

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 113/2017

Date of Institution ... 19.01.2017

Date of Decision ... 13.07.2021

Saleem Asmat Naib Tehsildar, Irrigation, Gomal, DI.Khan.  
... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa, Revenue & Estate Department  
through Secretary/Senior Member Board of Revenue, Civil Secretariat,  
Peshawar and another.  
... (Respondents)

Present:

MR. BILAL AHMAD KAKAZAI, --- For Appellant.  
Advocate

KABIR ULLAH KHATTAK, --- For respondents.  
Additional Advocate General

AHMAD SULTAN TAREEN --- CHAIRMAN  
ROZINA REHMAN --- MEMBER (Judicial)

JUDGEMENT

AHMAD SULTAN TAREEN, CHAIRMAN:-The appellant named above has invoked the jurisdiction of this Tribunal through service appeal described above in the heading challenging thereby the order of Senior Member Board of Revenue (SMBR) as to withdrawal of his promotion and purporting the same being against the facts and law.

2. The facts precisely include that appellant was appointed as Naib Tehsildar in his own pay & scale (OPS) vide order dated 13.01.2004 and on the same day he assumed the charge. He claimed his seniority with effect from the date of his posting as Naib Tehsildar and on acceptance of his appeal by the Respondent No.2 (SMBR), appellant's services as Naib Tehsildar were



regularized w.e.f. 13.02.2004. He i.e. appellant was in pursuit of securing seniority from the date of his promotion and his service appeal in continuation of previous service appeals was pending before this Tribunal when the Respondent No. 2 vide order dated 19.09.2016 purportedly received by appellant on 25.10.2016 withdrew the orders dated 29.09.2009 18.01.2010 without mentioning any lawful reason or justification. Feeling aggrieved, he filed departmental appeal on 15.11.2016 which was rejected vide order dated 23.12.2016. As a matter of next remedy, present service appeal was preferred and admitted for full hearing with notice to the respondents. They on attending the proceedings have filed written reply/comments refuting the claim of appellant for the relief as sought by him in the memorandum of appeal.

3. We have heard the arguments and perused the record.

4. It was argued on behalf of the appellant that although his services as Naib Tehsildar were regularized by an administrative order on acceptance of his appeal by the SMBR but it is specifically mentioned by SMBR in his order dated 29.09.2009 that case of the appellant for selection/promotion as Naib Tehsildar had already been decided vide minutes of Departmental Promotion Committee meeting held on 31.03.2008. The appellant's case for promotion was considered by DPC. His promotion was to take place in light of minutes of DPC but his services as Naib Tehsildar were regularized earlier leaving no need for order of promotion in light of DPC's recommendation. The name of appellant was included in the seniority list of Naib Tehsildars as properly circulated. His name appeared at S. No. 17 as per date of his regularization. However, this seniority position of the appellant was changed in the list circulated vide office order No. 15261/Admn: V/SL dated 10.08.2010, wherein the appellant was shown at S. No. 62 on the basis of wrong date of promotion to the post of Naib Tehsildar i.e. 31.03.2008 instead of 13.01.2004. So, the appellant started pursuit for benefits of

his seniority but it was malafidely intercepted by withdrawal of the orders of regularization of his services as Naib Tehsildar. The appellant was treated discriminately for the reason that others employees were also promoted by the Respondent No. 2 in similar pattern but in their case, no incumbent was treated with withdrawal of their orders or seniority and some of them are now serving as PMS Officers with career progression on the basis of same orders of Respondent No.2. While concluding his arguments, learned counsel for the appellant contended that impugned orders are against the facts and law and suffer from malafide and unfairness of the respondents. Therefore, the appeal on strength of its facts and grounds is worth acceptance.

5. It was argued on behalf of respondents that promotion to the post of Naib Tehsildar from the Ministerial Establishment was doable only on recommendation of DPC but the same in case of appellant was not accordingly made. The appellant got the promotion illegally through an administrative order which was nothing more than an out-of-turn promotion always deprecated by the Superior Courts in various pronouncements. The learned AAG concluded his arguments with the submission that order of appellant's promotion in its particular style was not tenable under the facts and law and was rightly withdrawn through impugned order of the competent authority. He requested for dismissal of appellant's appeal with costs.

6. The respondents in their parawise comments, while giving justification of the impugned order, have termed the appellant's promotion as out-of-turn promotion having been made by an administrative order. So, the main question comes to fore for our determination is whether the promotion of appellant could be treated by the respondents as out-of-turn promotion, when view in light of appellant's grounds of appeal and the reply of respondents. For answer to the question, we have firstly differentiate the timelines of the service of appellant as

Naib Tehsildar. Thus, the first period of his service as such relates to OPS w.e.f. 13.01.2004 to 29.09.2009 and second period starts after 29.09.2009 till passing of the impugned order. As far as first period is concerned, the same being relevant for question of seniority has got no relevance for discussion in the matter of present appeal. It is there in the grounds of appeal and also argued before us that the case of appellant was considered by DPC for promotion as Naib Tehsildar much before passing of the order of his regularization 29.09.2009. We have also noticed that this fact is also cited in the order dated 29.09.2009 as passed by the then SMBR. In reply to ground "E" of the memorandum of appeal, the respondents have admitted the fact of discussion of appellant's case for promotion as Naib Tehsildar by the DPC but with the rider that was not considered as he was junior most in D.I.Khan Division. In support of said assertion, the respondents also annexed the copy of seniority list with their reply. According to the said list of 23 incumbents, name of the appellant appears at S. No. 10 which negates the stance of respondents as to his being junior most in D.I.Khan Division. If he was not considered for promotion, they were required to furnish the minutes of DPC meeting with their comments but omitted. Therefore, presumption goes in favor of the appellant that if they had produced the said minutes of meeting from their custody, they would have supported the case of appellant. The order of regularization of appellant's promotion as Naib Tehsildar from 13.01.2004 was passed by the then SMBR namely Ahsanullah khan but it is evident from a copy of order dated 07.01.2016 of the SMBR annexed with parawise comments of respondents sent to the Registrar of this Tribunal vide letter No. Judi/SMBR/1797 dated 18-01-2016 in relation to the order dated 01.12.2015 of this Tribunal in Service Appeal No. 932/2013 of the appellant; whereby the appeal of the appellant claiming seniority for OPS service period was rejected. It is there in the said order that on



posting of (Waqar Ayub) the then Senior Member, Board of Revenue, he (the appellant) was given seniority from the date of his regular promotion as Naib Tehsildar i.e. from 29.09.2009. The given expression in the said order admits the regularization of appellant's promotion from 29.09.2009 which is the date of order passed by the then SMBR namely Ahsanullah Khan. So, if there was anything questionable about the order dated 29.09.2009 it stood settled leaving no room for its second review at departmental level. It is noteworthy that Service Appeal No. 130/2016 is pending before this Tribunal whereby the appellant has impugned the order of SMBR reckoning his seniority from 29.09.2009 instead of 13.01.2004. The impugned order was passed during pendency of said appeal which impelled the appellant to challenge the same firstly through departmental appeal and next through the service appeal at hand. The copy of the memo of service appeal No. 130/2016 has been annexed with memo of appeal at hand. In factual account of appeal No. 130/2016, reference is made to two other service appeals one bearing No. 813/2011 decided on 19.06.2012 and the other bearing No. 932/2013 decided on 01.12.2015. From this account, it appears that the appellant had continuously kept the respondents engaged with the claim of his seniority still subjudice before this Tribunal. It is also pertinent to point out that same orders as withdrawn through impugned order were pressed into service by the appellant in his previous service appeals duly contested by the respondents and were disposed of by giving judicious consideration to the orders of appellant's regularization from 13.01.2004. The first service appeal was preferred in the year 2011 claiming seniority on strength of the orders dated 29.09.2009 and 18.01.2010, and matter was remitted to the Respondent No. 2 but woke up to withdraw the said orders 19.09.2016 when the appellant was pursuing his service appeal in the third round before this Tribunal in the similar matter. The impugned order dated 19.09.2016 lacks the justification that which



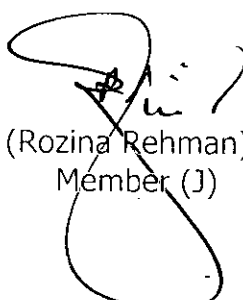

was the impelling cause for review of the orders dated 29.09.2009 and 18.01.2010 when the matter of seniority in pursuance to said orders was subjudice before this Tribunal. Obviously, if the impugned order is kept intact, it will defeat the ongoing pursuit of the appellant since 2011 for judicial remedy in the matter of his seniority being claimed on strength of orders dated 29.09.2009 and 18.01.2010 as withdrawn by the Respondent No.2. Thus, the impugned order on its face does not stand to the test of fairness and transparency and is liable to be reversed. We are mindful of question formulated herein above having regard to the arguments and grounds of defense taken in parawise comments of the respondents. The answer to the said question if not possible in negative but same could not be answered in affirmative in view of particular factual position of the appellant's case as discussed herein above, particularly when the respondents have not been able to rebut the fact of consideration of appellant's promotion by DPC as cited in the order dated 29.09.2009 and also urged through a specific ground in the memo of appeal. The grounds of defense taken by respondents in their parawise comments and the arguments advanced at the bar would be workable, if they have not acquiesced in the orders after their judicious consideration by this Tribunal in the orders passed in service appeals discussed herein above in this judgment in relation to the pursuit of appellant for seniority.

7. For what has gone above, we accept the appellant's appeal as prayed for. Consequently, the impugned order dated 19.09.2016 and order dated 23.12.2016 of departmental appellate authority are set aside and order of appellant's promotion stands restored. There is no order as to costs. File be consigned to the record room.

ANNOUNCED  
13.07.2021

(Rozina Rehman)  
Member (J)

(Ahmad Sultan Hareem)  
Chairman

S.No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	13.07.2021	<p><u>Present:</u></p> <p>Bilal Ahmad Kakazai, Advocate ..... For Appellant</p> <p>Kabir Ullah Khattak, Additional Advocate General ..... For respondents</p> <p>Vide our detailed judgment of today of this Tribunal placed on file, we accept the appellant's appeal as prayed for. Consequently, the impugned order dated 19.09.2016 and order dated 23.12.2-016 of departmental appellate authority are set aside and order of appellant's promotion stands restored. There is not order as to costs. File be consigned to the record room.</p> <p><u>ANNOUNCED.</u> 13.07.2021</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;">               (Rozina Rehman)              Member (J)         </div> <div style="text-align: center;">               (Ahmad Sultan Tareen)              Chairman         </div> </div>

16.06.2021

Appellant with counsel present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Muhammad Haroon Assistant for respondents present.

Arguments heard. To come up for order on 13.07.2021 before D.B.

  
(Rozina Rehman)  
Member(J)

  
Chairman

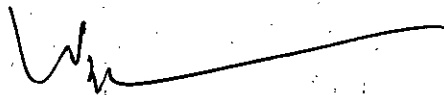


18.11.2020

Junior counsel for appellant present.

Muhammad Jan learned Deputy District Attorney for respondents present.

Former requests for adjournment as senior counsel for appellant is not available. Adjourned. To come up for arguments on 21.01.2021 before D.B.



(Atiq ur Rehman Wazir)  
Member (E)



(Rozina Rehman)  
Member (J)

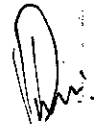
21.01.2021

Appellant in person and Asstt. AG alongwith Muhammad Haroon, Assistant for the respondents present.

To come up for hearing on 10.03.2021 before the D.B alongwith Service Appeal No. 130/2016.



(Mian Muhammad)  
Member(E)



Chairman

10.3.2021

The Worthy Chairman is on leave, therefore, the bench is incomplete. To come up for hearing on 16.06.2021 before the D.B.



Reader

8-4-2020

Due to COVID19, the case is adjourned to

6/7/2020 for the same as before.

  
Reader

06.07.2020

Due to COVID19, the case is adjourned to <sup>18</sup> 08.08.2020 for the same as before.

  
Reader

18.08.2020

Due to summer vacations, the case is adjourned to 17.09.2020 for the same.


  
Reader

17.09.2020

Nemo for appellant.

Mr. Muhammad Jan learned Deputy District Attorney alongwith Mukhtiar Ali Assistant Secretary for respondents present.

Due to Reader's note on the preceding three dates, notices were not issued. As such, notice be issued to appellant and his counsel for 18.11.2020 for arguments, before D.B.

  
(Atiq ur Rehman Wazir)  
Member (E)

  
(Rozina Rehman)  
Member (J)

04.03.2020

Counsel for the appellant present. Mr. Ziaullah, DDA alongwith Mr. M. Arif, Supdt for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 08.04.2020 before D.B.

Member



Member

18.10.2019 Counsel for the appellant present. Asst: AG  
alongwith Mr. M. Arif, Supdt for respondents present.  
Learned counsel for the appellant seeks adjournment.  
Adjourned. To come up for arguments on 13.11.2019  
before D.B.

  
Member

  
Member

13.11.2019 Counsel for the appellant and Mr. Ziaullah, Deputy District  
Attorney alongwith Mr. Muhammad Arif, Superintendent for the  
respondents present. Learned counsel for the appellant seeks  
adjournment. Adjourned to 27.12.2019 for arguments before D.B.

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

27.12.2019 Appellant in person present. Mr. Muhammad Jan,  
DDA alongwith Mr. Afan Junior Clerk for respondents  
present. Appellant seeks adjournment as his counsel is  
not available today. Adjourn. To come up for arguments  
on 04.03.2020 before D.B.

  
Member

  
Member

03 .09.2019

Learned counsel for the appellant present. Mr. Usman Ghani learned District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 18.10.2019 before D.B



(Hussain Shah)  
Member



(M. Amin Khan Kundi)  
Member

~~18.10.2019~~

~~Counsel for the appellant present. Asst: AG alongwith Mr. M. Arif, Supdt for respondents present. The case was argued at some length by the learned counsel for the appellant. Order impugned in service appeal no. 130/2016 carries date (07.01...), which according to the learned counsel for the appellant was passed after thirty seven days of the deadline given in the judgment of this Tribunal dated 01.12.2015. He further clarified that in the said judgment, respondents were directed to decide the issue within thirty days. On the other hand, learned Asst: AG objected on the same by pointing out that dated (07.1...) appeared to be overwriting and did not match with the record of the respondents. In order to remove the confusion, respondents are directed to bring original record on or before the next date of hearing. To come up for arguments on 13.11.2019 before D.B.~~

Member

Member

11.04.2019

Clerk of counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Muhammad Arif, Superintendent for the respondents present. Due to strike <sup>on the call</sup> of Pakistan Bar Council, learned counsel for the appellant is not available today. Adjourned. To come up for arguments on 27.05.2019 before D.B.



(AHMAD HASSAN)  
MEMBER



(M. AMIN KHAN KUNDI)  
MEMBER

27.05.2019

Clerk to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Javed Assistant for the respondents present. Due to general strike on the call of Bar Council, learned counsel for the appellant is no in attendance. Adjourned. To come up for arguments on 12.07.2019 before D.B.



(Hussain Shah)  
Member



(M. Amin Khan Kundi)  
Member

12.07.2019

Clerk to counsel for the appellant and Addl: AG alongwith Mr. M. Arif, Supdt for respondents present. Clerk to counsel for the appellant seeks adjournment. Adjourned. Case to come up for arguments on 03.09.2019 before D.B.



Member



Member

15.11.2018


Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 17.12.2018:

  
READER

17.12.2018

Junior to counsel for the appellant and Mr. Riaz Paindakhel learned Assistant Advocate General for the respondents present. Junior to counsel for the appellant requested for adjournment. Adjourned. To come for further proceeding/arguments on 25.01.2019 before D.B

  
(Hussain Shah)  
Member

  
(Muhammad Amin Kundi)  
Member

25.01.2019

Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Muhammad Arif, Superintendent for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 13.03.2019 for further proceedings/arguments before D.B.

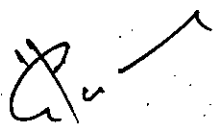
  
(AHMAD HASSAN)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

13.03.2019

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourned by way of last chance. To come up for arguments on 11.04.2019 before D.B.

  
Member

  
Member

27.09.2018

Clerk of counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Mr. Attaullah, Assistant Secretary for the respondents present. Due to general strike of the bar, arguments could not be heard. Adjourned. To come up for arguments on 17.10.2018 before D.B alongwith connected appeals.

  
(Ahmad Hassan)  
Member (E)

  
(Muhammad Amin Kundi)  
Member (J)

17.10.2018

Appellant in person present and seeks adjournment as his counsel is not in attendance. Mr. Kabir Ullah Khattak learned Additional Advocate General present. It was brought to the notice of this Tribunal that due to the suspension of the impugned order and inordinate delay in the disposal of the present service appeal and connected appeals, the process of further promotions has come to halt for the last two (02) years. Consequently the ad-interim relief in the shape of suspension/restraint order earlier issued is hereby vacated. Adjourn. To come up for arguments on 26.10.2018. Since the order regarding ad-interim relief has been vacated, learned counsel for appellant may argue the present service appeal on any working day even before the date fixed.

  
Member

  
Member

26.10.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 15.11.2018

  
MEMBER



28.05.2018

Counsel for the appellant and Addl. AG alongwith Mr. Attaullah, Assistant Secretary for respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 22.06.2018 before D.B.



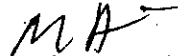
(Muhammad Hamid Mughal)  
Member

22.06.2018

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Javed Iqbal, Senior Clerk for the respondents also present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 02.08.2018 before D.B.



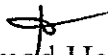
(Ahmad Hassan)  
Member



(Muhammad Amin Khan Kundi)  
Member

02.08.2018

Junior to counsel for the appellant and Learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel is not in attendance. Adjourned. To come up for arguments on 21.08.2018 before D.B.



(Ahmad Hassan)  
Member



(Muhammad Hamid Mughal)  
Member

21.08.2018

*Due to Eidul Azha vacation,  
the case is adjourned to 27-9-18.*




Reader

1130/16

29.03.2018

Counsel for the appellant and Addl. AG alongwith Attaullah, Assistant Secretary for the respondents present. Learned Addl. AG submitted before the court that the case was prepared by Mr. Ziaullah, DDA who has been transferred. Learned AAG requested for adjournment. Adjourned. To come up for arguments on 11.04.2018 before this D.B. Status quo be maintained till the date fixed.

  
(M. Hamid Mughal)  
Member-I

  
Chairman

11.04.2018

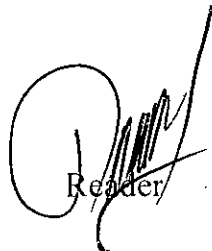
Junior to counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Attaullah, Assistant Secretary - for the respondents present. Seeks adjournment as learned senior counsel for the appellant is not in attendance. Granted. To come up for arguments on 14.05.2018 before the D.B. Status quo be maintained till the date fixed.

  
Member

  
Chairman

14.05.2018

The Tribunal is non-functional due to retirement of the Worthy Chairman. To come up for the same on 28.05.2018 before the D.B.

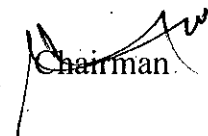
  
Reader

15.02.2018

Appellant in person and Mr. Usman Ghani, District Attorney alongwith Mukhtiar Ali, Assistant Secretary for the respondents present. Vide our detailed judgment of today in service appeal No. 94/2015 entitled "Sher Yar Khan Vs. the Government of Khyber Pakhtunkhwa, SMBR. and others", this appeal to come up for arguments on 01.03.2018 before the D.B.



(M. Hamid Mughal)  
Member



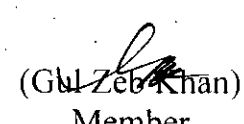
Chairman



(M. Amin Khan Kundi)  
Member



(Ahmad Hassan)  
Member



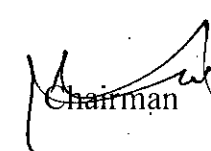
(Gul Zeb Khan)  
Member

01.03.2018

Clerk of counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mukhtiar Ali, Asstt. Secretary for the respondents present. The learned DA sent an application for adjournment, which is placed in connected appeal of Sheryar. To come up for arguments before this D.B on 29.03.2018.



Member-I




Chairman

113/17

11.01.2018

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mukhtiar Ali, Asstt. Secretary for the respondents present. Learned DDA submitted before the court that the case was prepared by Mr. Usman Ghani, District Attorney who is not available today due to meeting of Law Officers Association. Adjourned. To come up for arguments before the larger bench on 06.02.2018.

  
(M. Hamid Mughal)  
Member

  
Chairman


(M. Amin Khan Kundi)  
Member

  
(Ahmad Hassan)  
Member

  
(Gul Zeb Khan)  
Member

06.02.2018

Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Mr. Mukhtiar Ali, Assistant Secretary for the respondents present. Arguments heard. To come up for order on 15.02.2018 before the Larger Bench.

  
(M. Hamid Mughal)  
Member

  
Chairman

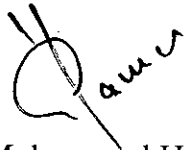
  
(M. Amin Khan Kundi)  
Member


  
(Ahmad Hassan)  
Member


  
(Gul Zeb Khan)  
Member


11.12.2017

Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Mukhtiar Ali, Assistant Secretary for the respondents present. Since some similar appeals have been adjourned due to non-availability of the learned counsel for the appellants, Counsel for the appellant in the instant appeal also requested for adjournment. Granted. To come up for arguments on 15.12.2017 before the Larger Bench. Status quo be maintained.

  
(Muhammad Hamid Mughal)  
Member

  
Chairman


  
(M. Amin Khan Kundi)  
Member

  
(Ahmad Hassan)  
Member

  
(Gul Zeb Khan)  
Member

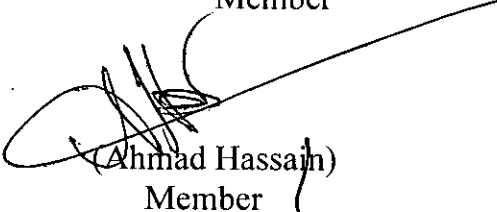
15.12.2017

Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Mukhtiar Ali, Asstt. Secretary for the respondents present. Since some other similar appeals have been adjourned due to non-availability of their counsel, counsel for the present appellant also requested for adjournment. To come up for arguments before the Larger Bench on 11.01.2018.

  
(Muhammad Hamid Mughal)  
Member

  
Chairman


  
(M. Amin Khan Kundi)  
Member


  
(Ahmad Hassan)  
Member

  
(Gul Zeb Khan)  
Member

07.11.2017

Clerk of the counsel for appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Mukhtiar Ali, Assistant Secretary for the respondents also present. Clerk of the counsel for appellant requested for adjournment on the ground that learned counsel for the appellant is not available today. Adjourned. To come up for arguments on 27.11.2017 before D.B.

  
(Gul Zeb Khan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

27.11.2017

Clerk of counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mukhtiar Ali, Assistant Secretary for the respondents present. Counsel for the appellant is not in attendance. To come up for arguments on 29.11.2017 before the D.B.

29.11.2017

Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Mr. Mukhtiar Ali, Assistant Secretary for respondents present. All the counsels for the appellants and District Attorney for respondents unanimously requested this Tribunal that larger bench be constituted for the decision of the issue involving in the present appeal alongwith other connected appeals for the reason that some contradictory judgments have been delivered on the issue by different D.B's of this Tribunal. The request is genuine which is accepted and larger bench consisting of all Members of this Tribunal is constituted to decide the issue. To come up for arguments on 11.12.2017 before the D.B.

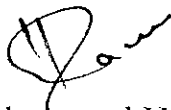
  
Member

  
Chairman

05.09.2017

Counsel for the appellant present. Mr. Zia Ullah, Deputy District Attorney for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 29.09.2017 before D.B.


  
(Muhammad Amin Khan Kundi)  
Member

  
(Muhammad Hamid Mughal)  
Member

29.09.2017


Clerk of the counsel for appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Mukhtiar Ali, Assistant Secretary for the respondents also present. Clerk of the counsel for appellant requested for adjournment on the ground that learned counsel for the appellant is not available today. Adjourned. To come up for arguments on 27.10.2017 before D.B.

  
(Gul Zeb Khan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

27.10.2017


Appellant with counsel present. Mr. Ziaullah, Deputy District Attorney for the respondents also present. Learned Deputy District <sup>Attorney</sup> stated before the court that similar nature appeals are already pending before this Tribunal and fixed on 07.11.2017, therefore, the instant appeal may also be clubbed with those appeals. Adjourned. To come up for arguments on 07.11.2017 before D.B.

  
(Gul Zeb Khan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

27.04.2017

Clerk to counsel for the appellant and Mr. Ibrar, Assistant Secretary alongwith Addl. AG for the respondents present. Written reply submitted. To come up for rejoinder and final hearing on 18.05.2017 before D.B. The restrain order shall continue.

  
(Ahmad Hassan)

Member

18.05.2017

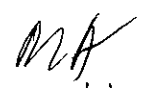
Counsel for the appellant and Mr. Muhammad Ibrar Assistant Secretary alongwith Mr. Muhammad Adeel Butt Additional AG for the respondents present. Counsel for the appellant requested for time to file rejoinder. Request accepted. To come up for rejoinder and arguments on 17.07.2017 before D.B. The restraint order shall continue.

  
(Gul Zeb Khan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

17.07.2017

Counsel for the appellant present. Mr. Mukhtiar Ali, Assistant Secretary alongwith Mr. Ziaullah, Deputy District Attorney for the respondents also present. The Learned Executive Member Mr. Gul Zeb Khan is away for interviews in the office of Khyber Pakhtunkhwa Public Service commission therefore, due to incomplete bench the case is adjourned for rejoinder and arguments to 05.09.2017 before D.B. The restraint order shall continue.

  
(Muhammad Amin Khan Kundi)  
Member



10.04.2017

Counsel for the appellant and Addl: AG for the respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 27.04.2017 before S.B. The restraint order shall continue.

  
Chairman

~~SECRET~~

~~Counsel for the appellant and Addl: AG for the respondents  
present. Written reply not submitted. Requested for further adjournment.  
Last opportunity granted. To come up for written reply/comments on  
27.04.2017 before S.B. The restraint order shall continue.~~

~~(Signature)~~  
Member

~~SECRET~~

Appeal No. 113/2017  
Saleem Asmat vs Govt

06.02.2017

Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal, the appellant has impugned order dated 19.09.2016 vide which the appellant promotion order was withdrawn with immediate effect. Against the impugned order appellant filed departmental appeal but the same was dismissed vide appellate order dated 23.12.2016, hence the instant service appeal.

