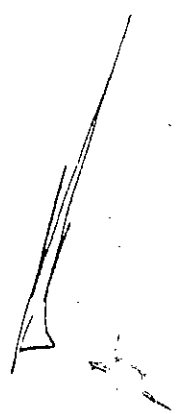
19 / (21)  
PESHAWAR HIGH COURT, PESHAWAR.

FORM 'A'  
FORM OF ORDER SHEET

Amir  
Amir ECU

Date of order.	Order or other proceedings with the order of Judge
16.5.2013.	<p><u>W.P. 1328-P of 2013.</u></p> <p>Present: Mr. Babar Khan Yousafzai, advocate for petitioner.</p> <p>-----</p> <p><u>DOST MUHAMMAD KHAN, C.J.</u>- Petitioner has question his transfer order dated 16.4.2013 on various grounds and because this constitutional petition has been filed as the Provincial Services Tribunal according to the petitioner is not fully functional after the judgment of the Hon'ble Supreme Court in the case of <u>Sheikh Riaz-ul-Haq Vs. Federation of Pakistan</u> and because the Ordinance No.2 of 2013 promulgated by the Governor, Khyber Pakhtunkhwa is not in conformity with the principle and ratio laid down by the Hon'ble apex court, hence no forum to seek redress for the petitioner is available, therefore, this petition has been filed here.</p> <p>2. Once under Article 212 of the Constitution of Pakistan, 1973 and under the provision of Service Tribunal Act, 1974 a forum with exclusive jurisdiction has been provided for the redressal of grievances of a particular class of person like</p>

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civil servant, then temporary non-functional of the said forum would not reinvest jurisdiction in this court.

3. The proper course for the petitioner is to file a constitutional petition seeking direction from this court that the Provincial Government shall comply with the judgment of the Hon'ble apex court in full without pick and choose and the Provincial Services Tribunal must be constituted according to the procedure laid down by the Hon'ble apex court on the strength of principle laid down by it in the above mentioned judgment and in that way the petitioner would be able to get remedy from the newly constituted Services Tribunal.

With these observations, this petition is disposed of.

~~\_\_\_\_\_~~  
CHIEF JUSTICE

~~\_\_\_\_\_~~  
JUDGE

~~\_\_\_\_\_~~  
A. P. S. S. S.

12/7

(13)  
Annex 'F'

BEFORE THE COURT OF SENIOR MEMBER BOARD OF  
REVENUE KHYBER PAKHTUNKHWA

1. Kifayatullah Naib Tehsildar  
2. Adil Waseem Naib Tehsildar ..... Appellants

Versus

Commissioner, Peshawar Division Peshawar ..... Respondent

DEPARTMENTAL APPEAL / REPRESENTATION AGAINST THE  
ORDER DATED 16.04.2013 PASSED BY COMMISSIONER  
PESHAWAR DIVISION PESHAWAR.

My this single order will dispose of the above mentioned two identical  
appeals / representations against the order dated 16.04.2013 issued by Commissioner,  
Peshawar Division whereby M/S Kifayatullah Naib Tehsildar was posted as Head Clerk  
(Revenue) and Adil Waseem was posted as District Kanungo Peshawar.

Peshawar High Court vide their Judgement dated 04.06.2013 remanded the  
case of the appellants with the observations that the departmental appellate authority, who  
earlier rejected the Representations of the Petitioners shall revisit the matter, if not already  
decided and grievances of the Petitioners be resolved in light of the Supreme Court  
Judgement dated 09.05.2013 whereby all the appointments, transfers and postings which has  
been made by the Caretaker Government, has been declared void ab initio, null and void and  
without lawful authority.

Perusal of the available record reveals that the posting / transfer orders were  
issue during the Caretaker Government, therefore in light of Judgement of Peshawar High  
Court dated 04.06.2013 passed in Writ Petition No. 1407-P/2013 and Hon'ble Apex  
Supreme Court of Pakistan the posting / transfer orders dated 16.04.2013 of Commissioner,  
Peshawar is without lawful authority and is therefore cancelled. Appeals / Representations  
are accepted.

Announced  
Dated 20.06.2013

ATTESTED

*[Signature]*  
Senior Member,  
Board of Revenue,  
Khyber Pakhtunkhwa

*[Signature]*  
Senior Member

*[Signature]*  
ATTESTED

24 (24)  
GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT

Annex G

CHARGE SHEET

1. Waqar Ayub, Secretary Revenue & Estate Department, Khyber Pakhtunkhwa as Competent Authority, hereby charge you Mr Adil Waseem Naib Tehsildar (BPS - 14) as follows:

1. That you while posted as Naib Tehsildar Qasba Circle, Peshawar committed the following irregularities:

a) That you were transferred on 16.04.2013 and posted as District Kanungo Peshawar in the office of Deputy Commissioner, Peshawar. When the office of Commissioner, Peshawar Division inquired about charge assumption, it was reported by the Deputy Commissioner, Peshawar on 16.05.2013 that you have not yet assumed the charge of your post. Your refusal to comply with transfer orders in time falls within the mischief of insubordination and misconduct.

b) When your explanation was called on 22.05.2013 you sent charge assumption report under No. 827-31/ADC/DC, dated 16.05.2013 to Commissioner, Peshawar Division. On enquiry it revealed that this dispatch number was affixed on some other communication. Therefore, you forged the dispatch number which tantamounts to cheating and misconduct.

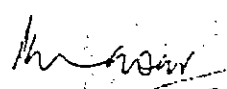
2. By reasons of the above, you appear to be guilty of misconduct and insubordination as defined under Rule - 3 of Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule - 4 of the Rules ibid. Copy of fact finding enquiry report is annexed.

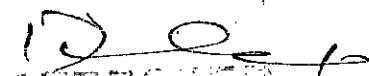
3. You are, therefore, required to submit your written defence within 07 days of the receipt of this charge sheet, to the Inquiry Officer, as the case may be.

4. Your written defence, if any, should reach the Inquiry Officer within the specified period, failing which it shall be presumed that you have no defence to put in and in that case appropriate action shall be taken against you.

Intimate whether you desire to be heard in person.

5. Statement of allegations is enclosed.

  
1-8-2012  
Secretary  
Revenue & Estate Department

  
ATTESTED

GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE AND ESTATE DEPARTMENT

CHARGE SHEET:

I, Waqar Ayub, Secretary Revenue & Estate Department, Khyber Pakhtunkhwa as Competent Authority, hereby charge you Mr. Adil Waseem Naib Tehsildar (BPS-14) as follows:

1. That you while posted as Naib Tehsildar Qasba Circle, Peshawar committed the following irregularities:
  - a) That you were transferred on 16/04/2013 and posted as Distict Kanungo Peshawar in the office of Deputy Commissioner, Peshawar. When the office of Commissioner, Peshawar Division inquiry about charge assumption, it was reported by the Deputy Commissioner, Peshawar on 16/05/2013 that you have not yet assumed the charge of your post. Your refusal to comply with transfer orders in time falls within the mischief of insubordination and misconduct.
  - b) When your explanation was eared on 22/05/2013 you sent charge assumption report under No. 827-31/ADC/DC. Dated 16/05/2013 of Commissioner, Peshawar, Division on enquiry it reversals that this dispatch number was affixed on some other communication. Therefore, your forged the dispatch number which tantamount to cheating and misconduct.
2. By reasons of the above, you appear to be guilty of misconduct and in subordination as defined under Rule 3 of Khyber Pakhtunkhwa Government Servants (Efficiency and Disciplinary) Rule 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the Rules ibid. Copy of facts finding enquiry report is annexed.
3. You are, therefore, required to submit your written defence within 07 days of the receipt of this charge sheet, to the Inquiry Officer, as the case may be.
4. Your written defence, if any, should reach the Inquiry Officer within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

Intimate whether your desire to be heard in person.  
Statement of allegations is enclosed.

Secretary  
Revenue & Estate Department



25 (25)

Annex (11)

GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT

DISCIPLINARY ACTION

I, Waqar Ayub, Secretary Revenue & Estate Department, Khyber Pakhtunkhwa as Competent Authority, am of the opinion that Mr. Adil Waseem Naib Tehsildar (BPS - 14), has rendered himself liable to be proceeded against, as he committed the following acts / omissions, within the meaning of Rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

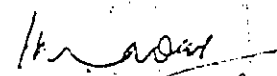
STATEMENT OF ALLEGATIONS

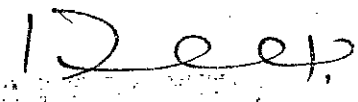
- a) That you were transferred on 16.04.2013 and posted as District Kamange Peshawar in the office of Deputy Commissioner, Peshawar. When the office of Commissioner, Peshawar Division inquired about your charge assumption, it was reported by the Deputy Commissioner, Peshawar on 16.05.2013 that you have not yet assumed the charge of your post. Your refusal to comply with transfer orders in time falls within the mischief of insubordination and misconduct.
- b) When your explanation was called on 22.05.2013 you sent charge assumption report under No. 827-31/ADC/D/C, dated 16.05.2013 to Commissioner, Peshawar Division. On enquiry it revealed that this dispatch number was affixed on some other communication. Therefore, you forged the dispatch number which tantamounts to cheating and misconduct.

