BEFORE THE HONORABLE PESHAWAR HIGH COURT, ABBOTTABAD BENCH

Service Appeal No.377 of 2023.

Muhammad IlyasPetitioner

VERSUS

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT CAMP COURT ABBOTTABAD

Service Appeal No. 377 of 2023

Muhammad Ilyas.....

VERSUS

- 1. Member Board of Revenue, Khyber Pakhtunkhwa Peshawar.
- 2. Commissioner, Hazara Division Abbottabad.
- 3. Deputy Commissioner, Mansehra.
- 4. Additional Deputy Commissioner (General), Mansehra.
- 5. Settlement Officer, Mansehra.

.....Respondents.

Para wise comments on behalf of respondents 1 to 4. Khyher Publishwa

Preliminary Objections

- The appellant has no cause of action and locus standi. 1)
- That the appeal is time barred and barred by law.
- 3) That the appeal is bad in its present form, hence not maintainable and liable to be dismissed.
- That the appellant has not come to the Tribunal with clean 4) hands.
- That the appeal is bad for misjoinder and non joinder 5) of necessary and proper parties.

Reply on facts.

Para No. 1 Pertains to record.

Para No.2 Incorrect. His plea is against the facts. According to report of the Settlement Officer, Mansehra vide his letter No. 718-21/SO (M), dated 20.06.2022, the appellant completed Settlement work of "Mouza" Mundiar, Tehsil Mansehra in the month of February, 2022 at (Annex-A). Record of this "Mouza" was reportedly completed and consigned in Mansehra vide Settlement Officer, Mansehra letter No.323-27/SO (M), dated 28.02.2022 at (Annex-B), but actually the appellant did not handed over the relevant revenue record in DC-Office. He was telephonically contacted by the Settlement Officer, Mansehra but he did not bother to respond or even attend the call. Beside this the Settlement Officer, Mansehra reported that he kept the record of said "Mouza" with him for attestation of some mutations since February 2022, which amounts to inefficiency and misconduct on his part, thus he committed an act of gross misconduct.



Para No. 3 As explained in para No. 2 above.

Para No.4

The Settlement Officer, Mansehra vide his letter No.718-21/SO reported dated 20.06.2022 against the Patwari concerned and based on the allegations he was proceeded against under the provisions of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, served with charge sheet/statement of allegations and the Additional Deputy Commissioner (General), Mansehra was appointed as Inquiry Officer vide No. 7331-33/AE, dated 29.06.2022 at (Annex-C). Later on the Settlement Officer, Mansehra forwarded another report dated 06.07.2022 from Girdawar Circle Laberkot duly endorsed by the concerned Revenue Officer Circle with the recommendations to initiate criminal proceedings against the accused/appellant vide his letter NO. 930-33/ SO (M), dated 25.07.2022 and the same in Charge Sheet was sent to the continuation of previous Inquiry Officer to make it a part of the enquiry and submit report vide this office letter No.9392/AE, dated 18.08.2022 at (Annex-D) and (Annex-E) respectively. The Inquiry Officer conducted enquiry and furnished report vide his letter No. 10473/ADC (G), dated 14.09.2022, copy alongwith its enclosures at (Annex-F). Allegations levied against the appellant were proved, therefore, as required in the Rules ibid he was served with Show Cause Notice vide No. 10553/A/AE, dated 15.09.2022 at (Annex-G). The appellant submitted reply to the show cause Notice on 21.09.2022 at (Annex-H). He was also heard in person but failed to rebut the allegations, hence in exercise of the powers conferred upon the undersigned under Rule-14 of the Khyber Pakhtunkhwa, Government Servants (Efficiency and Discipline) Rules, 2011 major penalty to the extent of "compulsory retirement from Service" was inflicted on the appellant (Mr. Muhammad Ilyas, Ex-Patwari) vide order No. 16764-70/AE, dated 22.09.2022 at (Annex-I). As mentioned in foregoing paras of comments all codal formalities have been completed before issuance of order, therefore, decision is based on merit, facts and records.

Z

- Para No. 5 Pertains to record.
- Para No. 6 Pertains to record.

