

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	04.02.2016	<p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>PESHAWAR.</u></p> <p align="center">Appeal No. 1053/2015</p> <p>Mr. Mir Akbar Khan Versus The Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others.</p> <p align="center"><u>JUDGMENT</u></p> <p align="center"><u>PIR BAKHSH SHAH, MEMBER.-</u> Appellant with counsel (Mr. Muhammad Asif Yousafzai, Advocate) Government Pleader (Mr. Ziaullah) with Sultan Shah, Assistant for the respondents present.</p> <p>2. Relevant facts in brief on record are that appellant Mir Akbar Khan, PMS (BS-18) Addl. Deputy Commissioner, Charsadda was awarded major penalty of reduction to a lower post for a period of three years, vide impugned order dated 10.6.2015 on the basis of charges contained in the charge sheet which were as follow:-</p> <ol style="list-style-type: none"> i. You misbehaved with the Lawyers in District Buner by using your official status as per information report. ii. You have also flouted the rules during your posting as DOR Malakand and promoted your son as District Kanungo while ignoring the senior most officials. The statement in this regard of Mr. Muhammad Ghufraan, Girdawar Circle Batkhela is attached. iii. You have also used your position to initiate a baseless inquiry against Mr. Hidayatullah, Tehsildar Matta, due to your personal grudges with the Tehsildar."

His review petition dated 11.06.2015 was not responded, hence this appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

3. The appellant has denied the charges. According to record, after issuing the charge sheet and statement of allegations, the matter was enquired into by Dr. Syed Akhtar Hussain Shah, then ^{Addl} Secretary Labour Department, Khyber Pakhtunkhwa Peshawar who submitted his report which shows that the charges against the appellant were not proved. Hence a denovo enquiry was resorted to, to be conducted by Mr. Shafirullah PC (EG) BS-19. The same charge sheet was repeated and issued to the appellant. The enquiry report was submitted which is available on record, which shows that charges No. i & iii were not proved. So far charge No. ii is concerned, the enquiry officer has given the following findings:-

“The subject case is subjudiced in the Service Tribunal Khyber Pakhtunkhwa, Commissioner Malakand and the DOR Malakand have defended the case in their Para-wise comments, therefore, finding of the charges may lead to contempt of court.”

Thereafter, a show cause notice was issued to the appellant, which was replied by him. Finally the impugned order was passed against the appellant.

4. Arguments heard and record perused.

5. The learned counsel for the appellant stated that the entire proceedings against the appellant are based on malafide. He submitted

that no charge was proved against the appellant and the final show cause notice issued to the appellant was uncalled for and against the facts and law. He also argued that the appellant was found not guilty in the first enquiry and no findings have been given so far charge No. ii is concerned even by the enquiry officer in denovo enquiry proceedings He submitted that the appellant is at the verge of retirement and has been penalized on baseless allegations and without due process of law. He prayed that the appeal may be accepted.

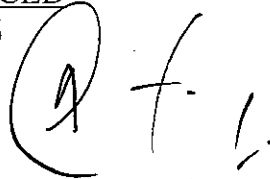
6. This appeal was resisted by the learned Government Pleader by stating that all codal formalities were fulfilled. He also argued that the appellant had promoted his son from the post of Patwari to the post of District Kanungo which charge stand proved against him. He prayed that the appeal may be dismissed.

7. From perusal of the record as summarized above, it is evident that in the first enquiry no charge was proved against the appellant. It was also stated by the learned counsel for the appellant that order of the denovo enquiry was not made by any competent authority. Again it is evident that no finding has been recorded by the enquiry officer in the denovo enquiry proceedings. In this situation, requirement of the law was either to have exonerated the appellant or to have directed afresh enquiry proceedings for third time against the appellant if the competent authority deemed it proper. Award of penalty to the appellant in the said situation and in the light of available material on record, cannot be appreciated and such an order cannot be maintained. Hence, the Tribunal is of the considered view to set aside the impugned order dated 10.06.2015 and to remit the case to the respondent-department for denovo proceedings against the appellant,

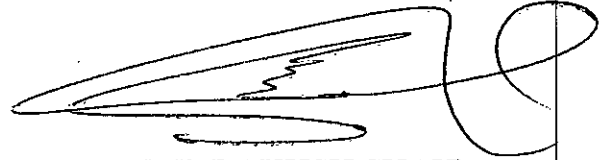
if so desired. Order accordingly. The appeal is disposed off in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

04.02.2016



(ABDUL LATIF)
MEMBER



(PIR BAKHSH SHAH)
MEMBER

20.01.2016

Appellant in person and Mr. Muhammad Adeel Butt, Addl: AG for respondents present. Due to strike of legal fraternity, counsel for the appellant is not available. Therefore, the case is adjourned to 27.1.16 for arguments.


MEMBER

27.1.2016

Appellant in person and Addl: A.G for respondents present. Counsel for the appellant is busy before the august Peshawar High Court, Peshawar and the Court time is over. Adjourned for final hearing before D.B to 4.2.2016.


Member


Chairman

27.11.2015

Appellant in person present. Application for fixation of appeal for an early date has been submitted.

In view of the application, case to come up for written reply/comments on 28.12.2015 instead of 27.1.2016 before S.B. Respondents be informed accordingly.


Chairman

28.12.2015

Appellant with counsel and Mr. Sultan Shah, Supdt: alongwith Asst: AG for respondents present. Written reply submitted on behalf of respondent No. 1 to 4 copy of which was handed over to the appellant. Learned counsel for the appellant submitted that he has also filed application for suspension of the penalty order but as the appellant is going to be retired in February therefore this case may be fixed on priority basis and may be fixed immediately while he ~~has~~ is not going to press his application for interim relief. The request is genuine, to come up for rejoinder/final hearing before D.B on 20-01-2016


Member

02.10.2015

Counsel for the present. Learned counsel for the appellant argued that the appellant was serving as Additional Deputy Commissioner, Charsadda when subjected to inquiry on the allegations of misbehaviour with lawyer community; promotion of his son as District Kanungo and initiation of baseless inquiry against Hidayatullah, Naib Tehsildar Matta and vide impugned order dated 10.6.2015 punished for reduction to lower post for three years against which appellant preferred departmental representation on 11.6.2015 which was not responded and hence the instant service appeal on 18.9.2015.

That the appellant was exonerated in the first inquiry as well as in second inquiry but despite the same he was given show cause notice for promotion of his son as D.K and punishment referred to above awarded on the said ground. That the promotion of the son of the appellant was the domain of SMBR. That the punishment of the appellant is, therefore, against facts and law and liable to be set-aside.

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 11.11.2015 before S.B. Notice of stay application be also issued for the date fixed.


Chairman

11.11.2015

Appellant with counsel, M/S Sultan Shah, Assistant and Mukhtiar Ali, Supdt. alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 27.1.2016 before S.B.


Member

Appellant Deposited
Security & Process Fee

FORM-A

FORM OF ORDER SHEET

Court _____

Case No. 1053/2015

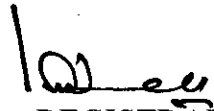
	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	30.09.2015	<p>The appeal of Mr. Mir Akbar Khan resubmitted to-day by Mr. Muhammad Asif Yousafzai, Advocate, may be entered in the institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
a.	1-10-2015	<p>This case be put up before the S.B for preliminary hearing on <u>02-10-2015</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>

The appeal of Mr. Mir Akbar Khan PMS (BPS-18) Addl. Deputy Commissioner, Charsadda received to-day i.e. on 18.09.2015 is incomplete on the following scores which is returned to his counsel for completion and resubmission within 15 days.

1. Pages No. 2, 3 & 4 may either be retyped or cuttings may be attested by appellant or his counsel.

No. 1452 /ST,

Dated 21-9- /2015


REGISTRAR
KPK SERVICE TRIBUNAL,
PESHAWAR.

Mr. Muhammad Asif Yousafzai, Advocate, Peshawar.

Sir, objections removed and Re-submitted.

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

Appeal No. 1053 /2015

Mr. Mir Akbar Khan

V/S


Government of KPK.

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-05
2.	Stay Application	---	06-07
3.	Copy of Charge sheet	A	08
4.	Copy of Statement of Allegations	B	09
5.	Copy of Reply to Charge-sheet	C	10-12
6.	Copy of Order Enquiry Report	D	13-17
7.	Copy of Denovoe Enquiry	E	18
8.	Copy of Charge sheet	F	19
9.	Copy of Statement of Allegations	G	20
10.	Copy of Reply to Charge-sheet	H	21-24
11.	Copy of Supporting Documents	H-1, to H-7	25-34
12.	Copy of Enquiry Report	I	35-37
13.	Copy of Show cause Notice	J	38
14.	Copy of Reply to Show-cause Notice.	K	39-42
15.	Copy of Order	L	43
16.	Copy of Appeal	M	44-46
17.	Wakalat Nama	-----	47

APPELLANT

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

①

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

Appeal No. 1053 /2015

**A.W.S Province
Service Tribunal**
Diary No. 1094
dated 18-9-2015

Mr. Mir Akbar Khan, PMS (BPS-18)
Additional Deputy Commissioner, Charsadda.

APPELLANT

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, KPK, Civil Secretariat, Peshawar.
2. The Chief Secretary, Government of Khyber, Civil Secretariat, Peshawar.
3. The Secretary, Government of KPK, Establishment Department, Civil Secretariat, Peshawar.
4. The Senior Member Board of Revenue, Government of KPK, Civil Secretariat, Peshawar.

RESPONDENTS

.....

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 10.06.2015 WHEREBY THE PENALTY OF REDUCTION TO LOWER POST FOR A PERIOD OF 3 YEARS HAS BEEN IMPOSED UPON THE APPELLANT AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENT REVIEW/APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD.

.....

*Filed to-day
18/9/15.*

*Re-submitted
to-day*

18/9/15.

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 10.06.2015 MAY BE SET ASIDE AND THE APPELLANT MAY BE RESTORED TO HIS ORIGINAL POST AND SCALE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND PROPER THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

1. That the appellant joined the Revenue Department in the year 1975 and with the passage of time he was promoted as PMS (BPS-18) officer in the year 2012. The appellant has good service record except the present impugned incident.
2. That while serving as Additional Deputy Commissioner, Charsadda, the appellant was charge-sheeted as (i) you misbehaved with the Lawyers in District Buner by using your official status as per information report. (ii) You have also flouted the rules during your posting as DOR Malakand and promoted your son as District Kanungo while ignoring the senior most officials. The statement in this regard of Mr. Muhammad Ghufraan, Girdawar Circle Batkhela is attached, (iii) You have also used your position to initiate a baseless inquiry against Mr. Hidayatullah, Tehsildar Matta, due to your personal grudges with the Tehsildar. The appellant filed details reply to the Inquiry Officer Syed Akhtar Hussain Shah and denied all the allegations with cogent proof and reasons. Copy of Charge sheet and Statement of Allegations and reply are attached as Annexure-A, B and C.
3. That as the enquiry was conducted against the appellant regarding the charges and the inquiry officer categorically exonerated the appellant from all the leveled three (3) charges. Copy of Inquiry Report is attached as Annexure-D.
4. That then in utter violation of Rules-14(6) and in absence of any order of the competent authority an order was passed on 15.09.2014 for holding denevo inquiry. Copies of the Denevo Inquiry order and charge sheet and statement of allegations are attached as Annexure-E, F and G.
5. That the appellant again filed details reply to the charge sheet of the denove enquiry and rebutted all allegations with cogent proof and reasons. Copies of Reply to the charge sheet and supporting documents are attached as Annexure-H, H-1, H-2, H-3, H-4, H-5, H-6 and H-7.

6. That the denevo enquiry was conducted by Mr. Shafirullah and after completing the enquiry concluded that Charge No.1 and Charge No.3 not proved, however, regarding Charge No.2 the enquiry officer opined that the subject case subjudiced in the Service Tribunal. Commissioner, Malakand and DOR Malakand defended the case in their para-wise comments, therefore, the findings of the charges may lead to contempt of court. Copy of enquiry is attached as Annexure-I.

7. That despite, the findings of the two enquires, the appellant was served with show cause notice with modified charges actually not incorporated in the charge sheet wherein it was tentatively decided to impose the penalty of reduction of lower post for a period of three years upon the appellant. The appellant submitted his details reply again in response to the show-cause notice and again denied the allegations with proof and cogent reasons. Copies of show cause notice, and reply to show cause notice are attached as Annexure-J and K.

8. That on 10.06.2015 the impugned penalty order was passed by incompetent authority wherein the penalty of reduction to lower post for a period of three years imposed upon the appellant. The appellant filed Review Petition against the same on 11.06.2015 and waited for statutory period but no response has been received so far to the appellant, hence the present appellant on the following grounds amongst the others. Copies of orders and appeal are attached as annexure-L and M.

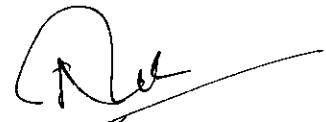
GROUND:

- A) That the impugned orders dated 10.06.2015 and not taking any action on the departmental appeal of the appellant within the statutory period, is against the law, facts, norms of justice and material on record, therefore, liable to be set aside.

- B) That the appellant has not been dealt in accordance with law and rules and has been penalized for no fault on his part.

- C) That so far as the charges of charge sheet is concerned those charges never proved against the appellant and the appellant has been penalized for the charge neither incorporated in the charge sheet nor enquired by the enquiry officer.
- D) That the competent authority has never passed any order under Rules-14(6) of E&D Rules, 2011 for denove enquiry nor he recorded any reasons in black and white for not agreeing with the findings of the first enquiry officer. Thus, all the procedures stood vitiated by violation the rules mentioned above.
- E) That the appellant is going to be retired on superannuation on 8.2.2016 and as such the penalty of reduction for three years is impracticable and can not be sustained in the eyes of law.
- F) That the appellant never passed any promotion order of his son as District Kanungo rather that order was passed by the BOR and the appellant can not be held responsible for the act of BOR. Moreover, for DPC proper approval was sought which was granted and the DPC was conducted in the presence of the representative of BOR and in the minutes of DPC, the order dated 4.8.2009 clearly mentioned the relaxation granted by BOR on his application. Thus, the appellant did nothing illegal for which he could be penalized.
- G) That the charges for which the appellant has been penalized defended by the Commissioner Malakand and DOR Malakand in their comments, however, the appellant pending before the Service Tribunal and as such under the principle of estopple the government now can not be changed its stance.
- H) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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



APPELLANT
Mir Akbar Khan

THROUGH:



(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

(6)

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

Appeal No. _____/2015

Mr. Mir Akbar Khan

V/S


Government of KPK.

**APPLICATION FOR SUSPENDING THE
OPERATION OF THE IMPUGNED ORDER
DATED 10.06.2015 TILL THE DISPOSAL OF
MAIN APPEAL.**


RESPECTFULLY SHEWETH:

1. That the appellant has filed an appeal along with this application which no date has been fixed so far.
2. That the appellant stood absolved from the charges in both of enquiries by the report of both the enquiry officers and the appellant has been penalized for the charges which are neither incorporated in the charge sheet nor enquired their regular enquiry and moreover no dispensing with the regular order was passed in that respect.
3. That the appellant is going to be retired after 4-5 months and the penalty is legally impracticable to sustain for three years.
4. That the appellant has good prima facie case and the balance of convenience is also in favour of the appellant, therefore,
5. That the grounds of main appeal may also be integral part of this application.
6. That the impugned order has been passed by the respondent, which is illegal and violation of rules.