For the purpose of inquiry against the said accused with reference to the above allegations, Syed Zaheer-ul-Islam, Deputy Commissioner, Peshawar is appointed as Inquiry Officer under Rule 10(1)(a) of the Rules ibid.

The Inquiry Officer shall, in accordance with the provisions of the Rules ibid provide reasonable opportunity of hearing to the accused, record findings and make, within thirty (30) days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

The accused and a well conversant representative of Commissioner Office Peshawar shall join the proceedings on the date, time and place fixed by the Inquiry Officer.

  
Secretary  
1-8-2013  
Revenue & Estate Department



GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE AND ESTATE DEPARTMENT

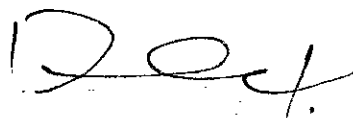
DISCIPLINARY ACTION

I, Waqar Ayub, Secretary Revenue & Estate Department, Khyber Pakhtunkhwa as Competent Authority, am of the opinion that Mr. Adil Waseem Naib Tehsildar (BPS-14), has rendered himself liable to be proceeded against as he committed the following acts/ omissions, within the meaning of Rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011.

STATEMENT OF ALLEGATIONS

- a) That you were transferred on 16/04/2013 and posted as District Kanungo Peshawar in the office of Deputy Commissioner, Peshawar, when the office of Commissioner, Peshawar Division inquired about your charge assumption. It was reported by the Deputy Commissioner, Peshawar on 16/05/2013 to Commissioner, Peshawar Division. On enquiry it revealed that this dispatch number was affixed on some communication. Therefore, you forged the dispatch number which tantamount to cheating and misconduct.
2. For the purpose of inquiry against the said accused with reference to the above allegations, Syed Zaheer-ul-Islam, Deputy Commissioner, Peshawar is appointed as Inquiry Officer under Rule 10 (1) (a) of the Rules ibid.
3. The inquiry Officer shall, in accordance with the provisions of the Rules ibid provide reasonable opportunity of hearing to the accused, record findings and make, within thirty (30) days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.
4. The accused and as well conversant representative of Commissioner Office Peshawar shall join the proceedings on the date time and place fixed by the Inquiry Officer.

Secretary  
Revenue & Estate Department





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GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT

(42)

Amir

SHOW CAUSE NOTICE

1. I, Waqar Ayub, Secretary Revenue & Estate Department, under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 serve you, Mr. Adil Waseem, Naib Tehsildar that an inquiry conducted against you, an opportunity was given to be heard in person and written defence vide communication dated 02.08.2013.
2. After going through the findings of the Inquiry Officer, the material on record and other connected papers including your defence before the Inquiry Officer, I am satisfied that you have committed gross misconduct on the following counts:
  - a) That while you were transferred on 16.04.2013 and posted as District Kanungo Peshawar in the office of Deputy Commissioner, Peshawar and when the office of Commissioner, Peshawar Division inquired about charge assumption, it was reported by the Deputy Commissioner, Peshawar on 16.05.2013 that you have not yet assumed the charge of your post. Your refusal to comply with transfer orders in time falls within the ambit of insubordination and misconduct.
  - b) That when your explanation was called on 22.05.2013 you sent charge assumption report under No. S27-31/ADC/DC dated 16.05.2013 to Commissioner, Peshawar Division. On enquiry it reveals that this dispatch number was affixed on some other communication. Therefore, you forged the dispatch number which tantamounts to cheating and misconduct.
3. As a result thereof, I, as Competent Authority, have decided to impose one or more major penalties indicated in Rule 4(b)(ii) (iii) and (iv) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.
4. You are therefore required to show cause as to why the aforesaid penalty should not be imposed upon you. Furthermore, you are directed to appear on 11.09.2013 at 9.00 am before the undersigned for personal hearing.
5. If no reply to this Notice is received within seven days of its delivery, it shall be presumed that you have no defence to put in, and ex-parte action shall be taken against you.

Copy of finding Inquiry Report is enclosed.

*Amir*  
Secretary 30-8-2013

No.Estt: V/Adil Waseem/155558  
Peshawar dated 30/08/2013  
Mr Adil Waseem, Naib Tehsildar, Peshawar.

*Adil Waseem*

Subject:

(27)

ENQUIRY INTO THE DISCIPLINARY PROCEEDINGS  
RULE 3 OF KHYBER PAKHTUNKHWA GOVERNMENT SERVANTS  
(EFFICIENCY & DISCIPLINARY) RULES 2011 AGAINST  
1. MR. KIFAYATULLAH, NAIB TEHSILDAR MOHMAND CIRCLE.  
2. MR. ADIL WASEEM, NAIB TEHSILDAR QASBA CIRCLE.

BRIEF HISTORY.

An enquiry was entrusted to the undersigned as Enquiry Officer by the Board of Revenue, Government of Khyber Pakhtunkhwa, vide its order contained in letter No Estt:VI/Adil Waseem/14390, Peshawar, dated 01.8.2013, for making probe into the allegations made against Mr. Kifayatullah Naib Tehsildar Mohmand Circle and Mr. Adil Waseem Naib Tehsildar Qasba Circle regarding insubordination, cheating and misconduct (Annexure-A)

2 The charges to be enquired by me are that both the Naib Tehsildars Kifayatullah and Adil Waseem while posted as N.T Mohmand and Qasba Circles respectively were transferred on 16.04.2013 by the competent authority as Head Clerk Revenue and District Kanungo Peshawar, in the office of the Deputy Commissioner, Peshawar, but FIRSTLY they did not take the charge (Annexure-B). When the office of the Commissioner Peshawar Division Peshawar, enquired about the charge assumption, it was reported by the Deputy Commissioner, Peshawar, on 16.5.2013 that they had not assumed the charge of the posts yet (Annexure-C). It was then reasonably presumed that they had refused to comply with the transfer orders in time and their this act was taken within the meaning of mischief of insubordination and misconduct.

3- SECONDLY, when the explanation was called on 22.5.2013, the accused officials sent their charge assumption reports against forged dispatch numbers which were allocated to some other correspondence and as such by forging the dispatch numbers and making wrong entries in the dispatch register, both the officials were considered guilty of cheating and misconduct.

4 The Commissioner Peshawar Division Peshawar asked to probe into the case of bogus and back dated charge assumption reports of the Naib Tehsildars Mr. Kifayatullah and Adil Waseem and submit report by 6.6.2013 upon which, Mr. Mohammad Fawad Additional Assistant Commissioner conducted a fact finding preliminary enquiry.

5 The Officer conducted a detailed enquiry and found the allegations true to the extent that the charge assumption reports were bogus, back dated and prepared with malafide intention. He opined that both the officials did not comply with the transfer orders and were guilty of misconduct. The probing Officer in his preliminary facts finding enquiry recommended disciplinary action against the accused officials under Rule 3 of Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011 (Copy attached as Annexure-D).

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Therefore, the Board of Revenue Government of Khyber Pakhtunkhwa vide its order contained in letter No.Estt:V/Adil Waseem/14390 dated 1.8.2013 ordered the present enquiry to make probe into the allegations made against Mr. Kifayatullah and Adil Waseem Naib Tehsildars Mohmand & Qasba Circles respectively regarding insubordination, cheating & misconduct.

In the charge sheets and statement of allegations, both the accused officials are charged separately for committing the following acts/omissions, which are reproduced as

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"1. Mr. Kifayatullah Naib Tehsildar Mohmand Circle.

(a) That you were transferred on 16.4.2013 and posted as Head Clerk Revenue Peshawar in the office of Deputy Commissioner Peshawar. When the office of the Commissioner Peshawar enquired about the charge assumption, it was reported by the Deputy Commissioner Peshawar on 16.5.2013, that you have not got assumed the charge of the post. Your refusal to comply with the transfer orders in time falls within the mischief of insubordination and misconduct.

(b) When your explanation was called on 22.5.2013, you sent charge assumption report under No.822-26/ADC/DK dated 16.5.2013 to Commissioner Peshawar Division. On enquiry it revealed that this dispatch number was affixed on some other communication. Therefore, you forged the dispatch number, which tantamounts to cheating and misconduct."

"Mr. Adil Waseem Naib Tehsildar, Qasba Circle Peshawar.

(a) That you were transferred on 16.4.2013 and posted as Head Clerk Revenue Peshawar in the office of Deputy Commissioner Peshawar. When the office of the Commissioner Peshawar enquired about the charge assumption, it was reported by the Deputy Commissioner Peshawar on 16.5.2013, that you have not got assumed the charge of the post. Your refusal to comply with the transfer orders in time falls within the mischief of insubordination and misconduct.

(b) When your explanation was called on 22.5.2013, you sent charge assumption report under No.827-31/ADC/DK dated 16.5.2013 to Commissioner Peshawar Division. On enquiry it revealed that this dispatch number was affixed on some other communication. Therefore, you forged the dispatch number, which tantamounts to cheating and misconduct."