Since the appeal pertains to terms and conditions of services of the appellant and required further consideration of this Tribunal therefore, the same is admitted for regular hearing, subject to deposit of security and process fee within 10 days. Notices be issued to the respondents for written reply/comments for 15.03.2017 before S.B. Alongwith appeal appellant filed an application for suspending the operation of impugned order dated 19.09.2016 and impugned appellate order dated 23.12.2016 and release/payment of salary. Operation of the impugned order is suspended till the date fixed.

Appellant Deposited  
Security & Process Fee

(Muhammad Aamir Nazir)  
Member

15.03.2017

Counsel for the appellant and Mr. Muhammad Ibrar, Assistant Director alongwith Addl. AG for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 10.04.2017 before S.B. Operation of the impugned order is suspended till the date fixed.

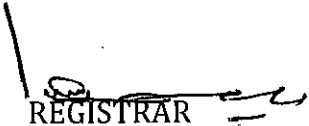

(AHMAD HASSAN)

MEMER

Form- A  
FORM OF ORDER SHEET

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

Case No. 113/2017

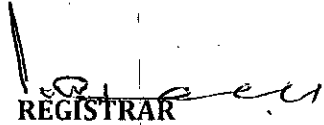
S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	31/01/2017	<p style="text-align: center;">The appeal of Mr. Saleem Asmat resubmitted today by Mr. Bilal Ahmad Kakaizai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	1/2/2017	<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>06-2-2017</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Saleem Asmat Naib Tehsildar Irrigation Gomal D.I.Khan received today i.e on 19.01.2017 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- The authority to whom the departmental appeal made/preferred has not been arrayed a party.
- 2- One more copy/set of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

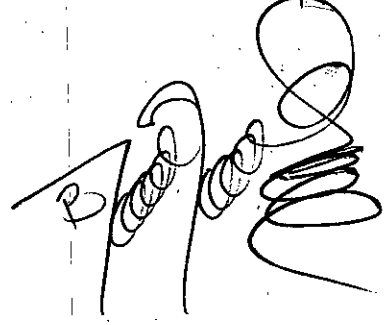
No. 145 /S.T,

Dt. 19/01 /2017

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Bilal Ahmad Kakaizai Adv. Pesh.

Resubmitted! - Please put before Preliminary Bench.

  
31-1-2017

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

Service Appeal No: 113 / 2017

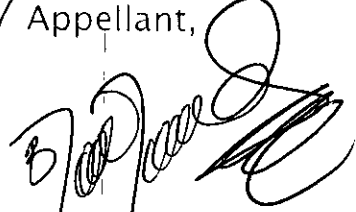
**SALEEM ASMAT**                      Versus                      Govt. of Khyber Pakhtunkhwa etc.

**I N D E X**

DESCRIPTION OF DOCUMENTS		PAGE NO:
<i>Memo of Service Appeal</i>		1 - 4
<i>Affidavit</i>		5
<i>Addresses Sheet</i>		6
Annexure-A	Posting Order dated 13.01.2004.	7
Annexure-B	Order dated 29.09.2009.	8
Annexure-C	Order dated 18.01.2010.	9
Annexure-D	Pending Service Appeal No. 130 / 2016.	10 - 15
Annexure-E	Impugned Order.	16 - 17
Annexure-F	Departmental Appeal.	17-18
Annexure-G	Impugned Appellate Order.	19
Annexure-H	Order of other N.T.	20
Annexure-J	Order of other N.T.	21
Wakalatnama		nil

  
Appellant,

Through:

  
**BILAL AHMAD KAKAIZAI**  
(Advocate, Peshawar)  
0300 9020098

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

Service Appeal No: 113 / 2017

Khyber Pakhtunkhwa Service Tribunal

Diary No. 66

Dated 19-1-2017

SALEEM ASMAT,  
Naib Tehsildar,  
Irrigation, Gomal, D.I.Khan

..... APPELLANT

VERSUS

- 1. GOVERNMENT OF KHYBER PAKHTUNKHWA,  
Revenue & Estate Department,  
Through Secretary / SMBR, Civil Secretariat, Peshawar.
- 2. SENIOR MEMBER BOARD OF REVENUE,  
Government of Khyber Pakhtunkhwa, Peshawar.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT, 1974 AGAINST ORDER NO. ESTT.V/PF/(S.ASMAT)/22698 DATED 19.09.2016 HANDED OVER TO APPELLANT ON 25.10.2016 AGAINST WHICH DEPARTMENT APPEAL DATED 15.11.2016 WAS FILED, WHICH WAS ALSO DISMISSED VIDE ORDER DATED 23.12.2016.

Prayer: That on acceptance of this Service Appeal the Impugned Order dated 19.09.2016 as well as Impugned Appellate Order dated 23.12.2016 be set aside and Appellant's Promotion Order may please be restored with such other relief as may deem fit in the circumstances of the case may also be granted.

Filed to-day

Registrar

19/1/17

Re-submitted to-day and filed.

Registrar

21/1/17

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

Service Appeal No: \_\_\_\_\_ / 2017

SALEEM ASMAT,  
Naib Tehsildar,  
Irrigation, Gomal, D.I.Khan

..... APPELLANT

VERSUS

- 1. GOVERNMENT OF KHYBER PAKHTUNKHWA,  
Revenue & Estate Department,  
Through Secretary / SMBR, Civil Secretariat, Peshawar.
- 2. SENIOR MEMBER BOARD OF REVENUE,  
Government of Khyber Pakhtunkhwa, Peshawar.
- 3. CHIEF SECRETARY,  
Government of Khyber Pakhtunkhwa,  
Civil Secretariat, Peshawar.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT, 1974 AGAINST ORDER NO. ESTT:V/PF/(S.ASMAT)/22698 DATED 19.09.2016 HANDED OVER TO APPELLANT ON .....2016 AGAINST WHICH DEPARTMENT APPEAL DATED 15.11.2016 WAS FILED, WHICH WAS ALSO DISMISSED VIDE ORDER DATED 23.12.2016.

Prayer: That on acceptance of this Service Appeal the Impugned Order dated 19.09.2016 as well as Impugned Appellate Order dated 23.12.2016 be set aside and Appellant's Promotion Order may please be restored with such other relief as may deem fit in the circumstances of the case may also be granted.

*Respectfully Sheweth,*

Short facts, giving rise to present Service Appeal, are as under:

1. That, Appellant was Appointed & posted as Naib Tehsildar in his own pay & scale vide Order dated 13.01.2004 and on the same day he assumed the charge, copy of the Posting Order is attached as *Annexure-A*.
2. That, Appellant claimed his Seniority w.e.f. the date of his posting as Naib Tehsildar, therefore, his appeal was accepted by the Respondent No. 2 on 29.09.2009 whereby the services of Appellant as Naib Tehsildar were regularized w.e.f. 13.01.2004, copy of the Judgment issued by Respondent No. 2 is attached as *Annexure-B* and Order in this respect, dated 18.01.2010 is attached as *Annexure-C*.
3. That, in order to secure the seniority from the date of Promotion, the Appellant approached this Honourable Tribunal on many occasions moreover an Appeal in continuation of previous Appeals is also pending subjudice before this Honourable Tribunal, copy of the Pending Appeal is attached as *Annexure D*.
4. That, the Respondent No. 2, melafidely, on 19.09.2016 withdrew Orders dated 29.09.2009 and Order dated 18.01.2010 without mentioning any lawful reasons or justifications, copy of the Impugned Order is attached as *Annexure E*. It is important to mention here that the Order dated 19.09.2016 was handed over to the Appellant, unofficially, on 25.10.2016.
5. That, as per law applicable Appellant submitted his Departmental Appeal / Representation dated 15.11.2016 to the Competent Authority which was later on dismissed on 23.12.2016 without mentioning reasons, copy of the Departmental Appeal and Impugned Appellate Order is attached as *Annexure F & G*, hence, this Service Appeal on the following amongst other grounds: -

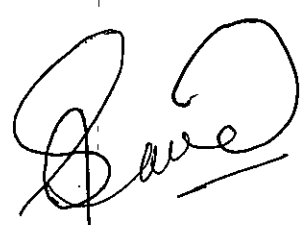


**GROUND:**

- A. That, the Impugned Order as well as Impugned Appellate Order in Appeal is illegal, unlawful, void and ineffective.
- B. That, the same is against the principles of Natural Justice, also.
- C. That, Appellant was Appointed & posted as Naib Tehsildar in his own pay & scale vide Order dated 13.01.2004 and on the same day he assumed the charge.
- D. That, Appellant claimed his Seniority w.e.f. the date of his posting, therefore, his appeal was accepted by the Respondent No. 2 on 29.09.2009 whereby the services of Appellant as Naib Tehsildar were regularized w.e.f. 13.01.2004.
- E. That, it is important to mention here that before passing the Order dated 18.01.2010 & 29.09.2009, the Appellant was considered by the Departmental Promotion committee and was found fit for promotion however due to issuance of Orders dated 18.01.2010 & 29.09.2009 Appellant was not promoted because his promotion already took effect due to above mentioned orders.
- F. That, a Seniority List showing the position of the Naib-Tehsildars according to the date of regularization of each, was circulated vide Boards office No.1270/Admn dated 30.06.2010. In this Seniority List the name of the Appellant appears at S.No.17 with correct entry of date of promotion.
- G. That, while dealing with the Departmental Appeal of the Appellant, the Appellate Authority did not paid any heed to the similarly placed Naib Tehsildars who were also promoted by the Department on the same pattern, copies of the relevant orders are attached as Annexure H & J. It is important to mention here that these incumbents are now serving as PMS Officers.

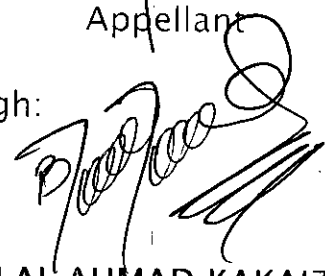
- H. That, the Appellant has been dealt with different yardstick and the Appellate Order is seems an example of nepotism and favoritism.
- I. That, apart from Annexure H & J, other employees were also promoted by the Respondent No. 2 but no order or seniority from any incumbent has been withdrawn by the Respondents.
- J. That, the act of the Respondent No. 2 is against the Article 4, 25 & 27 of the Constitution of Islamic Republic of Pakistan, 1973.
- K. That, the Order dated 23.12.2016 has been passed in hasty manner. Even otherwise the same is against the principle enshrined in the section 24-A of the General Clauses Act, 1897.

It is, therefore, requested that Appeal be accepted as prayed for.



Appellant

Through:



**BILAL AHMAD KAKAIZAI**  
(Advocate, Peshawar)

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

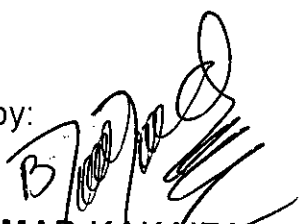
Service Appeal No: \_\_\_\_\_ / 2017

**SALEEM ASMAT**                      Versus                      Govt. of Khyber Pakhtunkhwa etc.

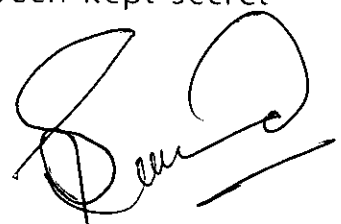
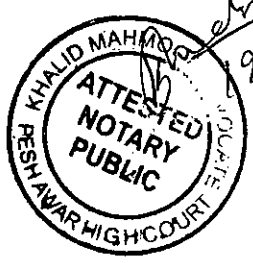
**AFFIDAVIT**

I, Saleem Asmat S/o Haji Nasrullah Khan, Naib Tehsildar, Irrigation, Gomal, D.I.Khan, Appellant, do hereby on oath affirm and declare that the contents of the Service Appeal are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Honourable Tribunal.

Identified by:



**BILAL AHMAD KAKAIZAI**  
(Advocate, Peshawar)



Deponent

(6)

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

Service Appeal No: \_\_\_\_\_ / 2017

**SALEEM ASMAT**                      Versus                      Govt. of Khyber Pakhtunkhwa etc.

**ADDRESSES OF PARTIES.**

**APPELLANT:**

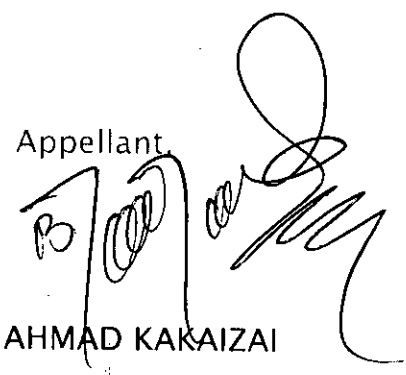
SALEEM ASMAT, Naib Tehsildar, Irrigation, Gomal, D.I.Khan

**RESPONDENTS:**

1. Government of Khyber Pakhtunkhwa, Revenue & Estate Department, through Secretary, Peshawar.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.

Appellant

Through,

  
**BILAL AHMAD KAKAIZAI**  
(Advocate, Peshawar)

7 A  
ANNEXURE

GOVERNMENT OF N.W.F.P.  
REVENUE AND ESTATE DEPARTMENT.

PESHAWAR DATED THE 12/1/2004.

Annex: "A"

ORDER.

No. /Admn:I/FF(S). On the recommendation of the District Coordination Officer, D.I.Khan Mr. Salim Anmat presently working as Assistant Finance and Planning Department, D.C. O. Office Tank is hereby transferred and posted as Political Walli Tehsildar Barazinda P.R. D.I.Khan in his own pay and scale against the vacant post till further orders.

Sl

SENIOR MEMBER,  
BOARD OF REVENUE, N.W.F.P.

Undst: No. 852-63 /Admn:I/FF(S)/RZ.

Copy to the :-

- 1- Secretary to Chief Minister, N.W.F.P.
- 2- District Coordination Officer, D.I. Khan with reference to his letter No. 233-PS(Ext), dt. 12/1/2004.
- 3- District Coordination Officer, Tank, with reference to his letter No. 20/DOJ dated 7-1-2004.
- 4- District Officer(R&B)/Collector, Tank and D.I. Khan.
- 5- District Accounts Officer, D.I. Khan and Tank.
- 6- P.S. to Senior Member, Board of Revenue, N.W.F.P.
- 7- P.A. to Secretary, Board of Revenue, N.W.F.P.
- 8- Official concerned.
- 9- Personal file.
- 10- Office order file.

Secretary,  
Board of Revenue, N.W.F.P.

ATTEND

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

Case No. 338  
Date of Institution 06.06.2008  
Date of Decision 29.09.2009

Appeal against order No. 10314-69/Admn:U/DPC/Naib Tehsildar, dated  
29.05.2008.

ORDER

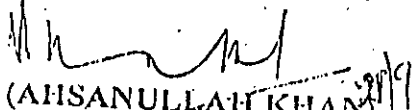
This is an appeal filed by Mr. Saleem Asmat Political Naib Tehsildar (FR) Kohat challenging therein this Department order bearing Endorsement No. 852-63/Admn:L/PP(S)/NT/OPS/PNT/FR/DIKhan, dated 13.01.2004.

Facts leading to the case are that the appellant was initially appointed as Junior Clerk in the office of Deputy Commissioner, DIKhan and remained posted in various Branches. He was later on promoted as Assistant and was given the charge of Political Naib Tehsildar Jandola (FR) Tank and Naib Tehsildar Irrigation several times. He was also posted as Political Naib Tehsildar (FR) DIKhan by the then Senior Member Board of Revenue NWFP dated 13.01.2004.

Moreover, in a meeting held between the District Coordination Officer, Lakki Marwat and Governor NWFP he was assigned the duties of Acting Assistant Political Agents (FR) Lakki Marwat and thereafter he was posted as Political Naib Tehsildar Razmak as well as Political Naib Tehsildar Datta Khel North Waziristan Agency. He also remained posted as Political Naib Tehsildar Mohmand Agency and Political Naib Tehsildar (FR) Kohat. His case for selection / promotion as Naib Tehsildar has already been decided vide minutes of Departmental Promotion Committee meeting held on 31.03.2008. —

Under the circumstances and his meritorious and excellent service available on record his case seems to be genuine. As such, the appeal is hereby accepted and the services of the appellant are hereby regularized as Naib Tehsildar w.e.f 13.01.2004.

ANNOUNCED  
29.09.2009

  
(AHSANULLAH KHAN)  
SENIOR MEMBER  
BOARD OF REVENUE NWFP



GOVERNMENT OF NWFP  
REVENUE & ESTATE DEPARTMENT

9 c

Dated Peshawar the 18/01/2010

ANNEXURE

ORDER.

No. \_\_\_\_\_ /Admn:V/PF(Saleem). In pursuance of Judgment of Senior Member Board of Revenue NWFP dated-29.09.2009 passed in Appeal No. 338/2009 services of Mr. Sleem Asma Najib Tehsildar (Own Pay & Scale) (BPS - 14) presently waiting for posting in Board of Revenue NWFP are hereby regularized w.e.f 13.01.2004..

By Order of,  
Senior Member  
Board of Revenue NWFP

No. 983-90 /Admn:V/PF(Saleem)

Copy to:-

1. Commissioner DIKhan Division DIKhan
2. Accountant General NWFP
3. District Officer (R&E)/Collector, DIKhan
4. District Accounts Officer DIKhan.
5. Reader to Senior Member Board of Revenue NWFP
6. Bill Assistant Board of Revenue NWFP
7. Official concerned.
8. Personal File.
9. Office Order File.

*Handwritten signature*  
 Assistant Secretary  
 Revenue & Estate Department  
 Peshawar  
 BOR NWFP

Assistant Secretary (Estt)  
Board of Revenue NWFP

*Handwritten signature*  
**ATTACHED**

Commissioner DIKhan Division  
 Accountant General NWFP  
 District Officer (R&E) Collector, DIKhan  
 District Accounts Officer DIKhan  
 Reader to Senior Member Board of Revenue NWFP  
 Bill Assistant Board of Revenue NWFP  
 Official concerned  
 Personal File  
 Office Order File

(10) D

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

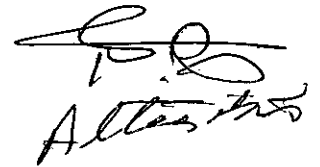
Service Appeal No: 130/2016

SALEEM ASMAT,  
Naib Tehsildar,  
Irrigation, Gomal, D.I.Khan

APPELLANT

VERSUS

1. GOVERNMENT OF KHYBER PAKHTUNKHWA,  
Revenue & Estate Department,  
Through Secretary, Civil Secretariat, Peshawar.
2. SENIOR MEMBER BOARD OF REVENUE,  
Government of Khyber Pakhtunkhwa, Peshawar.
3. Ali Sher Khan, Naib Tehsildar.
4. Tariq Saleem, Naib Tehsildar.
5. Abdul Ghaffar, Naib Tehsildar.
6. Said Rehman, Naib Tehsildar.
7. Kiramatullah, Naib Tehsildar.
8. Akbar Iftikhar Ahmad, Naib Tehsildar.
9. Qaisar Khan, Naib Tehsildar.
10. Najeebullah, Naib Tehsildar.
11. Muhammad Ayub Khan, Naib Tehsildar.
12. Abdur Rehman Shah, Naib Tehsildar.
13. Sarir Ahmad, Naib Tehsildar.
14. Hasham Gul, Naib Tehsildar.
15. Muhammad Riaz, Naib Tehsildar.
16. Attaullah, Naib Tehsildar.
17. Musaddiq Hussain, Naib Tehsildar.
18. Abdul Qayum, Naib Tehsildar.

  
Attaullah



19. Muhammad Nawaz, Naib Tehsildar.
20. Mir Laiq Shah, Naib Tehsildar.
21. Nouman Ali Shah, Naib Tehsildar.
22. Muhammad Bashir, Naib Tehsildar.
23. Hidayatullah, Naib Tehsildar.
24. Iftikhar Ahmad, Naib Tehsildar.
25. Ghulam Sarwar, Naib Tehsildar.
26. Farzand Ali, Naib Tehsildar.
27. Muqarrab Khan, Naib Tehsildar.
28. Said Rahim, Naib Tehsildar.
29. Fazli Raziq, Naib Tehsildar.
30. Shah Nawaz, Naib Tehsildar.
31. Asmatullah, Naib Tehsildar.
32. Mazhar Hussain, Naib Tehsildar.
33. Hussain Baksh, Naib Tehsildar.
34. Abdul Rashid, Naib Tehsildar.
35. Fateh Ullah, Naib Tehsildar.
36. Muhammad Akram, Naib Tehsildar.
37. Mulazim Hussain, Naib Tehsildar.
38. Muhammad Israr, Naib Tehsildar.
39. Afzal Khan, Naib Tehsildar.
40. Anwar ul Haq, Naib Tehsildar.
41. Khyzar Hayat, Naib Tehsildar.
42. Muhammad Farooq Anwar, Naib Tehsildar.
43. Kutab Khan, Naib Tehsildar.
44. Ghulam Qasim, Naib Tehsildar.
45. Qudratullah, Naib Tehsildar.
46. Aftab Hussain Shah, Naib Tehsildar.
47. Sikandar Hayat Shah, Naib Tehsildar.
48. Ghulam Abbas, Naib Tehsildar.

All Naib Tehsildars, through Respondent No. 2.

RESPONDENTS

APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT, 1974  
AGAINST ORDER NO. NIL DATED 07.01.2016, WHEREBY  
DEPARTMENTAL APPEAL / REPRESENTATION AGAINST IMPUGNED  
SENIORITY LIST HAS BEEN REJECTED.

*Prayer: That on acceptance of this Service Appeal the Impugned Order dated 07.01.2016 be set aside and Seniority List be corrected as per Order dated 29.09.2009 and 18.01.2010 of Respondent No. 2 and Appellant be declared senior to the Private Respondents, with such other relief as may deem fit in the circumstances of the case may also be granted.*

*Respectfully Sheweth,*

Short facts, giving rise to present Service Appeal, are as under:

1. That, vide Office Order No. 15261 / Admn: V / SL dated 10.08.2010, the Impugned Seniority List was circulated wherein Appellant was shown at S.No.62 on the basis of wrong date of promotion to the post of Naib Tehsildar i.e. 31.03.2008 instead of 13.01.2004, copy of the Impugned Seniority List is attached as Annexure-A. It is important to mention here that Appellant has only questioned the wrong date of promotion in the Impugned Seniority List.
2. That, as Appellant was assigned Seniority w.e.f 31.03.2008 and was placed at S.No.62 instead of assigning seniority from 13.01.2004, therefore, Appellant submitted his Departmental Appeal / Representation before the Respondent No. 2, copy of the same is attached as Annexure-B. Moreover Tentative Seniority List circulated vide Boards Office No. 1270/Adm dated 30.06.2010 is attached as Annexure-C.
3. That, the Competent Authority vide Order dated 16.04.2011 held the Departmental Appeal of the Appellant as non-maintainable being time barred, copy of the Order in Appeal is attached as Annexure-D. The said Order dated 16.04.2011 was challenged before the Honourable Tribunal in Service Appeal No. 813 / 2011.

4. That, the above said Service Appeal was decided on 19.06.2012 with the direction to decide the Departmental Appeal of the Appellant afresh, on merits, copy of the Order / Judgment dated 19.06.2012 is attached as Annexure E.
5. That, even than the Respondents were reluctant to decide the Departmental Appeal of the Appellant hence the Appellant filed Execution Petition No. 186 / 2012 in Service Appeal No. 813 / 2011, copy of the Execution Petition is attached as Annexure F.
6. That, on 17.04.2012, during the Execution Proceedings, Appellant was handed over Order dated 12.09.2012 whereby the Departmental Appeal of the Appellant was again rejected, copy of the Order dated 12.09.2012 and Order / Judgment dated 17.04.2013 of Honourable Service Tribunal are attached as Annexure G & H.
7. That, Appellant once again preferred Service Appeal No. 932 / 2013 before the Tribunal which was decided on 01.12.2015 with the direction to the Appellate Authority to decide the Departmental Appeal of the Appellant within 30 days, copy of the Service Appeal No. 932 / 2013 along with Order dated 01.12.2015 is attached as Annexure J.
8. That, the Competent Authority once again dismissed the Departmental Appeal of the Appellant without mentioning any lawful reason or justification, copy of the Impugned Appellate Order is attached as Annexure K, hence, this Service Appeal on the following amongst other grounds: -

GROUNDS:

- A. That, the Impugned Appellate Order in Appeal dated 07.01.2016 is illegal, unlawful, void and ineffective.
- B. That, the same is against the principles of Natural Justice, also.
- C. That, Appellant was Appointed & posted as Naib Tehsildar in his own pay & scale vide Order dated 13.01.2004 and on the


same day he assumed the charge, copy of the Posting Order is attached as Annexure-L.

- D. That, Appellant claimed his Seniority w.e.f. the date of his posting, therefore, his appeal was accepted by the Respondent No. 2 on 29.09.2009 whereby the services of Appellant as Naib Tehsildar were regularized w.e.f. 13.01.2004, copy of the Order of Respondent No.2 is attached as Annexure-M and Order in this respect, dated 18.01.2010 is attached as Annexure-N.
- E. That, it is important to mention here that before passing the Order dated 18.01.2010 & 29.09.2009 the Appellant was considered by the Departmental Promotion committee and was found fit for promotion.
- F. That, a Seniority List showing the position of the Naib-Tehsildars according to the date of regularization of each, was circulated vide Boards office No.1270/Admn dated 30.06.2010. In this Seniority List, the name of the Appellant appears at S.No.17.
- G. That, the cancellation of the Provisional Seniority List and circulation of the Impugned Seniority List is against the factual position and the service rules.
- H. That, according to the service rules and law laid down by the Superior Courts of Pakistan, the Seniority of the civil servants is determined from the date of continuous service of the officials but this principle / criteria has been by-passed and violated in a fanciful and unlawful manner, thus the Seniority List circulated is liable to be set aside and liable to be revised / corrected in accordance with the rules.
- I. That, while dealing with the Departmental Appeal of the Appellant, the Appellate Authority did not paid any heed to the similarly placed Naib Tehsildars who were also given the seniority from back date, copies of the relevant orders are attached as Annexure O & P.