It is, therefore, most humbly prayed that the operation of the impugned order dated 10.06.2015 may be suspended till the disposal of main appeal. Any other remedy with this august Tribunal deems fit may also be awarded in favour of appellant.

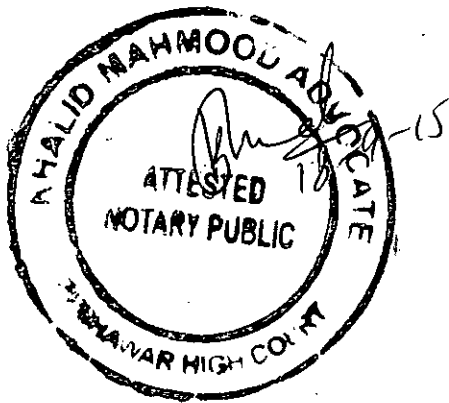
Appellant 
Mir Akbar Khan

Through:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT:

It is affirmed and declared that the contents of the above Application are true and correct to the best of my knowledge and belief.




Deponent



Annexure - "A" (7) (8)

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

CHARGE SHEET

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as competent authority, hereby charge you, Mr. Amir Akbar Khan; (PMS BS-18) the then Additional Deputy Commissioner, Swat now Addl. Deputy Commissioner, Charsadda, as follows:

That you, while posted as Additional Deputy Commissioner, Swat, committed the following irregularities:

- i) You misbehaved with the Lawyers in District Buner by using your official status as per information report (Annex-A)
- ii) You have also flouted the rules during your posting as DOR Malakand and promoted your son as District Kanungo while ignoring the senior most officials. The statement in this regard of Mr. Muhammad Ghufraan, Girdawar Circle Batkhela is attached at (Annex-B).
- iii) You have also used your position to initiate a baseless inquiry against Mr. Hidayatullah, Tehsildar Matta, due to your personal grudges with the Tehsildar (Annex-C)

2. By reason of the above, you appear to be guilty of misconduct under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the Rules ibid.

3. You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the enquiry officer/enquiry committee, as the case may be.

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

5. Intimate whether you desire to be heard in person.

6. A Statement of Allegations is enclosed.

Pervez Khattak
(Pervez Khattak)
Chief Minister
Khyber Pakhtunkhwa

Attested True Copy
Amir Akbar Khan

A-11-17



(11)
9

GOVERNMENT OF B
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

DISCIPLINARY ACTION

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa as competent authority, am of the opinion that **Mr. Amir Akbar Khan, (PMS BS-18) the then Additional Deputy Commissioner, Swat now Addl. Deputy Commissioner, Charsadda**, 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

i) He misbehaved with the Lawyers in District Buner by using his official status as per information report **(Annex-A)**

ii) He has also flouted the rules during your posting as DOR Malakand and promoted his son as District Kanungo while ignoring the senior most officials. The statement in this regard of Mr. Muhammad Ghufuran, Girdawar Circle, Batkhela is attached at **(Annex-B)**.

iii) He has also used his position to initiate a baseless inquiry against Mr. Hidayatullah, Tehsildar Matta, due to his personal grudges with the Tehsildar **(Annex-C)**

2. For the purpose of enquiry against the said accused with reference to the above allegations, an enquiry officer/enquiry committee, consisting of the following, is constituted under Rule 10(1)(a) of the ibid Rules.

i) Syed Akhtar Hossain Shah. (PCS-SG-BS-19) AS Labour.

ii) _____

3. The enquiry officer/enquiry committee shall, in accordance with the provisions of the ibid Rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty days of the receipt of this order, recommendations as to punishment or other appropriate action against the official.

4. The accused and a well conversant representative of the Department shall join the proceedings on the date, time and place fixed by the enquiry officer/enquiry committee.

Pervez Khattak
(Pervez Khattak)
Chief Minister
Khyber Pakhtunkhwa
(Competent Authority)
28.02.2014.

Mr. Amir Akbar Khan, (PMS BS-18)
the then Additional Deputy Commissioner, Swat
Now Addl. Deputy Commissioner, Charsadda

ATTESTED

True copy

To

Syed Akhtar Hussain Shah,
(PCS SG BS-19),
Additional Secretary, Labour Department.
(Inquiry Officer)

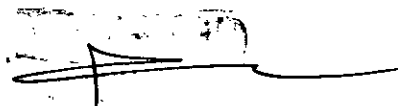
Subject:-

DISCIPLINARY PROCEEDING AGAINST MR. AMIR AKBAR KHAN, PMS BS-18, THE THEN ADDITIONAL DEPUTY COMMISSIONER, SWAT NOW ADDITIONAL DEPUTY COMMISSIONER, CHARSADDA.

Dear Sir,

With reference to Establishment Department letter No. SO(E-I) E&AD/6-11/20114 dated 05.03.2014, I hereby submit my written reply to the charge sheet and statements of allegations as under:-

- i. When I was serving as ADC Swat, my services were surrendered to Establishment Department on the basis of commissioner Malakand Division letter dated 24.07.2013 (**Annex-I**), wherein the main allegation was to harass my subordinates for obtaining illegal gratifications, which was baseless and that was the reason that in charge sheet and statements of allegations, the charges leveled against me are totally different.
- ii. I served with the DC concerned for about 03 months and during the said period the DC has not warned me, issued any advisory note or called any explanation.
- iii. The charges mentioned in charge sheet and statements of allegations are baseless and do not pertain to the period when I was serving as ADC, Swat. Moreover, they are totally different from that one on the basis of which my services were surrendered.
- iv. The first allegation regarding misbehavior with the lawyers pertains to Distt Buner. The incident was took place between me and Mr. Ubaid Ur Rehman Advocate in his village Toor Warsak Distt Buner which was due to personal affairs. The said incident has no concerned with my official duty. Moreover, through mediation of senior lawyers and elders of the area a compromised was made between me and advocate concerned on 22.06.2013(**Annex-II**)
- v. (a). The second allegation regarding flouting the rules during my posting as DO(R), Malakand is also baseless, because two posts of regular Kanongo were vacant in Malakand which are required to be filled amongst the illegible and senior patwari working in Distt Malakand (**Annex-III**). The Departmental Promotion Committee examined the seniority list thoroughly and except one Mr. Faiz Muhammad, Patwari working as Kanongo (OPS) there was no illegible pawtari available for regular promotion as Kanongo (BS-09)(**Annex-IV**), therefore Mr. Faiz Muhammad patwari was recommended for regular promotion as Kanongo. While Mr. Muhammad Ghufan patwari was recommended for his appointment as Kanongo on acting charge basis due to his length of service which was below qualifying five years service for regular promotion as Kanongo (BS-9)as per rules(**Annex-V**).



(b). After promotion of Mr. Faiz Muhammad as Kanongo, Mr. Kamalistan, had made an appeal before the Senior Member Board of Revenue which was rejected **Annex-VI**, while M/S Mohammad Ghufuran and Zahir Khan have also submit departmental appeals before the Commissioner Malakand Division and then also filed appeals before Services Tribunal, Khyber Pakhtunkhwa. The Commissioner Malakand Division has filed their appeals and now their service appeals are still sub-judice in the Services Tribunal, Khyber Pakhtunkhwa **Annex-VII**.

(c). it is further mentioned that on anonymous complaint in the subject Commissioner, Malakand Division conducted an inquiry and appointed Mr. Muhammad Ayaz Mandokhel, the then DDO(Rev) Gagra, Distt Buner as Inquiry Officer. The inquiry officer in his inquiry declared the promotion of Mr. Faiz Muhammad covered the rules **Annex-VIII**.

(d). The Commissioner Malakand Division and the then ~~DDO~~ DDO(Rev) Malakand Distt have fully sported the promotion of Mr. Faiz Muhammad as Kanongo in their comments furnished to services Tribunal in case of Mr. Muhammad Ghufuran vs Mr. Faiz Muhammad etc **Annex-IX**. ✓

vi. (a) The third one allegation is also baseless as the undersigned in pursuance of verbal direction of Advocate General, Darul Quza, Swat put up a note to DC, Buner for initiation of an inquiry against Mr. Hidayat Ullah, Tehsildar, Daggar Buner presently working as Tehsildar Mata, Swat **Annex-X**. The DC, Buner, later on requested Board of Revenue for initiation of formal inquiry in the case **Annex-XI**. ✓

(b) The inquiry committee comprising DC, Buner and DC, Swat held that the DFO concerned ~~is~~ responsible for the omission and commission of irregularities in the acquisition of land for "Construction of DFO office-cum-resident and Staff quarters at Daggar" and sustaining losses of Rs. 32,38,644/- instead of Rs. 45,90,256/- to the Government exchequer and expected losses of Rs. 8,51,09,042 to the Government exchequer as well. Copy of inquiry is at **Annex-XII**. ✓

Moreover, Mr. Hidayat Ullah the then Tehsildar, Daggar ignored Land Acquisition Act and provincial Govt. instructions contained in letter No. V/4/2006/notification/LA/10973 dated 17.08.2006 (**Annex-XIII**). He did not get the approval of DOR and approved mutation No. 3908 and 3909. If he had follow the rules, no financial loss was to bear by the Government.

(c). The inquiry committee have ignored that Tehsildar concerned as he was also member of the purchase committee besides the DFO and Tehsildar was bouned to sent the case for approval to District Collector concerned.

(d). Private agreement dead is very much clear that the payment of land compensation should be made through DO(Rev) then why at the time of attestation mutation no. 3808 and 3809 the RO concerned has not brought the matter in the notice of DO(Rev) **Annex-XIV**. ✓

(e) The inquiry Committee discussed that under section (42) LRA 1963 the RO was bouned to attest the mutations. but this rules is only for private parties and not for Government purpose, because

ATTESTED

12

in this regard Land Acquisition Act has already been extended and implemented in Malakand Division.

(f). That the purchase property has not in commercial area, because the approach road is also purchased for the purpose.

(g) The revenue staff have prepared yeksala wrongly and showed irrelevant mutation no. 3716-3728 and ignored correct mutation no. 3728, 3741, 3742, 3753, 3754, 3752 and enhanced the rate per kanal Rs. 1454000/- instead of Rs. 353278/- Annex-XV and XVI respectively

The allegation no, 1 and 2 pertains to Distt Buncr and allegation no. 3 relates to Distt Malakand, the action of DC, Swat is showing that he has any personal gruges with me to charge un-related allegations.

In view of the above, it is requested that the above mentioned charges/allegations may be filed being baseless & without any footings, please.

Yours faithfully,



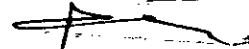
AMIR AKBAR,
PMS BS-18,
ADC, Charsadda.

ENDST: NO & DATE EVEN

0333-9505135

Copy to Section Officer (E-1), Establishment Department for information.

ATTESTED



D
Amir Akbar Khan
7
13

INQUIRY REPORT

Subject: DISCIPLINARY PROCEEDING AGAINST MR. AMIR AKBAR KHAN, PMS BS-18, THE THEN ADDITIONAL COMMISSIONER, SWAT NOW ADDITIONAL DEPUTY COMMISSIONER, CHARSADDA

Regarding subject disciplinary proceedings the competent authority (Chief Minister Khyber Pakhtunkhwa) was pleased to order for conducting inquiry under Civil Servants E&D Rules 2011 against the officer Mr. Amir Akbar Khan, PMS BS-18, the then Additional Commissioner, Swat now Additional Deputy Commissioner, Charsadda.

The above inquiry was ordered vide Secretary to Govt. of Khyber Pakhtunkhwa Establishment Department letter No.SO(E-I)E&AD/6-11/2014 dated 05-03-2014. (Annex-A)

GIST OF CHARGES

While addressing the accused officer, Mr. Amir Akbar Khan, PMS BS-18, the then Additional Commissioner, Swat now Additional Deputy Commissioner, Charsadda. Following irregularities were mentioned by the competent authority:

- i. He Misbehaved with the Lawyers in District Buner by using his official status as per information report. (Annex-B).
- ii. He has also flouted the rules during his posting as DOR Malakand and promoted his son as District kanungo while ignoring the senior most officials. (Annex-C).
- iii. He has also used his position to initiate a baseless inquiry against Mr. Hidayatullah, Tehsildar Matta, due to his personal grudges with the Tehsildar. (Annex-D).

PROCEEDINGS.

In response to above orders the accused Officers was contacted asking him to submit written reply statement against the charges leveled in charge sheet/statement of allegation already served upon him vide Establishment Department letter as mentioned above.

Mr. Amir Akbar Khan, PMS BS-18, the then Additional Commissioner, Swat now Additional Deputy Commissioner, Charsadda was asked to submit his

Attested true copy
S
R

AMIR AKBAR KHAN
↓

(12) DATA (8) (14)

reply to clarify his position against the charges leveled in aforementioned inquiry.

In response to above, the accused Officer submitted his reply and is placed at (Annex-E).

After going through all record/documents provided by the accused officer, was called for personal hearing on 14-04-2014 in the office of the undersigned.

The Commissioner Malakand Office specially the coordination officer Mr. Salman Khan Lodhi, Assistant Commissioner Barikot, Swat was contacted to provide verified copies of relevant record (Annex-F). The charges leveled against the officer are discussed one by one with observations, findings and recommendation.

1. Misbehavior with the Lawyers in Malakand

OBSERVATIONS.

After going through the charge sheet/statement of allegation served upon the accused officer and the reply submitted by him to Inquiry Committee, it was observed that:

- i. It has been observed that there was a short term conflict between the officer and Mr. Ubaid Ur Rehman Advocate in their village Toor Warsak District Buner.
- ii. An information report on recommendation of the lawyers of District Buner was sent to the high-ups against the accused officer.
- iii. A jirga was established and both the parties had settled the issue through a compromise deed (Annex-G).

FINDINGS

- i. Later on the alleged officer while faced the advocate and some other lawyers on a local road due to these personal conflicts collided.
- ii. A local jirga was arranged where both the parties were set in and resolved the issue through mutual understandings.
- iii. The dispute rose in the previous elections and due to personal affairs.

Attested true copy
S
Aan

ATTESTED

Part 10

12

RECOMMENDATIONS

There were some social conflicts between the alleged officer and the Advocate Mr. Ubaid ur Rehman which were settled through a compromise deed. Since there is no backing and pursuance of the case by the Advocate. Therefore, there is no base of persistence of charges against the officer. Thus, charge does not hold against him.

2. Promotion of Mr. Faiz Muhammad (son of accused officer) to the post of Kanungo

The second allegation regarding manipulation of the rules during his posting as DO(R), Malakand.