PROCEEDINGS

Immediate after the receipt of enquiry order, the charge sheets/statement of allegations were served upon the accused officials on 02.08.2013, wherein the accused were required to put their written defence within seven days of the receipt of charge sheets before the enquiry officer, otherwise it would be presumed that they have nothing to offer in their defence and ex-parte proceedings would be undertaken. They were also asked to intimate whether they desire to be heard in person or otherwise. On 13.08.2013, both the accused officials appeared in person, submitted their written statements (Annexure-E & Annexure-F). In the meantime, the dispatch clerk Mr. Imran was also called who presented the dispatch register. Both the accused officials and dispatch Clerk were examined/cross examined in the light of record in presence of all.

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DEFENCE BY ACCUSED OFFICIALS.

A. In response to the charge that why did they not take the charge of the posts of their new assignments, they contended that their services had been placed on the disposal of District & Sessions Judge Peshawar vide letter No.5184/ADC(P)/EA dated 05.04.2013 for facilitating the election process and as such they reported to his office.(Annexure-G). They further stated that in the meantime, they were transferred on 16.04.2013 but through another order vide letter No.5999/DC(P)AG-I/Election dated 24.04.2013, they were instructed to continue their election duties with the District Returning Officer/District & Session Judge Peshawar, in the large public interest.

According to them, being on duty in the office of District & Session Judge Peshawar, they were not supposed to take the charge of their new places of posting vide ibid orders till completion of the election process.

B. While responding to 2<sup>nd</sup> charge, they categorically denied the charge and said that it was the responsibility of dispatch clerk to properly register their charge assumption reports which according to them they had handed over to the staff of office of the Additional Deputy Commissioner Peshawar. To cut short they did not own the charge of forgery of dispatch number.

STATEMENT OF DISPATCH CLERK (MR.IMRAN)

Mr. Imran, dispatch clerk, A.D.C. Office Peshawar, in the presence of accused officials, recorded his statement and said that Mr.Kifayatullah Naib Tehsildar came to his office on 23.05.2013 and asked him to enter the charge assumption reports in back date i.e 16.05.2013 but he refused to do so on the advice of his senior namely Haji Siddique. He further maintained that he refused to obey the illegal request of accused official and left the office for getting some photocopies. On his return, he found that the charge assumption reports had been entered against wrong dispatch numbers on 16.05.2013, which were already allocated to other correspondence. According to him there are ample chances that it was done by the accused official.

EXAMINATION OF RECORD.

The Dispatch Clerk also produced the dispatch register. It was confirmed by the examination of dispatch register that endorsements No.822-26/ADC/DC in respect of charge assumption report of Mr. Kifayatullah and No.827-31/ADC/DC in respect of charge assumption report of Mr. Adil Waseem have already been allocated to other correspondence. Endorsement/Dispatch No 821-823 issued to office orders of Mr.

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ARSNED & TOUNIS HAD QASIS, and dispatch clerk's name is \_\_\_\_\_  
Tehsildar Peshawar titled application for correction of girdawari, 825 to a summon  
addressed to Tehsildar Peshawar and 826 to a notice addressed to Tehsildar. The entry  
was found false and forged to cheat the high-ups.

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DISCUSSION.

From perusal of the charge sheets, statement of allegations, replies thereto by  
the accused officials, statement of dispatch clerk and examination of the record, the  
questions/discussion generate that:-

Firstly, whether the accused officials deliberately did not comply with the transfer orders  
or otherwise?

Secondly, why the need arose to enter the charge assumption reports in back date?

It is an admitted fact that an officer or official can not remain unaware of his  
transfer orders and it is also true that Govt. servants are quite conscious of the service  
rules, policies and principles. Being astonished by an official on knowing that he has  
been transferred to some other position and that too not through the office where he has  
been assigned additional duty, is just a deceitful statement by the accused officials. No  
sooner did the officer/officials come to know, that they have been transferred, they  
either take over/hand over the charge or relinquish/assume, as the case may be and in  
the instant case their plea that as they were on duty with District Returning Officer and  
were not supposed to take the charge is totally absurd. The fact is proved as both the  
defiant officials lodged civil suits in the court of Mr. Mohammad Irfan Civil Judge  
Peshawar on 18.4.2013. Copies attached as Annexure-'H' & 'J'.

Their arguments are inappropriate and unreasonable. They were supposed to  
take the charge of the posts against which they had to draw their salaries. Further more,  
they were directed by the then Deputy Commissioner to continue their additional  
assignment i.e election duty and were not barred to take the charge of the posts of new  
positions.

The fact that they did not bother to assume the charge is further augmented by  
the statement of the dispatch clerk where they turn up on 23<sup>rd</sup> May once matter was  
ordered to be enquired.

Now coming to the second question as to what forced them to submit their  
charge assumption reports on 16<sup>th</sup> May 2013, and why they wanted to have dispatch  
nos. on that very day only, the answer is quite simple. Firstly the Deputy Commissioner  
had reported on 16<sup>th</sup> May 2013, that they had not assumed their charges and secondly,  
the office of the Commissioner Peshawar Division has enquired about the compliance of  
the orders. When they failed to force the dispatch clerk's hand, they themselves  
hurriedly and dishonestly entered their charge assumption reports against wrong  
dispatch numbers, taking advantage of absence of dispatch clerk and thus committed  
another blatant misconduct.

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(D.C./E.O.)

(Better Copy)

Arshad and Younas Naib Qasid and disappearance of Revenue Record Tehsildar Peshawar tilted application for correction of girdawari, 825 to a summon addressed to Tehsildar Peshawar and 826 to a notice addressed to Tehsildar. The entry was found false and forged to cheat the high-ups.

DISCUSSION:

From perusal of the charge sheets, statement of allegations, replies thereto by the accused officials, statement of dispatch clerk and examination of the record, the questions/ discussion generate that:-  
 Firstly, whether the accused officials deliberately did not comply with the transfer orders or otherwise?  
 Secondly, why the need arose to enter the charge assumption reports in

back date?

It is an admitted fact that an officer or official can not remain unaware of his transfer orders and it is also true the Govt: servants are quite conscious of the service rules, policies and principles. Being astonished by an official on knowing that he has been transferred to some other position and that too not through the office where he has been assigned additional duty, it just a deceitful statement by the accused officials. No entire take over/ hand over the charge or relinquish/ assume, as the case may be and in were not supposed to take the charge is totally absurd. The fact is proved as both the defiant officials lodged civil suits in the Court of Mr. Mohammad Irfan Civil Judge Peshawar on 18/04/2013. Copies attached as annexure "H" and "J".

Their arguments are inappropriate and unreasonable. They were supposed to take the charge of the posts against which they had to draw their salaries. Furthermore, they were directed by the then Deputy Commissioner to continue their additional assignment i.e. election duty and were not barred to take the charge of the posts of new positions.

The fact that they did not bother to assume the charge is further augmented by the statement of the dispatch clerk where they turn up on 23<sup>rd</sup> May once matter was ordered to be enquired.

Now coming to the second question as to what forced them to submit their charge assumption reports on 16<sup>th</sup> May 2013, and why they wanted to have dispatch nos on that very day only, the answer is quite simple. Firstly the Deputy Commissioner had reported on 16<sup>th</sup> May 2013, that they had not assumed their charges and secondly, the office of the Commissioner Peshawar Division has enquired about the compliance of the orders. When they failed to force the dispatch clerk's hand, they themselves hurriedly and dishonestly entered their charge assumption reports against wrong dispatch numbers, taking advantage of absence of dispatch clerk and thus committed another blantant misconduct.

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FINDINGS :

Both the charges stand proved against the accused officials because they were supposed to take the charge well in time, comply with the orders and then keep on performing additional duties with District Returning Officer at the same time. Their contention is not correct that they were not aware of their postings and were on election duty thinking nothing of their transfer orders.

As far as the charge of back dated entry of their charge assumption reports is concerned, their reply that it was not their responsibility and they knew nothing about it, is not convincing. As discussed earlier, in first attempt, they tried to exert pressure or influence the dispatch clerk and on his refusal, they did that what was not justified. The statement of the dispatch clerk supports the attribution of wrong entries by the accused officials for their gain by corrupting the record on one hand and deceiving the bosses on the other.


RECOMMENDATIONS.


It is deduced from the facts, record and statements that both the officials are found guilty of insubordination, misconduct and cheating. One of the following major penalties is recommended please:-

1. Compulsory retirement.
2. Dismissal from service.

Enquiry report containing 5 pages and 9 annexure are enclosed.

Dated 26.08.2013

  
Deputy Commissioner,  
Peshawar.  
(Enquiry Officer)

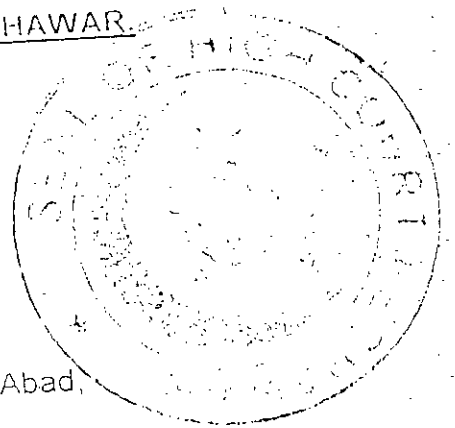
  
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Annex H

~~Annex A~~

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.