- J. That, the Appellant has been dealt with different yardstick and the Appellate Order is seems to be best example of nepotism and favoritism.
- K. That, apart from Annexure O & P, other employees were also promoted by the Respondent No. 2 but no order or seniority from any incumbent has been withdrawn by the Respondents.
- L. That, Orders dated 18.01.2010 & 29.09.2009 are still in field and no order had been taken back or withdrawn by the Respondents.
- M. That, despite clear direction in the Judgment dated 01.12.2015; clear discrimination has been done with the Appellant.
- N. That, the act of the Respondent No. 2 is against the Article 4, 25 & 27 of the Constitution of Islamic Republic of Pakistan, 1973.
- O. That, Appellant has no personal grudges with any incumbent above his name in the seniority List but he just wants to correct the date of his regular promotion to the post of Naib Tehsildar.
- P. That, the Order dated 07.01.2016 has been passed in hasty manner. Even otherwise the same is against the principle enshrined in the section 24-A of the General Clauses Act, 1897.

It is, therefore, requested that Appeal be accepted as prayed for.

Appellant

  
Attest Just

Through:



BILAL AHMAD KAKAIZAI  
(Advocate, Peshawar)

18

FE

GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT

Peshawar, Dated 19/09/2016

ORDER

No. Estt: V/PF/(S. Asmat)/ 22698 Whereas, Mr. Saleem Asmat was promoted to the post of Naib Tehsildar on 29.09.2009 on regular basis through administrative order without holding of Departmental Promotion Committee meeting.

NOW THEREFORE, in pursuance of order passed by Senior Member, Board of Revenue on 01/09/2016, the promotion / regularization order dated 29.09.2009 read with notification bearing No. 982-90/Admn:V/PF(S), dated 18.01.2010, being made in violation of Service Rules and instructions governing promotions is hereby withdrawn with immediate effect.

*Subject*  
*[Signature]*

By Order of  
Senior Member

No. Estt: V/PF/( S. Asmat)/ 22699-743

Copy forwarded to the:-

1. Commissioner, DIKhan Division.
2. Deputy Commissioner, DIKhan.
3. District Accounts Officer, DIKhan.
4. Official concerned.

*DC DIK*  
*19.9.16*

*6482/DC*  
*20-9-16*

*The Deputy Commr*  
*3791*  
*21-9-16*

*[Signature]*  
Assistant Secretary (Estt)

*[Signature]*  
*[Signature]*

*B.C*  
*K 21/9/16*

To,

THE PSO TO CHIEF SECRETARY,  
GOVT. OF KHYBER PAKHTUNKHWA,  
PESHAWAR

23-1-16  
46 F  
17

THROUGH PROPER CHANNEL

SUBJECT: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER NO. ESTT:V/PF/(S.ASMAT)/2268 DATED 19.09.2016 THROUGH WHICH THE PETITIONER IS DEPRIVED FROM HIS ESTABLISHED SERVICE RIGHT AS NAIB TEHSILDAR.

Respected sir,

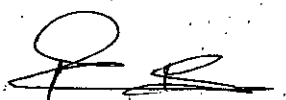
Most respectfully I submit the following for your favorable & sympathetic consideration.

That the petitioner was conducted in to Government Servant in year 1984 as Junior Clerk (BPS-05) and by virtue of his seniority coupled with good performance was selected Assistant in BPS-11 by D.C Tank vide his No. 1470-71/DC Dated 10.10.1992 and posted as Assistant on 02.01.1993. (Annexure "A").

- 2- That the petitioner on the basis of exemplary performance in the Revenue Service was selected and adjusted as Naib Tehsildar in the Revenue hierarchy with effect from 13.01.2004 initially on his own pay and subsequently on regular basis w.e.f 13.01.2004 vide Court judgment of competent authority issued on 29.09.2009. (Annexure "B, C").
- 3- That petitioner being aggrieved of the position in the seniority list preferred an appeal in Service Tribunal Khyber Pakhtunkhwa which was accepted through judgment Dated 01.12.2015 in which the petitioner has been regularized as Naib Teshildar w.e.f 13.01.2004. (Annexure "D").
- 4- That now vide impugned order Dated 19.09.2016 the learned Senior Member Board of Revenue, Khyber Pakhtunkhwa, has withdrawn the court order dated 29.9.2009 without any lawful authority and thus deprived the petitioner of his established service rights as Naib Tehsildar over a period of more then 13 years. (Annexure "E")

Received

15/11/16  
UG 281  
PA to DC DIRKHA



Attendant

18

Grounds:-

- a) That the impugned order Dated 19.09.2016 is fanciful without lawful authority.
- b) That the impugned order has been passed without any show cause notice with the petitioner and without providing any opportunity to the petitioner, the petitioner came to know about the impugned order on 25.10.2016 by receiving a copy of the same. So the Departmental appeal is within time.
- c) That on issuance of order of regularization of the petitioner as Naib Tehsildar w.e.f 13.01.2014 by the competent authority had become part and parcel of the Revenue hierarchy and this right spreading over a period of 13 years could not be taken away through the impugned Office order Dated 19.09.2016.

In view of the submission made above, it is humbly prayed that on acceptance of instant Departmental Appeal, the impugned order dated 19-09-2016 of the Senior Member Board of Revenue Khyber Pakhtunkhwa may please be set aside and petitioner may please be reinstated as Naib Tehsildar in Revenue Department of this province and entitled me to seniority w.e.f 13-01-2004 vide Judgment of Honourable Service Tribunal Court, KPK dated 01-12-2015.

Your Humble Petitioner


Saleem Asmat  
(Naib Tehsildar)  
Irrigation Gomal,  
Dera Ismail Khan.

Dated 15/11/2016

**AFFIDAVIT:**

I, Saleem Asmat (Naib Tehsildar) Irrigation Gomal, do hereby solemnly affirm declared on oath that contents of the above Departmental Appeal are true and correct to the best of my knowledge and nothing has been concealed.

Deponent

  
Attest



19

G

GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT

No. Estt: V/ Saleem Asmat/ 30602  
Peshawar dated the 23/12/2016

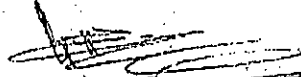
To

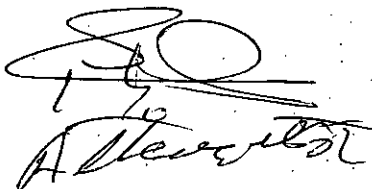
Mr. Saleem Asmat,  
Ex -- Naib Tehsildar

Through Deputy Commissioner DIKhan

SUBJECT: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER NO. ESTT:V/PF/S.AMAT/2268 DATED 09.09.2016 THROUGH WHICH THE PETITIONER IS DEPRIVED FROM HIS ESTABLISHED SERVICE RIGHT AS NAIB TEHSILDAR.

Your departmental appeal dated 15.11.2016 has been examined and dismissed by the Appellate Authority having no legal ground.

  
Assistant Secretary (Estt)

  
A. H. Khan



GOVERNMENT OF NWFP  
REVENUE & ESTATE DEPARTMENT

(20) H

ANNEXURE

Dated Peshawar the 25/01/2010

**ORDER.**


No. 869 /Admn:V/PF(Niab Din). In pursuance of  
Judgment of Senior Member Board of Revenue NWFP (dated 29.09.2009  
passed in Appeal No. 38/2009 services of Mr. Niab Din Naib presently  
working as Political Naib Tehsildar Torkhum (BPS -- 14) are hereby  
regularized w.e.f 17.01.1996.

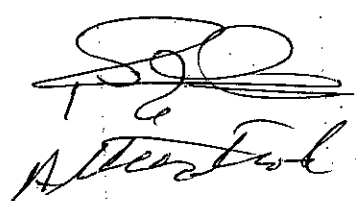
By Order of,  
Senior Member  
Board of Revenue NWFP

No. 870/76 /Admn:V/PF(Niab Din)

Copy to:-

1. Commissioner Peshawar Division Peshawar
2. Political Agent Khyber Agency.
3. Agency Accounts Officer Khyber Agency.
4. Reader to Senior Member Board of Revenue NWFP
5. Official concerned.
6. Personal File.
7. Office Order File.

  
Assistant Secretary (Estt)  
Board of Revenue NWFP



21 J

ANNEXURE

IN THE COURT OF AHSAN ULLAH KHAN, SENIOR MEMBER BOARD OF REVENUE, KHYBER PAKHTUNKHWA.

Case No. 257/2010  
Date of Institution 16.09.2010  
Date of Decision 11 / 11 / 2010

MIRAJ MOHMAAD POLITICAL NAIB TEHSILDAR YAKA GHUND,  
MOHMAND AGENCY. Appellant

ORDER:

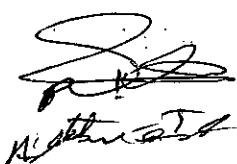
This is an appeal filed Miraj Mohamad, Political Naib Tehsildar, Yaka Ghund, Mohmand Agency challenging therein this Department seniority list notified on 10.08.2010.

Facts leading to the case are that the appellant was initially promoted to the post of Naib Tehsildar on 09.05.2003 in his own pay & scale and subsequently on 29.04.2005, the appellant was promoted on the same post on regular basis. After his regular promotion vide No. 10683-90/Admn-I/PF (M) dated 29.04.2005. The appellant was placed in the seniority list ibid at S. No 24 with effect from 29.04.2005 as stood on 31.12.2009. In the year 2010, when the seniority was notified and his position was placed to at S. No. 69. On the other hand in similar nature case one Mr. Naib Din Naib Tehsildar as promoted to the post of HVC (BPS-14) in his own pay & scale on 17.01.1996 and granted seniority from the same date i.e. 17.01.1996 already disposed up in this Court in case No. 381/09 dated 29.09.2009. On the same analogy and pattern the appellant is also entitled w.e.f 29.04.2005, on which he was promoted to the post of Naib Tehsildar on regular basis vide this Department No. 10683-90/Admn-I/PF (M) dated 29.04.2005. Hence the appellant has been discriminated as order having identical circumstances were granted due seniority while the appellant was refused which is not sustainable under Articles 4, 25, 27 of Constitution 1973.

In view thereof the above appeal is accepted and the Respondent Department directed to consider the case of the appellant regarding assignme regularization/seniority w.e.f 29.04.2005.

Announced

11.11.2010



Senior Member  
Board of Revenue, Khyber

Before KPK Service بعدالت  
Tribunal, Peshawar

Appellant 2 منجانب  
Govt of KPK بنام Saleem Asmat  
left

مورخہ  
مقدمہ  
دعوی  
جرم

### باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ

آن مقام Peshawar کیلئے Bilal A. Wazir  
Adv

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز  
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی براہدگی  
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت  
مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے  
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے  
اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے  
سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں  
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

*(Handwritten signature)*

20

ماہ

المرقوم

الع د گ واہ الع

کے لئے منظور ہے۔

مقام

4

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No: 113/2017

Saleem Asmat Ex- Naib Tehsildar.....Appellant

**VERSUS**

The Government of Khyber Pakhtunkhwa through Chief Secretary and others. .... Respondents

**RESPECTFULLY SHEWETH.**

**PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1, 2 & 3 ARE AS UNDER.**

**PRELIMINARY OBJECTIONS.**

1. That the appellant has got no cause of action or locus standi.
2. That the appeal is bad for mis- joinder and non- joinder of necessary parties.
3. That appellant is estopped by his own conduct to institute the instant appeal.
4. That the appellant has not come to the Tribunal with clean hands.
5. That the Hon'ble Tribunal has no jurisdiction to adjudicate the matter.

**ON FACTS**

1. Pertains to record. Need no comments.
2. Incorrect. The official was posted as Naib Tehsildar in his own pay and scale which is a temporary arrangement, therefore seniority of the period he remained as Naib Tehsildar (own pay scale) cannot be given under the Rules. Beside his services were regularized as Naib Tehsildar through Administrative order without holding of Departmental Promotion Committee meeting, which has also been withdrawn. Furthermore Senior Member Board of Revenue have no authority to promote an official out of turn as Naib Tehsildar through Administrative order. Out of turn promotions are even against law and injunction of Islam as reported in 2017 SCMR 206, and 2017 SCMR 192, 2016 SCMR 1525 (Copies A,B and C).
3. Incorrect. On remand of his appeal from Service Tribunal, the appeal of the appellant was properly examined and after giving the opportunity of hearing as per law/rules his appeal / representation was rejected. (Copy of the order is "D").
4. Incorrect. The order dated 09.09.2016 has rightly been issued by the Competent Authority, as the appellant was posted in Own Pay Scale. Seniority cannot be counted from such posting and any order which is against law being void order may at any stage be withdrawn.
5. Incorrect. The Departmental appeal has rightly been rejected by the Appellate Authority.

## GROUNDS

- A. Incorrect. The order dated 09.09.2016 and 23.12.2016 is according to law / rules.
- B. Incorrect. Void and illegal order can at any time be reviewed / withdrawn as having no effect nor can create a single right.
- C. As stated above, However seniority counts from regular appointment/promotion not from posting in Own Pay Scale.
- D. Incorrect. As the appellant was posted as Naib Tehsildar (own pay scale). Own pay scale services is temporary arrangement and cannot be counted for seniority, while on the other hand his regularization was made through an illegal Administrative Order which has also been withdrawn by the Competent Authority.
- E. Incorrect. His name was only discussed in the Departmental Promotion Committee meeting for promotion as Naib Tehsildar but was not considered as he was junior most in DIKhan Division. (Copy of seniority list is Annexed "E").
- F. Incorrect. On rechecking, the seniority list was revised and his name was kept at proper place.
- G. Incorrect. Proper opportunity of personal hearing was given to the appellant. All of the officials who were promoted through Administrative orders have also been reverted to their original posts.
- H. Incorrect. All the officials who were granted seniority from the date of own pay scale has been withdrawn and they have been given seniority w.e.f the date of their regular promotion.
- I. Incorrect. As stated in proceeding paras.
- j. Incorrect. No violation of Article 4, 25 and 27 have been committed.
- K. Incorrect. The order dated 23.12:2016 has been passed by the appellate authority and no violation of Section 24-A of the General Classes Act has been committed.

Keeping in view of the above the appeal of the appellant having no legal grounds may be dismissed with costs.

Respondent No. 1, 2 & 3

10/4/17

SUPREME COURT MONTHLY REVIEW IV/2016  
**Criminal Procedure Code (V of 1898)**

---S. 497(2)---Penal Code (XLV of 1860), S. 377---Sodomy---Bail, grant of---Further inquiry---Sample for DNA test was sent to the Forensic Science Agency---Doctor in his final opinion had opined that no act of sodomy was committed---Further the accused remained behind bars for about nine months---Case of the accused called for further inquiry in the light of the opinion of the doctor---High Court had fallen in error in setting aside the bail granting order passed by the Trial Court---Order passed by Trial Court granting bail to accused was restored accordingly. [p. 1524] A

M.D. Chaudhry, Advocate Supreme Court for Petitioner.

Ch. Din Muhammad Meo, Advocate Supreme Court for Respondent No.2.

Asjad Javaid Ghural, Additional P.-G. and Naimat, SI for the State.

Date of hearing: 9th March, 2016.

**ORDER**

MANZOOR AHMAD MALIK, J.---C.M.A. No. 51-L of 2016.  
For the reasons mentioned in the application, the same is allowed and delay in filing the criminal petition is condoned.

**Crl. P. No. 118-L of 2016**

2. Petitioner calls in question the order dated 26.11.2015 passed by the learned Lahore High Court, Lahore whereby petition for cancellation of bail filed by respondent No.2/complainant was allowed and the order dated 02.09.2015 granting bail to the petitioner or passed by the learned Additional Sessions Judge, Chunian was set aside.

3. After hearing the learned counsel for the parties, learned Additional Prosecutor General and having gone through the material available on record as well as the impugned order, it has been observed that sample for DNA test was sent to the Punjab Forensic Science Agency on 26.01.2015 and after receipt of report dated 03.06.2015, the doctor in his final opinion dated 27.07.2015 has opined, which has been confirmed by the learned Additional Prosecutor General, that no act of sodomy was committed in this case. We have further noted that petitioner remained behind the bars for about nine months. In this view of the matter, we find that the learned High Court has fallen in error in setting aside the bail granting order passed by the learned Additional Sessions Judge in favour of the petitioner as the case of the petitioner in the light of the opinion of the doctor calls for further enquiry.

2016] Regional Police Officer Gujranwala v. Ejaz Ahmad (Amir Hani Muslim, J) 1525

4. For the foregoing reasons, this petition is converted into appeal and the same is allowed. The impugned order of the learned High Court dated 26.11.2015 is set aside and that of the learned Additional Sessions Judge dated 02.09.2015 granting bail to the petitioner is restored.

MWA/A-16/SC

Bail granted.

2016 S C M R 1525

[Supreme Court of Pakistan]

Present: Amir Hani Muslim and  
Umar Ata Bandial, JJ

REGIONAL POLICE OFFICER GUJRANWALA  
and another---Appellants

versus

EJAZ AHMAD and others---Respondents

Civil Appeal No.184-L of 2013, decided on 26th January, 2016.

(On appeal from judgment dated 20-3-2012 of the Punjab Service Tribunal, Lahore, passed in Appeal No. 110 of 2011)

**(a) Civil service---**

---Promotion---Out of turn promotion---No civil servant (or police personnel) was entitled to out of turn promotion on account of gallantry award or otherwise. [p. 1526] A

Contempt Proceedings Against Chief Secretary Sindh 2013 SCMR 1752 and Ali Azhar Khan Baloch v. Province of Sindh 2015 SCMR 456 ref.

**(b) Civil service---**

---Seniority---Ante-dated seniority to a civil servant---Violation of the law. [p. 1526] B

Contempt Proceedings Against Chief Secretary Sindh 2013 SCMR 1752 and Ali Azhar Khan Baloch v. Province of Sindh 2015 SCMR 456 ref.

Siraj ul Islam, Additional P.-G. and Rana M. Anwar, S.P. (L)  
Gujranwala for Appellants.

Aftab Gull, Advocate Supreme Court for Respondent No.1.

Aftab Mustafa, Advocate Supreme Court for Respondent No.7.

M. Arif Gondal, Advocate Supreme Court for Respondents Nos. 6, 8, 10, 24, 26, 28, 30, 32-35, 37-39 and 41.

Respondents Nos. 4, 13 and 19 in person.

Date of hearing: 26th January, 2016.

ORDER

AMIR HANI MUSLIM, J.--The issue raised in these proceedings have already been answered by the judgments of this Court reported as *Contempt Proceedings Against Chief Secretary Sindh* (2013 SCMR 1752) and *Ali Azhar Khan Baloch v. Province of Sindh* (2015 SCMR 456). It has been declared in the aforesaid judgment that no Police Personnel and or Civil Servant is entitled to out of turn promotion on account of gallantry award or otherwise. It has further declared that ante dated seniority to a Civil Servant is violation of the law.

2. Through the impugned judgment, the Regional Police Officer has challenged the anti-date seniority granted to the Respondents, which has been dealt with in depth in the aforesaid judgments and has been declared to be unconstitutional and *ultra vires* of the fundamental rights of the Civil Servants. We, therefore, set aside the impugned judgment, in terms of the law enunciated in the aforesaid judgments, and allow the Appeal.

3. The learned Additional Advocate General, Punjab, states that the Punjab Government has started implementing judgments of this Court reported as *Contempt Proceedings Against Chief Secretary Sindh* (2013 SCMR 1752) and *Ali Azhar Khan Baloch v. Province of Sindh* (2015 SCMR 456) and till date substantial portion of seniority of the Police personnel has been re-fixed. We must record our displeasure over the inaction on the part of the Punjab Government for the directions issued by this Court in 2013 and 2015. We expect that all the out of turn promotions granted either to the police personnel on gallantry award or otherwise shall be undone within four weeks from today and their seniority be re-fixed with their batch mates in terms of the directions contained in the aforesaid judgments. Out of turn promotions ranging from Constable to any gazetted officers shall be streamlined in terms of the aforesaid two judgments. On completion of the exercise, the I.G Police Punjab, Home Secretary, Punjab and Chief Secretary, Punjab, shall submit compliance report with the Assistant Registrar of this Court for our perusal in Chambers. This order shall be communicated to the I.G., Punjab; Home Secretary; and Chief Secretary, Punjab, for their information and compliance and non compliance of this judgment shall expose the concerned officials to contempt proceedings.

MWA/R-6/SC

Order accordingly.

2016

Sanaulah v. State  
(Dost Muhammad Khan, J)

1527

2016 S C M R 1527

[Supreme Court of Pakistan]

Present: Mushir Alam and  
Dost Muhammad Khan, JJ

شاہ اللہ --- سائل

بنام

سرکار۔۔۔ جواب کنندہ

فوجداری عرضداشت برائے حصول اجازت اپیل نمبر ۲۳۰/۲۰۱۶ زیر مشن نمبر ۱۸۵ ڈی مشن نمبر (۲)  
آئین پاکستان بحریہ سال ۱۹۷۳ء، تاریخ فیصلہ ۲۵ مئی ۲۰۱۶ء۔

(اپیل خلاف فوجداری حکم نمبری ۲۰۱۶/پی-۱۵۸ عدالت عالیہ پشاور، پشاور مورخہ ۲۰۱۶-۰۳-۱۴)

Criminal Procedure Code (V of 1898)---

S. 497---Penal code (XLV of 1860), S. 462-C---

--- گیس کی چوری --- ضمانت مسترد۔۔۔ ملزم مہینہ طور پر گیس کے بڑے پائپ سے نقب لگا کر غیر قانونی طور پر گیس چوری کر رہا تھا۔۔۔ علاقہ کینٹوں نے ہزاروں کی تعداد میں غیر قانونی گیس کنکشن برائے گھریلو، صنعتی اور تجارتی مقاصد کے استعمال شروع کر دیے تھے۔۔۔ گیس کے ذخائر کو وسیع پیمانے پر بے دردی سے لوٹا جا رہا تھا جو کہ موجودہ اور آئندہ نسلوں کے لیے ایک ہمیشہ پھرتی اور قدرتی خزانے کی حیثیت رکھتا ہے۔۔۔ ملزم کو رہائی پر ضمانت دینا قرین انصاف نہ ہوگا۔۔۔ ضمانت کی استدعا مسترد کر دی گئی۔

A & B [1529]

فوجداری عرضداشت نمبر ۲۳۹/۲۰۱۶ بعنوان رضوان اللہ بنام سرکار

منجانب سائل : ارشد حسین یوسف زئی، وکیل، عدالت عظمیٰ

منجانب وکیل سرکار : سیدنا یاب حسن گردیزی، وکیل، عدالت عظمیٰ

تاریخ سماعت : ۲۵ مئی ۲۰۱۶ء



2017 S C M R 192

[Supreme Court of Pakistan]

Present: Amir Hani Muslim,  
Ejaz Afzal Khan and Mushir Alam, JJ

AMANULAH---Petitioner

versus

GOVERNMENT OF BALOCHISTAN  
and 2 others---Respondents

Civil Petition No. 80-Q of 2010, decided on 25th April, 2014.

(Against the judgment dated 14.4.2010 passed by the  
Balochistan Service Tribunal Quetta in S.A. No. 21 of 2006)

*Balochistan Civil Servants Act (IX of 1974)---*

---Ss. 9 & 23---*Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 1979, R. 7---Balochistan Levies Force (B-1 to B-15) Service Rules, 1990---Constitution of Pakistan, Art. 130(5)---Out of turn promotion---Competent authority/Provincial Chief Minister relaxing promotion Rules to award two stages out of turn promotion---Legality--- Nepotism and favoritism--- Scope--- Section 23 of the Balochistan Civil Servants Act, 1974 did not confer any power on the Provincial Government, which could be exercised through the executive authority of the Province, to relax any promotion Rules framed under the said Act---Section 23 of the Balochistan Civil Servants Act, 1974 did empower the Provincial Government to deal with the case of any civil servant in such manner as may appear to it to be just and proper, but such discretion was not unfettered as it was shackled and controlled by the proviso to S. 23, Balochistan Civil Servants Act, 1974, which provides that where the said Act or any rule was applicable to the case of a civil servant, the case shall not be dealt with in any manner less favourable to him than that provided by the Act or such rule--- Provincial Chief Minister/competent authority not only ordered out of turn promotion of the appellant on purported meritorious service, but also waived off requirement of provisions of Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 1979, bypassing the District Promotion Committee---Act of extending favour and conferring benefit of promotion was not only against the fundamental rights of promotion of appellant's peers on merits but, was also a glaring example of nepotism and undue favour, which act was also opposed to Oath of office of the Provincial Chief Minister---Out of turn promotion of appellant on directions of the Provincial Chief Minister*

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*could not be sustained---Petition for leave to appeal was dismissed accordingly. [pp. 195, 196] A, B & C*

Abdul Malik and others v. Government of Balochistan through Secretary, Home and Tribal Department and others 2013 PLC (C.S.) 736; Abdul Shakoor and others v. Azad Government of the State of Jammu and Kashmir through Chief Secretary and others 2004 PLC (C.S.) 208 and Muhammad Sadiq and another v. Federal Service Tribunal, Islamabad and others 2003 PLC (C.S.) 1029 ref.

M. Munir Paracha, Advocate Supreme Court for Petitioner.

Shaiq Baluch, A.A.-G. Balochistan for Respondents Nos. 1 - 2.

Hassan Raza Pasha, Advocate Supreme Court for Respondent No.3.

Date of hearing: 25th April, 2014.

## ORDER

MUSHIR ALAM, J.---Instant Civil Petition for leave to Appeal under Article 212(3) of the Constitution of Pakistan, 1973 arises out of an order dated 14.4.2010 passed by the Balochistan Service Tribunal, Quetta.