Observations

- i. A meeting of the Departmental Promotion Committee was held on 10/08/2009 in the office of District Officer (R&E) Malakand under the Chairman Ship of District Officer (R&E) for promotion of Patwari (BPS-05) to the post of Kanungo (BPS-09) (Annex-H).
- ii. In the Seniority List of Patwaris of District Malakand Mr. Muhammad Ghuffran (appellant) was at the top of the seniority list while Mr. Faiz Muhammad (son of the accused officer) was at Sr. No.5.(Annex-I)
- iii. Mr. Faiz Muhammad patwari who has been transferred from buner district and posted as Kanungo in own pay and scale in District malakand by competent authority and had served as regular Patwari for two years six months and passed Kanungo Examination in the year 2008.
- iv. Mr. Muhammad Ghufran the senior most Patwari in District Malakand and pssed Kanungo Examination and served for four years and six months as regular Patwari. He was considered for promotion to the post of Kanungo on Acting Charge basis.

FINDINGS

- i. Mr. Faiz Muhammad the then Patwari was granted relaxation in minimum required service of 5 years for promotion to the post of Kanungo BS-09 by the Board of Revenue (Annex-J)
- ii. The appeal against the seniority list/ promotion was rejected (Annex-K)
- iii. The only official Mr. Faiz Muhammad was granted relaxation by Board of Revenue, which seems discriminatory, so was challenged in the service tribunal by Mr.Muhammad Ghufran.

True copy.
S. R. Khan

→

- iv. Apparently procedures were followed irrespective of the spirit.
- v. the Competent Authority has relaxed / condoned his length of service for two years, six months and six days vide Board of Revenue NWFP officer Order, and was considered for promotion to the post of Kanungo on regular basis.
- vi. There is disconnect between the incumbent DOR and being father of the applicant which needs opinion of law department.
- vii. There is also disconnect between the service rules demanding for minimum service of (5) years & relaxation given by BOR in this regard. Whether the BOR is competent to grant relaxation in presence of other four candidates to the official at S.No.5 of the seniority list.
- viii. The case is sub-judice in the Services Tribunal, Khyber Pakhtunkhwa.

RECOMMENDATIONS

Apparently the charges against the officer for appointment of his son by superseding other officials are not proved with the following assumptions/Conclusions

- i. The officer being Chairman of the Competent forum is justified to chair the session considering promotion cases of all the incumbents including his son.
- ii. Whether the relaxation granted by the Board of Revenue to official at S.No.5 ignoring 4 officials senior to him is in line with the rules/policy? These assumptions needs legal opinion from the law department or advice of regulation wing of Establishment Department.

3. Purchase of Land

The third allegation irregularities in the acquisition of land for "Construction of DFO office-cum-Resident and Staff quarters at Daggar".

OBSERVATIONS

- i. Land was purchased for "Construction of DFO office-cum-Resident and Staff quarters at Daggar" and much irregularities were observed with respect to land acquisition act.
- ii. An enquiry was initiated against Mr. Hidayat Ullah Tehsildar Daggar presently working as Tehsildar Matta.

FINDINGS

True copy
S
A

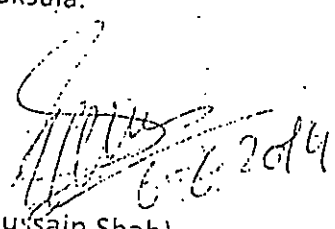
ATTESTED

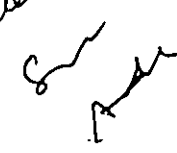
[Handwritten signature]

- ③ ~~④~~ ~~⑤~~ ⑥ ⑦ ⑧
- i. It is found that the accused officer put up a note on verbal directions of the Advocate General, Darul Qaza Swat to the D.C Buner
 - ii. It was proposed to conduct inquiry against Mr. Hidayat Ullah Tehsildar Daggar presently working as Tehsildar Matta.
 - iii. An enquiry committee comprising DC Buner and DC Swat was then held.
 - iv. The enquiry committee pointed out gap in yaksala rate & rate provided to the land owners by Mr. Hidayat Ullah Tehsildar are different (Annex-L)
 - v. Tehsildar paid Rs.1454000/- over and above yaksala rate of Rs.353278/-
 - vi. Violation of rules are found in acquisition of land and a total loss of Rs. 7,85,98,121/- were given to the Government exchequer as per enquiry report.

RECOMMENDATIONS

The charge against the officer of initiation of malifide enquiry against Tehsildar is not proved due to the reason he was not Competent Authority to decide the matter as well as amount paid by Tehsildar over and above yaksala.


 (Dr. Syed Akhter Hussain Shah)
 Additional Secretary
 Labour Department
 Govt. of Khyber Pakhtunkhwa
 (Inquiry Officer)

True Copy


ATTESTED

Keeping in view the above the charge does stand proved against the officer.



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

NO. SO(E-I)E&AD/6-11/2014

Dated Peshawar, the September 15, 2014

To

Mr. Shafirullah,
(PCS EG BS-19),
Additional Secretary, Home & T.As Department.

SUBJECT: - DISCIPLINARY PROCEEDING AGAINST MR. AMIR AKBAR KHAN (PMS BS-18) THE THEN ADDITIONAL DEPUTY COMMISSIONER, SWAT, NOW ADDITIONAL DEPUTY COMMISSIONER, CHARSADDA DE NOVO ENQUIRY.

Dear Sir,

I am directed to refer to the subject cited above and to inform that the competent authority has been pleased to appoint you as Enquiry Officer to conduct de novo enquiry under Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011, against Mr. Amir Akbar Khan (PMS BS-18), Additional Deputy Commissioner Charsadda.

2. Copies of the charge Sheet and Statement of Allegations against the accused officer duly signed by the competent authority are enclosed for further necessary action.
3. It is requested to kindly conduct the enquiry and submit report within the prescribed time as per rules.

Yours faithfully,

Encl: as above.

(MUHAMMAD JAVED SIDDIQI)
SECTION OFFICER (ESTT. I)

Endst. No. & date even

Copy is forwarded to the:-

1. Commissioner, Malakand Division, Swat with the request to nominate a Departmental Representative well conversant with the case to assist the Enquiry Officer and also to provide the record/information as and when required by the Enquiry Officer.
2. Mr. Amir Akbar Khan (PMS BS-18), Additional Deputy Commissioner Charsadda, alongwith copies of Charge Sheet and Statement of Allegations with the request to submit written reply to the Enquiry Officer and attend the proceedings as and when directed by the Enquiry officer.

SECTION OFFICER (ESTT. I)
PHONE & FAX # 091-9210529

True copy

AA

AMIR AKBAR KHAN



(7) F 19

GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT

CHARGE SHEET

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as competent authority, hereby charge you, Mr. Amir Akbar Khan, (PMS BS-18) the then Additional Deputy Commissioner, Swat now Addl. Deputy Commissioner, Charsadda, as follows:

That you, while posted as Additional Deputy Commissioner, Swat, committed the following irregularities:

- i) You misbehaved with the Lawyers in District Buner by using your official status as per information report (Annex-A)
- ii) You have also flouted the rules during your posting as DOR Malakand and promoted your son as District Kanungo while ignoring the senior most officials. The statement in this regard of Mr. Muhammad Ghufraan, Girdawar Circle Batkhela is attached at (Annex-B).
- iii) You have also used your position to initiate a baseless inquiry against Mr. Hidayatullah, Tehsildar Matta, due to your personal grudges with the Tehsildar (Annex-C)

2. By reason of the above, you appear to be guilty of misconduct under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the Rules ibid.

3. You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the enquiry officer/enquiry committee, as the case may be.

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

5. Intimate whether you desire to be heard in person.

6. A Statement of Allegations is enclosed.

Pervez Khattak
(Pervez Khattak)
Chief Minister
Khyber Pakhtunkhwa
(Competent Authority)
06.09.2014.

Mr. Amir Akbar Khan, (PMS BS-18)
the then Additional Deputy Commissioner, Swat
Now Addl. Deputy Commissioner, Charsadda

True copy
S
Ad

ATTESTED

[Signature]



3 9 16

**GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT**

DISCIPLINARY ACTION

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa as competent authority, am of the opinion that **Mr. Amir Akbar Khan, (PMS BS-18) the then Additional Deputy Commissioner, Swat now Addl. Deputy Commissioner, Charsadda**, 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

- i) He misbehaved with the Lawyers in District Buner by using his official status as per information report **(Annex-A)**
- ii) He has also flouted the rules during your posting as DOR Malakand and promoted his son as District Kanungo while ignoring the senior most officials. The statement in this regard of Mr. Muhammad Ghufraan, Girdawar Circle Batkhela is attached at **(Annex-B)**.
- iii) He has also used his position to initiate a baseless inquiry against Mr. Hidayatullah, Tehsildar Matta, due to his personal grudges with the Tehsildar **(Annex-C)**

2. For the purpose of enquiry against the said accused with reference to the above allegations, an enquiry officer/enquiry committee, consisting of the following, is constituted under Rule 10(1)(a) of the ibid Rules.

- i) Mr. Shafiq-ullah. (PCS. EG. BS-19)
- ii) _____

3. The enquiry officer/enquiry committee shall, in accordance with the provisions of the ibid Rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty days of the receipt of this order, recommendations as to punishment or other appropriate action against the official.

4. The accused and a well conversant representative of the Department shall join the proceedings on the date, time and place fixed by the enquiry officer/enquiry committee.

ATTESTED

Pervez Khattak
(Pervez Khattak)
Chief Minister
Khyber Pakhtunkhwa
(Competent Authority)
08.09.2014

Mr. Amir Akbar Khan, (PMS BS-18)
the then Additional Deputy Commissioner, Swat
Now Addl. Deputy Commissioner, Charsadda

ofc
AH
21

**OFFICE OF THE
ADDITIONAL DEPUTY COMMISSIONER
CHARSADDA**

NO.ADC(CHD)7(14)/Discipline.

Dated: September 25, 2014.To

Mr. Shafirullah (Sb),
(PCS EG BS-19)
Additional Secretary, Home & T.A.s Department.

Subject: DISCIPLINARY PROCEEDING AGAINST MR.AMIR AKBAR KHAN (PMS BS-18) THE THEN ADDITIONAL DEPUTY COMMISSIONER, SWAT, NOW ADDITIONAL DEPUTY COMMISSIONER, CHARSADDA DE NOVO ENQUIRY.

With reference to Establishment Department letter NO.SO (E-I)E&AD/6-11/2014 dated 15-9-2014, I hereby submit my written reply to the charge sheet and statement of allegations as under:

1. When I was serving as ADC Swat, my services were surrendered to Establishment Department on the basis of Commissioner Malakand Division letter dated 24-7-2013 (Annex-I) wherein the main allegation was to harass my subordinates for obtaining illegal gratification which was baseless and that was the reason that in charge sheet and statement of allegations, the charges leveled against me are totally different.

2. I served with the DC concerned for about 03 months and during the said period, the DC has not warned me, issued any advisory note or called any explanation.

3. The charges mentioned in charge sheet and statements of allegations are baseless and do not pertain to the period when I was serving as ADC, Swat. Moreover, they are totally different from that one on the basis of which my services were surrendered.

Reply of the Allegations is as under;

1. Allegation No. 01

The first allegation regarding misbehavior with the lawyer pertains to District Buner. The incident was took place between me and Mr.Ubaid-ur-Rehman Advocate

ASR

ATTESTED
A

(14) (22)

in his village Toor Warsak District Buner which was due to personal affairs. The said incident has no concerned with my official duty. Moreover, through mediation of senior Lawyers and elders of the area a compromise was made between me and Advocate concerned on 26-6-2013 (Annex-II). But malafidely the Deputy Commissioner Swat has included this allegation in the charge sheet after 4 ½ months after 12-11-2013.

2. Allegation No. 02

(a). The second allegation regarding flouting the rules during my posting as DO (R) Malakand is also baseless because two posts of regular Kanongos were lying vacant in Malakand which are required to be filled. amongst the legible and senior Patwaris working in District Malakand (Annex-III). That on dated 08-10-2009 the Departmental Promotion Committee examined the seniority list thoroughly and except one Mr. Faiz Muhammad Patwari working as Kanungo (OPS) there was no legible Patwari available for regular promotion as Kanungo. While Mr. Muhammad Ghufan Patwari was recommended for his appointment as Kanungo on acting charge basis due to his length of service which was below and not qualifying five years service for regular promotion as Kanungo (BS-9) as per rules (Annex-IV). That post of regular Kanungo is still lying vacant.

b. After promotion of Mr. Faiz Muhammad as Kanungo, Mr. Kamalistan had made an appeal before the Senior Member Board of Revenue which was rejected (Annex-V) while M/S Muhammad Muhammad Ghufan and Zahir Khan have also submitted departmental appeals before the Commissioner Malakand Division and then also filed appeals before Services tribunbal, Khyber Pakhtubnkhwa. The Commissioner Malakand Division has filed their appeals and now their service appeals are still sub-judice in the services tribunal, Khyber Pakhtunkhwa Annex-VI.

c. It is further mentioned that on anonymous complaint, Commissioner Malakand Division appointed Mr. Muhammad Ayaz Mandokhel the then SDM Gagra District Buner as Inquiry Officer. The Inquiry Officer in his Inquiry report declared the promotion of Mr. Faiz Muhammad etc (Annex-VII).

d. The Commissioner Malakand Division and the then DO (R) Malakand District have fully sported the promotion of Mr. Faiz Muhammad as


ATTESTED

(23)

Kanungo in their comments furnished to Service Tribunal in case of Mr.Muhammad Ghufraan Vs Mr.Faiz Muhammad etc (Annex-VIII).

Allegation No. 03

(a) The third one allegation is also baseless as the undersigned in pursuance of verbal direction of Advocate General, Darul Qaza Swat put up a note to DC Buner for initiation of an Inquiry against Mr.Hidayatullah. Tehsildar Buner presently working as Tehsildar Matta (Annex-IX). The DC Buner lateron requested Board of Revenue for initiation of formal inquiry in the case (Annex-X).

(b) The inquiry committee comprising, DC Buner and DC Swat held that the DFO concerned is responsible for the omission and Commission of irregularities in the acquisition of land for construction oof DFO office –cum- resident and staff quarters at Daggar and sustaining losses of Rs.32,38,644/- instead of Rs.45,90,256/- to the Government exchequer and expected losses of Rs.8,51,09,042/- to the Government Exchequer as well and illegally exonerated Tehsildar concerned (Complainant (Copy of Inquiry is at Annex-XI. Because:

- i. He was a member of the assessment/purchase committee.
- ii. He was bound to follow the rules of Land Acquisition Act and Provincial Government Notification No. No.V/4/2006 /Notification/LA/10973 dated 17-8-2006 (Annex-XII).
- iii. He illegally approved the wrong yaksala for Rs.1121266/- instead of Rs.353278/- and paid the amount of Rs.4646328/- instead of Rs.2137333/- to the land owner during the attestation of mutation No.3808 and 3809 of Mauza Daggar without the approval of the competent authority.

C. It is submitted for your kind information, that Syed Akhtar Hussain Shah Additional Secretary Labour Department, KPK, has been appointed by the Provincial Government as inquiry Officer vide order No.SO (E-I_ E&AD/6-10/2014 dated 17-3-2014 who conducted Inquiry in the matter and submitted a detailed report on 6-6-2014 wherein he recommended that all the three charges leveled against the undersigned have not been proved vide (Annex-XIII).