In Re: W.P No 2238 /2013

Kifayatullah S/O Haji Akbar R/O Gulbahar No.3, Street Idress Abad,  
Peshawar City.....Petitioner

VERSUS

1. Government of Khyber Pakhtun Khwa,  
Through Chief Secretary,  
Peshawar.
2. Govt. of K.P.K. through  
Secretary Board of Revenue, Civil Secretariat,  
Peshawar.
3. Senior Member Board of Revenue, Khyber Pakhtunkhwa, Civil Secretariat,  
Peshawar
4. Deputy Commissioner, Peshawar, Deputy Commissioner Office, Bacha  
Khan Choke Peshawar.
5. Syed Sultan Haidar Shah S/o Syed Gulzar Hussain Shah  
R/o Sheikh Abad No.3, House No. 946/14-A,  
Peshawar.....Respondents

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PETITION UNDER ARTICLE 199 OF THE  
CONSTITUTION OF ISLAMIC REPUBLIC  
OF PAKISTAN, 1973  
=====

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FILED TODAY  
Deputy Registrar

ATTESTED  
EXAMINER  
Peshawar High Court,  
25 JUN 2014



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JUDGMENT SHEET  
PESHAWAR HIGH COURT PESHAWAR  
JUDICIAL DEPARTMENT

W.P. NO. 2238-P OF 2013

JUDGMENT

Date of hearing 9-10-2013

Appellant (Kifayatullah) By Mr. Babar Khan Gusaif

Respondent (Govt. Etc) By Mr. Waqar Ahmad Khan, advoc  
AA-9

MIAN FASIH-UL-MULK, J.- Through this

single judgment in W.P. No.2238-P of 2013, we

intend to dispose of the connected Writ Petition

No.2350-P/2013 also, as both are identical in

nature.

2. Kifayatullah and Adil Waseem are

petitioners in above noted writ petitions. They are

Naib Tehsildars in the Revenue Department, who

were transferred by the Deputy Commissioner,

Peshawar on 16.04.2013 and posted as Head Clerk

Revenue as well as District Kanungo Peshawar

respectively in the office of Deputy Commissioner.

In response to a query, whether petitioners had

assumed the charge in compliance with above

transfer orders or not, it was reported that they had

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not submitted their arrival reports. The Deputy Commissioner, therefore, called explanations from both the petitioners, who then submitted their charge reports but the same were found to be entered in the back dates.

3. Meanwhile, petitioners questioned their transfer orders before this Court by filing writ petitions, which, according to them were illegal having been made during the Care-Taker Government in violation of the orders of the august Supreme Court of Pakistan. The writ petitions were, however, disposed of with directions to petitioners to seek their remedy from the Service Tribunal. Petitioners again filed writ petitions before this Court as the Khyber Pakhtunkhwa Service Tribunal being disfunctional did not entertain their appeals. The writ petitions were disposed of with directions to the appellate authority i.e. Senior Member Board of Revenue to dispose of the departmental appeals of petitioners.

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not submitted their arrival reports. The Deputy Commissioner, therefore, called explanations from both the petitioners, who then submitted their charge reports but the same were found to be entered in the back dates.

3. Meanwhile, petitioners questioned their transfer orders before this Court by filing writ petitions, which, according to them were illegal having been made during the Care-Taker Government in violation of the orders of the august Supreme Court of Pakistan. The writ petitions were, however, disposed of with directions to petitioners to seek their remedy from the Service Tribunal. Petitioners again filed writ petitions before this Court as the Khyber Pakhtunkhwa Service Tribunal being dysfunctional did not entertain their appeals. The writ petitions were disposed of with directions to the appellate authority i.e. Senior Member Board of Revenue to dispose of the departmental appeals of petitioners.

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Ultimately, the same were decided and transfer orders of petitioners were declared as without lawful authority; hence cancelled vide order dated 20.06.2013.

4. After about three and a half month of the above order, respondent No.5 filed review petitions before Senior Member Board of Revenue, which were accepted and the case was re-opened, in response to which Secretary Revenue and Estate Department issued charge-sheets against petitioners and the Deputy Commissioner was made inquiry officer in the matter, who in his fact finding inquiry held the petitioners guilty of the charge, on the basis of which show-cause notices were issued against the petitioners.

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5. Petitioners through instant writ petitions apprehend that the Deputy Commissioner being biased against them would not be in a position to do complete justice to petitioners.

*Am*

6. In view of the above factual aspect of the case, these writ petitions are disposed of with directions to respondents that let the charge against petitioners be re-enquired through Member-II Board of Revenue wherein petitioners shall be provided proper opportunity of defence and dealt with strictly in accordance with law and the rules, keeping in view the fact also that a competent forum had earlier declared the transfer orders of petitioners as without lawful authority, where after again petitioners are being proceeded against for the same charge. No order as to costs.

Announced  
09.10.2013

JUDGE

*Sd/- Miran Fazlulmulk - J*  
*Sd/- Qasim Roshid Khan - J*

JUDGE

21959

25-6-14

58

10.00

25-6-14

25-6-14

25-6-14

12.04

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IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

CPLA NO. 670-P 2013

Govt. of Khyber Pakhtunkhwa through  
Chief Secretary, Peshawar etc

-----PETITIONERS

VERSUS

Kifayatullah etc

-----RESPONDENTS

Appeal from  
Counsel for Petitioner  
Instituted by

: Peshawar High Court, Peshawar  
: Advocate General, KPK, Peshawar  
: Mian Saadullah Jandoli, AOR

Request-  
23-1-2014.

o/c

Deep

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Sessions Judge  
Peshawar  
1.7.00

**IN THE SUPREME COURT OF PAK**  
**(Appellate Jurisdiction)**

CPLA NO. \_\_\_\_\_/2013

Govt. of Khyber Pakhtunkhwa through  
Chief Secretary, Peshawar etc

-----PETITIONERS

**VERSUS**

Kifayatullah etc

-----RESPONDENTS

*Appeal from* : *Peshawar High Court, Peshawar*  
*Counsel for Petitioner* : *Advocate General, KPK, Peshawar*  
*Instituted by* : *Mian Saadullah Jandoli, AOR*

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**CERTIFIED** that the paper book has been prepared in accordance with the rules of the Court and all the documents necessary for due appreciation of the court have been included in it. Index is complete in all respect.

(Mian Saadullah Jandoli)  
Advocate on Record  
Supreme Court of Pakistan  
For Govt. of KPK/petitioners

*D. J.*

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

CPLA NO. \_\_\_\_\_/2013

Govt. of Khyber Pakhtunkhwa through  
Chief Secretary, Peshawar etc

-----PETITIONERS

VERSUS

Kifayatullah etc

-----RESPONDENTS

CONCISE STATEMENT

*12 Oct*  
ALLOTTED

- 1- Subject matter and the law      Claim for setting aside the appointment  
Order of enquiry officer appointed by the  
petitioner
- 2- Which side has filed this petition      Government / petitioners

Court /Forum	Date of a). Institution b) Decision	Who filed it and with what result
Peshawar High Court, Peshawar	a) 24/7/2013 b) 9/10/2013	Respondents filed writ petition which has been accepted
Points noted in the impugned Judgment	Treatment of points in the impugned judgment	
Meanwhile, respondents questioned their transfer orders before this Court by filing writ petitions, which, according to them were illegal having been made during the Care-Taker Government in violation of the orders of the august Supreme Court of	Respondents through instant writ petitions apprehend that the Deputy Commissioner being biased against them would not be in a position to do complete justice to respondents.	



(Better Copy)

IN THE SUPREME COURT OF PAKISTAN  
Appellate Jurisdiction

CPLA \_\_\_\_\_/2013

Govt. of Khyber Pakhtunkhwa through  
Chief Secretary, Peshawar etc .....Petitioners

VERSUS

Kifayatullah etc .....Respondents

CONCISE STATEMENT

1. Subject matter and the law Claim for setting aside the appointment  
Order of enquiry officer appointed by the  
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Points noted in the impugned judgment	Treatment of points in the impugned judgment	
Meanwhile, respondents questioned their transfer orders before this Court by filing writ petitions, which, according to them were illegal having been made during the care-taker Government in violation of the orders of the august Supreme Court of Pakistan. The writ petitions were, however disposed of with directions to	Respondents through instant writ petitions apprehend that the Deputy Commissioner being biased against them would not be in a position to do complete justice to respondents. In view of the above factual aspect of the case, these writ petitions are	

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respondents to seek their remedy from the Service Tribunal. Respondents again filed writ petitions before this court as the Khyber Pakhtunkhwa Service Tribunal being dysfunctional did not entertain their appeals. The writ petitions were disposed of with directions to the appellate authority i.e. Senior Member Board of Revenue to dispose of the departmental appeals of respondents. Ultimately, the same were decided and transfer orders of respondents were declared as without lawful authority; hence cancelled vide order dated 20/6/2013.

After about three and a half month of the above order, respondent No.2, filed review petitions before Senior Member board of Revenue, which were accepted and the case was re-opened, in response to which Secretary Revenue and Estate Department issued charge-sheets against respondents and the Deputy Commissioner was made inquiry officer in the matter, who in his fact finding inquiry held the respondents guilty of the charge, on the basis of which show cause notices were issued against the respondents.

disposed of with directions to petitioners that let the charge against respondents be re-enquired through Member-II Board of Revenue wherein respondents shall be provided proper opportunity of defence and dealt with strictly in accordance with law and the rules, keeping in view the fact also that a competent forum had earlier declared the transfer orders of respondents as without lawful authority, where after again respondents are being proceeded against for the same charge.