2. Brief facts as may be necessary to appreciate the rival contentions of the parties appear to be that the Respondent No.3 Adam Khan was appointed as Risaldar in Levies on 23.12.1993. Appellant, Amanullah was appointed as Jamadar/Naib Risaldar in Levies on 18.12.1993. From the record it seems that Amanullah was favoured with out of turn promotion as Risaldar on 3.6.1999, which action was successfully challenged in Appeal by one Alil Muhammad who was senior to him consequently, Appellant was reverted to his original post as Naib Risaldar and said Adil Muhammad was promoted vide order in appeal dated 12.5.2003. Record shows that the then Chief Minister of Balochistan on 9.8.2005 favoured Amanullah, with two stage out of turn promotion to Risaldar Major (B-14), overlooking ban and non-availability of vacancy, beside ignoring seniority criteria as laid down in section 9 of the Balochistan Civil Servants Act, 1974 and also by waiving condition of consideration and recommendation of his case by the District Promotion Committee as required under Rule 7 of the Balochistan Civil Service (Appointment, Promotion and Transfer) Rules 1979, in negation of Balochistan Levies (B-1 to B-15) Rules 1990, consequently promotion order dated 25.11.2005 was issued by the Government of Balochistan, the Respondent No.1 herein.

3. The Respondent No.3 herein Adam Khan successfully

challenged the above Order dated 25.11.2005 of the Respondent No.1 before the Balochistan Services Tribunal, Quetta. Learned Balochistan Services Tribunal, Quetta, in consideration of provisions contained in the Balochistan Civil Servants Act, 1974, Balochistan Civil Servants (Appointments, Promotion and Transfer) Rules, 1979, Balochistan Levies (B-1 to B-15) Rules, 1990, and all other relevant laws/policy as in vogue allowed the appeal through impugned order dated 14.4.2010. relevant part of the impugned order is as follows:

"15. In the instant case, a deviation was made from the rules and the selection was made by the Chief Minister which was arbitrary and without lawful basis. In this regard we are fortified by the Judgment reported in 1995 SCMR P-650, the relevant portion thereof is reproduced hereinbelow:

"No doubt the competent authority has the discretion but it was not unfettered, while exercising discretion, the authority should not act arbitrarily, unreasonable and in complete disregard of the rules and regulations. The discretion to be exercised has to be judged and considered in the background of the facts and circumstances of each case. In the present case there is a strong background of ignoring for disapproving the appellant with certain proposes."

16. In view of the above discussion, we are of considered view that the appellant has been granted two steps out of turn promotion illegally for erroneous consideration. We regretfully disapprove such exercise of power by the then Chief Minister of the province. The impugned order dated 25.11.2005 is hereby set aside being illegal and contrary to law. The respondent is reverted from the rank of Risaldar Major to the rank of Risaldar immediately. The respondent No.1 i.e. Secretary Home and Tribal Affairs is directed to place the case of appellant's promotion as Risaldar Major before the District Promotion Committee being senior most within a period of two months".

4. Mr. Muhammad Munir Paracha, learned ASC for the petitioner, contended that the Petitioner was condemned unheard by the Balochistan Service Tribunal, as the Appellant was not served any notice of Appeal, therefore impugned order is liable to be set aside and the service appeal be remanded for decision afresh after hearing the Appellant. When attention of learned ASC was drawn to the order of the Balochistan Service Tribunal dated 5.06.2008, recording service of notice on the Appellant (page 71 of the Paper Book) and with copy of Notice of Service Appeal showing same address of the Appellant as shown in the memo of Appeal, it was vainly argued that postman was not examined to

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(Mushir Alam J)

prove service. We are afraid such contentions cannot be considered and no legal sanctity is attached to the order of the Service Tribunal holding the appellant in good on the Appellant under given facts and circumstances. No exception could be taken on this count.

5. It was next contended that in terms of section 20 of the General Clauses Act 1956 read with other enabling provision of section 39(1) of the Government of Balochistan Rules of Business read with Schedule VII and section 23 of the Balochistan Civil Servants Act, 1974, the Chief Minister being the executive head of the Province, had all the authority and discretion to relax the Rules, and no exception to exercise of such authority could be taken. Arguments seemingly persuasive, when examined, are denuded of any legal sanctity on more than one counts; firstly in terms of Article 240 read with Articles 260 and 2A of the Constitution of Pakistan, 1973; terms and conditions of service of a person in the service of Pakistan and or Province right from very inception of appointment till its termination or retirement including all matters incidental and or falling in between are determined by or under the Act of Parliament or Provincial Assembly, as the case may be. Right to be consider for promotion of an employee is one of the essential term and condition of service. Secondly, section 23 of the Balochistan Civil Servants Act, 1974 does not confer any power on the Government of Balochistan, which could be exercised through the executive authority of the Province, to relax any rules framed under the Act, 1974 governing promotion of a Civil Servant. Even otherwise, section 23 of the Balochistan Civil Servants Act, 1974 only empowers the Government of Balochistan to deal with the case of any civil servant in such manner as may appear to it to be just and proper. Even than such discretion is not unfettered but is shackled and controlled by the Proviso to section 23 *ibid*; which *inter alia* provides that "where this Act or any rule is applicable to the case of a civil servant, the case shall not be dealt with in any manner less favourable to him than that provided by the Act or such rule." Now examining the case in hand, appellant is in the service of Province of Balochistan. His terms and conditions of service are governed by special enactment namely Balochistan Civil Servants Act, 1974 and Balochistan Levies (B-1 to B-15) Rules, 1990. His promotion is regulated and controlled by Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 1979. In the matter of terms and conditions of services, Rule 7 thereof, mandates that promotion and transfer to the post in basic pay scale 2 to 16 and equivalent are to be made on The recommendation of the appropriate Departmental Promotion Committee and any promotion to higher grade is to be made on the recommendation of Provincial Selection Board. Section 9 of the Balochistan Civil Servants Act, 1974 mandates promotion against non-selection post on the basis of seniority cum fitness. In instant case it is B

quite disturbing to note that the then Chief Minister, not only ordered out of turn promotion of the Appellant on purported meritorious service; but also waived off requirement of provisions of Rules 1979, bypassing District Promotion Committee. The act of extending favour and conferring benefit of promotion is not only against the fundamental rights of promotion of his peers on merits but, is also a glaring example of nepotism and undue favour, which act is also opposed to Oath of office of the Chief Minister, whereby he pledged to the people of his province to "discharge my duties, and perform my function, honestly, to the best of my ability, faithfully in accordance with the Constitution of Islamic Republic of Pakistan and the law, and always in the interest of the sovereignty, integrity, solidarity, well being and prosperity of Pakistan...." That in all, circumstances, I will do right to all manner of people, according to law, without favour, affection or ill-will" thus favouring the Petitioner with out of turn promotion as Risaldar by passing all those in deserving and waiting for promotion is against all canon of norms and law, and in abdication of Oath of office thus cannot be sustained.

6. In a very recent case reported as *Abdul Malik and others v. Government of Balochistan through Secretary, Home and Tribal Department and others* (2013 PLC (C.S.) 736), learned Division Bench of Balochistan High Court disapproved, for valid reasons, ad-hoc appointment of Risaldars in the Provincial Levies Force on the directive of the Chief Minister. In the cited case, the High Court thoroughly examined the authority of the Provincial Government to relax rules. It was held therein Provincial Legislature had not granted the Provincial Government any power to 'relax' any rule. No provision existed in the *Balochistan Civil Servants (Appointments, Promotion and Transfer) Rules, 2009*, which may enable the Provincial Government to do any thing in the purported 'Relaxation of Rules.' It was further held that if persons were appointed as Levies Officers on the personal whims of a Minister or on the basis of 'sifarish' the fundamental rights of those aspiring to such post were transgressed (Article 18), to be considered equal before the law (Article 25(2)) of the Constitution of Pakistan, 1973. The Court not only set aside the ad hoc appointment of the Risaldar, declaring the same to be void ab initio but also directed them to refund all salaries and benefit received by them. In number of cases including *Abdul Shakoor and others v. Azad Government of the State of Jammu and Kashmir through Chief Secretary and others* (2004 PLC (C.S.) 208), and in the case of *Muhammad Sadia and another v. Federal Service Tribunal, Islamabad and others* (2003 PLC (C.S.) 1029), this Court disapproved practice of relaxing Rules by the executive authority to extend favour to dole out favour to blue eyed.

7. Under facts and circumstance of case, no exception to the well

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(Ijaz ul Ahsan, J)

considered, and reasoned decision dated 12.4.2010 of the Balochistan Service Tribunal could be taken. Leave is declined and petition is dismissed.

MWA/A-37/SC Petition dismissed.

2017 S C M R 197

[Supreme Court of Pakistan]

Present: Mian Saqib Nisar,  
Faisal Arab and Ijaz-ul-Ahsan, JJ.

COMMISSIONER OF INCOME TAX---Appellant

versus

Messrs GILANI TRANSPORT COMPANY---Respondent

Civil Appeal No. 908 of 2009, decided on 21st November, 2016.

(Against order dated 31.10.2008 of High Court of Sindh at Karachi, passed in I.T.A. No. 25 of 2001)

(a) *Income Tax Ordinance (XXXI of 1979) [since repealed]*---

---Ss. 80-C(4) & 89---Presumptive Tax Regime---Charge of additional tax for failure to pay tax or penalty---Scope---Section 89 of the Income Tax Ordinance, 1979 empowered the department to levy and recover additional tax only in case an assessee failed to pay the whole or any part of tax levied under Chapter VII or the whole or any part of the penalty levied under Chapter XI of the Income Tax Ordinance, 1979.

For the assessment year 1991-92 a sum of Rs.240,260/- was payable by the taxpayer as tax on or before 30.09.1991 in terms of section 80-C(4) of the Income Tax Ordinance, 1979. Amount in question was not paid on its due date. It was paid subsequently over a period of time in instalments. This prompted the Income Tax Department to issue a show cause notice calling upon the taxpayer to explain why additional tax in the sum of Rs.164,823/- may not be recovered from him in terms of section 89 of the Income Tax Ordinance, 1979. Contention of department that since the taxpayer failed to pay tax on or before the due date, the department was justified in resorting to the provisions of section 89 of the Ordinance to levy and recover additional tax.

12. The above judgment has been passed to set the law straight. Accordingly, this petition is converted into appeal and allowed in terms set out above. Impugned order dated 24.2.2015 passed by the learned Bench of the High Court is accordingly set aside.

MWA/I-14/SC

Appeal allowed.

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[Supreme Court of Pakistan]

*Present: Anwar Zaheer Jamali, C.J.,  
Amir Hani Muslim, Ejaz Afzal Khan,  
Mushir Alam and Ijaz-ul-Ahsan, JJ*

C.R.P. 49/2016, CRL. O.P. No.186, 193 of 2016,  
C.M.As.1681/2016, 7575/2016, 8132/2016, 8143/2016, 8144/2016,  
8146/2016, 8147/2016, 8148/2016 in C.R.P.49/2016  
in C.A.184-L/2013 and C.M.A. 8177/2016

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

SHAHID PERVAIZ---Petitioner

versus

EJAZ AHMAD and others---Respondents

C.R.P.50/2016 in C.A. 184-L/2013

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

MANZOOR AHMED and others---Petitioners

versus

RPO GUJRANWALA and others---Respondents

C.R.P. 51/2016 in C.A. 184-L/2013

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

JAMIL AHMED---Petitioner

versus

RPO GUJRANWALA and others---Respondents

SHAHID PERVAIZ v. Ejaz Ahmad  
(Amir Hani Muslim, J)

C.R.P. 52/2016 in C.A.184-L/2013

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

MALIK M. SARWAR AWAN and others---Petitioners

versus

GOVERNMENT OF PUNJAB and others---Respondents

C.R.P.83/2016 in C.A.184-L/2013

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

AWAIS MALIK and others---Petitioners

versus

EJAZ AHMAD and others---Respondents

C.R.P.84/2016 in C.A.184-L/2013

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

Mst. RASHIDA BASHIR and another---Petitioners

versus

REGIONAL POLICE OFFICER, GUJRANWALA  
and another---RespondentsC.R.P.85/2016 in C.A.184-L/2013

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

Syed JAMAT ALI BOKHARI and others---Petitioners

versus

EJAZ AHMED and others---Respondents

C.R.P.89/2016 in C.A.184-L/2013

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

MUHAMMAD NAWAZ and others---Petitioners

versus

CHIEF SECY. GOVT. OF PUNJAB and others---Respondents

**C.R.P.91/2016 in C.A.184-L/2013**

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

GHULAM DASTGIR and others---Petitioners

versus

EJAZ AHMAD and others---Respondents

**C.R.P.92/2016 in C.A.184-L/2013**

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

MUHAMMAD AZAM---Petitioner

versus

EJAZ AHMED and others---Respondents

**CRL.R.P.52/2016 in CrI. O.P.89/2011**

(On review from the judgment dated 12-06-2013 passed by this Court in CrI. O.P.89/2013)

AWAIS MALIK and others---Petitioners

versus

CHIEF SECY. PUNJAB and another---Respondents

**CRL.O.P.123/2016 in C.P.1446-L/1997**

(Contempt proceedings arising out of order of this Court passed in Civil Petition No.1446-L/1997)

AKHTAR UMER HAYAT LALAYKA---Petitioner

versus

MUSHTAQ AHMED SUKHAIRA, IG PUNJAB,  
LAHORE---Respondent

**CIVIL MSIC. APPLICATION NO.4435/2016**

(Application against out of turn promotions in the Province of Punjab)

**C.R.P.382/2016 in C.A.184-L/2013**

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

(Amir Hani Muslim, II)

MUHAMMAD AMI TAIMOOR  
and others---Petitioners

versus

PROVINCE OF PUNJAB and others---Respondents

**C.R.P.383/2016 in C.A.184-L/2013**

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

MAHMOOD-UL-HASSAN RANA  
and others---Petitioners

versus

PROVINCE OF PUNJAB and others---Respondents

**C.R.P.454/2016 in C.A.184-L/2013**

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

ABRAR AHMAD KHALIL and others---Petitioners

versus

GOVT. OF PUNJAB and others---Respondents

**CRL.R.P.174/2016 in CrI.O.P.89/2011**

(On review from the judgment dated 12-06-2013 passed by this Court in CrI.O.P.89/2013)

GHULAM DASTGIR and others---Petitioners

versus

CHIEF SECRETARY, GOVT. OF PUNJAB  
and others---Respondents

**CRL.O.P.186/2016 in C.A.184-L/2013**

(Contempt proceedings arising out of judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

MUHAMMAD AZAM---Petitioner

versus

MUSHTAQ AHMAD SUKHERA and others---Respondents

**Crl.O.P.193/2016 in Crl.O.P.86/2016 in C.P.1000-L/2005**

(Contempt proceedings arising out of the order dated 4.10.2016 passed by this Court in Crl. O.P.86/2016 in C.P.1000-L/2005)

SHAHID PERVAIZ---Petitioner

versus

MUSHTAQ AHMED SUKHERA, IGP PUNJAB.  
LAHORE---Respondent

**Crl.O.P.195/2016 in C.A.184-L/2013**

(Contempt proceedings arising out of the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

IMTIAZ SARWAR---Petitioner

versus

ZAHID SAEED, CHIEF SECRETARY PUNJAB  
and others---Respondents

**C.R.P.479/2016 in C.A.184-L/2013**

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

TAHIR SIKANDAR and others---Petitioners

versus

THE INSPECTOR GENERAL OF POLICE, PUNJAB  
and others---Respondents

**C.R.P.480/2016 in C.A.184-L/2013**

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

MUHAMMAD WASEEM IJAZ---Petitioner

versus

IGP PUNJAB and others---Respondents

**C.R.P.481/2016 in C.A.184-L/2013**

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

(Amir Hani Muslim, J)

**KHALID MEHMOOD AFZAL and others---Petitioners**

versus

IGP PUNJAB and others---Respondents

**C.R.P.482/2016 in C.A.184-L/2013**

(On review from the judgment dated 26-01-2016 passed by this Court in C.A. No.184-L/2013)

Malik MUHAMMAD SABIR---Petitioner

versus

IGP PUNJAB and others---Respondents

**Crl.R.P.191/2016 in Crl.O.P.89/2011**

(On review from the judgment dated 12-06-2013 passed by this Court in Crl.O.P.89/2013)

SHAHID PERVAIZ, SP---Petitioner

versus

CHIEF SECRETARY, GOVT. OF PUNJAB  
and others---Respondents

C.R.P. 49/2016, CRL. O.P. No.186, 193 of 2016, C.M.As.1681/2016, 7575/2016, 8132/2016, 8143/2016, 8144/2016, 8146/2016, 8147/2016, 8148/2016 in C.R.P.49/2016 in C.A.184-L/2013 and C.M.A. 8177/2016, C.R.P. 50/2016 in C.A. 184-L/2013, C.R.P.51/2016 in C.A. 184-L/2013, C.R.P.52/2016 in C.A. 184-L/2013, C.R.P. 83/2016 in C.A. 184-L/2013, C.R.P. 84/2016 in C.A. 184-L/2013, C.R.P. 85/2016 in C.A. 184-L/2013, C.R.P. 89/2016 in C.A. 184-L/2013, C.R.P. 91/2016 in C.A. 184-L/2013, C.R.P. 92/2016 in C.A. 184-L of 2013, Crl. R.P. 52/2016 in Crl. O.P. 89/2011, Crl. O.P. 123/2016 in C.P. 1446-L/1997, Civil Misc. Application No. 4435/2016, C.R.P. 382/2016 in C.A. 184-L/2013, C.R.P. 383/2016 in C.A. 184-L of 2013, C.R.P. 454/2016 in C.A. 184-L/2013, Crl. R.P. 174/2016 in Crl. O.P. 89/2011, Crl. O.P. 186/2016 in C.A. 184-L/2013, Crl. O.P. 193/2016 in Crl. O.P. 86/2016 in C.P. 1000-L/2005, Crl. O.P. 195/2016 in C.A. 184-L/2013, C.R.P. 479/2016 in C.A. 184-L of 2013, C.R.P. 480/2016 in C.A. 184-L/2013, C.R.P. 481/2016 in C.A. 184-L/2013, C.R.P. 482/2016 in C.A. 184-L/2013 and Crl. R.P. 191/2016 in Crl. O.P. 89/2011, decided on 30th December, 2016.

**(a) Punjab Civil Servants Act (VIII of 1974)---**

---S. 8-A [since omitted]---Punjab Civil Servants (Appointment and

*Conditions of Service) Rules, 1974, R. 14-A [since omitted]---Sindh Civil Servants Act (XIV of 1973), S. 9-A [since omitted]---Constitution of Pakistan, Arts. 9, 14 & 188---Review of Supreme Court judgment---Out of turn promotion to police personnel on basis of gallantry---Constitutionality and legality---Out of turn promotion was not only against the Constitution, but also against the Injunctions of Islam---Each out of turn promotion necessarily damaged the career of a corresponding deserving officer---Acts of gallantry did not justify out-of-turn promotions as they necessarily lead to impingement of the Fundamental Rights of fellow officers in terms of blocking their smooth progression of careers and impinging their respect and honour---Supreme Court directed the concerned officials and authorities to fix the seniority of all the police officers who were given out of turn promotion along with their batch-mates, as if they were never given out of turn promotion---Review petition was dismissed accordingly.*

Out of turn promotions were inherently destructive of the rights of other officers who, though senior and entitled to be considered for promotion before the beneficiaries of out of turn promotions, were bypassed as a result of out of turn promotions. Each out of turn promotion necessarily had a corresponding affected officer, who suffered due to such exercise despite being completely blameless. He suffered for no fault of his own when he was bypassed in favour of the beneficiary of such an exercise. Unless he voluntarily waived his rights, in which case the promotion could no longer be described as out of turn, the courts ought not to ignore his rights in matters brought before it for adjudication, irrespective of his presence or absence before the Court in a particular case. [p. 250] A

Out of turn promotion was not only against the Constitution, but also against the Injunctions of Islam. Reward or award should be encouraged for meritorious public service but should not be made basis for out of turn promotion. [p. 250] B

Muhammad Nadeem Arif v. I.G. of Police 2011 SCMR 408; Ghulam Shabbir v. Muhammad Munir Abbasi PLD 2011 SC 516 and Contempt proceedings against Chief Secretary, Sindh 2013 SCMR 1752 ref.

Brunt of out of turn promotions was always borne by the individual officers who were bypassed. The damaging effect on the careers of deserving officers who suffered due to out of turn promotions continued during service and even after retirement in terms of pensionary benefits. If the beneficiaries of such illegal exercise were reverted to the positions to which they would have been entitled to, on their respective merit and promotion, it would immediately open up vistas of promotion

for those deserving officers who were earlier bypassed due to out of turn promotions. [p. 260] N

Acts of gallantry, no matter how commendable and appreciated by the society, did not justify out-of-turn promotions as they necessarily lead to impingement of the Fundamental Rights of fellow officers in terms of blocking their smooth progression of careers and impinging their respect and honour as protected under Articles 9 and 14 of the Constitution. [p. 270] AA

Supreme Court directed the concerned officials and authorities to fix the seniority of all the police officers who were given out of turn promotion along with their batch-mates, as if they were never given out of turn promotion. Review petition was dismissed accordingly. [p. 273] EE

#### (b) Constitution of Pakistan---

---Art. 189---Decisions of Supreme Court binding on other courts---Scope---Under Article 189 of the Constitution, the Supreme Court was the court of last resort and laws declared or principles enunciated by it were binding on all subordinate courts and authorities in the country---All the courts and public institutions were bound to follow the principles laid down by the Supreme Court. [p. 254] C & F

Farhat Azeem v. Waheed Rasul PLD 2000 SC 18 ref.

#### (c) Constitution of Pakistan---

---Art. 189---Decisions of Supreme Court binding on other courts---Scope---Decisions of the Supreme Court laying down propositions in law were laws binding on all, regardless whether they were party to the proceedings before the Supreme Court or not. [p. 254] D

Messrs Star Diamond Co. v. Union of India PTCL 1988 FC 229 ref.

#### (d) Constitution of Pakistan---

---Art. 189---Decisions of the Supreme Court---Doctrine of stare decisis, applicability of---Said doctrine was not applicable to the Supreme Court---Supreme Court was not a slave of the doctrine of stare decisis and could change or modify its view with the passage of time. [p. 254] E

Hitachi Limited v. Rupali Polyester 1998 SCMR 1618 ref.



(e) Punjab Civil Servants Act (VIII of 1974)---

---S. 8-A [since omitted]---Sindh Civil Servants Act (XIV of 1973), S. 9-A [since omitted]---Constitution of Pakistan, Arts. 4, 9, 14, 18, 25, 240 & 242---Out of turn promotion---Constitutionality and legality---Similarities between S. 8-A of Punjab Civil Servants Act, 1974 and S. 9-A of Sindh Civil Servants Act, 1973---Both provisions were substantively similar in nature and catered to the same purpose, i.e., out-of-turn promotion, which was unconstitutional and a nullity ab initio; both provisions created a new exception or category of promotion to the existing framework of service rules, in the name of out of turn promotion, which was alien to the concept and scheme of civil service rules, read with Arts. 4, 9, 14, 18, 25, 240 & 242 of the Constitution; both provisions overtly militated against the settled law and principles of promotion based on merit, inter se seniority, annual performance reports etc.; both provisions were discriminatory and violative of the Fundamental Rights of other civil servants who had been affected by out of turn promotions, despite the fact that they may stand a notch up in merit, inter se seniority and even competence from the beneficiary of such promotions. [p. 255] G

(f) Vires of statute---

---Rules framed under a statute---Scope---Operation of a statute or any statutory provision was not dependent upon framing of the Rules---Absence of Rules may affect the enforceability or operation of the statute, however, for considering the constitutionality or otherwise of a statute on the touchstone of the Constitution or Fundamental Rights, framing or non-framing of the Rules under that statute could hardly be relevant. [p. 256] H

(g) Vires of statute---

---Benefits conferred under an unconstitutional statute, reversal of---Scope---Once a statute had been declared as being unconstitutional for any reason, all direct benefits continuing to flow from the same were to be stopped---When a statute (whether existing or repealed) was found to be ultra vires the Constitution, the Court was empowered to examine whether any person continued to enjoy the benefits of the ultra vires statute, or whether any state of affairs continued to exist as a result, and if it was found so, the Court was mandated to undo/reverse the same, provided that the benefit or state of affairs in question was not a past and closed transaction. [pp. 257, 262] I, R & S

Dr. Mobashir Hassan v. Federation of Pakistan, PLD 2010 SC 265 ref.

(h) Vires of statute---

---Legislative competence---Scope---Legislature enjoyed much leeway and competence in matters of legislation, but every law enacted may not necessarily be tenable on the touchstone of the Constitution---Legislative competence was not enough to make a law valid---Law must also pass the test at the touchstone of constitutionality to be enforceable, failing which it became invalid and unenforceable. [p. 257] J & L

(i) Constitution of Pakistan---

---Art. 184(3)---Judicial review by the Supreme Court---Scope---Supreme Court had the jurisdiction under the law and the Constitution to look into the fairness and constitutionality of an enactment and even declare it non est, if it was found to be in conflict with the provisions of the Constitution. [p. 257] K

(j) Vires of statute---

---Doctrine of severance---Scope---Normally the courts made utmost efforts to save a piece of legislation from becoming invalid, but in certain cases, the courts also applied, the doctrine of severance to remove a piece of legislation that distorted the scheme of a parent law, or deviated from the provisions of the Constitution. [p. 257] M

(k) Past and closed transaction, doctrine of---

---Applicability---Vested rights---Scope---Vested rights were generated only under a valid and uncontested instrument of law---Doctrine of 'past and closed transaction' would apply in cases where rights were created under a valid law, even if such law was allowed to lapse or was removed from the statute book, however, an instrument that was still born or treated by the court as non est was barred from creating any vested rights, let alone being protected under the doctrine of 'past and closed transaction'---Court was duty bound to protect the rights and interests created under a law and also to deny the enjoyment of rights created under an invalid law---Where a party was claiming the protection of rights that were created under a law that failed to pass the test of constitutionality, as determined by the court, it could not take the plea of 'past and closed transaction'. [pp. 261, 264] O & V

(l) Constitution of Pakistan---

---Art. 184(3) & Part II, Chap. 1 [Arts. 8 to 28]---Power of court to examine vires of a repealed statute---Scope---When a repealed statute was invoked or raised in support of any claim, right, office or act, before the Supreme Court, the Court would always be entitled to





GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE  
REVENUE & ESTATE DEPARTMENT



No. Judi/SMBR/ 1797  
Peshawar dated the 18 /01/2016.