ATTESTED

(26) (24)

The allegations no 1 and 2 pertains to District Buner and allegation No.3 relates to District Malakand, the action of DC Swat is showing that he has any personal grudge with me to charge unrelated allegations.

In view of the above, it is requested that the above mentioned charges/allegations may be filed being baseless and without any footings please.


AMIR AKBAR KHAN,
PMS-18, ADC CHARSAJDA.

Copy to Section Officer (E-I) Establishment Department for information.

ATTESTED


D-20

Seniority list of Patwaris of District Officer Revenue & Estate/
Collector, Office, Malakand.

S. No.	Name of Patwari	Date of appointment	Length of Service	Kanungo Examination Passed	Un-Passed
1.	Muhammad Ghaffar	10-01-2005	4 years & 2 months	Passed	
2.	Zahir Muhammad	10-01-2009	-do-	-do-	
3.	Abdul Ghafoor	12-08-2005	4 years & 6 months	Un-Passed	
	Fariq Nawaz	19-8-2006	3 years & one month	-do-	
5.	Faiz Muhammad	25-01-2007	2 years & 5 months	Passed	

not eligible for regular promotion as Kanungo as his service is less than five years.

The Kanungo Examination

Eligible for regular promotion

Remarks:- Mr. Faiz Muhammad Patwari has been transferred/posted as Kanungo (Q.S) vide Senior Member Board of Revenue, NWFP, letter No. 21245/Adm:R/S/P, dated 30/7/2009.

District Officer Revenue & Estate/
Collector, Malakand at Batakhele.

ATTENDED

READER TO
District Officer Revenue &
Estate Malakand at Batakhele

16/4/2011

ATTENDED

GOVERNMENT OF NORTH - WEST FRONTIER PROVINCE
 (Tehsildar, Naib Tehsildar / Subordinate Revenue Service Rules 2008)

20 Au x D

Peshawar dated the 22/2/2008.

32/03 /Admn:1/135/SSRC.

In pursuance of the provisions contained in sub - rule (2) of rule 3 of the North West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 read with the Cabinet Division Notification No. SRO. 457 (1) / 2001 dated 28th June, 2001 and in pursuance of the provisions of the Revenue and Estate Department in consultation with the Establishment and the Finance Department, hereby lays down the method of recruitment, qualification and other conditions specified in column 3 to 7 of the Appendix to this Notification and applicable to posts borne on the cadre strength of Revenue and Estate Department specified in column 2 of the said appendix.

Appendix						
1	2	3	4	5	6	7
S.No	Nomenclature of the post	Appointing Authority	Minimum Qualification for appointment by initial recruitment or by transfer	Minimum Qualification for appointment by promotion	Age limit	Method of recruitment
1.	Tehsildar (BPS 16)	Administrative Secretary (SMBR)	Second class Graduation from any University recognized by the Higher Education Commission	Second class Graduation from any University recognized by the Higher Education Commission.	21 - 30 years For initial recruitment	(a) Twenty percent by initial recruitment; and (b) Sixty percent by promotion, on the basis of Seniority - cum - fitness From amongst Graduate Naib Tehsildar such at least Five Years Service as such The condition of Graduation will be applicable after five years from the date of issuance of this Notification; and (c) Twenty percent by Promotion, on the basis of joint Seniority - cum - fitness from amongst the Graduate Assistants / Senior Scale Stenographer of Board of Revenue NWFP Director Land Record NWFP Revenue Appellate Court / Sub - Registrar with at least Five Years Service as such.

	2	3	4	5	6	7
6. Kanungo (BPS-09)	District Officer (Revenue & Estate) /Collector					By promotion, on the basis of joint Seniority -cum- fitness, on District level from amongst the Patwaris / Tehsil Revenue Accountant and Wasil Baqi Nawis who have passed the Departmental Examination of Kanungo with at least five Years Service as such.
7. Senior Tehsil Revenue Accountant (BPS 07) and Junior Tehsil Revenue Accountant Wasil Baqi Nawis / Additional Wasil Baqi Nawis (BPS-05)						By transfer from amongst Patwaris
8. Patwari (BPS - 05)	District Officer (Revenue & Estate) /Collector	Intermediate or equivalent qualification, who have passed the Patwari Examination having one year diploma in information technology from any institution recognized by Board of technical education	13 to 30		By initial recruitment	By initial appointment for amongst the Patwari passed candidates entered in Register maintained by the District Collector of the District Concerned having one year diploma in information technology from any institution recognized by Board of technical education. The condition of diploma will be applicable after three years from the date of issuance of Notification.

Sd/-
 Secretary to Government of NWFP
 Revenue and Estate Department

- 2. Director Land Records, NWFP.
- 3. District Officer (R&E), Buner and Malakand at Battakot
- 4. District Accounts Officer, Buner and Malakand
- 5. Assistant Secretary (Administration), Buner and Malakand
- 6. Official copy

No. 32103-61 /Admin:1/135:SSRC

Copy forwarded for information and necessary action :

1. Secretary to Government of NWFP Establishment Department
2. Secretary to Government of NWFP Finance Department
3. Secretary to Government of NWFP Law & Parliamentary Affairs Department
4. Secretary NWFP Public Service Commission
5. Secretary to Governor NWFP
6. Registrar Peshawar High Court Peshawar
7. Advocate General, NWFP
8. Accountant General NWFP Peshawar
9. Private Secretary to Chief Secretary NWFP
10. All District Coordination Officer, in NWFP
11. All District Officer (Revenue & Estate) /Collector, in NWFP
12. Director Land Record NWFP
13. The Controller, Government Printing Press, NWFP Peshawar with the request that the notification may be published in the official gazette and to supply one hundred printed copies to the undersigned

Deputy Secretary
Government of NWFP
Revenue & Estate Department

Tuehl
ALL

ALL

23

3

3

(B)

Seniority list of Patwaris of District Officer Revenue & Estate/
Collector, Office, Malakand.

S. No.	Name of Patwari	Date of appointment	Length of Service	Kanunge Examination	
				Passed	Un-Passed
1.	Muhammad Ghufraan	10-01-2005	4 Years & 8 months	Passed	
2.	Zahir Muhammad	10-01-2009	-do-	-do-	
3.	Abdul Ghafoor	12-03-2005	4 years & 6 months	Un-Passed	
4.	Tariq Nawaz	10-6-2006	3 years & one month	-do-	
5.	Faiz Muhammad	25-01-2007	2 years & 3 months	Passed	

Remarks:- Mr. Faiz Muhammad Patwari has been transferred/posted as Kanunge (Q-S) vide Senior Member Board of Revenue, NWFP, letter No. 21245/Admn I/P/S/P, dated 30/7/2009.

District Officer Revenue & Estate/
Collector, Malakand at Batakhalo.

ATTACHED

READER TO
District Officer Revenue &
Estate Malakand at Batakhalo

16/4/2011

H-4

-1-

30

GOVERNMENT OF NWFP.
REVENUE & ESTATE DEPARTMENT.

PESHAWAR DATED THE 04/08/2009.

OFFICE ORDER.

No. _____ /DLR/Settle: The Competent Authority, has been pleased to grant relaxation regarding prescribed length of service in respect of Mr. Faiz Muhammad, Patwari of District Buner now transferred and posted as Kanungo in his (own pay and scale) in District Malakand at Batkhela for a period of two years six months and six days service as Patwari for the post of Kanungo under Rules-12 of the West Pakistan (Northern Zone) Kanungo Services Rule-1964.

Sd/-
SECRETARY TO GOVT. OF NWFP,
REVENUE AND ESTATE DEPARTMENT

No. 460-69 /DLR/Settle:

Copy for information and necessary action is forwarded to the: -

1. District coordination Officer, Buner and Malakand.
2. Director Land Records, NWFP.
3. District Officer (R&E), Buner and Malakand at Batkhela.
4. District Accounts Officers, Buner and Malakand at Batkhela.
5. Assistant Secretary (Admn.), Board of Revenue, NWFP.
6. Official concerned.
7. Office order file.

ASSISTANT SECRETARY (ESTT).
BOARD OF REVENUE, NWFP.

ATTESTED

MINUTES OF THE MEETING OF DEPARTMENTAL PROMOTION / SELECTION COMMITTEE MEETING HELD ON 10/08/2009 IN THE OFFICE OF DISTRICT OFFICER (R&E) MALAKAND.

H-5
 Hux &
 (24)
 (31)
 Alex
 Amroddin
 Adnan
 (27)

A meeting of Departmental Promotion / Selection Committee meeting regarding promotion of Patwari (BPS-05) to the post of Kanungo (BPS-09), transfer of Patwari to the post of T.R.A (BPS-07) and appointment of Patwaris was held on 10/08/2009 in the office of District Officer (R&E) Malakand under his Chairmanship.

- The following attended:-
- | | |
|--|----------|
| 1. District Officer (R&E) Malakand. | Chairman |
| 2. H.R.D.O, Malakand. | Member |
| 3. Deputy District Officer, (R&E) Malakand | Member |
| 4. Representative of Board of Revenue, NWFP. | Member |

There are four (4) regular sanctioned posts of Kanungo (BPS-09) in District Malakand in which two (2) posts of Kanungos are vacant, due to promotion of M/S Ibrahim Shah Kanungo to the post of District Kanungo (BPS-14) and Khursaid Ali Kanungo to the post of Naib Tehsildar (BPS-14) on regular basis. The said vacant posts of Kanungos are required to be filled amongst the senior most Patwaris in the District who have passed the Kanungo Examination and have five (5) years services as Patwari under the rules: One Mr. Faiz Muhammad Patwari who has been transferred from Buner District and posted as Kanungo in own pay and scale in District Malakand by Competent Authority and had served as regular Patwari for two years six months and passed Kanungo Examination in the year 2008 and the Competent Authority has relaxed/condoned his length of service for two years and six months and six days vide Board of Revenue, NWFP office order No. 46069/DLR/Scit dated 04/08/2009 for promotion to the post of Kanungo. The committee thoroughly examined his service record and unanimously found him eligible for promotion to the post of Kanungo on regular basis. Perusal of Service record of Mr. Muhammad Ghufraan who is a senior most Patwari in District Malakand and passed Kanungo Examination and served for four years and six months as regular Patwari. The Committee examined his service record and unanimously found him eligible for promotion to the post of Kanungo (BPS-09) on Acting Charge Basis under Rule-19 NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

Two posts of Tehsil Revenue Accountant (BPS-07) are vacant in the District which is required to be filled in by transfer of Patwaris who have undergone 12 weeks training in Tehsil under the rules, against one post of TRA one Mr. Tariq Ali junior Patwari is working in (OPS) he is back transferred to the post of Patwari. The Committee unanimously recommended to transfer M/S Zahir Muhammad and Abdul Ghufraan

[Handwritten signature]

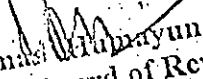
(32) (25)

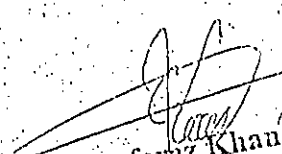
atwaris in the District as TRA (BPS-07) and directed them for Tehsil Revenue Accountant training in Tehsils Dargai and Bathhila.

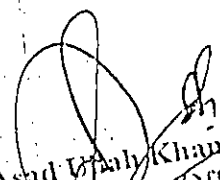
In view of the above, two posts of Patwaris become vacant which is required to be filled amongst the senior most Patwar candidates Register maintained in the office of District Officer (R&E) Malakand but no Patwar candidate is available in the District. As such the committee unanimously recommended the following qualified Patwar candidates of adjacent District as Patwari:-

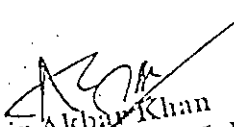
1. Syed Imran Ali Shah, s/o Syed Sardar Ali, District Mardan.
2. Mr. Muhammad Ali S/o Haya Khan, District Charsadda.

The meeting was ended with vote of thanks by the Chairman.


Muhammad Ullah Khan
Superintendent, Board of Revenue, NWFP
(Representative of Board of Revenue)


Sarfaraz Khan
H.R.D.O, Malakand
(Member)


Asad Ullah Khan
Deputy District Officer (R&E)
(Member)


Amir Akbar Khan
District Officer (R&E), Malakand
(Chairman)

ATTESTED


H-6
Mr. H. [Signature]
OFFICE OF THE
DISTRICT OFFICER REVENUE
AND ESTATE DISTRICT MALAKAND
AT BATKHILA.

Malakand Dated the 10 /08/2009

OFFICE ORDER

No. 1540 /DOR/DK/MKD.

In pursuance of decision taken in the Departmental Promotion / Selection Committee meeting the following Patwaris (BPS-05) are hereby promoted to the post of Kanungo (BPS-09) with immediate effect :-

1. Mr. Faiz Muhammad on regular basis.
2. Mr. Muhammad Ghufraan on acting charge basis.

[Signature]
District Officer (R&E)/
Collector, Malakand at Batkhela.

No. 1540-46 /DOR/DK/MKD.

Copy for information and necessary action is forwarded to the :-

1. District Coordination Officer, Malakand.
2. Secretary, Board of Revenue, NWFP.
3. District Accounts Officer, Malakand.
4. Official concerned.
5. Office order file.
6. Personal file.

[Signature]
District Officer (R&E)/
Collector, Malakand at Batkhela.

16
From: The Deputy District Officer (R/J),
Gagra, Buner.

To: The Commissioner,
Malakand Division.

Subject: COMPLAINT AGAINST MR. FAIZ MUHAMMAD KILAN,
NAIB TEHSILDAR GAGRA, BUNER.

Reference your office letter No. 3103-042/26/Estt: dated 18.11.2009,
on the subject cited above.

R/Sir,
As per your direction on the subject cited above, an open and
discreet inquiry was conducted. After inquiry, it was revealed that the complaint
against Faiz Muhammad has been made by an anonymous person. Muhammad
Laki, president Anjuman-e-Patwarian, Buner was called on 26.11.2009 to confirm
or otherwise the filing of the said application who categorically distanced himself
from such application.

Mr. Faiz Muhammad was transferred to District Malakand as
Kanungo (own pay & scale) vide 21245-4 dated 30.07.2009. He was granted
relaxation by Govt. of NWFP, Revenue & Estate Department vide No. 460-
69/DCR/Settle: dated 04.08.2009. After this on 07.08.2009, he was posted as
ADK Malakand by DOR&E, Malakand. Though the said DOR&E was father of
Mr. Faiz Muhammad yet his order was a routine order and was as per rules.

On 20.08.2009 the Revenue & Estate Department vide No.
22893-22901/Admn:1/PF(Q), transferred and posted him as Naib Tehsildar
Charbagh District Swat (own pay scale).

On 26.09.2009 he was promoted as District Kanungo (BPS-14) on
current charge basis and posted as District Kanungo Buner vide NWFP Revenue
& Estate Department No. 24277-89/Admn:V/PF(A). On 01.10.2009, NWFP
Revenue & Estate Department vide No. 24656-61/Admn:V/PF(N) posted Faiz
Muhammad as Naib Tehsildar Gagra, Buner. Mr. Faiz Muhammad is still
working on the said post.