LAW/RULING ON THE SUBJECT

FOR:

- 1- CONSTITUTION OF PAKISTAN, 1973
- 2- CIVIL SERVANT E&D RULES 2011

CERTIFICATE:

CERTIFICATE that I myself prepared the above concise statement which is correct.

*Deaf*

(Mian Saadullah Jandoli)  
Advocate-on-Record  
Supreme Court of Pakistan  
For Government

(41)

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

CPLA NO. \_\_\_\_\_/2013

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Boar of Revenue, Peshawar
3. Senior Member Board of Revenue, Khyber Pakhtunkhwa, Civil Secretariat Peshawar
4. Deputy Commissioner, Peshawar, Deputy Commissioner Officer, Bacha Khan Choke Peshawar

-----PETITIONERS

**VERSUS**

1. Kifayatullah S/o Haji Akbar R/o Gulbahar No.3, Street Idress Abad, Peshawar City
2. Syed Sultan Haider Shah S/o Syed Gulzar Hussain Shah R/o Sheikh Abad No.3, House No.946/14-A, Peshawar

-----RESPONDENTS

CIVIL PETITION FOR LEAVE TO APPEAL  
UNDER ARTICLES 185(3) OF THE  
CONSTITUTION OF ISLAMIC REPUBLIC OF  
PAKISTAN, 1973 AGAINST THE JUDGMENT OF  
LEARNED PESHAWR HIGH COURT, PESHAWR  
DATED 9/10/2013 IN WRIT PETITION NO.2238-  
P/2013

*De*

RESPECTFULLY SHEWETH

The substantial questions of law of public importance and grounds, inter alia, which falls for determination of this august Court are as under:-

1. Whether the impugned judgment and order of the Honble Peshawar High Court, Peshawar does not suffer from material illegality and require interference by this august Court?
2. Whether the Honble Peshawar High Court, Peshawar has correctly exercised his jurisdiction in the matter in hand?
3. Whether the impugned judgment and order of the Peshawar Honble High Court, Peshawar is not coram-non-judice being matter of terms and conditions of service?
4. Whether the Honble Peshawar High Court, Peshawar has not illegally exercised his jurisdiction in the service matter which is sole domain of the Service Tribunal?
5. Whether the jurisdiction of the Honble Peshawar High Court, Peshawar does not bared under Article 212 of the Constitution being the matter of terms and conditions of service?
6. Whether the Honble Peshawar High Court, Peshawar has not pre-empted the powers and domain of the competent authority?
7. Whether the writ petition of the respondent is not competent and maintainable against issuance of Show Cause Notice as well as disputed question of facts?
8. Whether the Honble Peshawar High Court, Peshawar has not exercised his jurisdiction in pre-mature matter which will

*[Handwritten signature]*

influence the function and power of enquiry officer appointed in the matter in hand?

9. Whether under the law and rules it is not the domain and power of competent authority to make alteration or substitute enquiry officer in the enquiry proceedings and the High Court has no such power and authority to order for substitution of the enquiry officer in the enquiry proceeding under the E&D Rules?
10. Whether the respondent has not committed mis-conduct or insubordination in not complying with the order of competent authority?
11. Whether the respondent has not given the reply of explanation which is also violation of E&D rules and also constitute gross-misconduct and in subordination on the part of respondent?
12. Whether the respondent has not committed gross-misconduct while submitting fake and false dispatch number of charge report instead of submitting reply to the explanation?
13. Whether it is not pre-mature opinion/view of the respondent which was illegally endorsed by the Honble Peshawar High Court, Peshawar without any cogent, authentic and tangible evidence that the enquiry is based on malafide and it is the result of personal grudges when the enquiry officer has not yet conducted/started the enquiry in the matter?

FACTS

- II- Facts relevant to the above points of law, inter alia, are as under:-
1. That the respondent was appointed as Naib Tehsildar in the petitioner department on 22/1/2009.

influence the function and power of enquiry officer appointed in the matter in hand?

9. Whether under the law and rules it is not the domain and power of competent authority to make alternation or substitute enquiry officer in the enquiry proceedings and the High Court has no such power and authority to order for substitution of the enquiry officer in the enquiry proceeding under the E&D Rules?
10. Whether the respondent has not committed mis-conduct or insubordination is not complying with the order of competent authority?
11. Whether the respondent has not given the reply of explanation which is also violation of E&D rules and also constitute gross-misconduct and in subordination on the part of respondent?
12. Whether the respondent has not committed gross-misconduct while submitting fake and false dispatch number of charge report instead of submitting reply to the explanation?
13. Whether it is not pre-mature opinion/view of the respondent which was illegally endorsed by the Hon'ble Peshawar High Court, Peshawar without any cogent, authentic and tangible evidence that the enquiry is based on malafide and it is the result of personal grudges when the enquiry officer has not yet conducted/ started the enquiry in the matter?

**FACTS:**

- II- Facts relevant to the above points of law, inter alia, are as under:
  1. That the respondent was appointed as Naib Tehsildar in the petitioner department on 22/01/2009.

2. That the respondent was transferred by the petitioner Commissioner Peshawar Division on 16/4/2013.
3. That the respondent was not complying the order of transfer therefore his explanation was called on 22/5/2013 for non-compliance of the transfer order.
4. That the respondent did not give reply of the explanation but instead of reply he submitted a fake and false dispatch No.8,22-26/ADC/DC dated 16/5/2013 of assumption charge report.
5. That the petitioner No.3 then issued to the respondent charge sheet and statement of allegation on 1/8/2013 wherein the enquiry officer was appointed.
6. That the respondent filed writ petition in the Peshawar High Court, Peshawar against the notice of charge sheet and statement of allegation dated 1/8/2013.
7. That the comments were called from the petitioners to which the petitioners filed their comments and denied the allegation mentioned in the writ petition and also raised substantial points of jurisdiction as well as of maintainability.
8. That the Honble Peshawar High Court, Peshawar accepted the writ petition No.2238-P/2013 vide order dated 9/10/2013.
9. That the petitioners mortally aggrieved from the impugned judgment dated 9/10/2013 of Peshawar High Court, Peshawar prefer this CPLA before this august Court.

*D. [Signature]*  
 ATTESTED-

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10. That the petitioners seek leave to appeal against the impugned judgment of Peshawar High Court, Peshawar dated 9/10/2013 in writ petition No.2238-P/2013.

It is, therefore, prayed that on acceptance of this petition leave to appeal against the impugned order of Peshawar High Court, Peshawar dated 9/10/2013 in WP NO.2238-P/2012 may graciously be granted:

(Mian Saadullah Jandoli)  
Advocate-on-Record  
Supreme Court of Pakistan  
For Government

NOTE:

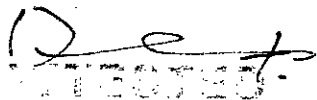
Learned Advocate General, KPK/ Addl. AG /State Counsel shall appear at the time of hearing of this petition.

ADDRESS

Office of the Advocate General, KPK, High Court Building, Peshawar. (Telephone No.091-9210119, Fax No.091-9210270)

CERTIFICATE Certified that no such petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.

Advocate-On-Record

  
RECORDED



(46)

GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT  
Peshawar dated 23 /07/2014

Annex J

NOTIFICATION

No. Estt: V/Adil Waseem/\_\_\_\_\_. Whereas Mr. Adil Waseem, Naib Tehsildar PDA Peshawar was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules 2011, for the charges, mentioned in the Charge Sheet & Statement of Allegations dated 31/10/2013;

AND WHEREAS, Hazrat Masaud Mian, Member -- II Board of Revenue was appointed as Inquiry Officer to probe charges leveled against the said official and submit findings and recommendations.

AND WHEREAS, the Inquiry Officer after having examined the charges, evidence produced before him and statement of accused official, submitted his report whereby the charge of cheating by affixing wrong number on the charge assumption report in order to cover non relinquishment of charge of post after issuance of transfer order stands proved.

AND THEREFORE, i, Waqar Ayub, Senior Member Board of Revenue/Secretary Revenue & Estate Department after having examined the charges evidence produced, statement of accused official, findings of Inquiry Officer and after personal hearing of the accused official concur with the findings and recommendation of the Inquiry Officer.

NOW THEREFORE, while considering cheating to be conduct unbecoming of Government Servant and gentlemen, and conduct prejudicial to good order and service discipline, i.e getting entered false number and date in the Dispatch Register on back dated charge relinquishment report which tantamounts to misconduct. I as Competent Authority, in exercise of power conferred under Rule4(b)(iii) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 impose the major penalty of dismissal from service upon Mr. Adil Waseem Naib Tehsildar PDA.

Sd/-  
Senior Member /Secretary

No. Estt: V/Adil Waseem/ 15530-35  
Copy forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa.
2. Commissioner, Peshawar Division, Peshawar.
3. Deputy Commissioner, Peshawar.
4. Private Secretary to Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
5. Official concerned.
6. Personal file.