Para No. 7 Respondent No.4 (Inquiry Officer) has conducted enquiry in accordance with the provisions of Khyber Pakhtunkhwa, Government Servants (Efficiency and Discipline) Rules, 2011.

Para No. 8 As explained in foregoing para No.4, all codal formalities were completed before issuance of impugned order No.1674-70, dated 22.09.2022.

Para No. 9 Correct.

GROUNDS.

(A). As per Rule-02 (1) (b) and (f) of the Khyber Pakhtunkhwa, Government Servants (Efficiency and Discipline) Rules, 2011, the respondents No. 02 & 03 are the competent authority, therefore, after observance of codal formalities within prescribed rules, the impugned orders dated 22.9.2022 and 02.02.2023 were issued and constitutional rights of the appellant have not been violated. The decisions are based on merit, facts and records, hence maintainable.

(B) The appellant was given full opportunity of defense viz regular enquiry under Efficiency & Discipline Rules-2011, Show Cause Notice and personal hearing but he failed to rebut the allegations and therefore, major penalty to the extent of "compulsory retirement from Service" was imposed upon him.

His plea is against the facts. According to the findings of enquiry report the allegations were levied/raised against the appellant in charge sheet in pursuance of recommendations of Settlement officer (Respondent No.5) which have been-proved.

(D) Incorrect, as per enquiry report allegations have been proved against the appellant.

- (E)
- The appellant being at the verge of retirement was dealt with on humanitarian grounds. Lenient view was taken and major penalty to the extent of compulsory retirement from service was inflicted on him.
- (F) His plea is against the facts.
- Incorrect. As mentioned in foregoing paras of comments (G) all codal formalities have been completed before issuance of order, therefore, decision is based on merit, facts and record.
- (H) According to enquiry report, allegations raised against the appellant in charge sheet are based on the recommendations of Settlement Officer which have been confirmed by recording statements of concerned Tehsildar and Girdawar circle as well as sitting Patwari of Patwar Halqa Mundihar.
- **(I)** Incorrect, as stated in para (G).
- (J) & (K) Incorrect, as stated in para (A).

In addition to above appellant has also attained the age of superannuation on 28.02.2023 and he has not challenged the order No. 16764/AE dated 22.09.2022 issued by respondent No. 3 vide which major penalty to the extent of compulsory retirement from service is reflect upon him

As explained above, the appeal may please be dismissed

and impugned order be upheld.

Member Board Revente & Estate Department,

> shawar. (Respondent No

Commissioner Hazara Division, Abbottabad (Respondent No. 2)

Deputy Coi Mansehra

(Respondent No. 3)

Additional Deputy Commissioner Mansehra

(Respondent No. 4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT CAMP COURT ABBOTTABAD

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- 3. Deputy Commissioner, Mansehra.
- 4. Additional Deputy Commissioner (General), Mansehra.
- 5. Settlement Officer, Mansehra.Respondents.

AFFIDAVIT.

I, the undersigned do hereby solemnly affirm and certify that contents of the comments are correct to the best of my knowledge and belief and nothing has been concealed from the Kkyber Pakhtunkhwa Service Tribunal Peshawar.

(Jamil Hussain Shah),

Superintendent Deputy Commissioner Office Mansehra / Representative on behalf of Respondents 1 to 4



OFFICE OF THE SETTLEMENT OFFICER MANSFHRA

No. 7/8-2/ SO(M)
Dated: 20/06/2022.

To

VThe Deputy Commissioner, Mansehra

Subject:

DISCIPLINARY PROCEEDINGS UNDER E & D RULES

Dear Sir,

Kindly refer to subject noted above and to state that Mr. Muhammad Ilyas (Revenue Patwari) was posted at Mouza Mundiar, Girdawar Circle Labarkot. The patwari has completed the settlement work of said mouza in the month of February 2022. The said Mouza was indicated as Completed and was forwarded to Deputy Commissioner Mansehra vide letter No 323-27/SO(M), dated 28-02-2022 for consignment. The patwari was directed time and again through Tehsildar concerned and Girdawar Circle to hand over the record of Mouza Mundiar to Deputy Commissioner Office, but he is not handing over the record. He was contacted telephonically by the undersigned but he did not bother to respond or even attend the call.