After perusal of copies of all these orders, it is clear that Faiz
Muhammad has been transferred and promoted by the competent authority. The
Said complaint has been made by an anonymous person. Transfer / promotion of
Faiz Muhammad has not affected any one. I find nothing irregular or wrong in this
process. The said complaint may therefore be treated as anonymous and baseless.

10
H-7
34
Inq A
M
%c (MUHAMMAD AYAZ)
Deputy District Officer (R/J)

INQUIRY REPORT

DISCIPLINARY PROCEEDING AGAINST MR. MIR AKBAR KHAN (PMS BS-18)
THE THEN ADDITIONAL DEPUTY COMMISSIONER SWAT, NOW ADDITIONAL
DEPUTY COMMISSIONER CHARSAKDA- DE-NOVE ENQUIRY

The undersigned was appointed as Enquiry Officer in the subject case vide Notification No. SO (F-I)/E&D/6-11/2013 dated 15-09-2014. (Annex-A)

As per charge sheet the following allegations were leveled against Mr. Amir Akbar Khan, the then Additional Deputy Commissioner Swat, now A.D.C Charsakda. (Annex-B)

- i. He misbehaved with the lawyers of District Buner by using his official status as per information report.
- ii. He has also flouted the rules during your posting as D.O.R Malakand and promoted his son as District Kanungo while ignoring the senior most officials.
- iii. He has also used his position to initiate a baseless enquiry against Mr. Hidayat Ullah, Tehsildar Matta, due to personal grudges with Tehsildar.

Reply to the charge sheet by Mr. Amir Akbar Khan was received and placed on file. (Annex-C)

The undersigned visited office of the Deputy Commissioner Malakand where all the concerned were summoned. The following were present.

- i. Mr. Amir Akbar Khan, the accused officer.
- ii. Mr. Hidayat Ullah, Tehsildar.
- iii. Muhammad Ghufan Girdawar.
- iv. Muhammad Umair, A.C Barikot, representative of Commissioner Malakand.

Statements of S. No. (i) to (iii) were recorded and placed on file. Record perused and copies of the relevant record obtained and placed on file.

Charge No. 1 MISBEHAVIOUR WITH THE LAWYER IN DISTRICT BUNER BY USING HIS OFFICIAL STATUS

Findings:-

- a. It was found that a conflict arose between the officer under enquiry and Mr. Ubaid-ur-Rehman advocate in a village Toor Warsak Buner. The motive was differences in elections due to personal affairs but the lawyers agitated the issue and reported to high ups.
- b. Later due to intervention of Jirga the issue was patched up amicably.
- c. Both the lawyer and the officer under enquiry belong to the same district. Since the compromise effected and the advocate did ^{not} pursue the case.

Keeping in view the above the charge does ^{not} stand proved against the officer.

True copy
for
[Signature]

[Signature]

Abdullah
14
30

DOR

(15) (28)

36

HE HAS FLOUTED THE RULES DURING HIS POSTING AS DOR MALAKAND AND PROMOTED HIS SON AS DISTRICT KANUNGO WHILE IGNORING THE SENIOUR MOST OFFICIALS.

- a. Mr. Faiz Muhammad Khan (Son of the officer under enquiry) was working as Patwari in District Buner. He was transferred and posted as Kanungo in his own pay and scale in District Malakand vide Board of Revenue order endorsement No. 21245-51/Admn:I/PF/F dated 30/07/2009.
- b. Relaxation of two years, six months and six days was granted to Faiz Muhammad Patwari to qualify the prescribed length of service of five years for the post of Kanungo by the Board of Revenue vide office endorsement No. 460-69/DCR/Settle dated 04/08/2009. (Annex-D).
- c. Meeting of Departmental Promotion / Selection Committee for promotion of Patwaris (BS-05) to the post of Kanungo (BS-09) and transfer of patwari to Tehsil Revenue Account (BS-07) and appointment of patwaris was held on 10/08/2009.
- d. Besides, others Faiz Muhammad Patwari transferred from Buner and was promoted as Kanungo on regular basis, while Ghufuranullah was promoted on acting charge basis. Office order issued by DOR bearing No. 1540/DOR/DK/MKD dated 10/08/2009, is on file (Annex-E).
- e. Mr. Faiz Muhammad was transferred and posted as Naib Tehsildar Charbagh, Dist: Swat in his own pay and scale. Vide Board of Revenue order No. 22893-22901/Admn:I/PF(Q) dated 20/08/2009. (Annex-F).
- f. Astonishingly Faiz Muhammad was promoted as District Kanungo vide office order No. J.R-V/DLRIDK dated 02/07/201 (Annex-G). This order was challenged in Service Tribunal Khyber Pakhtunkhwa and the DLR Board of Revenue held the order in abeyance till further orders and was subsequently withdrawn vide (Annex-H)

Findings:

- a) Mr. Ghufuranullah Girdawr (Acting Charge basis) did not challenge the promotion in competent forum at that time rather challenged the seniority list in the year 2011.
- b) The DOR wrote to DCO Malakand and Assistant Secretary (Estt) Board of Revenue to depute representative for the Department Promotion Selection Committee meeting. (Annex-I). The DOR was supposed to address the letter to SMBR or Secretary BOR instead of Assistant Secretary (Establishment) and here is something fishy in the whole issue.
- c) Interestingly the transfer of Faiz Muhammad Patwari from Buner to Malakand, Relaxation in the prescribed length of service for promotion as Kanungo and his posting took only twenty days.

Observations

Commissioner Malakand wrote Secretary Establishment Department for transfer of the officer under enquiry leveling charges of corruption (Annex-J) but the charges leveled against the said officer by the Deputy Commissioner did not relate to District Swat. The two allegations are of Buner District while one of

True Copy
S.A.

2

DAB

Malakand District. Furthermore, maximum lapse were found on the part of Board of Revenue.

Findings

The subject case is subjudiced in the Services Tribunal Khyber Pakhtunkhwa. Commissioner Malakand and the DOR Malakand have defended the case in their Para-wise comments vide (Annex-K), therefore finding of the charges may lead to contempt of court.

Charge No. III

He has also used his position to initiate baseless enquiry against Tehsildar Matta due to his personal grudges.

- a) Notification u/s 04 of Land Acquisition Act-1894 was issued for acquisition of land measuring 06 kanal and 1 Marla in village Daggar District Buner for Forest Department vide No. 1045-51/G dated 06/05/2010.
- b) DFO Buner entered into agreement with the land owners vide (Annex-L)
- c) The land owner was paid Rs.11,21,266/- per kanal instead of Rs.3,53,278 per kanal as per average one year price. Thus sustained loss of Rs.45,90,256/- to Government.
- d) In another case loss of Rs.78,598,121/- was sustained to Govt. by the court of Law.
- e) The Deputy Commissioner Buner approached Secretary Board of Revenue for conducting enquiry on the note of DOR (Officer Under Enquiry. (Annex-M)
- f) The enquiry Committee comprising Deputy Commissioners Swat and Buner conducted the enquiry and Hidayatullah Tehsildar was not found guilty.

Finding

I am of the view that DOR being head of Revenue Department on the direction of Advocate General Peshawar High Court Bench Dar-ul-Qaza Swat was bound to put the note to competent authority for enquiry. Tehsildar was not found guilty in the case. As such this charge is not proved against the officer under enquiry.

Enquiry report containing pages 03 with enclosures 13 pages is submitted. Statements recorded are enclosed in separate file below.

13/11/14
(Shafirullah Waqar)
Director Civil Defense
Inquiry Officer

True Copy
S
A

AMENDED

38 J
SHOW CAUSE NOTICE

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as competent authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 do hereby serve you, Mr. Amir Akbar Khan (PMS BS-18) the then DO(R&E) Malakand now Addl. Deputy Commissioner, Charsadda with the following:-

That on going through the material on record and other papers connected with the case, I am satisfied that the charge given below has been proved against you:-

"You have flouted the law/rules during your posting as DO(R&E) Malakand, chaired the Departmental Promotion Committee meeting held on 10.8.2009 and promoted your son ignoring the senior officials."

2. That as a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the penalty of Reduction to lower post for a period of three years. under rule 4 of the said rules.

3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within seven days or not more than seven days of its delivery, it shall be presumed that you have no defence to put in and in that case an exparte action will be taken against you.

5. A copy of enquiry report is enclosed.

Mr. Amir Akbar Khan
(PMS BS-18) the then DO(R&E) Malakand
Now Addl. Deputy Commissioner, Charsadda

Pervez Khattak
(PERVEZ KHATTAK)
CHIEF MINISTER
KHYBER PAKHTUNKHWA
(COMPETENT AUTHORITY)
23.08.2015

[Signature]

[Signature]

(6) K 39

Before the Honourable Chief Minister, Khyber Pakhtunkhwa


Reply of Show Cause Notice


Respected Sir,

It is submitted that from the perusal of record, it has been transpired that the show cause notice issued to the undersigned is totally against the statement of ~~allegation/charge sheet vide No. SO(E)DE&AD/6-11/2014 dated 05-03-2014 and No. SO(E)DE&AD/6-11/2014 dated 15-09-2014 related to the promotion of Faiz Muhammad Khan as District Kanungo (BPS-14), which is under the competency of Board of Revenue. The Board of Revenue has issued order of Faiz Muhammad Khan Kanungo vide No. 242767/89/Admn.V/PE/A dated 26-09-2009 (Annexure-A)~~ whereas, the show cause notice issued to the undersigned is regarding flouting of rules for the promotion of my son as Kanungo through Departmental Promotion Committee held on 10-08-2009 (Annexure-B).

As far as the promotion of Faiz Muhammad Khan to the post of Kanungo (BPS-9) is concerned, the undersigned being the Competent Authority convened a meeting of Departmental Promotion Committee for the promotion of Patwaries to the post of Kanungos including my son according to law, seniority/cum fitness and as such the rules have not been flouted in this regard. (Annexure-C) and the said promotion order has not been challenged by anyone in the proper forum.

In view of the above facts and circumstances, it is humbly prayed that the show cause notice may kindly be withdrawn as I have not flouted any rules and the promotion has been made on merits.


Amir Akbar Khan
Addl: Deputy Commissioner
Charsadda



8 (46)

Before the Honourable Chief Minister, Khyber Pakhtunkhwa.

Reply of Show Cause Notice.

Respected Sir,

I have the honour to refer to Section Officer (Estt:-I) Establishment Department, Khyber Pakhtunkhwa, Peshawar letter No.S.O. (E-I)E&AD/6-11/2015 dated 30-1-2015 on the subject cited above whereby a Show Cause Notice has been issued to the undersigned received on 3-2-2015 wherein it has been directed to show cause of the following:-

"You have flouted the law/Rules during your posting as DOR&E Malakand, Chaired the Departmental Promotion Committee Meeting held on 1-8-2009 and promoted your son ignoring the senior Officials".

In reply to the above stated Show Cause, I submit to explain the facts that three enquires have been conducted by various Inquiry Officers as follows:

1. First Inquiry was conducted by Mr. Ayaz Khan DDOR Gagra District Buner vide CMD letter No.3103-042/26 Estt: dated 18-11-2009 and he passed the following recommendations"

After perusal of the copies of all these orders, it is clear that Faiz Muhammad has been transferred and posted by the competent authority. The said complaint has been made by an anonymous person. Transfer/Promotion of Faiz Muhammad Khan has not affected the seniority of any one. ~~Nothing irregular or wrong in this process. The said complaint may, therefore, be treated as anonymous and baseless.~~ (Annex:A).

2. The second Inquiry was conducted by Dr.Syed Akhtar Hussain Shah, Additional Secretary Labour Department Khyber Pakhtunkhwa vide Establishment Department Notification No.SO (E-I)/E&AD/6-11/2015 dated 5-3-2014 and he recommended that:-

~~Apparently the charges against the Officer for appointment of his son by superseding other officials are not proved with the following assumptions/conditions:~~

- i. ~~The Officer being Chairman of the competent forum is justified to clear the session considering promotion cases of all the incumbents including his son.~~
- A

(3)

(4)

(46)

ii. Whether the relaxation granted by the Board of Revenue, Khyber Pakhtunkhwa, to the official at S.No.5 ignoring four officials senior to him is in line with rules/policy? This assumption needs legal opinion from the Law Department or advice of regulation wing of Establishment Department. (Annex: B). However, so far the competent authority has not sought the legal opinion of the Law Department or Regulation Wing regarding relaxation as observed by the Inquiry Office, hence the para is related to BOR, Khyber Pakhtunkhwa, being competent authority.

3. The third De-Novo enquiry was conducted by Mr. Shafirullah Khan, Additional Secretary Home & T.As Department now Director General, Civil Defence, KPK, vide Establishment Department letter No. SD (E-I)/E&AD/6-11/2014 dated 15-9-2014 and recorded the following findings:

~~The subject case is subjudice before the Service Tribunal, KPK, and the Commissioner Malakand and DOR&E Malakand have defended the case in their parawise comments as respondents No.2 and 3~~ (Annex: C). Therefore, the instant findings against the undersigned contained in the show cause notice are in contravention of the comments filed by the respondents in the case before the tribunal which may lead to an awkward position for the Department (Annex:D).

It is also pointed out for your kind perusal that the learned Inquiry Officer has remarked that the letter addressed to the Assistant Secretary, BOR, creates fishy situation whereas correspondence with the Assistant Secretary is made according to the routine official business ~~and the Secretary BOR has approved the case on 7/8/2014~~

During the DPC meeting, two posts of Kanungos were lying vacant which were required to be filled from amongst the Patwaris of District Malakand with the prescribed qualification of Kanungo with five years experience under the service rules 2008 and was not eligible for the promotion to the post of Kanungo (Annex:-E).

(S)

(CP)

This is very much clear that according to seniority list of Patwaris at S.No.1 Muhammad Ghufuran (Complainant) had four years and six months service which was less than the required length of qualifying service of five years for regular promotion to the post of Kanungo (BPS-9). (Annex:-F). Therefore, he was posted as Kanungo on officiating charge basis against the regular post of Kanungo, under rule-9 of Khyber Pakhtunkhwa Civil Servant rules 1989; while the others at S.No.3 and 4 officials have not passed Kanungo examination as well as their length of service were also less than the prescribed period (i.e. five years which is compulsory for the promotion to the post of Kanungo (BPS-9).

As far as the promotion of Mr.Faiz Muhammad Patwari to the post of Kanungo is concerned, the competent authority i.e. Board of Revenue, Khyber Pakhtunkhwa, has condoned relaxation for the length of service of two years , six months and seven days at his own request (Annex-G) and he has also passed Kanungo Examination in the year 2008. Therefore, Mr. Faiz Muhammad Khan Patwari has correctly been considered for promotion to the post of Kanungo (BPS-9) by the Departmental Promotion Committee after examining his credentials and the undersigned has played no irregular role in his promotion (Annex:H).

Keeping in view the findings/recommendations of all the three Inquiries and minutes of the meeting of the Departmental Promotion Committee dated 10-8-2009, there is no irregularity pointed out and there is no question of flouting the rules/regulation for the promotion of Faiz Muhammad Khan Patwari to the post of Kanungo (BPS-9).