To

The Registrar,  
Khyber Pakhtunkhwa Service Tribunal Peshawar.

SUBJECT: - SERVICE APPEAL NO. 932/2013  
SALEEM ASMAT VERSUS GOVERNMENT OF KHYBER  
PAKHTUNKHWA REVENUE AND ESTATE DEPARTMENT THROUGH  
ITS SECRETARY

I am directed to refer to Service Tribunal order dated 01.12.2015 and enclose a copy of order passed by Senior Member Board of Revenue Khyber Pakhtunkhwa for perusal of the Hon'ble Tribunal please.

  
Secretary - I  


# BRIEF FOR SENIOR MEMBER BOARD OF REVENUE

Saleem Asmat Naib Tehsildar .....Appellant

Versus

Senior Member Board of Revenue .....Respondent

This is an appeal filed by Saleem Asmat Naib Tehsildar before the Service Tribunal which has been remitted with the direction to the Appellate Authority to decide the matter within 30 days of the receipt of order by giving full opportunity of hearing to the appellant.

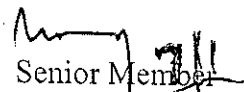
Appellant present and submitted his written reply in support of his claim for seniority for the period who remained posted as Naib Tehsildar (Own Pay Scale).

Facts of the case are that the appellant Mr. Saleem Asmat was posted as Naib Tehsildar (OPS) on 13.01.2004. Lateron, his services were regularized through Administrative order on 29.09.2009 and his name was included in the seniority list of Naib Tehsildar. On posting of (Waqar Ayub) the then Senior Member, Board of Revenue, he was given seniority from the date of his regular promotion as Naib Tehsildar i.e. from 29.09.2009. Aggrieved by the said order, the appellant filed Departmental Appeal before the Senior Member, Board of Revenue on 28.10.2010 which was rejected vide order dated 16.04.2011 on the grounds of limitation. Against the said order, the appellant filed the instant appeal before the Service Tribunal, which has been remitted for disposal on merit.

Perusal of the record reveals that the appellant was Assistant who was promoted as Naib Tehsildar through Administrative order without adopting proper procedure which is also under Review in this office. So far as the question of seniority w.e.f the date of the posting as Naib Tehsildar (OPS) is concerned, does not cover the rules, as under Section-8(4) of the Khyber Pakhtunkhwa Civil Servants Act, 1973, seniority in a post, service or cadre to which a civil servant is promoted/appointed shall take effect from the date of regular appointment to that post.

Keeping in view the facts narrated above, the appeal having no good ground is dismissed. File be consigned to record room after completion.

Announced

  
Senior Member

(36)

JOINT SENIORITY LIST OF MINISTERIAL STAFF OF D.C.O. AND D.O.R. OFFICES  
AND JUNIOR SCALE STENOGRAPHERS D.O.R. OFFICE D.I. KHAN.

S.No.	Name and designation.	Date of birth	Date of Isty entry in to Govt:Service.	Date of Regular appointment/ selection/ promotion as Asstt:/J.S.S.	Method of appointment.	Remarks.
1- <i>Do</i>	Mr. Abdur Rashid(B.Com)	6-2-1952	1-9-1972	1-5-1980	Steno (BS-12)	DOR Office(NT own payScale
2- <i>Do</i>	Mr. Rahim Ahmad(C.Com)	17-11-1951	1-3-1975	17-8-1983	J.S.S. "	DOR office -
3- <i>Do</i>	Mr. Niamatullah(B.A)	11-8-1967	16-6-1990	16-6-1990	Assistant.	DOR Office.
4- <i>Do</i>	Muhammad Shafaqat Awan	15-4-1963	22-10-1990	22-10-1990	- do -	D.C.O. Office.
5- <i>Do</i>	Mr. Asadullah (M.A)	5-4-1961	10-1-1981	20-5-1992	J.S.S.	DOR Office (NT O.P.S)
6- <i>Do</i>	Mr. Sher Bahadur	7-4-1965	10-10-1992	10-10-1992	Assistant	DCO Office. (NT O.P.S)
7- <i>Do</i>	Mr. Zainul Abidin.	1-4-1962	10-10-1992	10-10-1992	- do -	- do -
8- <i>Do</i>	Sh Muhammad Jamil.	15-2-1964	21-10-1992	21-10-1992	- do -	DOR Office.
9- <i>Do</i>	Mr. Abdul Haleem.	1-11-1965	1-11-1992	1-11-1992	- do -	DCO office.
10- <i>Do</i>	Mr. Saleem Asmat.	3-1-1959	17-3-1984	1-1-1993	- do -	- do - (NT O.P.S).
11- <i>Do</i>	Mr. Ghulam Rasool.	2-10-1950	17-10-1968	26-5-1996	- do -	DOR office.
12- <i>Do</i>	Mr. Masoodur Rehman.	12-2-1950	20-7-1971	26-5-1996	- do -	- do -
13- <i>Do</i>	Mr. Abdur Rashid.	1-5-1957	15-3-1983	4-7-1996	- do -	DCO office.
14- <i>Do</i>	Mr. Muhammad Rafiq.	1-3-1961	8-1-1979	5-6-2000	- do -	- do -
15- <i>Do</i>	Mr. Muhammad Jan.	12-1-1965	8-1-1985	5-6-2000	- do -	- do -
16- <i>Do</i>	Mr. Allah Nawaz	15-4-1956	12-1-1981	5-6-2000	- do -	- do -
17- <i>Do</i>	Mr. Inamullah.	15-3-1966	1-12-1990	1-6-2001	- do -	D.O.R. Office.
18- <i>Do</i>	Mr. Muhammad Nawaz	1-1-1949	4-12-1969	12-6-2001	- do -	DCO Office.
19- <i>Do</i>	Mr. Ihsanullah.	1-1-1979	29-5-2004	29-5-2004	- do -	- do -
20- <i>Do</i>	Mr. Inayatullah.	2-1-1955	6-12-1974	2-7-2004	- do -	- do -
21- <i>Do</i>	Mr. Muhammad Irfan.	3-4-1977	2-7-2004	2-7-2004	- do -	- do -
22- <i>Do</i>	Mr. Hussain Ahmad.	20-11-1974	2-7-2004	2-7-2004	- do -	- do -
23- <i>Do</i>	Mr. Sajid Saleem.	1-4-1978	6-11-1990	1-1-2000	- do -	- do -

4  
**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Civil Miscellaneous No. 113/2017  
in Service Appeal No. 130/2016.

Saleem Asmat.....Appellant

**VERSUS**

The Government of Khyber Pakhtunkhwa and others.....Respondents

**COMMENTS ON STAY APPLICATION ON BEHALF OF RESPONDENT NO. 1, 2 & 3.**

**ON FACTS**

1. No comments.
2. Incorrect. His seniority case is pending before the Service Tribunal however, he has been reverted from the post of Naib Tehsildar as his promotion was made through illegal Administrative Order, therefore the question of seniority does not arise.
3. No comments. However all the three ingredients are in favour of the respondents.
4. Incorrect. Balance of convenience is in favour of respondents.
5. Incorrect. No loss has been sustained by the appellant, as he was promoted illegally.
6. Incorrect. His pay has been released and Deputy Commissioner DIKhan has been directed to release pay of the appellant.
7. Incorrect. The grounds and facts taken in the main appeal cannot be considered as integral part of the stay application.

Keeping in view of the above stay application having no legal ground may be rejected with costs.

  
Respondent No. 1, 2 & 3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.113/2017

Saleem Asmat, Ex-NT .....Appellant

VERSUR

Government of Khyber Pakhtunkhwa through Chief Secretary & Others.....Respondents

AFFIDAVIT

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

  
Assistant Secretary (Lit-II)  
Board of Revenue



KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR

No. 1761-62/ST

Dated: 03/09 /2021

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281  
Fax:- 091-9213262

To

1. The Secretary Revenue & Estate Department,  
Government of Khyber Pakhtunkhwa,  
Peshawar.
2. Senior Member Board of Revenue  
Government of Khyber Pakhtunkhwa Peshawar.

Subject: JUDGMENT IN APPEAL NO. 113/2017, MR. SALIM ASMAT.

I am directed to forward herewith a certified copy of Judgement dated 13.07.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR

KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT**

Finance Department Civil Secretariat Peshawar | <http://www.finance.gkp.pk> | [facebook.com/GoKPFD](https://www.facebook.com/GoKPFD) | [twitter.com/GoKPFD](https://twitter.com/GoKPFD)

NO/SOSR/FFD/1-18/2022

Dated Peshawar the 03.02.2023

To

Mr. Noor Khan,  
The Assistant Secretary (Estt),  
Board of Revenue, Khyber Pakhtunkhwa.

By: *[Signature]*  
Date: 07.02.23  
Revenue  
Khyber Pakhtunkhwa

Subject: ADVICE FOR RETIREMENT FROM GOVT. SERVICE ON SUPERANNUATION/GRANT OF 365 DAYS ENCASHMENT OF LPR IN LIEU OF LPR & OTHERS BENEFITS.

Dear Sir,

I am directed to refer to your letter No.Estt:V/Saleem Asmit/Estt-NF/35512 dated 20.12.2022 on the subject cited above and to state that under Rule-20 of Khyber Pakhtunkhwa Civil Servants, Revised Leave Rules, 1981 read with Government of Khyber Pakhtunkhwa, Finance Department Notification No.SO(FR)FD/S-92/2005/Vol-V dated 13.12.2012, the encashment of LPR not exceeding 365 days is admissible only in case of retirement on attaining the age of superannuation or voluntary retirement on completion of 26 years of qualifying service provided such leave is available at his credit, subject to the condition that he did not avail any kind of leave (including extraordinary leave, leave without pay, leave on account of ill health & for performance of Hajj during the last 12 months of service). In case leave of any kind is taken during the last 12 months of service by a retiring government servant, the period of such leave will be reduced from 365 days or lesser period for which the encashment of LPR is allowed.

Therefore, the case may be disposed off in light of above explanation and FR-54.

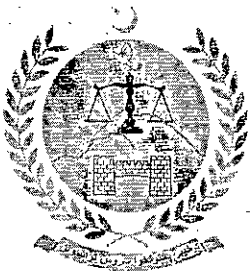
Yours faithfully,

*[Signature]*

SECTION OFFICER (SR III)

*Glk-v*

*Am*  
8.2.23



**KHYBER PAKHTUNKHWA**  
**SERVICE TRIBUNAL, PESHAWAR**

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281  
Fax:- 091-9213262

No. 1702 /ST Dated 09/06/2023

To:

Haleem Asmat S/O Saleem Asmat  
District D.I.Khan

SUBJECT **ORDER IN EXECUTION PETITION NO's. 199-200/2021,**  
**TITLED SALEEM ASMAT VERSUS GOVERNMENT OF KHYBER**  
**PAKHTUNKHWA THROUGH SENIOR BOARD OF MEMBER,**  
**PESHAWAR AND OTHERS**

I am directed to forward herewith a certified copy of order dated 12.04.2023, passed by this tribunal in the above mentioned execution petition for information.

*Encl. As above.*

(AAMIR FAROOQ)  
ASSISTANT REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL,  
PESHAWAR.



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

CIVIL Miscellaneous No: \_\_\_\_\_ / 2017

In Service Appeal No. 113 / 2017

Saleem Asmat                      VS                      Government of KPK etc

**APPLICATION FOR SUSPENDING THE OPERATION OF**  
**IMPUGNED ORDER DATED 19.09.2016 AND IMPUGNED**  
**APPELLATE ORDER DATED 23.12.2016 & RELEASE / PAYMENT**  
**OF SALARY.**

Respectfully Sheweth,

Application, on behalf of Applicants / Petitioners, is as under:

1. That, titled Service Appeal is recently instituted in which no date has yet been fixed for Preliminary Hearing.
2. That, even otherwise, the matter in dispute was pending in this Honourable Tribunal since long and in this respect another Appeal of the Appellant is also pending however the Respondents issued the Impugned Orders with the aim to harm the service career of the Applicant / Appellant.
3. That, similar orders of other employees have also been suspended by this Honourable Tribunal in Service Appeal No. 498 / 2013, copy of the Order in this respect is attached for ready reference.
4. That, Applicant / Appellant is sanguine about his success in the titled case due to the facts contained therein moreover the Applicant / Appellant has got

prima facie case and balance of convenience also lies in their favour.

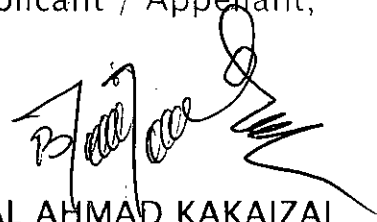
5. That, Applicant / Petitioner will suffer irreparable loss and inconvenience if the Interim Relief is not granted.
6. That, it merits mentioning here that the Respondents under mala fide intention have also stopped the pay of the Applicant / Appellant against the law and the rules.
7. That, the contents of the main Service Appeal may also be treated as integral part of this Application.

It is, therefore, requested that on acceptance of this Application, the subject mentioned Impugned Orders may please be suspended till the disposal of instant Service Appeal and pay of the Applicant / Appellant may also be released in the interest of justice & fairness.



Applicant / Appellant,

Through,



**BILAL AHMAD KAKAIZAI**  
(Advocate, Peshawar)

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

CIVIL Miscellaneous No: \_\_\_\_\_ / 2017

In Service Appeal No. 113 / 2017

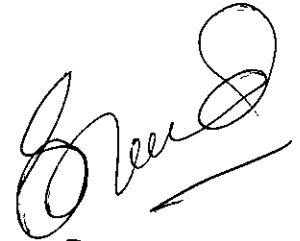
Saleem Asmat

VS

Government of KPK etc

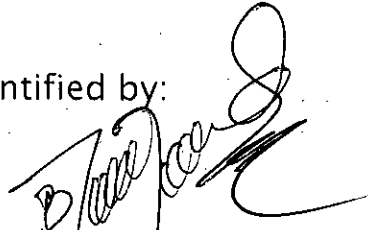
**AFFIDAVIT**

I, Saleem Asmat, Naib Tehsildar, Applicant/ Appellant, do hereby on oath affirm and declare that the contents of the Application are true and correct to the best of my knowledge and nothing has been kept secret from this Honourable Tribunal.

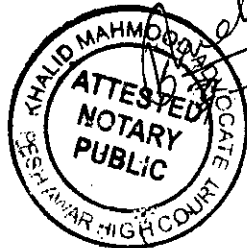


Deponent.

Identified by:



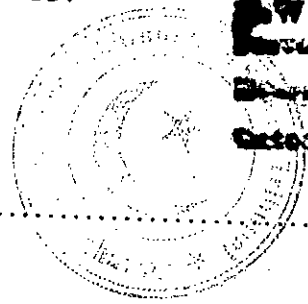
BILAL AHMAD KAKAIZAI  
(Advocate, Peshawar)



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 498 /2013.

Hazrat Yousaf, Naib Tehsildar,  
Kander District Torghar.....



**KPK Peshawar**  
No. 382  
Dated 06-2-2013

Appellant.

VERSUS

- ① The Senior Member Board of Revenue KPK Peshawar
- ② The Commissioner, Hazara Division Abbottabad
- ③ District Officer (R&E) Torghar.
- ④ Assistant Secretary (Estt:) Board of Revenue Govt:of Khyber Pakhtunkhwa Peshawar.

5- Mr. Abdur Rehman Shah, Tehsildar Dagar Bunir on Acting Charge  
S.No. 19 of the seniority list.

6- Mr.Sarir Ahmed ,Tehsildar Reconciliation Peshawar on Acting Charge.  
S.No. 20 of the seniority list.

7- Mr. Muhammad Riaz Tehsildar Recovery Officer PESCO Peshawar  
Circle on Acting charge S.No. 22 of the seniority list.

8- Mr.Attaullah Tehsildar Charsadda on Acting charge S.No. 23 of the  
seniority list.

9- Mr Musadiq Hussain Tehsildar Inspector Stamps Bannu on Acting  
charge S.No. 24 of the seniority list.

10- Mr Abdul Qayyum Tehsildar Karak on Acting charge S.No. 25 of the  
seniority list.

11- Mr Muhammad Nawaz Tehsildar Battagram on Acting charge S.No. 26  
of the seniority list.

12- Mr MIR Liaq Tehsildar Revenue Officer Khyber Bank Peshawar on  
Acting charge S.No. 27 of the seniority list.

13- Mr.Nouman Ali Shah Tehsildar Political Tehsildar lower Orakzai  
Agency on Acting charge S.No. 28 of the seniority list.

*All other private respondents except in circle are placed Ex-parte vide order sheet dated 9-6-14*

*Submitted to-  
6/2/13*

*Submitted to-  
and filed.*

*Submitted to-  
2-8/2/13*

21.09.2016

Appeal No. 498/2013  
Harsat Yousaf vs Govt



Counsel for the applicant/appellant present. On the application of learned counsel for the applicant/appellant file requisitioned for today. The learned counsel for the applicant/appellant argued that the appellant worked as Naib Tehsildar for almost 10 years. He further argued that his promotion from Naib Tehsildar was made on the basis of directions of the Service Tribunal dated 22.02.2010 followed by Execution Petition decided on 29.11.2010 and the impugned order of reversion dated 09.09.2016 was illegal, one sided and based on malafide. He requested for suspension of the impugned order dated 09.09.2016 till the date fixed for hearing of the main appeal which is 03.11.2016. Request is accepted. The impugned order dated 09.09.2016 is suspended till the date of hearing of main appeal. To come up for arguments on 03.11.2016 before D.B. Notice be issued to the respondents accordingly.

Certified copy  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Signature  
Number

Date of receipt ..... 06-10-16  
No. of copies ..... 5600  
Copies ..... 30  
Urgent ..... 2  
Total ..... 32  
Name of Officer ..... [Signature]  
Date of receipt ..... 06-10-16  
Date of receipt ..... 06-10-16

BEFORE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR.

Service Appeal No: 130 / 2016

SALEEM ASMAT                      Versus                      Govt. of Khyber Pakhtunkhwa etc.

I N D E X

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Wakalatnama		nil

Appellant,

Through:

BILAL AHMAD KAKAIZAI  
(Advocate, Peshawar)

(1)

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

Service Appeal No: \_\_\_\_\_ / 2016

**SALEEM ASMAT,**  
Naib Tehsildar,  
Irrigation, Gomal, D.I.Khan

..... **APPELLANT**

**VERSUS**

1. **GOVERNMENT OF KHYBER PAKHTUNKHWA,**  
Revenue & Estate Department,  
Through Secretary, Civil Secretariat, Peshawar.
2. **SENIOR MEMBER BOARD OF REVENUE,**  
Government of Khyber Pakhtunkhwa, Peshawar.
3. Ali Sher Khan, Naib Tehsildar.
4. Tariq Saleem, Naib Tehsildar.
5. Abdul Ghaffar, Naib Tehsildar.
6. Said Rehman, Naib Tehsildar.
7. Kiramatullah, Naib Tehsildar.
8. Akbar Iftikhar Ahmad, Naib Tehsildar.
9. Qaisar Khan, Naib Tehsildar.
10. Najeebullah, Naib Tehsildar.
11. Muhammad Ayub Khan, Naib Tehsildar.
12. Abdur Rehman Shah, Naib Tehsildar.
13. Sarir Ahmad, Naib Tehsildar.
14. Hasham Gul, Naib Tehsildar.
15. Muhammad Riaz, Naib Tehsildar.
16. Attaullah, Naib Tehsildar.
17. Musaddiq Hussain, Naib Tehsildar.
18. Abdul Qayum, Naib Tehsildar.

19. Muhammad Nawaz, Naib Tehsildar.
20. Mir Laiq Shah, Naib Tehsildar.
21. Nouman Ali Shah, Naib Tehsildar.
22. Muhammad Bashir, Naib Tehsildar.
23. Hidayatullah, Naib Tehsildar.
24. Iftikhar Ahmad, Naib Tehsildar.
25. Ghulam Sarwar, Naib Tehsildar.
26. Farzand Ali, Naib Tehsildar.
27. Muqarrab Khan, Naib Tehsildar.
28. Said Rahim, Naib Tehsildar.
29. Fazli Raziq, Naib Tehsildar.
30. Shah Nawaz, Naib Tehsildar.
31. Asmatullah, Naib Tehsildar.
32. Mazhar Hussain, Naib Tehsildar.
33. Hussain Baksh, Naib Tehsildar.
34. Abdul Rashid, Naib Tehsildar.
35. Fateh Ullah, Naib Tehsildar.
36. Muhammad Akram, Naib Tehsildar.
37. Mulazim Hussain, Naib Tehsildar.
38. Muhammad Israr, Naib Tehsildar.
39. Afzal Khan, Naib Tehsildar.
40. Anwar ul Haq, Naib Tehsildar.
41. Khyzar Hayat, Naib Tehsildar.
42. Muhammad Farooq Anwar, Naib Tehsildar.
43. Kutab Khan, Naib Tehsildar.
44. Ghulam Qasim, Naib Tehsildar.
45. Qudratullah, Naib Tehsildar.
46. Aftab Hussain Shah, Naib Tehsildar.
47. Sikandar Hayat Shah, Naib Tehsildar.
48. Ghulam Abbas, Naib Tehsildar.

All Naib Tehsildars, through Respondent No. 2.

RESPONDENTS

APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT, 1974  
AGAINST ORDER NO. NIL DATED 07.01.2016, WHEREBY  
DEPARTMENTAL APPEAL / REPRESENTATION AGAINST IMPUGNED  
SENIORITY LIST HAS BEEN REJECTED.



*Prayer: That on acceptance of this Service Appeal the Impugned Order dated 07.01.2016 be set aside and Seniority List be corrected as per Order dated 29.09.2009 and 18.01.2010 of Respondent No. 2 and Appellant be declared senior to the Private Respondents, with such other relief as may deem fit in the circumstances of the case may also be granted.*

*Respectfully Sheweth,*

Short facts, giving rise to present Service Appeal, are as under:

1. That, vide Office Order No. 15261 / Admn: V / SL dated 10.08.2010, the Impugned Seniority List was circulated wherein Appellant was shown at S.No.62 on the basis of wrong date of promotion to the post of Naib Tehsildar i.e. 31.03.2008 instead of 13.01.2004, copy of the Impugned Seniority List is attached as Annexure-A. It is important to mention here that Appellant has only questioned the wrong date of promotion in the Impugned Seniority List.
2. That, as Appellant was assigned Seniority w.e.f 31.03.2008 and was placed at S.No.62 instead of assigning seniority from 13.01.2004, therefore, Appellant submitted his Departmental Appeal / Representation before the Respondent No. 2, copy of the same is attached as Annexure-B. Moreover Tentative Seniority List circulated vide Boards Office No. 1270/Adm dated 30.06.2010 is attached as Annexure-C.
3. That, the Competent Authority vide Order dated 16.04.2011 held the Departmental Appeal of the Appellant as non-maintainable being time barred, copy of the Order in Appeal is attached as Annexure-D. The said Order dated 16.04.2011 was challenged before the Honourable Tribunal in Service Appeal No. 813 / 2011.

4. That, the above said Service Appeal was decided on 19.06.2012 with the direction to decide the Departmental Appeal of the Appellant afresh, on merits, copy of the Order / Judgment dated 19.06.2012 is attached as Annexure E.
5. That, even than the Respondents were reluctant to decide the Departmental Appeal of the Appellant hence the Appellant filed Execution Petition No. 186 / 2012 in Service Appeal No. 813 / 2011, copy of the Execution Petition is attached as Annexure F.
6. That, on 17.04.2012, during the Execution Proceedings, Appellant was handed over Order dated 12.09.2012 whereby the Departmental Appeal of the Appellant was again rejected, copy of the Order dated 12.09.2012 and Order / Judgment dated 17.04.2013 of Honourable Service Tribunal are attached as Annexure G & H.
7. That, Appellant once again preferred Service Appeal No. 932 / 2013 before the Tribunal which was decided on 01.12.2015 with the direction to the Appellate Authority to decide the Departmental Appeal of the Appellant within 30 days, copy of the Service Appeal No. 932 / 2013 along with Order dated 01.12.2015 is attached as Annexure J.
8. That, the Competent Authority once again dismissed the Departmental Appeal of the Appellant without mentioning any lawful reason or justification, copy of the Impugned Appellate Order is attached as Annexure K, hence, this Service Appeal on the following amongst other grounds: -

GROUNDS:

- A. That, the Impugned Appellate Order in Appeal dated 07.01.2016 is illegal, unlawful, void and ineffective.
- B. That, the same is against the principles of Natural Justice, also.
- C. That, Appellant was Appointed & posted as Naib Tehsildar in his own pay & scale vide Order dated 13.01.2004 and on the

same day he assumed the charge, copy of the Posting Order is attached as Annexure-L.

- D. That, Appellant claimed his Seniority w.e.f. the date of his posting, therefore, his appeal was accepted by the Respondent No. 2 on 29.09.2009 whereby the services of Appellant as Naib Tehsildar were regularized w.e.f. 13.01.2004, copy of the Order of Respondent No.2 is attached as Annexure-M and Order in this respect, dated 18.01.2010 is attached as Annexure-N.
- E. That, it is important to mention here that before passing the Order dated 18.01.2010 & 29.09.2009 the Appellant was considered by the Departmental Promotion committee and was found fit for promotion.
- F. That, a Seniority List showing the position of the Naib-Tehsildars according to the date of regularization of each, was circulated vide Boards office No.1270/Admn dated 30.06.2010. In this Seniority List the name of the Appellant appears at S.No.17.
- G. That, the cancellation of the Provisional Seniority List and circulation of the Impugned Seniority List is against the factual position and the service rules.
- H. That, according to the service rules and law laid down by the Superior Courts of Pakistan, the Seniority of the civil servants is determined from the date of continuous service of the officials but this principle / criteria has been by-passed and violated in a fanciful and unlawful manner, thus the Seniority List circulated is liable to be set aside and liable to be revised / corrected in accordance with the rules.
- I. That, while dealing with the Departmental Appeal of the Appellant, the Appellate Authority did not paid any heed to the similarly placed Naib Tehsildars who were also given the seniority from back date, copies of the relevant orders are attached as Annexure O & P.