  
Assistant Secretary (Estt.)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No: 711/2015

Adil Waseem S/O Masood-ur-Rehman R/O Saleh Khana, Tehsil Pabbi, District  
Nowshera..... Petitioner

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Senior Member, Board of Revenue Khyber Pakhtunkhwa and others..... Respondent

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS**

**PRELIMINARY OBJECTIONS.**

1. That the appellant has got no cause of action.
2. That the appellant has not come to the tribunal with clean hands.
3. That the instant appeal is barred by law.

**ON FACTS**


1. Pertains to record.
2. The appellant was transferred and posted as District Kanungo Peshawar vide Commissioner Peshawar Division order dated 16.04.2013, but he intentionally delayed assuming charge of new assignment and started approaching to get the transfer order cancelled. The appellant assumed the charge., when Commissioner Peshawar Division called his explanation on 22.05.2013 i.e. after 5 weeks. In order to show prompt implementation of the transfer order, the appellant got entered the charge report in the dispatch register in back date under No. 827-31 which was allotted to another communication by the dispatcher on 16.05.2013. on the basis of which charge sheet was issued to the appellant.
3. Pertains to record.
4. Correct to the extent that on the basis of Judgment of Peshawar High Court Peshawar the matter was re-enquired through Member Board of Revenue – II, who also held the appellant responsible and recommended major penalty upon the appellant.
5. As in Para – 4 above.
6. Incorrect. The appellant has been given proper opportunity of hearing and after adopting proper procedure, major penalty of removal from service was issued upon the appellant.
7. Incorrect. Finding of enquiry was provided to the appellant.
8. Incorrect. Departmental appeal of the appellant was filed after due consideration.

**GROUND.**

- A. Incorrect. Charge sheet was issued to the appellant strictly under the rules, and the allegation leveled against the appellant stands proved during the proceeding.

- B. Incorrect. The second enquiry was conducted through Member – II Board of Revenue on the basis of judgment/order of the Hon'ble Peshawar High Court.
- C. As in "B" above.
- D. Incorrect. Enquiry was conducted against the appellant on the basis of Judgment of Peshawar High Court Peshawar and the appellant was provided all kind of opportunities of defence.
- E. Incorrect. The charge leveled against the appellant stand proved during inquiry and dismissal order was issued on the basis of recommendation of enquiry officer.
- F. Incorrect. Proper show cause notice was issued and opportunity of personal hearing was given to the appellant.
- G. Incorrect as in Para – 2 of the facts.
- H. Incorrect. All the proceedings have been carried out under Khyber Pakhtunkhwa Government Servant (E&D) Rules, 2011 and all codal formalities were fulfilled.
- I. Incorrect. The respondent have acted according to constitution, law and rules.
- J. Incorrect. Penalty was imposed upon the appellant on the basis of recommendation of Inquiry Officer which is commensurate with the charge.
- K. Incorrect. The proceedings have been carried out in accordance with rules.

It is prayed that Appeal having no merit, may be dismissed with costs.

  
Respondent No. 1,2,3.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 711/ 2015

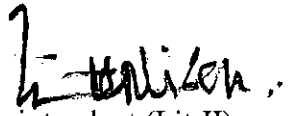
Adil Wasim S/O Masood ur Rehman R/O Saleh Khana, Tehsil Pabbi, District  
Nowshera..... Appellant

VERSUS

Senior Member Board of Revenue, Khyber Pakhtunkhwa & Others ..... Respondents

AFFIDAVIT

I Mukhtiar Ali, Superintendent (Lit-II), Board of Revenue Khyber Pakhtunkhwa do hereby solemnly affirm that the contents of the written reply are true and correct to the best of my knowledge and belief information provided to me and nothing has been deliberately concealed from this Hon'able Tribunal.

  
Superintendent (Lit-II)  
Board of Revenue

**BEFORE THE MEMBER SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA, PESHAWAR.**

Adil Wasim.....(Petitioner)

**VERSUS**

Govt of K.P.K and others .....(Respondents)

**APPLICATION FOR EARLY HEARING**

**Respectfully Sheweth:**

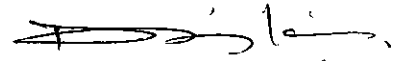
1. That petitioner dismissed from the service by the respondents on 23/07/2014 and there after the petitioner filed Writ Petition No. 2814/2014 before the Hon'ble Peshawar High Court, Peshawar.
2. That on 20/11/2014 the Hon'ble High Court, Peshawar suspended the operation of the impugned notification.
3. That on 16/06/2015 the Hon'ble Peshawar High Court, Peshawar converted the above said Writ Petition into appeal and send before the Service Tribunal.
4. That on 24/06/2015 the proceeding in the above stated case were commenced before the Service Tribunal and the case still pending since then.

5. That it will be in the interest of justice, if, keeping in view the circumstances of the case an early hearing of the case is allowed in order to grant the relief to the applicant.

It is, therefore, respectfully prayed that on acceptance of this application, this Hon'ble tribunal may be pleased to modified and accelerated the date of hearing as early as possible.

Petitioner

Through



**Danial Khan Chamkani**  
Advocate High Court,  
Peshawar.

Dated: 26/11/2015

**BEFORE THE MEMBER SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA, PESHAWAR.**

Adil Wasim.....(Petitioner)

**VERSUS**

Govt of K.P.K and others .....(Respondents)

**AFFIDAVIT**

I, Adil Waseem S/o Masood-ur-Rehman R/o Saleh Khana, Tehsil Pabbi, District Nowshera, do hereby solemnly affirm and declare on oath that the contents of the **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



**DEPONENT**

وکالت نامہ

بعدالت جناب سرور سٹریٹوئل پٹالہ

عادل وسیم بنام گورنمنٹ

منجانب دعویٰ یا جرم

تھانہ ایف آئی آر تاریخ

باعث تحریر آنکہ مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسٹ پیروی و جوابدہی

بمقام پٹالہ

کے لے دانیال خان چمکنی ایڈووکیٹ ہائی کورٹ پشاور، فیڈرل شریعت کورٹ کو

بدین شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکار سے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کروں گا اگر پیشی پر من مظهر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے کسی اور جگہ یا کچہری کے مقررہ اوقات سے پہلے یا پیچھے یا بزور تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے۔ اگر مقدمہ ملاوہ صدر مقام کچہری کے کسی اور جگہ باعث ہونے یا بزور تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر من مظهر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختانہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔

مجھ کو کل ساختہ پرداختہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجراء ڈگری و نظر ثانی اپیل و گمرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد ثالثی و راضی نامہ کو فیصلہ برخلاف کرنے، اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یا کٹرفہ درخواست حکم اتقائی یا قرتی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادائیگی علیحدہ مختانہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزو کی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں۔ اور ایسے مشیر قانون کو ہر امر میں وہی اور ویسے ہی اختیارات حاصل ہوں گے۔ جیسے کہ صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانہ التوائے پڑے گا۔ وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

لہذا یہ مختار نامہ لکھ دیا کہ سند ہے

موز 26-11-15 مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

Attested and Accepted by:

12/11/15  
Dania Khan Chankani

Advocate High Court  
Peshawar.



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR****Service Appeal No. 711/2015**

Adil Waseem,  
Naib Tehsildar,  
Presently posted as Naib Tehsildar,  
Peshawar Development Authority,  
Peshawar.....Appellant

Versus

The Govt. of Khyber Pakhtunkhwa  
through Chief Secretary,  
Civil Secretariat, Peshawar and other.....Respondents

**REJOINDER ON BEHALF OF APPELLANT IN  
RESPONSE TO REPLY FILED BY RESPONDENTS  
NO. 1, 2 & 3.**

Respectfully Sheweth,

**Preliminary Objections:**

Preliminary objections raised by answering respondents are erroneous and frivolous so denied

**Rejoinder to Reply of Facts:**

1. Furnish no reply meaning thereby the answering respondents have admitted the facts thereof.
2. That the reply is incorrect so denied. The appellant has complied with the order of his transfer within time.
3. Furnish no reply meaning thereby the answering respondents have admitted the facts thereof.

4. It is incorrect that in re-enquiry he was held responsible rather he was exonerated of the charges.
5. Furnish no reply meaning thereby the answering respondents have admitted the facts thereof.
6. Incorrect so denied.
7. Incorrect. No copy of enquiry report was supplied to appellant.
8. The departmental appeal of appellant was rejected in arbitrary manner without any consideration which is against the law and principle of natural justice.

**Rejoinder to reply of Grounds:**

- A. That the reply is incorrect so denied.
- B. No need of answer.
- C. No need of answer.
- D. Incorrect so denied.
- E. The charges as levelled against appellant remained unproved.
- F. Incorrect. No requisite codal formalities have been observed by the authority concerned.
- G. No need of answer.
- H. The reply is evasive so denied.
- I. The reply is evasive so denied.

J. Incorrect so denied.

K. Incorrect.

It is, therefore, humbly prayed that the reply of answering Respondents No. 1, 2 & 3 may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.