It is further mentioned that the case is subjudice in the Service Tribunal, KPK and the Show Cause Notice issued to the undersigned may kindly be withdrawn please.

Yes. I would desire to appear before the competent authority for personal hearing, please.


(Amir Akbar Khan)

Additional Deputy Commissioner,
Charsadda.

A



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT

Dated Peshawar the June 10, 2015

NOTIFICATION

NO.SO(E-I)E&AD/6-11/2015. WHEREAS, Mr. Amir Akbar Khan (PMS BS-18) the then Additional Deputy Commissioner, Swat now Additional Deputy Commissioner, Charsadda was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

2. **AND WHEREAS**, Mr. Shafirullah (PCS EG BS-19) Director, Civil Defence, Khyber Pakhtunkhwa was appointed as Inquiry Officer to conduct de-novo inquiry against the accused officer.

3. **AND WHEREAS**, the Inquiry Officer after having examined the charges, evidence on record and explanation of the accused officer submitted report.

4. **AND WHEREAS**, the competent authority also afforded the opportunity of personal hearing to the accused officer;

5. **NOW THEREFORE**, the competent authority, after having considered the charges, evidence on record, the explanation of the accused officer, defense offered by the accused officer during personal hearing and exercising his power under Rule-14 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, has been pleased to impose major penalty of "reduction to a lower post for a period of three years" on Mr. Amir Akbar Khan (PMS BS-18) the then Additional Deputy Commissioner, Swat now Additional Deputy Commissioner, Charsadda, with immediate effect.

**CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA**

Endst. No. & date even.

Copy forwarded to the:-

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
2. Principal Secretary to Governor, Khyber Pakhtunkhwa.
3. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. Commissioner, Malakand Division, Swat and Peshawar Division, Peshawar.
5. Accountant General, Khyber Pakhtunkhwa.
6. Deputy Commissioner, Swat and Charsadda.
7. District Accounts Officer, Swat and Charsadda.
8. PS to Secretary Establishment/PS to SS(E)/SS (Reg)/PA, AS(HRD)/AS(E)/DS(E.)/D.S(HRD Wing) SO(E.II), SO(HRD.I) SO(HRD.II) E&AD.
9. PS to Secretary (Admn.)/D.S(A)/SO(Secret)/Estate Officer/ACSO Cypher/Dy Director (IT) and Director Protocol Administration Department.
10. Officer concerned.
11. Manager, Government Printing Press, Peshawar.

M. Javed Siddiqi
(MUHAMMAD JAVED SIDDIQI)
SECTION OFFICER (ESTT.I)
Ph: & Fax No. 091/9210529

*True copy
Sent
Adm*

ATTESTED

A

Annex: 1

21

43

M (circled) 01/0

TO
THE HONORABLE CHIEF MINISTER,
KHYBER PAKHTUNKHWA.
(APPELLATE AUTHORITY/REVIEW AUTHORITY)

(44)

Through Proper Channel.

Subject: Review Petition against the Order/Notification dated 10.06.2015 whereby the penalty of reduction to lower post for the period of 3 years imposed upon the petitioner/appellant.

Sir,

It is profoundly submitted that I joined the Government Service in the year 1975 and with the passage of time I was promoted as PMS (BPS-18) officer in the year 2012. I had good service record throughout my service career and nothing adverse record is available against me in the record.

I was charge-sheeted under E&D Rules, 2011 on 05.3.2014 and the following charges were leveled against me:

- i) You misbehaved with the Lawyers in District Buner by using your official status as per information report.
- ii) You have also flouted the rules during your posting as DOR Malakand and promoted your son as District Kanungo while ignoring the senior most officials. The statement in this regard of Mr. Muhammad Ghufraan, Girdawar Circle Batkhela is attached.
- iii) You have also used your position to initiate a baseless inquiry against Mr. Hidayatullah, Tehsildar Matta, due to your personal grudges with the Tehsildar.

After issuing of charge sheet the first regular enquiry was conducted by Mr. Syed Akhtar Hussain Shah, Additional Secretary, Labour Department who concluded the enquiry in my favour by stating that all the charges were not proved against me. However, for un-known reasons, without any justification and reasons to be recorded in black and white, the denovo enquiry was ordered and the same was conducted by Mr. Shafiq Ullah, Director, Civil Defence, Peshawar.

RECEIVED
OFFICE OF THE PSCM
10/9/2015
11/16/15

True copy
Adm

AMIR AKBAR KHAN
ADE/ched
11/06/2015

[Signature]

(45) (25) (2) (2)

The enquiry officer in the denovo enquiry concluded the enquiry and held that "charges No.1 and 3 not proved whereas in respect of charge No.2 he recommended that "the subject case is subjudice in the Services Tribunal, Khyber Pakhtunkhwa, commissioner Malakand and the DOR Malakand have defended the case in their Para-wise comments, therefore, finding of the charges may lead to contempt of court". Meaning thereby the 2nd charge was also not proved by the enquiry officer.

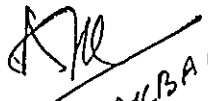
As far as the charge No.2 "You have also flouted the rules during your posting as DOR Malakand and promoted your son as District Kanungo while ignoring the senior most officials. The statement in this regard of Mr. Muhammad Ghufuran, Girdawar Circle Batkhela", it is submitted that the posts were available in the Malakand for which the proper approval was sought from the BOR to conduct DPC. The BOR after providing approval vide order dated 7.8.2009 I conducted DPC in the presence of his representative Mr. Hamayun Khan, Superintendent BOR. At this stage it is worth to mention here that the BOR vide order dated 4.8.2009 had already granted relaxation of 2 years, 6 months and 6 days in respect of Mr. Faiz Muhammad on his application, whereas, Muhammad Ghufuran who was short of 4 months service and had not applied for relaxation to the BOR nor BOR granted relaxation in respect of Muhammad Ghufuran till the date of DPC. Therefore, according to rules (Patwari with 5 years service plus passed Kanungo examination) Mr. Faiz Muhammad was promoted on regular basis, while Muhammad Ghufuran was promoted on acting charge basis in BPS-9.

All the above fact and circumstances revealed that the nothing irregularities or illegal act was done by me. Each and every step of promotion from convening of DPC to passing of promotion orders were done with the concurrence and proper approval of BOR.

I have penalized just for nothing and to damage my service career including pensionary rights because I have to retire after 8 months from service on superannuation. The aspect of my retirement within 8 months also shows that the penalty of reduction for 3 years is not applicable.

It is also worth to mention here that in the charge sheet I was blamed for promoting my son as District Kanoongo as per available record I never passed such like promotion order of Mr. Faiz Muhammad as District Kanoongo because neither that was in my competency nor I passed the order, rather, the promotion order of Mr. Faiz Muhammad as District Kanoongo was passed by the BOR and for that I can neither be charge sheeted nor legally held responsible. So much so the show cause notice the

True copy
S
A


AMIR AKBAR KHAN
ADc / ead
11/06/2015

ATTESTED


(46) (2) (3)

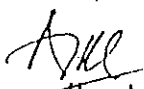
Charge- RC.2 was molded as "you have flouted the law and rules during your posting as DOR Malakand chaired the DPC meeting held on 10.08.2009 and promoted your son ignoring the senior official"

This illegality also proved the ill intentions on the part of my rivals because the charge contained in the show cause notice was neither reflected in the charge sheet nor any regular enquiry was conducted in that respect. Therefore, the penalty on the basis of molded charges which was not reflected in the original charge sheet is totally illegal, unlawful and against the norms of justice and fair play, which also reveals that in such proceedings under E&D Rules the competent authority was legally bound to dispense with regular enquiry for issuing direct show cause notice for imposing a penalty. But while issuing such show cause notice none of such legal requirement under E&D rules 2011 was observed nor the competent authority had ever passed the order in black and white for dispensing with regular enquiry for penalizing my for the charge mentioned in the show cause notice.

Thus, the whole proceedings including passing the impugned penalty order is nothing but nullity in the eyes of law which legally cannot be defended at any level.

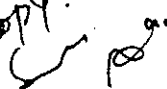
Therefore, it is humbly requested that the impugned penalty order dated 10.6.2015 may be set aside and I may very be graciously be restored to my original grade and post with all back and consequential benefits. It is also requested that the penalty is impracticable, keeping in view my less remaining length of service, the impugned penalty order may be held in abeyance to meet the ends of justice till the answer of the concerned staff to the legal questions raised in this review petition.

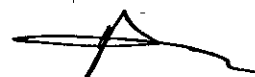
Yours Sincerely

 11/06/2015
Appellant/Petitioner
Amir Akbar Khan,
ADC, Charsadda.

C.C:

Copy in advance to the Honourable Chief Minister, Khyber Pakhtunkhwa, for his information and necessary action plz:

True copy.




VAKALAT NAMA

47

NO. _____/20

IN THE COURT OF KPK Service Tribunal Peshawar

Amir Akbar Khan (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Govt. of KPK etc (Respondent)
(Defendant)

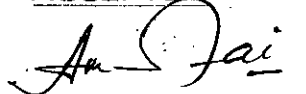
I/We, Amir Akbar Khan (Appellant)

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate, Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20


(CLIENT)

ACCEPTED

M. ASIF YOUSAFZAI
Advocate.

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar
Cell: (0333-9103240)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 1717 ST


Dated 6 / 11 / 2015

To

The Secretary Establishment,
Peshawar.

Subject: - Order

I am directed to forward herewith a certified copy of order dated 2.10.2015 passed by this Tribunal on the above subject for strict compliance.


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

BEFORE THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1053/2015

MIR AKBAR KHAN (PMS BS-18)
ADDITIONAL DEPUTY COMMISSIONER,
CHARSADDA

(Appellant)

VERSUS

Chief Secretary, Khyber Pakhtunkhwa

(Respondent)

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1, 2, 3,4.

PRELIMINARY OBJECTIONS:

1. This Honourable Services Tribunal has no jurisdiction to entertain the instant appeal.
2. That the appellant has got no cause of action/locus standi to file the instant appeal against the respondents.
3. That the present appeal is not maintainable.
4. That the appellant has presented the facts in manipulated form which disentitles him for any relief whatsoever.
5. That the appeal is barred by law/time.
6. That the appellant has not come to this Honourable Services Tribunal with clean hands.
7. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
8. That the appeal is hit by laches.

FACTS

ARA-1 Correct as per record the appellant was appointed in the year of 1975 and with the passage of time he promoted to BS-17 and then to BS-18.

PARA-2 Correct to the extent that the appellant was served with charge sheet and statement of allegations containing the said charges and Syed Akhtar Hussain Shah (PCS SG BS-19) was appointed as Enquiry officer (**Annex-I**).

PARA-3 Correct.

PARA-4 **Incorrect** the competent authority examined the enquiry report conducted by the enquiry officer and did not agree and approved to enquire the matter through an officer having revenue background/experience, therefore, a de novo enquiry was assigned to Mr. Shafirullah (PCS EG BS-19) (**Annex-II**).

PARA-5 Pertains to record and the enquiry officer will be in the better position to reply.

Para-6 **Incorrect.** The Enquiry Officer has conducted the enquiry and submitted his report. As per findings of the enquiry, out of three charges, two (charge i and iii) have not been proved whereas, no findings have been given against 3rd charge (charge ii) by the Enquiry Officer on the plea that the case is subjudiced in Khyber Pakhtunkhwa Services Tribunal and findings of the charge may lead to contempt of court. However, the Enquiry Officer has observed in his report that certain irregularities were committed by the accused officer in promotion of his son to the post of District Kanoongo while chairing Departmental Promotion/ Selection Committee meeting.

Para-7 **Incorrect** the appellant was served with Show Cause Notice with relevant charge with tentative penalty of Reduction to Lower post for a period of three years.

Para-8 **Incorrect final** penalty was imposed, on the appellant, after giving him opportunity of personal hearing with the officer of his choice. The review Petition of the appellant was also considered and matter was submitted to the competent authority for consideration, but the same not received back.

GROUNDS


A. **Incorrect** the appellant was awarded said penalty after completion of all codal formalities and his review petition was also processed according to the rules

B & C **Incorrect** the Enquiry Officer has conducted the enquiry on the charges mentioned in charge sheet and submitted his report. As per findings of the enquiry, out of three charges, two have not been proved whereas, no findings have been given against 3rd charge (charge ii) by the Enquiry Officer on the plea that the case is subjudiced in Khyber Pakhtunkhwa Services Tribunal and findings of the charge may lead to contempt of court. However, the Enquiry Officer has observed in his report that certain irregularities were committed by the accused officer in promotion of his son to the post of District Kanoongo while chairing Departmental Promotion/ Selection Committee meeting.

- D **Incorrect**, de novo enquiry was conducted with the approval of competent authority as is evident from the charge sheet and statement of allegations signed by it and mentioned the name of new enquiry officer.
- E **Incorrect** the penalty imposed upon the accused is according to the law.
- F **Incorrect** the matter was enquired through inquiry officer and then imposed requisite penalty by the competent authority on the accused officer.
- G As replied in above paras.
- H The respondents also seek permission to raise additional grounds at the time of arguments.

PRAYERS

It is therefore, respectfully prayed that the appeal being devoid of merits may please be dismissed with costs.


CHIEF SECRETARY
KHYBER PAKHTUNKHWA
(RESPONDENT NO. 1 & 2)


SECRETARY ESTABLISHMENT
KHYBER PAKHTUNKHWA
(RESPONDENT NO. 3)


SENIOR MEMBER
BOARD OF REVENUE
RESPONDENT NO. 4



Annexure - A¹ (R) (D) (8)

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

CHARGE SHEET

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa, as competent authority, hereby charge you, Mr. Amir Akbar Khan, (PMS BS-18) the then Additional Deputy Commissioner, Swat now Addl. Deputy Commissioner, Charsadda, as follows:

That you, while posted as Additional Deputy Commissioner, Swat, committed the following irregularities:

- i) You misbehaved with the Lawyers in District Buner by using your official status as per information report (Annex-A)
- ii) You have also flouted the rules during your posting as DOR Malakand and promoted your son as ~~District Kanungo~~ while ignoring the senior most officials. The statement in this regard of Mr. Muhammad Ghufraan, Girdawar Circle Batkhela is attached at (Annex-B).
- iii) You have also used your position to initiate a baseless inquiry against Mr. Hidayatullah, Tehsildar Matta, due to your personal grudges with the Tehsildar (Annex-C)

2. By reason of the above, you appear to be guilty of misconduct under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the Rules ibid.

3. You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the enquiry officer/enquiry committee, as the case may be.

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

5. Intimate whether you desire to be heard in person.

6. A Statement of Allegations is enclosed.

Pervez Khattak
(Pervez Khattak)
Chief Minister
Khyber Pakhtunkhwa

Attested true copy
S. A. I.