- J. That, the Appellant has been dealt with different yardstick and the Appellate Order is seems to be best example of nepotism and favoritism.
- K. That, apart from Annexure O & P, other employees were also promoted by the Respondent No. 2 but no order or seniority from any incumbent has been withdrawn by the Respondents.
- L. That, Orders dated 18.01.2010 & 29.09.2009 are still in field and no order had been taken back or withdrawn by the Respondents.
- M. That, despite clear direction in the Judgment dated 01.12.2015; clear discrimination has been done with the Appellant.
- N. That, the act of the Respondent No. 2 is against the Article 4, 25 & 27 of the Constitution of Islamic Republic of Pakistan, 1973.
- O. That, Appellant has no personal grudges with any incumbent above his name in the seniority List but he just wants to correct the date of his regular promotion to the post of Naib Tehsildar.
- P. That, the Order dated 07.01.2016 has been passed in hasty manner. Even otherwise the same is against the principle enshrined in the section 24-A of the General Clauses Act, 1897.

It is, therefore, requested that Appeal be accepted as prayed for.

Appellant

Through:

BILAL AHMAD KAKAIZAI  
(Advocate, Peshawar)

BEFORE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR.

Service Appeal No: \_\_\_\_\_ / 2016

SALEEM ASMAT Versus Govt. of Khyber Pakhtunkhwa etc.

AFFIDAVIT

I, Saleem Asmat S/o Haji Nasrullah Khan, Naib Tehsildar, Irrigation, Gomal, D.I.Khan, Appellant, do hereby on oath affirm and declare that the contents of the Service Appeal are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Honourable Tribunal.

Identified by:

Deponent

**BILAL AHMAD KAKAIZAI**  
(Advocate, Peshawar)

BEFORE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR.

Service Appeal No: \_\_\_\_\_ / 2016

SALEEM ASMAT Versus Govt. of Khyber Pakhtunkhwa etc.

ADDRESSES OF PARTIES.

APPELLANT:

SALEEM ASMAT, Naib Tehsildar, Irrigation, Gomal, D.I.Khan

RESPONDENTS:

1. Government of Khyber Pakhtunkhwa, Revenue & Estate Department, through Secretary, Peshawar.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
3. Ali Sher Khan, Naib Tehsildar.
4. Tariq Saleem, Naib Tehsildar.
5. Abdul Ghaffar, Naib Tehsildar.
6. Said Rehman, Naib Tehsildar.
7. Kiramatullah, Naib Tehsildar.
8. Akbar Iftikhar Ahmad, Naib Tehsildar.
9. Qaisar Khan, Naib Tehsildar.
10. Najeebullah, Naib Tehsildar.
11. Muhammad Ayub Khan, Naib Tehsildar.
12. Abdur Rehman Shah, Naib Tehsildar.
13. Sarir Ahmad, Naib Tehsildar.
14. Hasham Gul, Naib Tehsildar.
15. Muhammad Riaz, Naib Tehsildar.
16. Attaullah, Naib Tehsildar.
17. Musaddiq Hussain, Naib Tehsildar.
18. Abdul Qayum, Naib Tehsildar.
19. Muhammad Nawaz, Naib Tehsildar.
20. Mir Laiq Shah, Naib Tehsildar.
21. Nouman Ali Shah, Naib Tehsildar.

22. Muhammad Bashir, Naib Tehsildar.
23. Hidayatullah, Naib Tehsildar.
24. Iftikhar Ahmad, Naib Tehsildar.
25. Ghulam Sarwar, Naib Tehsildar.
26. Farzand Ali, Naib Tehsildar.
27. Muqarrab Khan, Naib Tehsildar.
28. Said Rahim, Naib Tehsildar.
29. Fazli Raziq, Naib Tehsildar.
30. Shah Nawaz, Naib Tehsildar.
31. Asmatullah, Naib Tehsildar.
32. Mazhar Hussain, Naib Tehsildar.
33. Hussain Baksh, Naib Tehsildar.
34. Abdul Rashid, Naib Tehsildar.
35. Fateh Ullah, Naib Tehsildar.
36. Muhammad Akram, Naib Tehsildar.
37. Mulazim Hussain, Naib Tehsildar.
38. Muhammad Israr, Naib Tehsildar.
39. Afzal Khan, Naib Tehsildar.
40. Anwar ul Haq, Naib Tehsildar.
41. Khyzar Hayat, Naib Tehsildar.
42. Muhammad Farooq Anwar, Naib Tehsildar.
43. Kutab Khan, Naib Tehsildar.
44. Ghulam Qasim, Naib Tehsildar.
45. Qudratullah, Naib Tehsildar.
46. Aftab Hussain Shah, Naib Tehsildar.
47. Sikandar Hayat Shah, Naib Tehsildar.
48. Ghulam Abbas, Naib Tehsildar.

All Naib Tehsildars, through Respondent No. 2.

Appellant,

Through,

**BILAL AHMAD KAKAIZAI**  
(Advocate, Peshawar)

## FINAL SENIORIT

## TEHSILDARS (BS-14) IN KHYBER PAKHTUNKHWA AS STOOD ON 30.06.2010.

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A

ANNEXURE

S.No.	NAME OF NAIB TEHSILDAR QUALIFICATION	DATE OF BIRTH / DOMICILE	DATE OF IST ENTRY INTO GOVT; SERVICE	DATE OF APPOINTMENT AS NAIB TEHSILDAR On Regular Basis	METHOD OF RECRUITMENT.	REMARKS.
1.	Mr. Abdul Qadeer (MSc)	15.8.1962 DIKhan	28.08.1995	28.08.1995	Promotee	Promoted as Tehsildar on Acting Charge Basis
2.	Mr. Muhammad Naib Din M.A	30.09.1959 NW Agency	24.11.1980	17.01.1996	--do--	Naib Tehsildar
3.	Mr. Abdul Nabi F.A	05.04.1957 Kohat	12.12.1976	10.04.2001	--do--	--do--
4.	Mr. Gulshan Mehmood F.A	01.05.1957 Kohat	08.01.1975	13.03.2004	--do--	--do--
5.	Mr. Hameed Khan Afirdi (MA/B.Ed)	15.02.1962 (FR Kohat)	14.03.1984	10.04.2001	--do--	--do--
6.	Mr. Abdul Samad (MA)	30.11.1960 Karak	03.05.1979	10.04.2001	--do--	--do--
7.	Mr. Javed Anwar Kamal (F A)	15.05.1958 Charsadda	01.11.1976	12.10.2002	--do--	Promoted as Tehsildar (BPS - 16) on Acting Charge basis
8.	Mr. Bashir Ahmad (FA)	10.04.1955 Nowshera	28.07.1973	12.10.2002	--do--	--do--
9.	Mr. Mian Samiullah Jan BA	17.10.1955 Charsadda	19.03.1982	12.10.2002	--do--	--do--
10.	Mr. Ghani Khan B.A	02.02.1952 Charsadda	1979	12.10.2002	--do--	--do--
11.	Mr. Ghulam Farooq (B.A)	01.01.1957 Bajuar	23.02.1978	13.01.2003	--do--	Naib Tehsildar
12.	Mr. Naz Amin Khan (Matric)	12.05.1960 Bajuar	25.11.1981	13.01.2003	--do--	--do--
13.	Mr. Muhammad Riaz Khan (B.A LLB)	08.05.1970 Bannu	02.05.1994	24.03.2003	Direct	Promoted as Tehsildar (BPS - 16) on Acting Charge basis
14.	Mr. Shamas Gul B.A	1952 NW Agency	1973	09.05.2003	Promotee	Naib Tehsildar
15.	Mr. Javed Hussain (Matric)	13.06.1952 Haripur	27.05.1977	30.06.2003	--do--	--do--
16.	Mr. S.Asghar Shah (Matric)	25.12.1959 Haripur	25.05.1981	30.06.2003	--do--	--do--
17.	Mr. Ali Sher Khan B.A LLB	15.02.1978 Peshawar	14.02.2004	14.02.2004	Direct	--do--
18.	Mr. Tariq Saleem B.A	14.08.1971 Tank	14.02.2004	14.02.2004	Direct	Naib Tehsildar



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No.	NAME OF NAIB TEHSILDAR QUALIFICATION	DATE OF BIRTH / DOMICILE	DATE OF IST ENTRY INTO GOVT; SERVICE	DATE OF APPOINTMENT AS NAIB TEHSILDAR On Regular Basis	METHOD OF RECRUITMENT.	REMARKS.
19	Mr. Abdul Ghaffar B.A	15.12.1974 Tank	14.02.2004	14.02.2004	--do--	--do--
20	Mr. Said Rehman (Matric)	30.10.1958 Mardan	01.10.1980	22.11.2004	Promotee	--do--
21	Mr. Kiramat Ullah B.A	03.03.1974 Tank	29.11.2004	29.11.2004	Direct	--do--
22	Mr. Akbar Iftikhar Ahmad (B.A) LLB	29.03.1977 Hangu	24.11.2005	24.11.2005	--do--	--do--
23	Mr. Qaisar Khan (B.A)	09.04.1975 DIKhan	19.12.2005	19.12.2005	--do--	--do--
24	Mr. Najib Ullah (BA)	15.02.1969 DIKhan	06.03.19969	27.02.2006	--do--	--do--
25	Mr. Muhammad Ayub Khan. (B.A)	01.03.1964 Bannu	12.06.2006	12.06.2006	--do--	--do--
26	Mr. Abdur Rehman Shah (B.A)	15.02.1985 Bannu	23.01.2007	23.01.2007	--do--	--do--
27	Mr. Sarir Ahamd (Matric)	13.05.1955 Peshawar	28.02.1977	31.05.2007	Promotee	--do--
28	Mr. Hasham Gul (B.A)	01.01.1955 Peshawar	07.06.1982	31.05.2007	--do--	--do--
29	Muhammad Riaz (Matric)	22.05.1958 Nowshera	06.08.1978	31.05.2007	--do--	--do--
30	Mr. Atta Ullah (Matric)	1.04.1956 Charsadda	06.11.1978	31.05.2007	--do--	--do--
31	Mr. Musadiq Hussain (Matric)	21.08.1955 Hangu	12.05.1973	31.05.2007	--do--	--do--
32	Mr. Abdul Qayyum (Matric)	03.01.1954 Kohat	23.06.1970	31.05.2007	--do--	--do--
33	Muhammad Nawaz (F.A)	30.03.1957 Mardan	20.05.1976	31.05.2007	--do--	--do--
34	Mr. Mir Laiq Shah (F.A)	27.04.1963 Mardan	08.03.1983	31.05.2007	--do--	--do--
35	Mr. Nouman Ali Shah BCS(Hons)	17.09.1984 Bannu	06.07.2007	06.07.2007	Direct	--do--
	Muhammad Bashir (F.A)	10.12.1956 Haripur	01.11.1976	20.07.2007	--do--	--do--
	Mr. Hidayat Ullah (Matric)	28.04.1962 Malakand	13.03.1991	20.07.2007	--do--	--do--
	Mr. Iftikhar Ahmad (Matric)	02.04.1954 Mansehra	15.07.1979	20.07.2007	--do--	--do--
	Mr. Ghulam Sarwar (Matric)	01.03.1955 Shangla	01.03.1978	20.07.2007	Direct	--do--

Naib Tehsildar

Assistant Secretary  
Revenue & Excise  
Mardan District

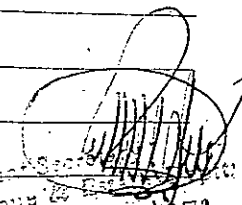
of Naib Tehsildar

(12)

	NAME OF NAIB TEHSILDAR QUALIFICATION	DATE OF BIRTH / DOMICILE	DATE OF IST ENTRY INTO GOVT; SERVICE	DATE OF APPOINTMENT AS NAIB TEHSILDAR On Regular Basis	METHOD OF RECRUITMENT.	REMARKS.
40.	Mr. Farzand Ali (Matric)	03.05.1954 Swat	19.05.1976	20.07.2007	--do--	--do--
41.	Mr. Muqarab Khan (F.A)	01.03.1953 Buner	13.08.1975	20.07.2007	Promotee	--do--
42.	Mr. Said Rahim (Matric)	15.04.1957 Swat	04.09.1976	20.07.2007	--do--	--do--
43.	Mr. Fazli Raziq (B.Com)	01.05.1955 Swat	06.04.1981	20.07.2007	--do--	--do--
44.	Mr. Shah Nawaz (B.A)	01.10.1959 Lakki Marwat	11.11.198	26.07.2007	--do--	--do--
45.	Mr. Asmat Ullah (Matric)	13.03.1959 Lakki Marwat	28.04.1982	26.07.2007	--do--	--do--
46.	S. Mazhar Hussain Shah (F.A)	07.07.1956 DIKhan	10.005.1976	26.07.2007	--do--	--do--
47.	Mr. Hussian Bakhsh (Matric)	13.04.1956 DIKhan	01.09.1976	26.07.2007	--do--	--do--
48.	Mr. Abdur Rashid (F.A)	01.09.1955 Tank	01.07.1984	26.07.2007	--do--	--do--
49.	Mr. Fateh Ullah (F.A)	10.10.1958 Tank	01.07.1984	26.07.2007	--do--	--do--
50.	Muhammad Akram (Matric)	03.10.1959 Tank	01.12.1983	26.07.2007	--do--	--do--
51.	Mr. Mulazim Hussain (Matric)	01.01.19657 Tank	05.07.1984	26.07.2007	--do--	--do--
52.	Muhammad Israr (B.A)	19.05.1959 Bannu	18.07.1985	26.07.2007	--do--	--do--
53.	Mr. Afzal Khan (F.A)	15.03.1959 Swat	05.04.1981	01.09.2007	--do--	--do--
54.	Mr. Anwar ul Haq (B.A)	01.02.1959 Swat	05.04.1981	31.12.2007	--do--	--do--
55.	Mr. Khyzar Hayat (F.A)	01.05.1955 Tank	22.12.1985	01.01.2008	--do--	--do--
56.	Muhammad Farooq Anwar (Matric)	10.09.1958 Tank	23.12.1985	01.01.2008	--do--	--do--
57.	Mr. Kutab Khan (F.A)	22.05.1956 Tank	02.07.1986	01.01.2008	Promotee	--do--
58.	Mr. Ghulam Qasim (FA)	28.08.1958 DIKhan		01.01.2008	--do--	--do--
59.	Mr. Qudratullah (Matric)	20.02.1959 DIKhan	01.09.1977	01.01.2008	Promotee	--do--

Naib Tehsildar  
Assistant Secretary  
Revenue & Estate Deptt  
Khyber Pakhtunkhwa.

	NAME OF NAIB TEHSILDAR QUALIFICATION	DATE OF BIRTH / DOMICILE	DATE OF IST ENTRY INTO GOVT; SERVICE	DATE OF APPOINTMENT AS NAIB TEHSILDAR On Regular Basis	METHOD OF RECRUITMENT.	REMARKS.
60.	Mr. Aftab Hussain Shah (B.A)	04.05.1958 DIKhan	1309.1980	01.01.2008	--do--	--do--
61.	Mr. Sikandar Hayat Shah (Matric)	20.01.1958 Bannu	18.02.1981	05.01.2008	--do--	--do--
62.	Mr. Ghulam Abbas (Matric)	15.02.1958 Lakki Marwat	11.11.1982	05.01.2008	--do--	--do--
63.	Mr. Saleem Asmat (BA)	03.01.1959 DIKhan	27.03.1984	31.03.2008	--do--	--do--
64.	Mr. Raqibas Khan (FA)	01.09.1956 Bannu	05.03.1982	02.04.2008	--do--	--do--
65.	Mr. Habib Ahmad B.A	04.04.1955 Swat	06.04.1981	02.04.2008	--do--	--do--
66.	Mr. Himayat Ullah Qureshi (B.A)	06.11.1958 Tank	10.01.1978	02.04.2008	--do--	--do--
67.	Mr. Maqsood Ahmad (BA)	11.01.1951 Nowshera.	10.02.1982	08.05.2008	--do--	--do--
68.	Mr. Abdullah Jan (FA) -	17.10.1958 Charsadda.	01.09.1977	08.05.2008	--do--	--do--
69.	Mr. Miraj Muhammad (F.A)	30.09.1958 Charsatdda	31.05.1975	12.05.2008	--do--	--do--
70.	Mr. Nazir Ahmad (Matric)	12.03.1954 Mansehra	18.08.1979	08.05.2008	--do--	--do--
71.	Mr. Muhammad Ziafat (F.A)	12.02.1955 Abbottabad.	06.10.1976	08.05.2008	--do--	--do--
72.	Mr. Abdur Rasheed (B.Com)	06.02.1952 DIKhan	01.09.1972	08.05.2008	--do--	--do--
73.	Mr. Raheem Ahmad (C.Com)	17.11.1951 DIKhan	01.03.1975	08.05.2008	--do--	--do--
74.	Mr. Naimat Ullah Khan (BA)	11.08.1967 Tank	16.06.1990	08.05.2008	--do--	--do--
75.	Mr. Naik Muhammad (B.A)	04.04.1971 Kohat	26.07.1995	10.05.2008	--do--	--do--
76.	Mr. Amanullah (Matric)	09.06.1956 Tank	09.06.1956	29.05.2008	--do--	--do--
77.	Mr. Shah Zaman (F.A)	16.07.1958 Tank	03.07.1984	29.05.2008	--do--	--do--
78.	Mr. Abdur Rashid (Matric)	1958 DIKhan	1987	29.05.2008	--do--	--do--
79.	Muhammad Ayub (Matric)	04.11.1960 Tank	18.12.1986	29.05.2008	--do--	--do--
80.	Mr. Amir Muhammad (B.A)	06.04.1961 Swabi	28.08.1988	11.08.2008	--do--	--do--

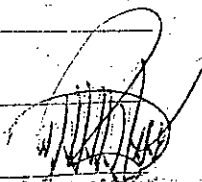
  
 Revenue Officer  
 District Tank, FATA

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S.No.	NAME OF NAIB TEHSILDAR QUALIFICATION	DATE OF BIRTH / DOMICILE	DATE OF IST ENTRY INTO GOVT; SERVICE	DATE OF APPOINTMENT AS NAIB TEHSILDAR On Regular Basis	METHOD OF RECRUITMENT.	REMARKS.
81.	Mr. Muhammad Umar (M.A)	10.03.1966 Mardan	16.07.2002	17.06.2006	Promotee	Naib Tehsildar.
82.	Mr. Farman Ali (MA)	04.02.1963 Mardan	16.07.2002	09.10.2008	--do--	--do--
83.	Mr. Maqboolur Rehman (F.A)	02.05.1959 Bannu	07.04.1980	13.01.2009	Selectee	--do--
84.	Mr. Shakir Ullah S/O Khan Mir (MA. MBA)	15.01.1978 Khyber Agency	02.02.2009	02.02.2009	Direct	--do--
85.	Mr. Munir Ahmad S/O Jhangi Khan (MSc)	20.03.1979 SWA	02.02.2009	02.02.2009	--do--	--do--
86.	Mr. Rahamd Ullah khan S/O Ahmad Khan (MSc. Chem)	18.04.1978 Lakki Marwat	02.02.2009	02.02.2009	--do--	--do--
87.	Mr. Abdul Kabir S/O Akram Jan (MA)	15.07.1979 Kyber	02.02.2009	02.02.2009	--do--	--do--
88.	Mr. Imtiaz Ali Shah S/O Muhammad Ali Shah (MSc)	14.04.1980 Karak	02.02.2009	02.02.2009	--do--	--do--
89.	Mr. Khalid Khan S/O Ifitikhar Hussain (MA)	23.03.1978 Bajuar	02.02.2009	02.02.2009	--do--	--do--
90.	Mr. Fazli Wadood S/O Fazli Mahmood (BA)	04.04.1982 Mohmand	02.02.2009	02.02.2009	--do--	--do--
91.	Muhammad Riaz Khan S/O Musa Khan (MA)	25.03.1983	02.02.2009	02.02.2009	--do--	--do--
92.	Mr. Irshad Ali S/O Dost Muhamamd (MA)	15.03.1978 Mohmand	02.02.2009	02.02.2009	--do--	--do--
93.	Mr. Noor-ul-Amin S/O Zar Moeen (MA)	21.09.1978 DIKhan	02.02.2009	02.02.2009	--do--	--do--
94.	Mr. Amir Nawaz S/O Gul Daraz (BSc/MPA)	22.04.1975 DIKhan	02.02.2009	02.02.2009	--do--	--do--
95.	Mr. Shah Wazir S/O Abdul Khan (MSc)	30.03.1980 SWA	02.02.2009	02.02.2009	--do--	--do--
X 96.	Mr. Imran S/o Ahmad Jan (MSc) X	11.04.1982 NWA	02.02.2009	02.02.2009	--do--	--do--
97.	Mr. Sikandar Khan S/O Sar Zamin Khan (M.A)	10.12.1976 Swat	02.02.2009	02.02.2009	--do--	--do--

Assistant Secretary  
Revenue  
Khyber Pakhtunkhwa

S.No.	NAME OF NAIB TEHSILDAR QUALIFICATION	DATE OF BIRTH / DOMICILE	DATE OF IST ENTRY INTO GOVT; SERVICE	DATE OF APPOINTMENT AS NAIB TEHSILDAR On Regular Basis	METHOD OF RECRUITMENT.	REMARKS.
98.	Mr. Ishtiaq Ahmad Khan S/O Allauddin (M.A)	30.04.1979 Malakand	02.02.2009	02.02.2009	Direct	Naib Tehsildar
99.	Mr. Shamsul Islam S/O Faqir Gul (MA)	10.04.1979 Malakand	02.02.2009	02.02.2009	--do--	--do--
100.	Mr. Allah Noor S/O Hazrat Noor (MA)	11.04.1983 (FR) DIKhan	02.02.2009	02.02.2009	--do--	--do--
101.	Mr. Riaz Muhamamd S/O Noor Muhammad (MA)	28.07.1974 SWA	02.02.2009	02.02.2009	--do--	--do--
102.	Muhammad Tariq Aziz S/O Ayaz Khan (MA)	04.02.1981 NWA	02.02.2009	02.02.2009	--do--	--do--
103.	Mr. Zeeshan Abdullah S/O Abdullah Khan (BA)	26.08.1982 SWA	02.02.2009	02.02.2009	--do--	--do--
104.	Muhammad Hayat S/O Sanab Gul (MA)	12.11.1981 Mohmand	02.02.2009	02.02.2009	--do--	--do--
105.	Mr. Shah Saud S/O Khitab Gul (LLB)	05.04.1979 Peshawar	02.02.2009	02.02.2009	--do--	--do--
106.	Muhammad Ilyas S/O Shah Nasim Khan (MSc)	03.03.1975 Swat	02.02.2009	02.02.2009	--do--	--do--
107.	Mr. Yasir Salman Kundi S/O Hamid Khan Kundi (MBA)	03.08.1979 Lakki Marwat	02.02.2009	02.02.2009	--do--	--do--
108.	Mr. Sher Alam Khan S/O.Sher Afzal (M.A Eng: Pol:Science)	01.04.1995 Swat	02.02.2009	02.02.2009	--do--	--do--
109.	Mr. Akmal Khan S/O Umar Din (MSc)	20.01.1980 Karak	02.02.2009	02.02.2009	--do--	--do--
110.	Mr. Yadullah Khan Khattak S/O Mohibullah Khattak (MA)	23.05.1979 Mardan	02.02.2009	02.02.2009	--do--	--do--
111.	Mr. Ahmad Hashmi S/O Fazli Rabbi (B.A)	2.04.1983 Dir Lower	02.02.2009	02.02.2009	--do--	--do--
112.	Mr. Jamshad Khan S/O Mir Kaman Khan (MA)	15.06.1980 Swat	02.02.2009	02.02.2009	--do--	--do--



S.No.	NAME OF NAIB TEHSILDAR QUALIFICATION	DATE OF BIRTH / DOMICILE	DATE OF IST ENTRY INTO GOVT; SERVICE	DATE OF APPOINTMENT AS NAIB TEHSILDAR On Regular Basis	METHOD OF RECRUITMENT.	REMARKS.
113.	Mr. Amin Ullah Khan S/O Dost Muhammad Khan (BA)	07.06.1977 DIKhan	02.02.2009	02.02.2009	Direct	Naib Tehsildar
114.	Mr. Islahuddin S/O Syed Badshah (BA.LLB)	15.04.1982 Mardan	02.02.2009	02.02.2009	--do--	--do--
115.	Mr. Zahid Younis S/O Muhamamd Younis (M.A)	20.01.1978 Karak	02.02.2009	02.02.2009	--do--	--do--
116.	Mr. Naimat Ullah S/O Khanim Ullah (Double M.A)	26.04.1973 Dir	02.02.2009	02.02.2009	--do--	--do--
117.	Muhammad Riaz S/O Fazal Aziz (LLB)	02.02.1980 Dir Lower	02.02.2009	02.02.2009	--do--	--do--
118.	Muhammad Yar S/O Faqir Gul (MA)	02.02.1979 Malakand	02.02.2009	02.02.2009	--do--	--do--
119.	Mr. Sher Ali Khan S/O Sahibzar Gul (M.A)	13.11.1974 Swat	02.02.2009	02.02.2009	--do--	--do--
120.	Mr. Munawar Shah S/O Abdur Rashid (M.A)	12.02.1973 Dir Lower	02.02.2009	02.02.2009	--do--	--do--
121.	Mr. Iftikhar uddin S/O Zewar Din (MSc)	05.08.1973 Charsadda	02.02.2009	02.02.2009	--do--	--do--
122.	Muhammad Khalid Zaman S/O Shams-uz-Zaman (M.A. Bed)	19.12.1978 Mardan	02.02.2009	02.02.2009	--do--	--do--
123.	Mr. Younis Khan S/O Waqif Khan (M.A)	15.06.1981 Upper Dir	02.02.2009	02.02.2009	--do--	--do--
124.	Mr. Mujahid Ali S/O Khalil-ur-Rehman (M.A)	19.04.1974 Nowshera	02.02.2009	02.02.2009	--do--	--do--
125.	Syed Abdul Akbar Shah S/O Syed Gul Chaman (MSC/M.A)	11.04.1981 Mardan	02.02.2009	02.02.2009	--do--	--do--
126.	Mr. Anwar Zeb S/O Alam Zeb (M.A)	01.03.1982 Charsadda	02.02.2009	02.02.2009	--do--	--do--
127.	Syed Sultan Haider Shah S/O Syed Gulzar Hussain Shah (BA. LLB)	08.12.1972 Peshawar	02.02.2009	02.02.2009	--do--	--do--