It came to the notice of undersigned that he kept the record of said mouza with him for attestation of some mutations since February 2022, which amounts to inefficiency and Misconduct.

It is therefore, requested that the above named Revenue Patwari may be suspended and disciplinary proceedings against him may be initiated under E & D Rules.

Settlement Officer,
Mansehra.

Endst: No 3 Date Even
Copy to

O1. The Director Land Records/ Chief Settlement Officer Khyber Pakhtunkhwa.

O2 PS to Senior Member Board of Revenue, Khyber Pakhtunkhwa.

O3. PS to Commissioner Hazara Division, Abbottabad.

Settlement Officer,

Remarks

Settlement Officer,

Wansehra.

nnex-

OFFICE OF THE SETTLEMENT OFFICER MANSEHRA

SO (M) Dated: 38 /02/2022.

To

The Deputy Commissioner, Mansehra.

Subject:

CONSIGNMENT OF RECORD OF 08 COMPL BEHRKUND-I, BEHRKUND-II, <u>ICHRIAN-II & LABARKOT</u>

Kindly reference to the subject captioned above and in continuation of this office letter No.6332-39SO(M) dated 26-11-2021 and to state that Settlement work in the following 08 mouzajat of different Girdawar Circles have been completed and are ready for consignment. You are requested to direct the District Kanungo of your office to take over the charge of the following completed Mouzajat.

S.No	Name of Mouza	Name of Circle	S.No	Name of Mouza	Name of Circle
03	Nelor	Bherkund-I	05	Machipol	
02	Shannai Tarli		06	Mundiar	Labarkot
03	Khawajgan.	Bherkund-II	07	Lung	Baffa-II
04	Cimbri	Baffu-III	08	Kanoog	Ichrian-II

It is further suggested that these completed mouzajat may be assigned to Service Delivery Center Manschra for direct digitization which will be easier than again incorporating transactions which will be a cumber some task. It is further requested to properly post the Revenue francaris against the aforesaid mouzajat.

> Officer, Mansehra.

No. 324-22_SO(M)

Copy to warded for information to:

1. The Senior Member Board of Revenue Khyber Pakhtunkhwa.

2. The Commissioner Hazara Division Abbottabad.

3. The Director Land Records/Chief Settlement Officer, Klyber Pakhtunkhawa. 4. All Settlement Tehsildar/Naib Tehsildar to handover the Yeord of above mentioned

Monzajat properly as per previous practice.

Manechra



OFFICE OF THE DEPUTY COMMISSIOINER, MANSEHRA.

ORDER

As reported by the Settlement Officer, Mansehra vide his letter No.718-21/SO (M), dated 20.6.2022, Mr. Muhammad Ilyas (Revenue Patwari) Mouza Mundiar, Girdawar Circle Labarkot, Tehsil Mansehra has not handed over revenue records despite completion of Settlement work of said Mouza in the month of February, 2022 and intimated to the office of Deputy Commissioner, Mansehra vide letter No.323-27/SO (M), dated 28.02.2022 for consignment. The Patwari was contacted telephonically by the SO (M) but he did not bother to respond or even attend the call. The SO (M) has further reported that Patwari concerned has kept the record of said mouza with him for attestation of some mutations since February 2022, which amounts to inefficiency and misconduct on his part.

Foregoing in view, Mr. Muhammad Ilyas (Revenue Patwari) Mouza Mundiar, Girdawar Circle Labarkot, Tehsil Mansehra is hereby suspended from service with immediate effect with the directions to report in Revenue Branch of this office.

Charge sheet and statement of allegations against him is being issued separately.

Deputy Commissioner Mansehra

Dated: 29/06/2022

No. 7305-8 /AE

Copy forwarded to:-

- 1. The Settlement Officer, Mansehra w/r to his letter No. quoted above for information /necessary action.
- 2. District Kanungo- Local office.
- 3. District Nazar, Local Office.

4. Mr. Muhammad Ilyas (Revenue Patwari) Mouza Mundiar, Girdawar Circle Labarkot, Tehsil Mansehra for immediate compliance.