(38) (11) (9)

B AB

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

DISCIPLINARY ACTION

I, Pervez Khattak, Chief Minister, Khyber Pakhtunkhwa as competent authority, am of the opinion that Mr. Amir Akbar Khan, (PMS BS-18) the then Additional Deputy Commissioner, Swat now Addl. Deputy Commissioner, Charsadda, 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

- i) He misbehaved with the Lawyers in District Buner by using his official status as per information report (Annex-A)
- ii) He has also flouted the rules during your posting as DOR Malakandi and promoted his son as District Kanungo while ignoring the senior most officials. The statement in this regard of Mr. Muhammad Ghufraan, Girdawar Circle, Batkhela is attached at (Annex-B).
- iii) He has also used his position to initiate a baseless inquiry against Mr. Hidayatullah, Tehsildar Matta, due to his personal grudges with the Tehsildar (Annex-C)

2. For the purpose of enquiry against the said accused with reference to the above allegations, an enquiry officer/enquiry committee, consisting of the following, is constituted under Rule 10(1)(a) of the ibid Rules.

- i) Syed Akhtar Hossain Shah. (PCS-SG-BS-19) AS Labour.
- ii) _____

3. The enquiry officer/enquiry committee shall, in accordance with the provisions of the ibid Rules, provide reasonable opportunity of hearing to the accused, record its findings and make, within thirty days of the receipt of this order, recommendations as to punishment or other appropriate action against the official.

4. The accused and a well conversant representative of the Department shall join the proceedings on the date, time and place fixed by the enquiry officer/enquiry committee.

Pervez Khattak
(Pervez Khattak)
Chief Minister
Khyber Pakhtunkhwa
(Competent Authority)
28.02.2014.

Mr. Amir Akbar Khan, (PMS BS-18)
the then Additional Deputy Commissioner, Swat
Now Addl. Deputy Commissioner, Charsadda

True copy
[Signature]



E

(18)

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

NO. SO(E-I)E&AD/6-11/2014

Dated Peshawar, the September 15, 2014

To

Mr. Shafirullah,
(PCS EG BS-19),
Additional Secretary, Home & T.As Department.

SUBJECT: - DISCIPLINARY PROCEEDING AGAINST MR. AMIR AKBAR KHAN (PMS BS-18) THE THEN ADDITIONAL DEPUTY COMMISSIONER, SWAT, NOW ADDITIONAL DEPUTY COMMISSIONER, CHARSADDA DE NOVO ENQUIRY.

Dear Sir,

I am directed to refer to the subject cited above and to inform that the competent authority has been pleased to appoint you as Enquiry Officer to conduct de novo enquiry under Khyber Pakhtunkhwa Government Servants (E&D) Rules 2011, against Mr. Amir Akbar Khan (PMS BS-18), Additional Deputy Commissioner Charsadda.

2. Copies of the charge Sheet and Statement of Allegations against the accused officer duly signed by the competent authority are enclosed for further necessary action.

3. It is requested to kindly conduct the enquiry and submit report within the prescribed time as per rules.

Yours faithfully,

Encl: as above.

(MUHAMMAD JAVED SIDDIQI)
SECTION OFFICER (ESTT. I)

Endst. No. & date even

Copy is forwarded to the:-

1. Commissioner, Malakand Division, Swat with the request to nominate a Departmental Representative well conversant with the case to assist the Enquiry Officer and also to provide the record/information as and when required by the Enquiry Officer.
2. Mr. Amir Akbar Khan (PMS BS-18), Additional Deputy Commissioner Charsadda, alongwith copies of Charge Sheet and Statement of Allegations with the request to submit written reply to the Enquiry Officer and attend the proceedings as and when directed by the Enquiry officer.

SECTION OFFICER (ESTT. I)
PHONE & FAX # 091-9210529

True Copy
AA

BEFORE THE KHYBER PAKHTUNKHWA,

SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1053/2015

Mir Akbar Khan (PMS BS-18)
Additional Deputy Commissioner,
Charsada

(Appellant)

Versus

Chief Secretary, Khyber Pakhtunkhwa

(Respondent)

REJOINDER ON BEHALF OF APPELLANT

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-8) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 Para-1 of appeal is admitted correct by the respondents hence need no reply.
- 2 Last portion of the Para-3 of the appeal is admitted correct hence need no comments, while remaining portion of the Para-3 of appeal is not denied by the respondents, which mean respondents also admitted the remaining portion of Para-2 of appeal as correct.
- 3 Para-3 of appeal is admitted correct by the respondents hence need no reply.
- 4 Incorrect. While Para-4 of appeal is correct.
- 5 Para-5 of appeal is not denied by the respondents, which mean respondents admitted Para-5 of appeal as correct.

- 6 Incorrect. While Para-6 of appeal is correct.
7 Incorrect. While Para-7 of appeal is correct.
8 Incorrect. While Para-8 of appeal is correct.

GROUND:

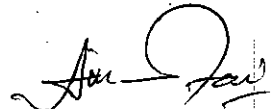
- A) Incorrect and not replied accordingly to Para-A of the appeal. Moreover, Para-C of the appeal is correct.
B & C) Incorrect. While Para-B & C of the appeal is correct.
D) Incorrect. While Para-D of the appeal is correct.
E) Incorrect. While Para-E of the appeal is correct.
F) Incorrect. While Para-F of the appeal is correct.
G) Not replied accordingly to Para-G of the appeal. Moreover, Para-G of the appeal is correct.
H) Legal.

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

APPELLANT

Mir Akbar KHan

Through:

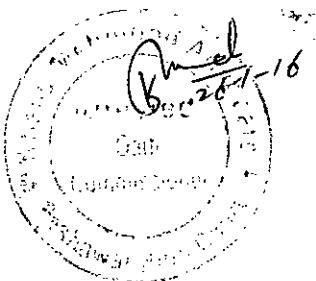


(M. ASIF YOUSAFZAI)

ADVOCATE, PESHAWAR

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.



DEPONENT


MINUTES OF THE MEETING HELD ON 27/052013 AT 10.00 AM WITH REGARD TO PROMOTION OF KANUNGOS TO THE POST OF DISTRICT KANUNGOS (BPS-14) CHITRAL, BUNER AND TOOR GHAR.

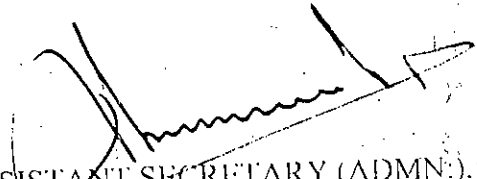
A meeting of Departmental Promotion/Selection Committee was held under the Chairmanship of Director Land Records, Khyber Pakhtunkhwa Peshawar on 27/05/2013 at 10.00 AM in his office with regard to promotion of Kanungos to the posts of District Kanungos (BPS-14) Chitral, Buner and Toor Ghar respectively. The following attended the meeting:-

- 1) Deputy Secretary-I, Board of Revenue, Khyber Pakhtunkhwa. Member.
- 2) Assistant Secretary (Admn), Board of Revenue, Khyber Pakhtunkhwa. Member.

The promotion case ibid has been examined in light of existing Rules and perused the relevant service record of the officials concerned and recommended the following for promotion to the post of District Kanungos (BPS-14), Chitral, Buner and Toor Ghar :-

S.No.	Name of official concerned	Recommendations/Decisions
1	Syed Inuran Ali Shah, Kanungo (BPS-11) Chitral	Promoted as District Kanungo (BPS-14) Chitral on Acting Charge Basis.
2	Mr. Faiz Muhammad, Kanungo (BPS-11) presently working as NT Buner (O.P.S)	Promoted as District Kanungo (BPS-14) Buner on regular basis.
3	Mr. Muhammad Daud, working as District Kanungo Abbottabad (A.C.B)	Regularized as District Kanungo (BPS-14) Toor Ghar.


 DEPUTY SECRETARY-I,
 BOARD OF REVENUE,
 KHYBER PAKHTUNKHWA.
 (MEMBER)


 ASSISTANT SECRETARY (ADMN),
 BOARD OF REVENUE,
 KHYBER PAKHTUNKHWA.
 (MEMBER)


 DIRECTOR LAND RECORDS,
 KHYBER PAKHTUNKHWA.
 (CHAIRMAN)

Amendment E " 15

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 877 /2012

Mst. Suriya Bibi wife of Syed Kifayat Hussain Shah R/o Village Tarmaki
Khampur Tehsil & District, Haripur.

...APPELLANT@

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary.
2. Secretary Health Khyber Pakhtunkhwa, Peshawar.
3. Executive District Officer Health Battagram. - DHO Battagram
4. Administrator BHU Sakargah.

...RESPONDENTS

AMENDED APPEAL

APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHAWA SERVICE TRIBUNAL ACT 1974
FOR DECLARATION TO THE EFFECT THAT ORDER
OF EXECUTIVE DISTRICT OFFICER HEALTH
BATTAGRAM DATED 08/10/2011 IS ILLEGAL,
UNLAWFUL, WITHOUT LAWFUL AUTHORITY, AB-
INITION, AGAINST THE LAW AND PRINCIPAL OF
NATURAL, THEREFORE LIABLE TO BE SET-ASIDE.

Attested
A Ra

File be consigned to the record room.

ANNOUNCED

04.02.2016.

(PIR BAKHSH SHAH)
MEMBER

(ABDUL LATIF)
MEMBER

PRAYER: ON ACCEPTANCE OF THIS APPEAL, THE TERMINATION ORDER DATED 08/10/2011 MAY KINDLY BE DECLARED AS NULL, VOID, AB-INITIO, AGAINST THE LAW, RULES AND AGAINST THE FUNDAMENTAL RIGHTS OF THE APPELLANT. THEREFORE, APPELLANT MAY KINDLY BE REINSTATED WITH ALL BACK BENEFITS ^{and} OR ANY OTHER RELIEF WHICH THIS HONOURABLE COURT MAY DEEM FIT AND PROPER IN THE CIRCUMSTANCES MAY ALSO BE GRANTED TO THE APPELLANT.

Respectfully Sheweth:-

1. That the appellant was appointed as DAI BPS-02 at BHU Sakargah on 16/07/2009. Copy of the appointment order is attached as Annexure "A".
2. That the appellant performed her duty with full devotion and dedication at RHC Kuzabanda and she was transferred to Haripur vide letter/office order No. 7647-5 dated 05/09/2011 by Director General Health Services Khyber Pakhtunkhwa. Copy of office order dated 05/09/2011 is attached as Annexure "B".

Attested
H. J. J.

that no charge was proved against the appellant and the final show cause notice issued to the appellant was uncalled for and against the facts and law. He also argued that the appellant was found not guilty in the first enquiry and no findings have been given so far charge No. ii is concerned even by the enquiry officer in denovo enquiry proceedings He submitted that the appellant is at the verge of retirement and has been penalized on baseless allegations and without due process of law. He prayed that the appeal may be accepted.

6. This appeal was resisted by the learned Government Pleader by stating that all codal formalities were fulfilled. He also argued that the appellant had promoted his son from the post of Patwari to the post of District Kanungo which charge stand proved against him. He prayed that the appeal may be dismissed.

7. From perusal of the record as summarized above, it is evident that in the first enquiry no charge was proved against the appellant. It was also stated by the learned counsel for the appellant that order of the denovo enquiry was not made by any competent authority. Again it is evident that no finding has been recorded by the enquiry officer in the denovo enquiry proceedings. In this situation, requirement of the law was either to have exonerated the appellant or to have directed afresh enquiry proceedings ^{for third time} against the appellant. Award of penalty to the appellant in the said situation and ^{in the light of available} material on record cannot be appreciated and such an order cannot be maintained. Hence, the Tribunal is of the considered ^{view} ~~opinion~~ to set aside the impugned order dated 10.06.2015 and to remit the case to the respondent-department ^{order accordingly} for denovo proceedings against the appellant, if so desired. The appeal is disposed off ^{in the above terms.} accordingly. Parties are left to bear their own costs.

authority deemed of paper

3. That unfortunately the daughter of the appellant got seriously sick as she had earlier undergone a heart operation. The appellant had to take her daughter to Rawalpindi hospital. Hence, the appellant applied for leave of three months vide application dated 12/09/2011, which was allowed by Executive District Officer Health Battagram. Copy of the doctors prescription and leave application dated 12/09/2011 is attached as Annexure "C" & "D".
4. That when the appellant alongwith her daughter was in Rawalpindi hospital for treatment, it transpired that the Executive District Officer Health Battagram had initiated inquiry against the appellant for her willful absence and without any show cause notice or giving any opportunity to the appellant had terminated her services vide letter No. 4510-15 dated 08/10/2011. Copy of the termination order, recently received on 07/02/2012 is attached as Annexure "E".
5. That feeling aggrieved, appellant filed departmental appeal before the Director General Health on 05/03/2011 but no response has yet been given to the appellant nor her child health has recovered. Copy of departmental appeal is attached as Annexure "F".

Attested
14/11/12
[Signature]

His review petition dated 11.06.2015 was not responded, hence this appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

3. The appellant has denied the charges. According to record, after issuing the charge sheet and statement of allegations, the matter was enquired into by Dr. Syed Akhtar Hussain Shah, then Secretary Labour Department, Khyber Pakhtunkhwa Peshawar who submitted his report which shows that the charges against the appellant were not proved. Hence a denovo enquiry was ^{resorted to,} ~~decided~~ to be conducted by Mr. Shafirullah PC (EG) BS-19. The same charge sheet was repeated and issued to the appellant. The enquiry report was submitted which is available on record, which shows that charges No. i & iii were not proved. So far charge No. ii is concerned, the enquiry officer has given the following findings:-

“The subject case is subjudiced in the Service Tribunal Khyber Pakhtunkhwa, Commissioner Malakand and the DOR Malakand have defended the case in their Para-wise comments, therefore, finding of the charges may lead to contempt of court.”

^{There after} Where-after, a show cause notice was issued to the appellant, which was replied by him. Finally, the impugned order was passed against the appellant.

4. Arguments heard and record perused.

5. The learned counsel for the appellant stated that the entire proceedings against the appellant are based on malafide. He submitted

6. That, the appellant seeks indulgence of this Honourable court for her redressal, inter-alia on the following grounds:-

GROUNDS:-

- a. That the termination order dated 08/10/2011 is illegal, unlawful, without lawful authority, perverse, capricious and is against the constitutional guaranteed rights of the appellant, hence, untenable in the eyes of law and is liable to be set-aside.
- b. That neither any charge sheet was served upon the appellant nor she was associated with any inquiry, hence, the termination order is based on political influence, ex-parte inquiry, therefore, liable to be set-aside.
- c. That if the opportunity had been granted to the appellant, she would have prove her valid, credentials and the facts that her leave was dully approved by the respondent No. 3.
- d. That the appellant was condemned unheard and she did not given opportunity for personal

Attested
DA
[Signature]

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	04.02.2016	<p><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>PESHAWAR.</u></p> <p>Appeal No. 1053/2015</p> <p>Mr. Mir Akbar Khan Versus The Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others.</p> <p><u>JUDGMENT</u></p> <p><u>PIR BAKHSH SHAH, MEMBER.-</u> Appellant with counsel (Mr. Muhammad Asif Yousafzai, Advocate) Government Pleader (Mr. Ziaullah) with Sultan Shah, Assistant for the respondents present.</p> <p><i>Relevant facts in brief on record are</i></p> <p>2. <i>the</i> Appellant Mir Akbar Khan, PMS (BS-18) Addl. Deputy Commissioner, Charsadda was awarded major penalty of reduction to a lower post for a period of three years, vide impugned order dated 10.6.2015 on the basis of charges contained in the charge sheet which <i>were</i> <i>are</i> as follows:-</p> <ol style="list-style-type: none"> i. You misbehaved with the Lawyers in District Buner by using your official status as per information report. ii. You have also flouted the rules during your posting as DOR Malakand and promoted your son as District Kanungo while ignoring the senior most officials. The statement in this regard of Mr. Muhammad Ghufan, Girdawar Circle Bathkela is attached. iii. You have also used your position to initiate a baseless inquiry against Mr. Hidayatullah, Tehsildar Matta, due to your personal grudges with the Tehsildar.”