Through

Appellant

  
Khush Dil Khan

Advocate,  
Supreme Court of  
Pakistan

Dated: 24 / 05 / 2016

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

No. 959 /ST

Dated 6/6/2016


To

The SMBR,  
Peshawar.

Subject: - JUDGMENT

I am directed to forward herewith a certified copy of Judgment dated 25.5.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.

## INQUIRY REPORT

The undersigned has been appointed as Inquiry Officer (Annexed as A) by the Senior Member Board of Revenue, Khyber Pakhtunkhwa, hereinafter referred to as competent authority, with direction / order of Peshawar High Court (Annexed as B). The mandate is to inquire into the charges levelled against Naib Tehsildars, Kifayatullah and Adil Waseem vide charge-sheets (Annexed as C & D).

### BACKGROUND: -

Naib Tehsildars Kifayatullah and Adil Waseem posted at Chitral District and Kasba were transferred and posted as Head Clerk Revenue and District Kanungo respectively vide Commissioner Peshawar order dated 16.04.2013 (Annexed as E). When they were transferred their services had already been placed at the disposal of District & Session Judge / District Returning Officer Peshawar in connection with Election duties. When they failed to report for duty of their new assignments, the Commissioner Peshawar asked them in writing to explain their position (Annexed as F). In response thereto both the accused Naib Tehsildars submitted their charge assumption reports and got these entered in the dispatch register of DC's office (relevant pages of dispatch register are Annexed as G).

A fact finding inquiry was conducted by ADC to ascertain what happened during the course of events. The officer consulted various records and also recorded statements of the officers and other officials connected with the maintenance of record, i.e. dispatch register. The inquiry officer arrived at the conclusion that both the Naib Tehsildars were prima facie guilty and recommended regular inquiry against them (Annexed as H).

Subsequently, Mr. Zaheer-ul-Islam, Deputy Commissioner Peshawar was appointed as inquiry officer by the competent authority and charge sheet (Annexed as C & D) was served on both the accused Naib Tehsildars. There are two charges in the charge sheet and statement of allegation which are reproduced below:

- (a) "That you were transferred on 16.04.2013 and posted as Head Clerk Revenue / District Kanungo Peshawar in the office of District Commissioner, Peshawar. When the office of Commissioner, Peshawar Division inquired about charge assumption, it was reported by the District Commissioner, Peshawar on 16.05.2013 that you have not yet assumed the charge of your post. Your refusal to comply with transfer orders and making of various attempts in civil and superior courts to de-

Hajrat Masood Mehmood

implementation of orders falls within the mischief of willful insubordination and misconduct."

- (b) "When your explanation was called on 22.05.2013 you sent charge assumption report under No. 822-26/ADC/DC, /827-31/ADC/DC dated 16.05.2013 to Commissioner, Peshawar Division. On inquiry it revealed that this dispatch number was affixed on some other communication. Therefore, you forged the dispatch number which tantamounts to cheating and misconduct and unbecoming of government official."

The inquiry officer examined the record, recorded the statements of the accused as well as those of concerned officials including Imran Junior Clerk. On the basis of his findings the inquiry officer suggested major penalties of dismissal from service or premature retirement for both the accused. Feeling aggrieved the accused officials invoked the writ jurisdiction of the High Court objecting to the impartiality of the inquiry officer. The honorable High Court disposed the writ off ordering the undersigned to re-inquire into the charges under the law and rules (Annexed as B). Hence this inquiry.

#### PROCEEDINGS: -

The undersigned received the order of appointment as inquiry officer (Annexed as A) and started proceedings in compliance thereof. As no fresh charge sheet was framed by the competent authority, the undersigned therefore, had the mandate to probe the matter with respect to the charges contained in the already issued charge sheets (Annexed as C & D).

Both the accused were summoned who joined the proceedings before the undersigned. They were asked to submit their written and oral defense with regard to the charges as per charge sheets already served upon them. They submitted their written statements (Annexed as I & J). Imran Junior Clerk, Haji Siddique Ex District Kanungo, ADK of Commissioner Office, Zulfiqar Reader APA office and Roedad official of Commissioner office were also summoned to record their statements regarding the chain of events. Zulfiqar was specially invited to record his statement on the request of Mr. Kifayatullah NT (Ref para 4 of his statement annexed as I)

Statement of Imran Clerk Additional Deputy Commissioner Office (responsible for entries in dispatch register), Haji Siddique, Ex-DK (now Tehsildar Kabal Swat), Roedad Khan official of Commissioner office Peshawar, Zulfiqar, Reader to APA FR Peshawar, Sayar Ahmad, Bill Clerk, and joint statement of Haji Imdad Khan Office Kanungo and Mohammad Younas Khan Assistant Office Kanungo were recorded. (Statements of these officials are annexed as K, L, M, N, O, P), in addition to the

statements of Kifayatullah (Annexed as I) and Adil Waseem (Annexed as J). Adil Waseem also produced two pieces of official record (annexed as Q) to prove that he had taken charge as District Kanungo Peshawar before 17.05.2013

Imran, Clerk ADC office, who was supposed to make entry of the arrival / charge assumption report of both the accused, deposed that Kifayatullah NT approached him with charge assumption / arrival report and asked him for entering the same in back date. He could not tell the exact date when the accused Kifayatullah approached him but told that he was approached to make the entry almost 6 or 7 days after 16.05.2013. He further told that he was advised against effecting a back dated entry) by Haji Siddique, Ex-DK who was seated adjacent to him. The deponent stated that he refused to make the back dated entry and after some time left the room for some official work. He further told that neither he made the entries himself nor saw someone making the entry. The entries bearing Nos. 822-26 and 827-31 made in the registers page pertaining to 16.05.2013 had been made by someone in his absence and without his knowledge.

Haji Siddique, Ex-DK in his statement told that one day he witnessed Kifayatullah NT (one of the accused) approaching Imran and insisting to make some entry in back date. He further stated that he prohibited Imran from making back dated entry and that he was unaware of the nature of the correspondence entry whereof was intended. He could not tell the exact date of the event but deposed that sufficient time had lapsed after the intended date, i.e. 16.05.2013 wherefor the accused Kifayatullah was pressurizing Imran Junior Clerk.

Roedad Khan, official of Commissioner office, who was responsible for putting up fresh Dak for perusal of the Commissioner deposed that the charge assumption reports of both the accused were received in Commissioner office on 24.05.2013 which were placed for perusal of the Commissioner.

Statement of Zulfiqar Khan, Reader to APA FR Peshawar was recorded on special request of Kifayatullah (the accused). Zulfiqar Khan stated that he knew nothing about the charge relinquishment or charge assumption of both the accused, i.e. Kifayatullah and Adil Waseem.

Sayar Ahmad, JC / Bill Clerk DC office deposed that he received the charge assumption reports of both the accused in compliance with transfer orders dated 16.04.2013, on 30.06.2013. He further stated that both the accused continued to draw their salaries as Naib Tehsildars till 30.06.2013.

Haji Imdad and Muhammad Younas in their joint statement stated that they found on scrutiny of the mutations attested during the disputed period that from 16.04.2013 onwards till 30.06.2013 no mutation was attested by Kifayatullah and Adil Waseem (the accused NTs). The mutations during this period were attested by Muhammad Ibrar NT and Sultan Haider NT who had replaced the accused vide order dated 16.04.2013

Kifayatullah, NT has furnished his written reply / written statement comprising "a" and "b" parts spread over 08 paragraphs (Annexed as I). In his statement the accused has tried to justify the delay in charge assumption by alluding to the Election duties which they were performing till 14.05.2013. He stated further that it was impossible for them to join their new assignment due to election duties and that they did not feel "pressing need to submit a written arrival report due to the fact that they had impugned the order dated 16.04.2013 in Peshawar High Court" (Para 2 part a). In Para 3 of his statement he deposes that they had submitted arrival report on 16.05.2013 out of utmost personal regard for Ex-Commissioner Peshawar, after the late Commissioner inquired whether they had reported for their new duties. He also contends to have physically reported for duty at DC office on 15.05.2013 (Para 5). In Para 6 of his statement the accused stated that he had seven days at his disposal after culmination of Election duties on 14.05.2013. In the same paragraph he has refuted the accuracy of the allegation / charge that they had submitted any forgery in submission of arrival reports. In the last portion of his statement the accused has referred to DC Peshawar order (Annexed R) and APT rules, and Peshawar High Court order (Annexed B), which in his opinion render the disciplinary proceedings baseless. In the same Para he has claimed that the proceedings had once been filed by the Ex-SMBR. He has requested that he along with the other co accused might be exonerated.

Adil Waseem NT in his statement (Annexed as J) has repeated the story that both the accused were performing election duties on the orders of Deputy Commissioner Peshawar from 05.04.2013 till 15.05.2013 where election process was completed and that during their attachment with the District Returning Officer they were not able to assume charge of their new assignment. He has further deposed that he assumed the charge of DK Peshawar on completion of election process. It has been stated by him that he had submitted his arrival report to the DC office. The staff, as he has narrated, prepared charge assumption report which was signed by him and handed over to a peon of ADC's office for issuance of dispatch number. To a query he responded that he had signed the charge assumption report on 16.05.2013. When further asked as to what was the name or identity of the peon to whom he handed over the signed report, he was unable to respond in affirmative.