Deputy Commissioner

Mansehra

OFFICE OF THE DEPUTY COMMISSIONER MANSEHRA

CHARGE SHEET

I, Adnan Khan Behttani, Deputy Commissioner Mansehra, as competent authority, hereby charge you, Mr. Muhammad Ilyas, (Revenue Patwari) mouza Mundiar, Girdawar Circle Labarkot, Tehsil – Mansehra as follows:-

- i). That as reported by the Settlement Officer, Mansehra vide his letter No. 718-21/SO(M), dated 20.06.2022 that you have completed the Settlement work of mouza Mundiar, Girdawar Circle Labarkot, Tehsil -Mansehra in the month of February, 2022. The said mouza indicated as completed and forwarded to DC-Office Mansehra vide letter No.323-27/SO (M), dated 28.02.2022 for consignment.
- ii). That you were directed time and again through Tehsildar concerned and Girdawar Circle to hand over the record of Mouza Mundiar to DC-Office, but you did not hand over the relevant revenue record.
- iii). That you were telephonically contacted by the SO (M), but you did not bother to respond or even attend the call. Beside this the SO (M) has reported that you kept the record of said mouza with you for attestation of some mutations since February 2022, which amounts to inefficiency and misconduct on your part, thus committed an act grass misconduct.
- iv). In light of the above, you are liable to be proceeded against under the Khyber Pakhtunkhwa, Government Servants (Efficiency and Discipline) Rules-2011 on account of the said lapses.
- 2. By reasons of the above, you appear to be guilty of <u>inefficient/misconduct</u> under Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule-4 of the Rules ibid.
- 3. You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the Inquiry Officer.
- 4. Your written defense, if any, should reach the Inquiry Officer within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.

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

6. A statement of allegations is enclosed.

(Adnan Khan Behttani)

Deputy Commissioner

L Mansehra

Dated: 29 / 06 / 2022.

No. 738/-33/AE

Copy forwarded to:

The ADC Mauschus alongwith copy of ibid quoted letter to conduct inquiry against the above named accused official and furnish report within 15-days positively to this office for further necessary action.

2. The District Kanungo, Local Office to assist the inquiry officer.

3. Mr. Muhammad Ilyas, (Revenue Patwari) mouza Mundiar, Girdawar Circle Labarkot, Tehsil Mansehra submit reply to the Inquiry Officer within 7-days and join the inquiry proceedings.

Deputy Commissioner Mansehra



OFFICE OF THE SETTLEMENT OFFICER MANSEHRA

No. <u>930 - 33</u> SO (M) Dated: $\partial S / 07/2022$.

The Deputy Commissioner, Mansehra.

Subject:

DISCIPLINARY PROCEEDINGS UNDER E &D RULES

Kindly refer to the subject captioned above and in continuation of this office letter No. 718-21 SO(M) dated 20-06-2022 and to enclose herewith report received from Girdawar circle Laberkot duly forwarded by concerned Revenue Officer with the recommendation to initiate criminal proceedings against the accused.

(Encl: As Above)

Settlement Officer, Mansehra.

ENDST: NO & DATE EVEN

Copy to:

1. The Director Land Records/Chief Settlement Officer, Khyber Pakhtunkhawa.

2. PS to Senior Member Board of Revenue Khyber Pakhtunkhwa.

3. PS to Commissioner Flazara Division Abbottabad,

Settlement Officer, Manschra.

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Annex-E

OFFICE OF THE DEPUTY COMMISSIONER MANSEHRA

No. 9392 /AE Dated 8 /08/2022

The Additional Deputy Commissioner (G), Mansehra.

Subject:

DISCIPLINARY PROCEEDINGS UNDER E&D RULES.

In continuation of Charge Sheet bearing No.7331-33/AE dated 29.06.2022 in respect of Mr. Muhammad Ilyas (Revenue Patwari) Mouza Mandiar, Girdawer Circle Labarkot (under suspension), a copy of letter No. 930-33/SO(M) dated 25.07.2022 received from the Settlement Officer Mansehra is forwarded herewith alongwith its enclosures for making it a part of the enquiry and submit report at the earliest.