IN THE HONOURABLE PESHAWAR HIGH COURT PESHAWAR

WRIT PETITION NO. 2430 / 2014



Mr. Shams-uz-Zaman Director (Tech) EQAA Abbottabad
C&W Department Govt. of Khyber Pakhtunkhwa

.....Petitioner

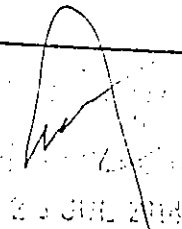
VERSUS

1. Provincial Government of Khyber Pakhtunkhwa,
Through the Chief Secretary Khyber Pakhtunkhwa
2. Secretary to the Government of Khyber Pakhtunkhwa
C&W Department at Peshawar
3. Principal Secretary to the Chief Minister Khyber Pakhtunkhwa
4. Secretary to the Government of Khyber Pakhtunkhwa
Establishment Department at Civil Secretariat Peshawar
5. Provincial Selection Board, through the Secretary establishment
Department Government of Khyber Pakhtunkhwa
6. Engineer Javed Ihsan Managing Director Khyber Pakhtunkhwa
Highway Authority at Peshawar

..... Respondents

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

Respectfully Sheweth:


23 FEB 2015

The petitioner most humbly craves permission to submit as under:

ATTESTED

EXAMINER
Peshawar High Court

19 FEB 2015

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

J U D G M E N T

WP No. 2430-P of 2014.
Date of hearing...17.02.2015

Shamsuz Zaman Vs Provincial Government of KPK & others.

Petitioner(s) by *Barrister Waqar Ali Advocate* Mr
Respondent(s) by *Mr. Naveed Ahsan Advocate & Rabnawaz Khan* Mr

ABDUL LATIF KHAN, J:- Through instant petition,
the petitioner seeks Constitutional jurisdiction of this
Court, praying that:-

"On acceptance of instant Writ
Petition, this Hon'ble Court may very
graciously be pleased to:

Set aside decision of the PSB and the
consequent notification dated 22 July
2014, whereby, respondent No.6 was
promoted to BS-20.

Declare that pending enquiries
against the petitioner should have
been ignored while considering the
petitioner's case for promotion and
Direct the respondents to issue

ATTESTED
EXAMINER
Peshawar High Court
19 FEB 2015

notification of the petitioner's promotion,

Declare that the pending proceedings against the petitioner are based on malafide and be aborted forthwith."

2. In essence, the petitioner has sought the relief for issuing direction to respondents for consideration of his case for promotion to BPS-20 strictly in accordance with law. It is also prayed that respondents be directed to consider the case of petitioner for promotion without being biased of pending inquires as rights of petitioner could not be denied on the pretext that an inquiry was pending against the petitioner.

3. Previously the petitioners had filed Writ Petition No.1646 of 2013, wherein the respondents filed comments and vide order dated 19.12.2013 the petition was disposed of by remanding the case of petitioner to the respondents for consideration in the coming P.S.B. meeting with the following orders:-

"The entries against the petitioner in the column of remarks of summary for promotion do not get any support from the Annual Confidence Reports

REGISTERED
EXAMINER
Peshawar High Court
19 FEB 2015

of the petitioner. The record of he case is also silent that no such disciplinary action was taken against the petitioner regarding the charges leveled against him. So, in this view of the matter and the facts referred to above, many fingers can be raised against the promotion of respondent No.5. Learned counsel for the petitioner in the given circumstances submitted that he would be satisfied if his case is considered for promotion by the coming PSB. So, in this view of the matter, we direct the respondents that the case of the petitioner be considered by the coming PSB and the above referred remarks in the summary are directed to be expunged having no documentary support."

4. It is submitted that petitioner was appointed as Inquiry Officer to look into the matter of construction of road from Village Kenthiali to village Marhais, Union Council Kookmang Abbottabad, situated at a height of around 7000 feet. The petitioner claims to be a Cardiac patient and had undergone angioplasty and angiography, requested the respondents to exonerate him from the task upon which a medical board was

EXAMINE
 District High Court
 19 FEB 2015

constituted to consider whether the petitioner was medically fit for his job or otherwise, who declared the petitioner as fit to carry out his services. Another inquiry was ordered on the ground that the petitioner has committed misconduct by refusing to conduct inquiry interested to him as the Medical Board has found him fit to perform his duty. The Medical Board constituted recommended the petitioner to be exonerated from charges levelled against him. Later on promotion papers from BPS-19 to BPS-20 were submitted by C&W Department to Provincial Selection Board including the name of petitioner as per direction of this Court in WP 1646-P/13 however the petitioner was not considered on the ground of pending inquiries. Another writ petition No.1150-P/14 was filed by the petitioner which was disposed of by this Court with the following observations:-

"In the morning when the case was taken up for hearing directed the learned AAG, present in Court, to immediately contact the high-ups of the C&W Department and let us have their view point in the matter. After a while the learned AAG came up alongwith Mr. Ghulam Siddique

Mu

[Signature]

Additional Secretary and Mr. Usman Jan Section Officer C&W Department and stated that the petitioner would be considered in the upcoming PSB. At this point, we directed both the learned AAG as well as Additional Secretary C&W to refrain from any act whereby we may draw inference that the petitioner is being hounded only because he had approached this Court in the earlier round for the redressal of his grievance.

DM

In view of the candid statement made by learned AAG accompanied by the worthy Additional Secretary C&W Department, we dispose of this petition in terms of directing the respondents to hold the PSB strictly in accordance with law and by observing merit and the seniority of the petitioner viz the other candidates and that no impression should be given that the petitioner has in any manner been prejudiced. Let fair play and merit be the criterion followed by the respondents in the upcoming PSB."

5. In the meeting of P.S.B held on 8.7.2014 the petitioner was dropped on the ground of pending

ATTESTED

EXAMINER
Peshawar High Court.

19 FEB 2015

inquiries against him and respondent No.6 was recommended for promotion to BPS-20 who was admittedly junior to the petitioner in seniority list.

6. The point of vital importance in the instant case is that P.S.B. meeting held on 8.7.2014 wherein petitioner was dropped only on the ground that Secretary C&W informed the Board that an inquiry is pending against him resulting into his supersession recommended by the Board whereas he was exonerated of the charges levelled against him on 18.2.2014 much prior to the P.S.B. meeting.

7. The comments filed by respondents reveals that respondent No.6 was held more suitable and as such recommended whereas the petitioner was dropped as some inquiries were pending against him and that Officer under inquiry cannot be promoted. No such inquiry was referred. The respondents were directed on previous date to produce the inquiry report mentioned in P.S.B. meeting who filed better statement wherein respondent has admitted exoneration of petitioner from the charges levelled against him however mentioned that department did not agree with the recommendation and submitted the case to the

ATTESTED

EXAMINER
Peshawar High Court.

19 FEB 2015

Worthy Chief Minister with proposal that the inquiry may be conducted afresh through another Inquiry Officer which is quite strange as the department has no authority to disagree with the recommendation made by the Inquiry Officer with regard to the exoneration of Officer/petitioner. This is also evident from the fact that department has sent the matter to the Worthy Chief Minister for appointment of another Inquiry Officer, which shows that they had no authority to do so. It is also evident from the record including the better statement that on 8.7.2014 no inquiry was pending and the information supplied by Secretary C&W to the Board was misconceived and petitioner had been deprived of his right to be recommended for promotion to BPS-20 at the relevant time. There was no inquiry pending at the relevant time against petitioner as the matter had already concluded on 18.2.2014 wherein the petitioner was excluded from the charges levelled against him. The subsequent inquiries dated 12.9.2014 and 6.11.2014 mentioned in Para 2 and 3 of better statement, were later in time to P.S.B. meeting and could not be considered as a hurdle in the way of petitioner for recommendation of promotion to BPS-20.

ATTESTED

EXAMINER
Peshawar High Court

19 FEB 2015

8. Quite apart from this, mere pendency of an inquiry/ disciplinary proceedings against a civil servant would not be sufficient ground to discard him from consideration for promotion. Similarly the promotion of a civil servant would not debar the authority to carry with the disciplinary proceedings if any, pending against him to deal with the same without being biased in a just and fair manner. Admittedly no inquiry was pending at the relevant time as such the petitioner could not be deprived of his entitlement to be promoted and the findings of P.S.B, with regard to non-recommendation of petitioner made in its meeting on 8.7.2014 were not in line with law. It is the inalienable right of civil servant to be considered for promotion alongwith his fellow mates subject to eligibility and mere pendency of an inquiry against a civil servant would not deprive him from considering his case for promotion strictly in accordance with law. In none of the inquiries the petitioner has been found guilty of misconduct. The learned AAG informed the Court that respondent No.6 has to retire on 20.2.2015 and two posts are lying vacant with respondents' department.

ATTESTED
EXAMINER
Madhya Pradesh High Court
10 FEB 2015

9. For the aforesaid reasons, we allow this petition, direct the respondents to hold a fresh meeting within one month positively for promotion of petitioner and consider his case fairly, justly and without being biased of any of enquiries, as no such inquiry was pending on 8.7.2014 against him and also direct the respondents to consider the petitioner from the date when he was illegally dropped in P.S.B, meeting dated 8.7.2014. Order accordingly.

Announced.
17.02.2015.

sd/ Abdul Wahid Khan JUDGE
sd/ Abdul Wahid Khan JUDGE

CERTIFIED TO BE TRUE COPY

Examiner
 Cashier

19 FEB

"A.Qayam"

16/199
 Date of Presentation of Application 19/2/15
 No of Pages 108
 Copying fee /
 Urgent Fee
 Total 20160
 Date of Preparation of Copy 19/2/15
 Date Given For Delivery 19/2/15
 Date of Delivery of Copy 19/2/15
 Received By K. S. S. S.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 519/2013

Muhammad Bakhsh Malik, Directorate of D.G Agriculture Extension
Jamrud Road, Peshawar.

(Appellant)

VERSUS

1. The Provincial Government through Chief Secretary, Govt. of Khyber Pakhtunkhwa, Peshawar and 3 others.
(Respondents).

S.No.	Date of Hearing	Order/other proceedings with signature of Judge/Magistrate
1	2	3
	02.06.2014	<p>Counsel for the appellant and Mr. Muhammad Jan, GP with Rahat Shah, Administrative Officer for the respondents present. Arguments on main appeal heard and case file perused.</p> <p>2. Through the instant appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, the appellant has impugned order dated 26.09.2012 vide which penalty of stoppage of promotion for one year was imposed upon him and against the order dated 08.02.2013 whereby the departmental appeal of the appellant was rejected.</p> <p>3. The appellant averred in the memo of appeal that while serving as EDO Agriculture Bannu, he was served with charge sheet on 16.1.2012 wherein it was alleged that he had appointed six persons without observing the codal formalities, terminated five officials without observing codal formalities and paid pay and allowances to illegal appointed person which caused loss to the government exchequer. That the appellant submitted reply to the charge sheet and statement of allegations and categorically denied all the charges levelled against him, however, an enquiry was conducted in the shape of questionnaire to which the appellant submitted reply. That on 29.2.2012, the enquiry officer submitted his findings to the competent authority and thereafter, the appellant was served with show cause notice to which he submitted reply and denied the allegations levelled against him. However, vide impugned order dated 26.09.2012 penalty of withholding of</p>

ATTENDED

Khyber Pakhtunkhwa
Service Tribunal
Peshawar

promotion for one year was imposed upon the appellant. The appellant filed a review petition on 22.10.2012 but the same was rejected on 8.2.2013 without assigning any cogent reason.

4. The learned counsel for the appellant argued before the court that the enquiry was not conducted in accordance with the established principles of law and rules, rather it was conducted in the shape of questionnaire which was total violation of law. The learned counsel for the appellant further argued that neither statements of witnesses were recorded in presence of the appellant nor the appellant was allowed to cross examine the witnesses and the record, hence the appellant remained undefended and condemned unheard. The learned counsel for the appellant further argued that final rejection order is not a speaking order which is violation of Section 24-A of General Clauses Act, 1897. Therefore, by accepting the instant appeal, the impugned order be set aside.

5. The learned Government Pleader in rebuttal argued before the court that the appellant was rightly charged for irregularities and after proper enquiry, he was rightly awarded punishment of stoppage of promotion for one year; that the instant appeal is without any substance, hence be dismissed.

6. Perusal of the case file reveals that after issuance of the charge sheet and statement of allegations to the appellant, he submitted detailed reply. Afterward, enquiry officer was appointed to probe into the allegations levelled against the appellant, however, the enquiry officer inspite of summoning the appellant and recording his statement, furnished questionnaire to him and on the basis of the reply of appellant to the questionnaire, he was held guilty of the charges with the recommendations to either withheld two increments of the appellant for three years and promotion for one year or if the appellant had reached to the maximum of his pay scale, in that case his promotion may be withheld for three years. On the recommendations of the enquiry officer, the appellant was awarded penalty of withholding promotion for one year. Perusal of the impugned order dated 26.09.2012, vide which

ATTESTED

EXAMINED
 Khyber Peshawar
 Service Tribunal,
 Peshawar

penalty of withholding promotion for one year was imposed upon the appellant, reveals that the same has been issued/signed by the Secretary, Agriculture/respondent No. 3 and not by the competent authority. The appellant was serving in BPS-18 and in his case the competent authority was Chief Minister. Moreover, review petition filed by the appellant was not properly addressed while keeping into consideration all the aspects of the enquiry. Merely, a stereo-type order was passed on 3.2.2013 wherein no justification or explanation for rejection of review petition was put forward which is against the spirit of Section 24-A of General Clauses Act, 1897 and the august Supreme Court's judgment reported in 1991-SCMR-2330.

6. In these circumstances, by accepting the present appeal, the case is hereby remanded to the competent authority to pass a proper and speaking order in the light of Section 24-A of General Clauses Act, 1897 keeping into consideration all the aspects mentioned above. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
02.06.2014

Sd-
Member

Sd-
Member

MEM
Date of Payment

Pro. Car. of

10.6.14
2000.
12-00
2-00
14-00
10.6.14
10.6.14

D..

Confidential
Signature copy
K.S.
cc
res

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 230 ST

Dated 15 / 2 / 2016


To

The Secretary,
Establishment and Administration Department
Peshawar.

Subject: - Judgement.

I am directed to forward herewith certified copy of Judgement dated 4.2.2016 passed by this Tribunal on subject for strict compliance.

Encl: As above

+ 
REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.