*Fazal Mehsud Man*



## ANALYSIS / FINDINGS: -

The charges against both the accused are "mischief of willful insubordination and misconduct" (Para 1(a) of the charge sheet) and "cheating and misconduct" (Para 1 (b) of the charge sheet). The conduct and acts of both the accused have been examined in light of the available record, their statements and the statements of other persons having connection with record related to charge assumption in various offices.

Dispatch register (relevant page of which is annexed as G) is the most important record in the case. It is the record which contains the entries regarding the charge assumption of both the accused in addition to other entries. The number allotted to Kifayatullah's charge assumption report (822-26) has already been allotted to some other letters. Dispatch No. 821-23 have been allotted to Office Order, No. 824 has been allotted to a letter addressed to Tehsildar Peshawar, No. 825 to a summon addressed to Tehsildar Peshawar and 826 has been allotted to a Notice addressed to Patwari through Tehsildar Peshawar, while the number allotted to Adil Wasceem's charge assumption report (827-31) has also been allotted to different letters, i.e. dispatch No. 828 has been allotted to letter addressed to Civil Judge Peshawar, No. 829 to a letter addressed to Judicial Magistrate-I Nowshera and dispatch No. 830 has been allotted addressed to Tehsildar Peshawar. Both the entries seem to have been made by a novice person in a hasty manner. The subject and remarks columns against the entries are blank indicating that the person making the entries was unaware of the proper procedure required for making entries and maintenance of register. The job does not seem to have been done by an expert person whose routine duty is to make entries in the dispatch register. The statement of Imran Clerk that he did not make the entry seems true because both the entries in question 'stand out' amongst all the entries and have no similarity with the other entries made by Imran and his other colleagues. The statement of Roedad Khan of Commissioner office that the charge reports of both the accused were received in Commissioner office on 24.05.2013 also clearly indicate that both the charge assumption reports were prepared on 22.05.2013 because it would take two days in routine for a correspondence to reach Commissioner's office or to be deposited there by someone. The statements of Imran and Haji Siddique are completely congruent and no inconsistency has been witnessed in both the statements. Adil Wasceem and Kifayatullah were given opportunity to cross examine both the witnesses, i.e. Imran and Haji Siddique. But they failed to create a doubt about the veracity of what they had stated. The statement of Zulfiqar did not help them in any way because he expressed complete ignorance about the charge assumption of any of the accused. The statement of Sayyar Ahrnad, Bill Clerk that both the accused continued to draw their salaries as Naib Tehsildars till 30.06.2013

*Hajrat Ahmad Khan*

also does not subscribe to their plea that they had relinquished charge on 16.05.2013 and submitted copies to the concerned.

Kifayatullah, NT (one of the accused) has admitted in his statement that he was not under obligation to submit his arrival immediately after completion of the Election process. He is of the opinion that they had seven days at their disposal to join new assignment. APT Rules of the Khyber Pakhtunkhwa are however, clear on the subject and seven days joining time is permissible only in cases where the transfer involves a shifting from one district to another. In the instant case the transfer of both the accused was within the same district, hence the question of seven days' joining time does not arise. The accused has further stated that they reported their arrival for duty in respect for ex-Commissioner Peshawar. This speaks volumes of the ignorance of the accused regarding the service rules. Charge assumption and relinquishment are never meant for personal appeasement or respect rather they are mandatory requirements and laxity in this regard may render the violator liable to disciplinary proceedings.

During the period that intervened between the transfer order dated 16.04.2013 and order dated 20.06.2013 (where they were cancelled by the SMBR), the accused knocked the doors of Civil courts and filed departmental appeals / representations. This indicates that the plea taken by them regarding their being overburdened by election duties and having no spare time for charge assumption is absurd. From the record of SMBR's office it is, however, clear that their appeal / representation with SMBR was disposed off without further action on 21.05.2013, resulting in maintaining the transfer orders of Commissioner Peshawar dated 16.04.2013. It was probably the fact of filing / rejection of their representation by SMBR / Secretary Board of Revenue on 21.05.2013 that the accused were compelled to prepare arrival reports on the following day and try to enter them in the dispatch register giving the impression as if they were entered on 16.05.2013. This was most probably done to falsify the reply of ADC Peshawar dated 16.05.2013 (Annexed as S) regarding their non assumption of duty in response to Commissioner office letter No. 2-2/AR/2012/4502 dated 30.04.2013 (Annexed as T). At the same time if the entry had been made exactly on 16.05.2013 without any fabrication, it would have created a proper reply to the explanation called by the Commissioner on 22.05.2013 and thus saved their skin.

From the record it is clear that the SMBR cancelled the transfer orders dated 16.04.2013 on 20.06.2013 (Annexed as U). In the intervening period both the officials were under obligation to comply with the orders of the Commissioner. The implementation whereof had not been stayed by any court of law. The orders have their legal position only after the next senior officer, i.e. SMBR cancelled them.

er on the part of both the accused to delay their arrival in anticipation of favorable  
fers.

### CONCLUSIONS :-

1. Analysis of the record and statements has led to the conclusion that the entries regarding arrival of both the accused have been made on the same date and probably by the same person.
2. The entries have actually been made on 22.05.2013 on the page of dispatch register pertaining to 16.05.2013. It has been established from the fact that the numbers assigned to both the arrival reports had already been allotted to other correspondence / communication, thus fabrication and forging of entries has taken place which is a conduct unbecoming of Government servant and a gentleman also being prejudicial to good order or service discipline (Cop. of E&D Rules annexed as V).
3. Although the accused had not relinquished charge in writing or submitted arrival report for their new duties, yet they had not attested any mutation as Revenue officer during the period 16.04.2013 to 30.06.2013.
4. The statements of all the eye witnesses establish the fact that Kifayatullah, NT (one of the accused) directly approached the office staff and made his utmost efforts to get the arrival entered in back date. He appears to have adopted an intimidatory attitude to get this illegal job done. Adil Waseem, NT (one of the accused) has not been witnessed by any person to make an entry in the register or ask anyone for doing so. However, the fact that both the entries were made in similar manner in similar handwriting leads to the conclusion that Adil Waseem acquiesced in the illegal act of Kifayatullah. He seems to have abetted the act by handing over his arrival report to Kifayatullah who managed to get it entered in the back date. Thus both the accused officials, i.e. Kifayatullah Naib Tehsildar and Adil Waseem Naib Tehsildar have been found guilty of misconduct.
5. The officials of ADC office who were the custodians of the record have failed to perform their duty because without their ignorance and careless attitude it would have been impossible for an outsider to make an entry in the dispatch register. In worst scenario this may be a case of connivance by the concerned staff.
6. Kifayatullah, NT (one of the accused) has played more overt role in the whole process whereas the role of Adil Waseem, NT (accused) seems that of a collaborator. Had Kifayatullah refused to oblige Adil Waseem he would have been unable to get his arrival entered.

COMMENDATIONS :-

Keeping in view the record, statements of both the accused and statements of all the officials aforementioned, the undersigned recommends the following penalties under Rule 4 of the Khyber Pakhtunkhwa (Efficiency and Discipline) Rules 2011:

Kifayatullah (Naib Tehsildar) :-

Major penalty of compulsory retirement from service for the active role he has played in doing / effecting the forgery.

Adil Waseem (Naib Tehsildar) :-

Major penalty of compulsory retirement from service for collaborating / conniving with Kifayatullah in the illegal act and acquiescence in the forgery committed.

Or

He may be reduced to the stage of December 31, 2011 keeping in view the fact that no one has witnessed him directly pressurizing or persuading any person to enter his arrival in the back date.

*Hzrat Masaud Mian*  
(HAZRAT MASAUD MIAN)  
Member-II, Board of Revenue /  
Inquiry Officer



(29)

discriminatory, void and against law, rules and policy of the govt. of KPK.

b. That appointment of respondents No. 5 to 8 was made on the basis of being employee's son and petitioner was better qualified being employee's son similarly placed was ignored hence discrimination was made on the political influence.

c. That respondent No. 9 was neither employee's son nor better qualified and also was low in merit list.

d. That respondent No. 9 was also not eligible for appointment according to policy. Copy of policy letter is attached as Annexure "D".

e. That court fee stamp paper worth of Rs.500/- are affixed.

FILED TODAY

Additional Registrar  
Peshawar High Court  
Abbottabad Bench

8/9/11

In the circumstances, what has been submitted above and case to argued at bar on acceptance of instant petition impugned appointment order may kindly be declared illegal and respondent NO. 3 may graciously be directed to issue appointment order of petitioner according to law and policy.

10 23.07.14 DJS

DA 6.8.14

Rej 10.11.14

W.P. then  
SA 24.6.15

5

Appet is N.T. Revenue Dept.

P40 16.04.13 Transfer posting order

P. 41 W.P. 1328/P 2013

P. 43 D.A. decided on 20.06.13 "accepted"  
Two months

P13 charge sheet 1.8.2013

W.P. No. 2350/2013 in 2238720  
13

Judgment 9.10.13 H.C. directed to reorganize the  
charge through Member II of Board of

Revenue

26.08.13

Shree Case

Page 30.

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No affidavit  
being

No enquiry in  
present case

No interest

exists