Assistant Secretary  
Revenue & Estate Dept  
Khyber Pakhtunkhwa

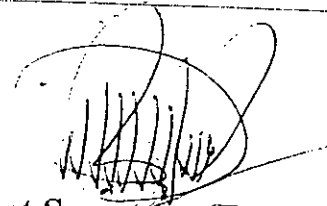
S.No.	NAME OF NAIB TEHSILDAR QUALIFICATION	DATE OF BIRTH/ DOMICILE	DATE OF IST ENTRY INTO GOVT; SERVICE	DATE OF APPOINTMENT AS NAIB TEHSILDAR On Regular Basis	METHOD OF RECRUITMENT.	REMARKS.
128.	Mr. Aftab Ahmad S/O Javed Muhammad (MSc)	08.12.1982 Peshawar	02.02.2009	02.02.2009	Direct	Naib Tehsildar
129.	Mr. Dil Nawaz Khan S/O Alam Zeb (LLB)	22.03.1979 Swabi	02.02.2009	02.02.2009	--do--	--do--
130.	Mr. Kifayat Ullah S/O Haji Akbar (M.A)	09.01.1977 Peshawar	02.02.2009	02.02.2009	--do--	--do--
131.	Mr. Faqir Hussain S/o Muhammad Younis (BA)	10.10.1983 Nowshera	02.02.2009	02.02.2009	--do--	--do--
132.	Mr. Zulfiqar Khan S/O Arsala Khan (M.Com)	15.04.1983 Peshawar	02.02.2009	02.02.2009	--do--	--do--
133.	Mr. Waqar Ahmad S/O Muhammad Irfan (M.A)	24.04.1980 Mansehra	02.02.2009	02.02.2009	--do--	--do--
134.	Muhammad Faraz Qurashi S/O Muhammad Riaz Qureshi (MBA)	17.03.1982 Abbottabad	02.02.2009	02.02.2009	--do--	--do--
135.	Mr. Fazal ur Rehman S/O Habib-ur-Rehman (M.A)	10.07.1975 Haripur	02.02.2009	02.02.2009	--do--	--do--
136.	Mr. Farukh Jadoon S/O Anwar Ahmad Khan (BSc)	04.05.1984 Abbottabad	02.02.2009	02.02.2009	--do--	--do--
137.	Mr. Fayaz Ahmad S/O Pir Khan (M.A)	10.03.1982 Abbottabad	02.02.2009	02.02.2009	--do--	--do--
138.	Bilal Ahmad S/O Farid-ud-Din (BA. B.Ed)	10.10.1978 Haripur	02.02.2009	02.02.2009	--do--	--do--
139.	Mr. Tanveer Shahzad S/O Muhammad Sahif (M.A)	30.12.1977 Mansehra	02.02.2009	02.02.2009	--do--	--do--
140.	Mr. Ejaz Ahmad S/O Muhammad Riaz (3 - M.A)	15.04.1982 Abbottabad	02.02.2009	02.02.2009	--do--	--do--
141.	Muhammad Salim S/O Muhammad Saddiq (BSC)	03.05.1978 Abbottabad	02.02.2009	02.02.2009	--do--	--do--
142.	Muhammad Sohail S/O Muhammad Ayub (BA)	16.11.1979 Abbottabad	02.02.2009	02.02.2009	--do--	--do--
143.	Mr. Sajid Saleem (BA)	01.04.1978 DIKhan	06.11.1996	10.02.2009	Selectee	--do--

S.No.	NAME OF NAIB TEHSILDAR QUALIFICATION	DATE OF BIRTH / DOMICILE	DATE OF IST ENTRY INTO GOVT; SERVICE	DATE OF APPOINTMENT AS NAIB TEHSILDAR On Regular Basis	METHOD OF RECRUITMENT.	REMARKS.
144.	Mr. Adil Waseem (BA)	25.12.1988 Nowshera	27.02.2009	27.02.2009	Direct	Naib Tehsildar
145.	Qazi Muhammad Aslam (Matric)	25.11.1953 Abbottabad	05.07.1980	02.05.2009	Promotee	--do--
146.	Mr. Abdul Qayum (BA)	24.04.1984 Kohistan	27.12.1993	02.05.2009	--do--	--do--
147.	Mr. Mirza Ali (Matric)	31.03.1951 Hangū	01.01.1971	02.05.2009	--do--	--do--
148.	Mr. Roohul Amin (Matric)	25.10.1966 Kohat	01.04.1985	02.05.2009	--do--	--do--
149.	Mr. Qianoos (BA)	14.02.1962 Kohat	01.07.1991	02.05.2009	--do--	--do--
150.	Mr. Khurshid Ali (Matric)	19.01.1959 Malakand	05.12.1991	02.05.2009	--do--	--do--
151.	Mr. Latif-ur-Rehman (Matric)	01.07.1959 Shangla	01.03.1978	02.05.2009	--do--	--do--
152.	Mr. Jehan Wali (Matric)	01.02.1957 Shangla	01.03.1978	02.05.2009	--do--	--do--
153.	Mr. Amir Zarin (Matric)	06.08.1959 Shangla	01.03.1978	02.05.2009	--do--	--do--
154.	Mr. Shah Wazir (Matric)	02.02.1960 Swat	05.04.1981	02.05.2009	--do--	--do--
155.	Mr. Sher Bahadar (BA)	07.04.1965 Tank	10.10.1992	02.05.2009	Selectee	--do--
156.	Mr. Shaukat Iqbal (M.A)	2/11/1973 DI Khan	19.10.1992.	02.05.2009	--do--	--do--
157.	Mr. Gohar Ali (B.A)	31.03.1980 Bannu	29.05.2009	29.05.2009	Direct	--do--
158.	Mr. Mehmood Shah (Matric)	01.02.1959 Peshawar	04.10.1977	02.06.2009	Promotee	--do--
159.	Mr. Sher Dil (BA)	24.01.1974 Kohistan	10.04.1995	02.06.2009	--do--	--do--
160.	Mr. Muhammad Arshad (BA)	20.01.1967 Kohat	02.09.1984	26.06.2009	--do--	--do--
161.	Mr. Zafar Iqbal (B.A. L.L.B)	25.02.1963 Kohat	02.04.1987	02.07.2009	--do--	--do--
162.	Mr. Nawab Gul (M.A)	15.11.1966 Kohat	01.01.1995	02.07.2009	--do--	--do--
163.	Mr. Umbaras Khan (B.A)	30.06.1960 Mardan	30.08.1988	07.07.2009	--do--	--do--
164.	Mr. Shakeel-ul-Rehman	10.02.1978 Bannu	06.01.2009	11.07.2009	Direct	--do--

Assistant Secretary  
Revenue & Taxation  
Khyber Pakhtunkhwa



S.No.	NAME OF NAIB TEHSILDAR QUALIFICATION	DATE OF BIRTH / DOMICILE	DATE OF 1ST ENTRY INTO GOVT; SERVICE	DATE OF APPOINTMENT AS NAIB TEHSILDAR On Regular Basis	METHOD OF RECRUITMENT.	REMARKS.
165.	Mr. Shiekh Muhammad Jamil (M.A)	15.02.1964 DIKhan	21.10.1992	18.07.2009	Promotee	Naib Tehsildar
166.	Muhammad Aslam Khan (Matric)	08.01.1953 DIKhan	16.07.1983	18.07.2009	--do--	--do--
167.	Mr. Bashir Ahmad (F.A)	01.01.1957 DIKhan	10.12.1983	18.07.2009	--do--	--do--
168.	Mr. Shah Nawaz (FA)	05.04.1953 DIKhan	13.01.1984	18.07.2009	--do--	--do--
169.	Mr. Abdur Rashid (MSC)	05.01.1962 Swabi	28.08.1988	01.10.2009	--do--	--do--
170.	Mr. Ahmad Ali M.A (B.ed)	17.04.1962 Swabi	28.08.1988	01.10.2009	--do--	--do--
171.	Muhammad Iqbal (BA)	05.10.1953 Lakki	01.11.1975	22.10.2009	--do--	--do--
172.	Mr. Muhammad Shoaib (BA)	01.01.1968 Kohat	09.12.1990	11.11.2009	--do--	--do--
173.	Shafiq-ur-Rehman (BA)	14.02.1959 Mardan	13.12.1985	23.11.2009	--do--	--do--

  
**Assistant Secretary (Estt)**  
**Board of Revenue Khyber Pakhtunkhwa**  
 Assistant Secretary  
 Revenue & Estate Deptt.  
 Khyber Pakhtunkhwa.

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~~20~~

B

ANNEXURE

**BEFORE THE SENIOR MEMBER BOARD OF REVENUE,  
KHYBER PAKHTOONKHWA, PESHAWAR**

Representation for correction of Seniority list of Naib Tehsildars (B-14) circulated vide SMBR office order No. 15261/Admn V/Sh dated 10.8.2010, whereby the petitioner has been wrongly placed at S.No. 62 of the impugned list and has been deprived of the legal right of Seniority in violation of the rules.

Prayers:-

To set aside the impugned Seniority list and to place the petitioner at the right place, keeping in view the date of the regularization of the service as N.T, W.e.f 13.01.2004.

Respected Sir,

The petitioner respectfully submits as under:-

- 1) That the petitioner was appointed as Naib Tehsildar (P.N.T FR, D.I.Khan), in his own Pay and Scale vide Senior Member Board of Revenue order No 652-63/Admn: I/FF(S)/NT dated 13.01.2004 (Copy attached as Annexure 'A')
- 2) That the petitioner assumed the charge of the Political Naib Tehsildar FR DIK on 13.01.2004 and has been continuously working/holding the post till date.
- 3) That against the excesses in service affair the petitioner had been voicing his grievances for over six years and at last succeeded in appeal before the SMBR who very kindly acceded to my request and accepted the appeal vide his Judgment dated 29.9.2009 followed by Notification issued by his office vide No. 982-90 dated 18.01.2010. (Copy of the Judgment and Notification attached as Annexure 'B' and 'C' respectively.
- 4) That a Seniority list showing the position of the N.Ts according to the date of regularization of each, was circulated vide Boards office No. 1270/Adm dated 30.6.2010. In this Seniority list the name of the petitioner appears at S.No. 17. (Copy placed at Annexure 'D')
- 5) That to the astonishment of the petitioner, a revised Seniority list (now impugned) has been circulated, showing the date of appointment of the petitioner as 31.3.2008 and thus placed at S.No. 62 in the Impugned Seniority list.
- 6) That the cancellation of the provisions Seniority list and circulation of the impugned list is against the factual position and the service rules.

*Secretary*

*SMBR  
28/10/2010*

*Reader to SMBR*

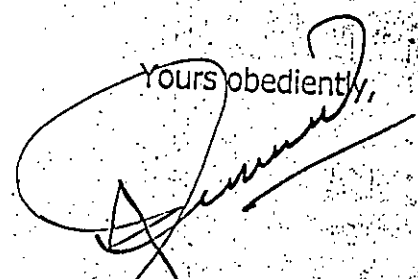
*29/10*

*[Signature]*  
**ATTESTED**

- 7) That according to the service rules and law laid down by the Superior Courts of Pakistan, the Seniority of the civil servants is determined from the date of continuous service of the Officials. But this principle/criteria has been by-passed and violated in a fanciful and unlawful manner, thus the Seniority list circulated is liable to be set-aside and revised/corrected in accordance with the rules.
- 8) That the petitioner has already objected on the impugned Seniority list in his appeal/petition dated 20.9.2010 on various grounds, which may please be considered as part of this representation.

In the wake of above submissions it is humbly prayed that the impugned Seniority list may please be modified and corrected keeping in view the date of appointment of the petitioner as 13.01.2004 and the petitioner's name shown at the proper place, to meet with the ends of justice.

The petitioner would also like to be heard in person, to further elaborate the position, if the need be.

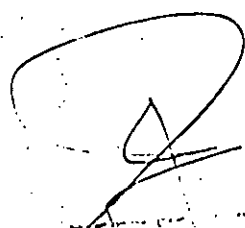
Yours obediently,  


(Saleem Asmat)

Naib Tehsildar,  
 Presently waiting  
 for posting

**Petitioner**

Dated. 26-10-2010

  
 ATTESTED

22 C  
ANNEXURE

GOVERNMENT OF NWFP  
REVENUE & ESTATE DEPARTMENT

No 6933-45 Admn:V/S/L/09

Dated Peshawar the 24/03/2010

To

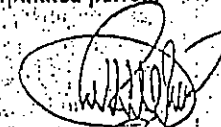
1. All Assistant to Commissioner, in NWFP
2. All Political Agents in NWFP

Subject: TENTATIVE JOINT SENIORITY LIST PREPARED ON PROVINCIAL BASIS  
OF NAIB TEHSILDARS (BPS - 14) AS STOOD ON 31.12.2009

Sir,

I am directed to enclose herewith Tentative Seniority List of Naib Tehsildars (BPS - 14) as stood on 31.12.2009 for information. The same may be circulated amongst the concerned officials serving under your control with the direction to forward their objection if any within 15 days from the date of issuance of this Circular.

In case no objection is received within the stipulated period, it shall be presumed that they are satisfied with the position assigned to them in the Seniority List prepared on Provincial Basis and no objection will be entertained after expiry of stipulated period.

  
Assistant Secretary (East)  
Board of Revenue NWFP

  
ATTACHED



Total 189

Annex: " "

23

ANNEXURE

REVISED FINAL SENIORITY LIST OF NAIB TEHSILDARS (BS-14) IN NWFP AS STOOD ON 31.03.2009

31.12.2007

NAME OF NAIB TEHSILDAR AS QUALIFICATION	DATE OF BIRTH / DOMICILE	DATE OF IST ENTRY INTO GOVT; SERVICE	DATE OF APPONT AS NAIB TEHSILDAR	METHOD OF RECRUITMENT.	REMARKS
Mr. Abdul Qadeer (MSc)	15.8.1962 DIKhan	28.08.1995	28.08.1995	Promote	Tehsildar on Acting Charge Basis
Mr. Hameed Khan Afirdi					
Mr. Abdul Samad (MA)	30.11.1960 Karak	03.05.1979	10.04.2001	Promotee	Seniority Assigned by the Court of Member, Board of Revenue, NWFP.
Mr. Muhammad Sohaib (BA)	01.01.1968 Kohat	09.02.1990	10.04.2001	Promotee	Seniority Assigned by the Court of Member, Board of Revenue, NWFP.
Mr. Javed Anwar Kamal FA	15.05.1958 Charsadda	01.11.1976	12.10.2002	Promotee	Seniority Assigned by the Court of Member, Board of Revenue, NWFP.
Mr. Bashir Ahmad (FA)	10.04.1955 Nowshera	28.07.1973	12.10.2002		
Mr. Mian Samiullah Jan B.A	17.10.1955 Charsadda	19.03.1982	12.10.2002	-do-	-do-
Mr. Ghani Khan B.A	02.02.1952 Charsadda	1979	12.10.2002	-do-	-do-
Mr. Ghulam Farooq (Metric)	01.01.1957 Bajaur	23.02.1978	13.01.2003	-do-	-do-
Mr. Naz Amin Khan (Metric)	12.05.1960 Bajaur	25.11.1981	13.01.2003	-do-	-do-
Mr. Muhammad Riaz Khan B.A LLB	08.05.1970 Bannu	02.06.1994	24.03.2003	-do-	-do-
Mr. Shamas Gul B.A	1952 NW Agency	1973	09.05.2003	Direct	-do-
Mr. Muhammad Naib Din M.A	30.09.1959 NW Agency	24.11.1980	02.05.2003	Promote	-do-
Mr. Javed Hussain	13.06.1952 Haripur	25.05.1981	30.06.2003	-do-	-do-
Mr. S. Asghar Shah (Metric)	25.12.1959 Haripur	25.05.1981	30.06.2003	-do-	-do-
Mr. Saleem Asmat (BA)	03.01.1959 DIKhan	27.03.1984	13.01.2004	-do-	-do-
				Promotee	

ATTESTED

Asst. Secy. Secy.  
B.R. No. 633-45/Adm  
S.L/09 dt: 24.3.2010

C. No. 303/2010

ANNEXURE

Saleem Asmat

Versus

Board of Revenue, Khyber Pakhtunkhwa,

24

28/10/2010

Departmental Appeal/Representation received by post from Mr. Saleem Asmat Naib Tehsildar for correction of seniority list circulated vide Board of Revenue, Khyber Pakhtunkhwa order No. 15161/Admn:V/S.L dated 10/08/2010. Call for comments from Assistant Secretary (Estt.), Board of Revenue, Khyber Pakhtunkhwa. Case to come up on 25/11/2010.

SMBR

25.11.2010.

Appellant absent. P.O. is busy in other important official work. To come up on 2.12.2010.

2.12.2010.

All documents and communications not received. Call for it to be submitted for further proceedings.

SMBR

30-12-2010.

Appellant present in person, arguments heard. From arguments and perusal of record it appears that the appellant was considered by DPC on 26-5-2008 and was not promoted. The DPC was headed by the then SMBR. Subsequently, the SMBR hearing an appeal against the decision of DPC regularized the services of the appellant.

ATTESTED

Office to seek advise from Establishment Deptt. on whether an officer heading the DPC can ~~promote~~ review the decision of the DPC and pass an order ~~in~~ contrary to the decision.

Order to Senior Member, Board of Revenue, Khyber Pakhtunkhwa.

ATTESTED

(19)

(25)

26-3-2011

Appellant present while PC is on tour / inspection to Mansehra. To come up on 12-3-2011 for further proceedings.

*[Signature]*  
Reader

12-3-2011

Appellant present and heard. He submitted minutes of DRC meeting held on 21-3-2008, which is placed on file. To process his case further, the original copy of his appeal may be connected with the present appeal case to come up on 2-4-2011 for further arguments.

*[Signature]*  
SMR

2-4-2011

ATTESTED

*[Signature]*

Reader to Senior Member Board of Revenue, Khyber Pakhtunkhwa.

16-4-2011

*[Signature]*  
ATTESTED

Appellant Subana Begum, No. 1, Tehsil has submitted an application for adjournment with the reason that the marriage of daughter has taken place on 2/4/2011 hence requested for adjournment. Application be placed on file case accordingly adjourned for 16-4-2011.

*[Signature]*

SMR

Appellant present. Perusal of his appeal shows that he has challenged the seniority list circulated on 10-8-2010 after 75 days i.e on 26-10-2010, which is quite after the mandatory limit of 30 days. Therefore the appeal/representation is not maintainable.

*[Signature]*  
SMR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

25



ANNEXURE F

Appeal No. 813/2011

Saleem Asmat Naib Tehsildar.

(Appellant)

Versus

1. Government of Khyber Revenue & Estate Department, through its Secretary and others.....  
(Respondents)



S.No.	Date of hearing	Order/proceedings of Court with signature of Judge/Magistrate
1	19.6.2012	<p>Appellant with counsel, and Mr. Sherafgan Khattak, AAG with Attaullah, Superintendent for the respondents present. Arguments heard and record perused.</p> <p>2. The appellant Saleem Asmat filed the instant appeal against the order dated 16.4.2011 of respondent No.2 whereby his departmental appeal against the seniority list circulated on 10.8.2010 has been rejected being time barred. It has been prayed that on acceptance of the appeal, the impugned order may be set aside and the seniority list be corrected or his departmental appeal/representation be decided on merits.</p> <p>3. The learned counsel for the appellant argued that the appellant was promoted as Naib Tehsildar in his own pay and scale vide order dated 13.1.2004. He filed departmental appeal before respondent No. 2 for regularization of his service and seniority. The appeal was accepted and his services were regularized as Naib Tehsildar w.e.f. 13.1.2004. A seniority list was issued on 30.6.2010, wherein his name was placed at S.No.17. On 10.8.2010, the impugned seniority list was issued wherein name of the appellant appeared at S.No. 62 instead of S.No. 17. The impugned seniority list was never received by the appellant and he came to know about the same on 21.10.2010. So he immediately filed departmental appeal on 26.10.2010. The Appellate Authority was required to decide the departmental appeal on merits</p>

EXAMINED  
ATTESTED  
Signature



27

and to avoid technicalities but he rejected the same on 16.4.2011 being time barred. The learned counsel for the appellant in support of his arguments, relied on 2004-PLC(C.S) 1014. He requested that the appeal may be accepted as prayed for.

4. The learned AAG argued that services of the appellant have been regularized as Naib Tehsildar w.e.f. 13.1.2004 through administrative order by the SMBR on 18.1.2010 and not by the DPC, which was against the Law/rules. The appellant challenged final seniority list circulated on 10.8.2010 of Naib Tehsildar on 26.10.2010 with a delay of more than 45 days, so his departmental appeal has rightly been rejected on the point of limitation. In case the appeal is allowed, certain incumbents will suffer, who have not been impleaded as respondents. He requested that the appeal may be dismissed.

5. The Tribunal observes that the appellant was posted as Political Naib Tehsildar (FR) D.I.Khan by the Senior Member Board of Revenue on 13.1.2004. The appellant filed departmental appeal for regularization of his service w.e.f. 13.1.2004. On the basis of his meritorious service, his services have been regularized w.e.f. 13.1.2004 and his name was placed at S.No. 17 in the tentative seniority list issued on 24.3.2010. A final seniority list of Naib Tehsildars has been circulated on 10.8.2010 wherein name of the appellant appeared at S. No. 62. In the circumstances, seniority list must be communicated to the appellant within the prescribed period but he came to know about the same on 21.10.2010, he immediately filed departmental appeal on 26.10.2010. It was not proved by the respondents that the seniority list issued on 10.8.2010 has been communicated to the appellant within the prescribed time. Even the august Supreme Court of Pakistan in its judgment reported as 2004-PLC(CS) 1014 held that decision of cases on merits always to be encouraged instead of non-suiting litigants on technical reasons including ground of limitation.

ATTESTED

Secretary  
Services  
Government of Punjab

28

6. In view of the above, the impugned order dated 16.4.2011 is set aside and the case is remanded to the departmental appellate authority for decision afresh on the departmental appeal of the appellant on merits. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED  
19.06.2012

(SULTAN MAHMOOD KHATTAK)  
MEMBER

(NOOR ALI KHAN)  
MEMBER

Certified to be true copy

Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application: 20.6.2012

Number of Words: 1200

Copying Fee: 8

Urgent: \_\_\_\_\_

Total: 8

Name of Copyist: \_\_\_\_\_

Date of Copying of Copy: 13.7.2012

Date of Delivery of Copy: 13.7.2012

29

29

F

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

**ANNEXURE**

Service Appeal No: 813 / 2011

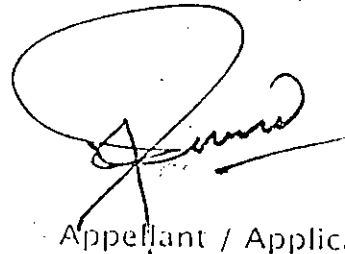
SALEEM ASMAT

Versus

Govt. of K.P.K. etc.

INDEX

DESCRIPTION OF DOCUMENTS		PAGE NO:
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Annexure-A	Judgment dated 19.06.2012	5 - 7
Wakalatnama		nil



Appellant / Applicant

Through,

BILAL AHMAD KAKAIZAI  
(Advocate, Peshawar)

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No: 813 / 2011

Date of Decision: 19.06.2012

SALEEM ASMAT

Naib Tehsildar,

HANGU

..... APPELLANT

VERSUS

1. GOVERNMENT OF K.P.K  
Revenue & Estate Department,  
Through Secretary, Peshawar.

2. Senior Member Board of Revenue,  
KPK, Peshawar.

..... RESPONDENTS

APPLICATION FOR IMPLEMENTATION OF JUDGEMENT  
DATED 19.06.2012

Respectfully Sheweth,

1. That, Appellant / Applicant filed the subject mentioned Appeal in this Honorable Tribunal, which was accepted on 19.06.2012 with the following observations: -

"In view of the above, the Impugned Order dated 16.04.2011 is set aside and the case is remanded back to the Departmental Appellate Authority for decision afresh on the Departmental Appeal of the Appellant on merits. Parties are left to bear their own costs. File be consigned to record".

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No: 813 / 2011

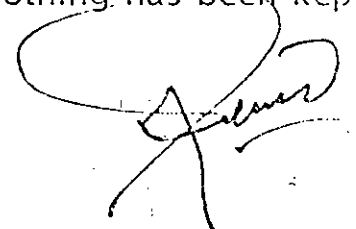
SALEEM ASMAT

Versus

Govt. of K.P.K. etc.

AFFIDAVIT

I, Saleem Asmat S/o Nasrullah Khan Naib Tehsildar, HANJALI Appellant / Applicant, do hereby on oath affirm and declare that the contents of the Service Appeal are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Honorable Tribunal.



Deponent

Identified by:

BILAL AHMAD KAKAIZAI  
(Advocate, Peshawar)

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No: 813 / 2011

SALEEM ASMAT

Versus

Govt. of K.P.K. etc.

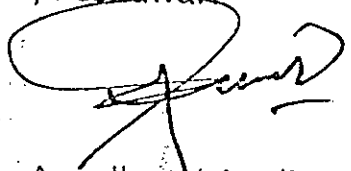
ADDRESSES OF PARTIES.

APPELLANT:

Saleem Asmat, Naib Tehsildar, HANGU

RESPONDENTS:

1. GOVERNMENT OF K.P.K, Revenue & Estate Department, through Secretary, Peshawar.
2. Senior Member Board of Revenue, KPK, Peshawar

  
Appellant / Applicant

Through,

BILAL AHMAD KAKAIZAI  
(Advocate, Peshawar)

34  
ANNEXURE  
G  
Asmat

GOVERNMENT OF KHYBER PAKHTUNKHWA  
BOARD OF REVENUE,  
REVENUE & ESTATE DEPARTMENT  
No. Estt: V/Saleem Asmat/ 17989  
Peshawar dated the 12/09/2012

To

Mr. Saleem Asmat,  
Naib Tehsildar  
Hangu.