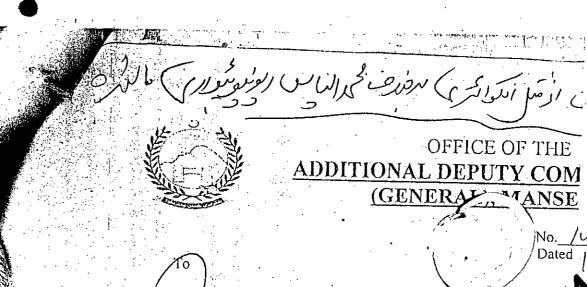
Deputy Commissioner Mansehra

No. 9393 /AE

Copy to the Settlement Officer Mansehra w/r to his letter cited above. In case Criminal proceedings are required in the matter, the same may be initiated at his end being Incharge of the Settlement Operation.

ſ

Deputy Commissioner Mansehra



Subject:

No. 109/10 (ADC (G): Dated 19/09/2022

The Deputy Commissioner, Manschra.

CHARGE SHEET AGAINST MR. MUHAMMAD ILYAS PATWARI, MOUZA MUNDIHAR, GIRDAWAR CIRCLE LABARKIOT, TEHSIL MANSEHRA.

• Reference charge sheet issued against the above named Patwari vide No.7331-33/AE, dated 29.06.2022.

Inquiry report alongwith its annexure containing (37) pages duly signed by the undersigned is enclosed herewith please.

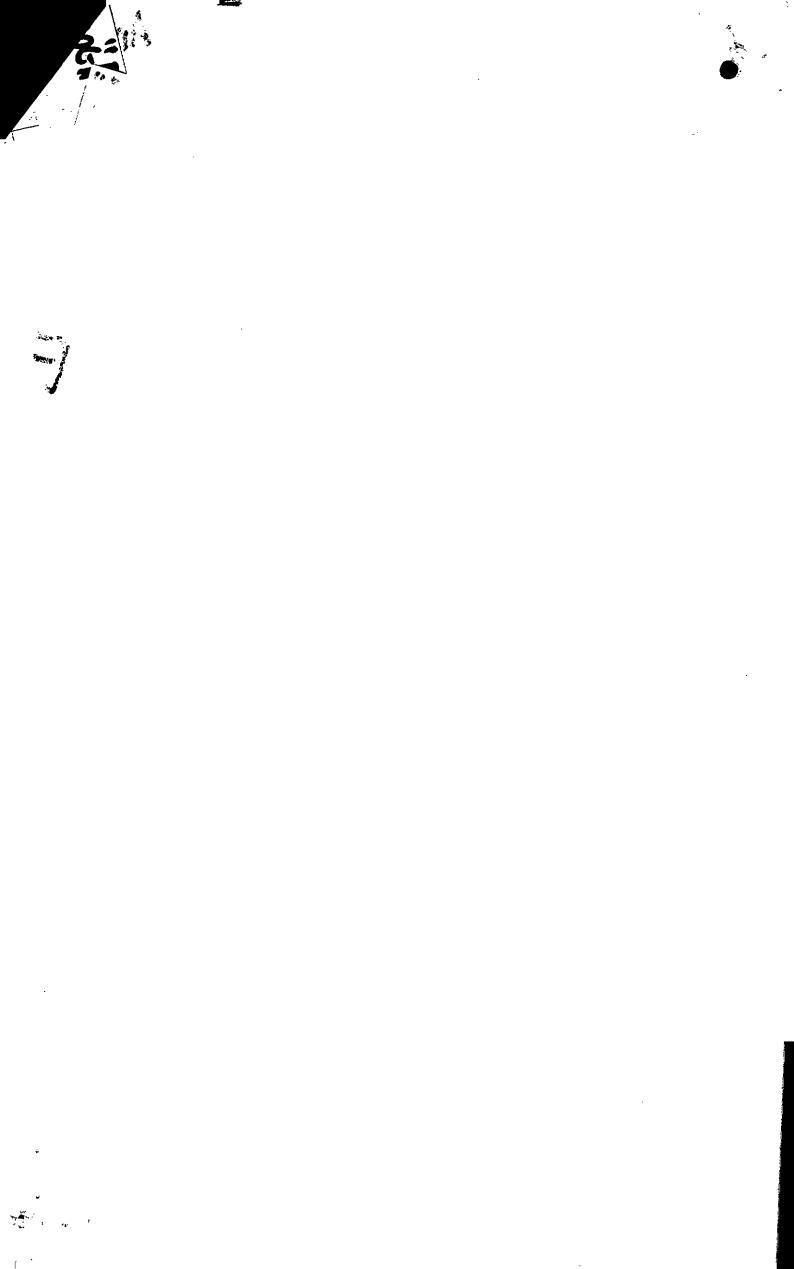
Additional Deputy Commissioner (G).