Subject: IMPLEMENTATION OF JUDGMENT DATED 19.06.2012 PASSED  
BY SERVICE TRIBUNAL KHYBER PAKHTUNKHWA IN SERVICE  
APPEAL NO.813/2011

Your application dated 25.07.2012 has been examined in light of the  
Appointment Promotion Transfer Rules, 1989 and it is observed that in light of Section -  
8(4) of the Khyber Pakhtunkhwa Civil Servant Act, 1973 seniority in a post, service or  
cadre to which a civil servant is promoted shall take effect from the date of regular  
appointment to that post.

Since your regularization order as Naib Tehsildar has been issued on  
18.01.2010 as such seniority as Naib Tehsildar has been assigned from the said date.  
Prior to this you were posted as Naib Tehsildar in Own Pay & Scale; therefore your  
request for grant of seniority from the date of posting as Naib Tehsildar in Own Pay &  
Scale cannot be acceded to.

14  
O/c Assistar. Secretary (Estt.)  
[Signature]

BEFORE KPK SERVICE TRIBUNAL, PESHAWAR

35

ANNEXURE

Execution Petition no 136/12



Service Appeal No: 813 / 2011

Date of Decision: 19.06.2012

Handwritten notes and dates: 20/6/12, 6/11/12

SALEEM ASMAT  
Naib Tehsildar,  
HANGU

..... APPELLANT

VERSUS

1. GOVERNMENT OF K.P.K  
Revenue & Estate Department,  
Through Secretary, Peshawar.
2. Senior Member Board of Revenue,  
KPK, Peshawar.

..... RESPONDENTS

APPLICATION FOR IMPLEMENTATION OF JUDGEMENT  
DATED 19.06.2012

17.04.2013

Counsel for the petitioner, Attaullah, Supat and Mir Qasim, Assistant Secretary with Arshad Alam, GP for the respondents present. Proper Implementation report with Annexure-A received, copy handed over to the Counsel for the petitioner. Arguments on implementation heard. The judgment of the Tribunal in service appeal No. 813/2011 dated 19.06.2012 has been implemented in true letter in spirit. As such the application is filed. File be consigned to the recored.

ANNOUNCED  
17.04.2013.

*Self-Member*

*Self-Member*

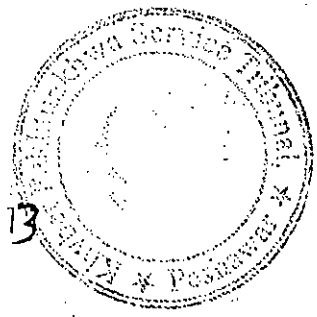
Handwritten notes and stamps on the left margin, including 'KPK Service Tribunal, Peshawar' and 'Copy of the file copy'.



BEFORE KPK SERVICE TRIBUNAL, PESHAWAR.

J  
**ANNEXURE**

Service Appeal No: 932 / 2013



Case No. 895  
Dated 09/5/13

**SALEEM ASMAT**  
Naib Tehsildar,  
Irrigation, Gomal, D.I.Khan

..... APPELLANT

VERSUS

1. GOVERNMENT OF K.P.K  
Revenue & Estate Department  
Through Secretary  
Peshawar.
2. Senior Member Board of Revenue  
KPK, Peshawar.

..... RESPONDENTS

APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT, 1974  
AGAINST ORDER NO. ESTT-V/SALEEM ASMAT/17989 DATED  
12.09.2012 COMMUNICATED TO THE APPELLANT ON 17.04.2013 IN  
COURT, DURING EXECUTION PROCEEDINGS, WHEREBY  
DEPARTMENTAL APPEAL / REPRESENTATION AGAINST IMPUGNED  
SENIORITY LIST HAS BEEN REJECTED.

Prayer: That on acceptance of this Service Appeal the Impugned  
order dated 12.09.2012 be set aside and Seniority List  
be corrected as per Order dated 29.09.2009 and  
18.01.2010 of Respondent No. 2 with such other relief  
as may deem fit in the circumstances of the case may  
also be granted.

**ATTESTED**  
Signature of Naib Tehsildar  
KPK Service Tribunal,  
Peshawar.

Submitted to  
led,

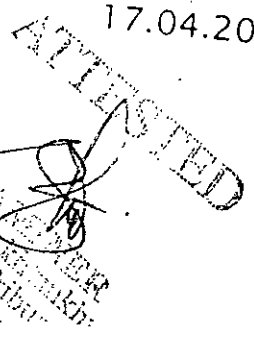
Signature  
15/5/13

Respectfully Sheweth,

Short facts, giving rise to present Service Appeal, are as under:

1. That, vide Office Order No.15261 / Admn: V / SL dated 10.08.2010, the Impugned Seniority List was circulated wherein Appellant was shown at S.No.62, copy of the Impugned Seniority List is attached as Annexure-A.
2. That, as Appellant was assigned Seniority w.e.f 31.03.2008 and was placed at S.No.62 instead of assigning seniority from 13.01.2004 i.e. below the name of Mr. S. Asghar Shah and above the name of Mr. Ali Sher at Serial No. 18, therefore, Appellant submitted his Departmental Appeal / Representation before the Respondent No.2, copy of the same is attached as Annexure-B. Moreover Tentative Seniority List circulated vide Boards Office No. 1270/Adm dated 30.06.2010 is attached as Annexure-C.
3. That, the Departmental Appeal was submitted on 28.10.2010 but vide Impugned Order dated 16.04.2011, the Departmental Appeal / Representation was held non-maintainable as being time barred, copy of the Order in Appeal is attached as Annexure-D.
4. That, against the said decision Appellant preferred Service Appeal No. 813 / 2011 which was decided on 19.06.2012 with the direction to decide the Departmental Appeal of the Appellant afresh, on merits, copy of the Order / Judgment dated 19.06.2012 is attached as Annexure E.
5. That, even than the Respondents were reluctant to decide the Departmental Appeal of the Appellant hence the Appellant filed Execution Petition No. 186 / 2012 in Service Appeal No. 813 / 2011, copy of the Execution Petition is attached as Annexure F.
6. That, on 17.04.2013, during the Execution Proceedings, Appellant was handed over Order dated 12.09.2012 whereby the Departmental Appeal of the Appellant was rejected, copy of the Order dated 12.09.2012 and Order / Judgment dated 17.04.2013 of Honourable Service Tribunal are attached as

ATTESTED



MEMBER  
Service Tribunal

Annexure G & H. Hence, this Service Appeal on the following amongst other grounds: -

GROUNDS:

- A. That, the Impugned Appellate Order in Appeal dated 12.09.2012 is illegal, unlawful, void and ineffective.
- B. That, the same is against the principles of Natural Justice, also.
- C. That, Appellant was Appointed & posted as Naib Tehsildar in his own pay & scale vide Order dated 13.01.2004 and on the same day he assumed the charge, copy of the Posting Order is attached as Annexure-J.
- D. That, Appellant claimed his Seniority w.e.f. the date of his posting, therefore, his appeal was accepted by the Respondent No. 2 on 29.09.2009 whereby the services of Appellant as Naib Tehsildar were regularized w.e.f. 13.01.2004, copy of the Order of Respondent No.2 is attached as Annexure-K and Order in this respect, dated 18.01.2010 is attached as Annexure-L.
- E. That, a Seniority List showing the position of the Naib-Tehsildars according to the date of regularization of each, was circulated vide Boards office No.1270/Admn dated 30.06.2010. In this Seniority List the name of the Appellant appears at S.No.17, ~~\_\_\_\_\_~~
- F. That, the cancellation of the Provisional Seniority List and circulation of the Impugned Seniority List is against the factual position and the service rules.
- G. That, according to the service rules and law laid down by the Superior Courts of Pakistan, the Seniority of the civil servants is determined from the date of continuous service of the officials but this principle / criteria has been by-passed and violated in a fanciful and unlawful manner, thus the Seniority

ATTESTED

MEMBER  
Sindh High Court  
Sindh Tribunal  
Beshawar

List circulated is liable to be set-aside and revised/corrected in accordance with the rules.

It is, therefore, requested that Appeal be accepted as prayed for.

Certified to be true copy  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

*[Signature]*

Appellant

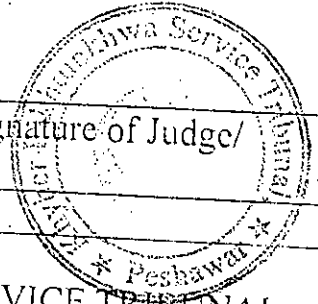
Through:

*[Signature]*

BILAL AHMAD KAKAIZAI  
(Advocate, Peshawar)

Date of Presentation of Appeal 11-12-15  
Number 1600  
Case No. 10  
Unit 2  
T 12  
N SW  
Date 11-12-15  
Date of 11-12-15

41




Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1.	01.12.2015	<p style="text-align: center;"><b>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.</b></p> <p style="text-align: center;">Service Appeal No. 932/2013 Saleem Asmat Versus Government of KPK, Revenue &amp; Estate Deptt. through its Secretary.</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>PIR BAKHSI SHAH, MEMBER.-</u> Appellant with counsel (Mr. Bilal Ahmad Kakaizai, Advocate) and Senior Government Pleader (Mr. Usman Ghani) with Mukhtiar Ali. Supdt. for the respondents present.</p> <p>2. Per memo. of appeal the appellant is aggrieved with order dated 12.09.2012, communicated to him on 17.4.2013 whereby his departmental appeal against the impugned seniority list was rejected, hence the present appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.</p> <p>3. Arguments heard. Record perused.</p> <p>4. The appellant claims seniority from 13.01.2004 on the basis of order of the Senior Member Board of Revenue Khyber Pakhtunkhwa dated 29.09.2009 whereby a departmental appeal No. 338 of 2008 of the appellant was accepted on 29.09.2009 and his services were regularized w.e.f. 13.01.2004 vide notification dated 18.01.2010. But when after the above order of SMBR the seniority list was</p>

ATTESTED

MEMBER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

circulated vide office order No. 15261/Admn:V/SL. dated 10.08.2010, the appellant was virtually relegated in seniority list of his Sr. No. 17 and instead he was placed at serial No. 62 ignoring the fact that the competent authority had already regularized his services w.e.f. 13.01.2004. It is undisputed that the order of the SMBR regularizing the services of the appellant as Naib Tehsildar is still in the field having not been challenged anywhere by anybody. Thus when once the services of the appellant as Naib Tehsildar were regularized w.e.f. 13.01.2004, he was placed at Sr. No. 17 of the seniority list. As this order is still in the field, hence, his claim to seniority from the said date appears to be well founded. Thus prima-facie the case of seniority of the appellant is in consonance with Section 8 of the Civil Servants Act, 1973 because his services were regularized w.e.f. 13.01.2004 by the order of the competent authority. It was asserted that when the appellant was relegated, he was badly discriminated keeping in view identical cases of Mr. Naib Din and Miraj Muhammad. That while deciding his departmental appeal, the competent authority ignored order of SMBR ~~order~~ dated 29.9.2009 followed by notification dated 18.01.2010 in favour of the appellant. That in view of the celebrated judgment of the august Supreme Court of Pakistan reported as 2009-SCMR-1, the department ought to have treated the appellant similarly while discriminatory treatment has been

ATTESTED

  
 MEMBER  
 Peshawar  
 Service Tribunal,  
 Peshawar

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meted out to him as is apparent from the record of the case.

5. For what has been discussed above, as the question of seniority is involved and the concerned civil servants have not been made parties, therefore, we would once again remit the case to the appellate authority to decide the matter within 30 days of the receipt of this order, giving full opportunity of hearing to the appellant without any discrimination. If the departmental appeal is not decided within the stipulated period, then this appeal be deemed to have been allowed and consequently the appellant be entitled to seniority w.e.f. 13.1.2004 as already ordered by the SMBR on 29.09.2009 alongwith with all back benefits. The appeal is disposed off accordingly. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
01.12.2015.

*sd/- Pir Bakhsh Shah,*  
Member

*sd/- Abdul Latif,* Member

Certified to be true copy  
E. M. J. R.  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Receipt 11-12-15  
No. 1200  
C. 8  
U. 2  
P. 10  
N. AM  
Date 11-12-15  
Date of 11-12-15

ANNEXURE  
71  
44

BRIEF FOR SENIOR MEMBER BOARD OF REVENUE

Saleem Asmat Naib Tehsildar .....Appellant

Versus

Senior Member Board of Revenue .....Respondent

This is an appeal filed by Saleem Asmat Naib Tehsildar before the Service Tribunal which has been remitted with the direction to the Appellate Authority to decide the matter within 30 days of the receipt of order by giving full opportunity of hearing to the appellant.

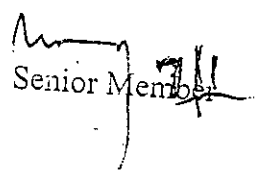
Appellant present and submitted his written reply in support of his claim for seniority for the period who remained posted as Naib Tehsildar (Own Pay Scale).

Facts of the case are that the appellant Mr. Saleem Asmat was posted as Naib Tehsildar (OPS) on 13.01.2004. Lateron, his services were regularized through Administrative order on 29.09.2009 and his name was included in the seniority list of Naib Tehsildar. On posting of (Waqar Ayub) the then Senior Member, Board of Revenue, he was given seniority from the date of his regular promotion as Naib Tehsildar i.e. from 29.09.2009. Aggrieved by the said order, the appellant filed Departmental Appeal before the Senior Member, Board of Revenue on 28.10.2010 which was rejected vide order dated 16.04.2011 on the grounds of limitation. Against the said order, the appellant filed the instant appeal before the Service Tribunal, which has been remitted for disposal on merit.

Perusal of the record reveals that the appellant was Assistant who was promoted as Naib Tchsildar through Administrative order without adopting proper procedure which is also under Review in this office. So far as the question of seniority w.e.f the date of the posting as Naib Tehsildar (OPS) is concerned, does not cover the rules, as under Section-8(4) of the Khyber Pakhtunkhwa Civil Servants Act, 1973, seniority in a post, service or cadre to which a civil servant is promoted/appointed shall take effect from the date of regular appointment to that post.

Keeping in view the facts narrated above, the appeal having no good ground is dismissed. File be consigned to record room after completion.

Announced

  
Senior Member



45

ANNEXURE

33

Annex: "A"

GOVERNMENT OF H.W.F.P.  
REVENUE AND ESTATE DEPARTMENT.

PESHAWAR DATED THE 12/1/2004.

ORDER

No. /Adm: I/FF(S). On the recommendation of the District Coordination Officer, D.I. Khan Mr. Salim Anwar presently working as Assistant Finance and Planning Department, D.C. O. Office Tank is hereby transferred and posted as Political Naib Tehsildar Paraziada P.R. D.I. Khan in his own pay and scale against the vacant post till further orders.

SL

SENIOR MEMBER,  
BOARD OF REVENUE, H.W.F.P.

Undst: No. 852-63 /Adm: I/FF(S)/FF.

Copy to the :-

- 1- Secretary to Chief Minister, H.W.F.P.
- 2- District Coordination Officer, D.I. Khan with reference to his letter No. 233-PS(Ext), dt 12/1/2004.
- 3- District Coordination Officer, Tank, with reference to his letter No. 20/DOO dated 7-1-2004.
- 4- District Officer(R&E)/Collectors, Tank and D.I. Khan.
- 5- District Accounts Officer, D.I. Khan and Tank.
- 6- F.S. to Member Member, Board of Revenue, H.W.F.P.
- 7- F.A. to Secretary, Board of Revenue, H.W.F.P.
- 8- Official concerned.
- 9- Personal file.
- 10- Office order file.

SL

Secretary,  
Board of Revenue, H.W.F.P.

Large handwritten signature

ATTEND

31.3.08

(46) (M) **ANNEXURE**

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

Case No. 338  
Date of Institution 06.06.2008  
Date of Decision 29.09.2009

Appeal against order No. 10314-69/Admn:U/DPC/Naib Tehsildar, dated  
29.05.2008.

ORDER

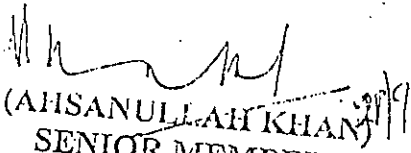
This is a an appeal filed by Mr. Saleem Asmat Political Naib Tehsildar (FR) Kohat challenging therein this Department order bearing Endorsement No. 852-63/Admn:1/PF(S)/NT/OPS/PNT/FR/DIKhan, dated 13.01.2004.

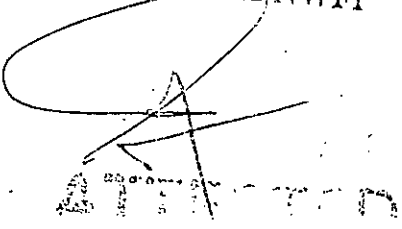
Facts leading to the case are that the appellant was initially appointed as Junior Clerk in the office of Deputy Commissioner, DIKhan and remained posted in various Branches. He was later on promoted as Assistant and was given the charge of Political Naib Tehsildar Jandola (FR) Tank and Naib Tehsildar Irrigation several times. He was also posted as Political Naib Tehsildar (FR) DIKhan by the then Senior Member Board of Revenue NWFP dated 13.01.2004.

Moreover, in a meeting held between the District Coordination Officer, Lakki Marwat and Governor NWFP he was assigned the duties of Acting Assistant Political Agents (FR) Lakki Marwat and thereafter he was posted as Political Naib Tehsildar Razmak as well as Political Naib Tehsildar Datta Khel North Waziristan Agency. He also remained posted as Political Naib Tehsildar / Mohmand Agency and Political Naib Tehsildar (FR) Kohat. His case for selection / promotion as Naib Tehsildar has already been decided vide minutes of Departmental Promotion Committee meeting held on 31.03.2008.

Under the circumstances and his meritorious and excellent service available on record his case seems to be genuine. As such, the appeal is hereby accepted and the services of the appellant are hereby regularized as Naib Tehsildar w.e.f 13.01.2004.

ANNOUNCED  
29.09.2009

  
(AHSANULLAH KHAN)  
SENIOR MEMBER  
BOARD OF REVENUE NWFP





GOVERNMENT OF NWFP  
REVENUE & ESTATE DEPARTMENT

Dated Peshawar the 18/01/2010

ANNEXURE

ORDER

No. \_\_\_\_\_ /Admn:V/PF(Saleem). In pursuance of Judgment of Senior Member Board of Revenue NWFP dated 29.09.2009 passed in Appeal No. 338/2009 services of Mr. Sleem Asmat Najb Tehsildar (Own Pay & Scale) (BPS - 14) presently waiting for posting in Board of Revenue NWFP are hereby regularized w.e.f 13.01.2004.

By Order of,  
Senior Member  
Board of Revenue NWFP

No. 983-90 /Admn:V/PF(Saleem)

Copy to:-

1. Commissioner DIKhan Division DIKhan
2. Accountant General NWFP
3. District Officer (R&E)/Collector, DIKhan
4. District Accounts Officer DIKhan.
5. Reader to Senior Member Board of Revenue NWFP
6. Bill Assistant Board of Revenue NWFP
7. Official concerned
8. Personal File
9. Office Order File

*Handwritten signature*  
Assistant Secretary  
Revenue - Estate Dept  
BOR NWFP

Assistant Secretary (Estt)  
Board of Revenue NWFP

*Handwritten signature*

ATTACHED



(48)

0

**ANNEXURE**

**GOVERNMENT OF NWFP  
REVENUE & ESTATE DEPARTMENT**

Dated Peshawar the 15/01/2010

**ORDER.**

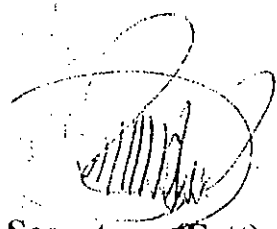
No 869 /Admn:V/PF(Niab Din). In pursuance of  
Judgment of Senior Member Board of Revenue NWFP dated 29.09.2009  
passed in Appeal No. 38/2009 services of Mr. Niab Din Naib presently  
working as Political Naib Tehsildar Torkhum (BPS - 14) are hereby  
regularized w.e.f 17.01.1996.

**By Order of,  
Senior Member  
Board of Revenue NWFP**

No 870-76 /Admn:V/PF(Niab Din)

Copy to:-

1. Commissioner Peshawar Division Peshawar
2. Political Agent Khyber Agency.
3. Agency Accounts Officer Khyber Agency.
4. Reader to Senior Member Board of Revenue NWFP
5. Official concerned.
6. Personal File.
7. Office Order File.

  
**Assistant Secretary (Estt)  
Board of Revenue NWFP**

(49) P

**ANNEXURE**

IN THE COURT OF AHSAN ULLAH KHAN, SENIOR MEMBER BOARD OF REVENUE, KHYBER PAKHTUNKHWA.

Case No. 257/2010  
Date of Institution 16.09.2010  
Date of Decision 11 / 11 / 2010

MIRAJ MOHMAAD POLITICAL NAIB TEHSILDAR YAKA GHUND,  
MOHMAND AGENCY. Appellant

ORDER:

This is an appeal filed Miraj Mohamad, Political Naib Tehsildar, Yaka Ghund, Mohmand Agency challenging therein this Department seniority list notified on 10.08.2010.

Facts leading to the case are that the appellant was initially promoted to the post of Naib Tehsildar on 09.05.2003 in his own pay & scale and subsequently on 29.04.2005, the appellant was promoted on the same post on regular basis. After his regular promotion vide No. 10683-90/Admn-I/PF (M) dated 29.04.2005. The appellant was placed in the seniority list ibid at S. No 24 with effect from 29.04.2005 as stood on 31.12.2009. In the year 2010, when the seniority was notified and his position was placed to at S. No. 69. On the other hand in similar nature case one Mr. Naib Din Naib Tehsildar as promoted to the post of HVC (BPS-14) in his own pay & scale on 17.01.1996 and granted seniority from the same date i.e. 17.01.1996 already disposed up in this Court in case No. 381/09 dated 29.09.2009. On the same analogy and pattern the appellant is also entitled w.e.f 29.04.2005, on which he was promoted to the post of Naib Tehsildar on regular basis vide this Department No. 10683-90/Admn-I/PF (M) dated 29.04.2005. Hence the appellant has been discriminated as order having identical circumstances were granted due seniority while the appellant was refused which is not sustainable under Articles - 4, 25, 27 of Constitution 1973.

In view thereof the above appeal is accepted and the Respondent Department is directed to consider the case of the appellant regarding assignment of regularization/seniority w.e.f 29.04.2005.

*Approved*

11.11.2010

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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 30/2016

Mr. Saleem Asmat Sub Tehsildar Irrigation Gomal Dikhan.....Appellant

VERSUS

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

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1&2 ARE AS UNDER:-**

**RESPECTFULLY HEWETH.**

**PARLIMINARY OBJECTIONS**

1. That the appeal is badly time barred.
2. That appellant is estopped by his own conduct to institute the appeal.
3. That the appeal is not maintainable in its present form.
4. The appellant has no grounds in support of his appeal and no cause of action.
5. The appellant has not come to the Tribunal with clean hands.

**ON FACTS.**

- 1 Correct to the extent that the name of the appellant was inadvertently mentioned in the seniority list at S No. 62 from 31.03.2008. Infact the appellant was promoted through an Administrative order on 18.01.2010 without adopting proper procedure. His illegal promotion is under review in the Department. Therefore, he cannot be granted seniority w.e.f 13.01.2004 the date of his posting in own pay scale.
2. Incorrect. As in para – 1 above.
3. Correct to the extent that the promotion of appellant was made through Administrative order which is under Review in the Department, therefore his appeal for seniority from 13.01.2004 was not maintainable at that time and was rightly rejected.
4. Correct to the extent that service appeal of the appellant was remanded by Service Tribunal for a fresh decision.
5. Incorrect. The appeal of the appellant was examined by the Competent Authority and was dismissed on 2.09.2012 strictly in accordance with rules.
6. As in para – 5 above.
7. Correct to the extent of remand of appeal of the appellant.
8. Incorrect. On remand of his case, the appellant was properly awarded chance of hearing, but his promotion was found illegal through Administrative order without adopting proper procedure therefore, his appeal for seniority was dismissed by the Competent Authority.

**GROUND:**

- A- Incorrect. Order dated 07.01.2016 was passed strictly in accordance with law/rules
- B- As in "A" above.
- C- Incorrect. Posting in own pay scale cannot make a person eligible for regular promotion and seniority.
- D- Incorrect. Even promotion of the appellant was made illegal through Administrative order which is under review in the Department, thus the question of seniority does not arise.

- Incorrect. Only name of the appellant was included in the panel of promotion which cannot make a person eligible for promotion on regular basis.
- F. Incorrect. The name of the appellant was inadvertently mentioned in the seniority list which was later on excluded from seniority list
- G. Incorrect. Seniority list was rightly cancelled and correct seniority list was issued on 06.10.2010
- H. Incorrect. Under Rule 8 (4) of the Khyber Pakhtunkhwa Civil Servant Act, 1973 seniority in a post, service or cadre to which a Civil Servant is promoted shall take effect from the date of regular appointment to that post.
- I. Incorrect. No one has given seniority with back date having similarity with the appellant's case.
- J. Incorrect. Order was passed strictly in accordance with law.
- K. Incorrect. Other colleagues of the appellant who were promoted through Administrative order are also under review in the Department.
- L. Incorrect. Some of his colleagues have been reverted to their original posts.
- M. Incorrect. No discrimination has been done with the appellant.
- N. Incorrect. No violation of rules or Article of the Constitution of Islamic Republic of Pakistan have been committed.
- O. As in preceding paras.
- P. Incorrect. The order dated 07.01.2016 is according to law and no violation has been committed.

Keeping in view of the above, the appeal having no legal ground may be dismissed with costs.

*9/5/20*  
Senior Member  
Respondent No. 1&2

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 30/2016/EP

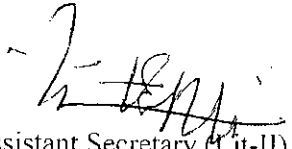
Saleem Azmat, Nail Tehsildar, Irrigation Gomal DIKhan,.....Appellant

VERSUR

Senior Member Board of Revenue & Others.....Respondents

AFFIDAVIT

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

  
Assistant Secretary (Lit-II),  
Board of Revenue