Manschra.

Examina 28/109
Dato

Media

01-03-023



SHOW CAUSE NOTICE.



I, Adnan Khan Behttani, Deputy Commissioner Mansehra, as competent authority, under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, do here serve you, Muhammad Ilyas (Revenue Patwari BPS-9) the then Halqa Mouza Mundiar, Girday Circle Laberkot, Tehsil Mansehra (under suspension), as follows:

- i. That consequent upon the completion of Inquiry conducted against you by Additional Deputy Commissioner (General), Mansehra which you were gi opportunity of hearing vide communicator No. 7331-33/AE, dated 29.06.2022; a
- iii) On going through the findings and recommendations of the Inquiry Officer, material on record and other connected papers including your defence before Inquiry Officer.

I am satisfied that you have committed the following acts/omissions specified in rule-3 of the rules:

Mis-conduct.

- 2. As a result thereof, I, as competent authority, have tentatively decided to impose you required to Show Cause as to why the penalty(s) under Rule-4 of the Khyber Pakhtunk Government Servants (Efficiency and Discipline) Rules, 2011 should not be imposed upon you also intimate whether you desire to be heard in person.
- 3. You are, therefore, required to Show Cause as to why the aforesaid penalty (s) shoul be imposed upon you and also intimate whether you desire to be heard in person.
- 4. If no reply of this Notice is received within seven days from receipt of this, it she presumed that you have no defence to put in and in that case an ex-parte action shall be taken at you.
- 5. A copy of the findings of the Inquiry Officer is enclosed.

Deputy Commissioner
Mansehra.

No. 10553/A/AE.

Dated_/5_/9/2022

Mr. Muhammad Ilyas (Revenue Patwari) the then Halqa Mouza Mundiar, Gir Circle Laberkot, Tehsil Mansehra now Revenue Branch DC-Office(under suspension) for nec action.

Deputy Commissioner
Mansehra.

Annex"H

محديث حنث دين مسترك ماميزه

جواب ستر المرنولش مبرى AE 10553/AE دريم 15/09

1 ... 1

OFFICE OF THE DEPUTY COMMISSIONER MANSEHRA

ORDER

Whereas, disciplinary proceedings were initiated against Mr. Muhammad Ilyas (Revenue Patwari BPS-9) the then Halqa Mouza Mundiar, Girdawar Circle Laberkot, Tehsil Mansehra (under suspension), under the provisions of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, on account of charges contained in the charge sheet/statement of allegations served upon him vide this office No. 7331-33/AE, dated 29.06.2022.

And whereas, the Additional Deputy Commissioner (General), Mansehra was appointed as Inquiry Officer, who conducted inquiry and submitted report vide his letter No. 10473/ADC(G), dated 14.09.2022, who held that the allegations against the said accused Patwari have been proved and recommended major penalty of compulsory retirement from service as specified in Rule-4 (b) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 upon him.

And whereas, In light of the inquiry report, the accused Patwari concerned was served with Show Cause Notice vide No. 10553/A/AE, dated 15.09.2022 to which he responded and submitted reply on 21.09.2022, which was considered. He was also heard in person.

And whereas, after considering reply of the accused official to the Show Cause notice, findings of the Inquiry Officer, the material on record and hearing him in person, the charges against the Patwari concerned have been proved, therefore, the undersigned in the capacity as Competent Authority has decided to impose Major penalty on the accused Patwari concerned.

Now therefore, in exercise of the powers conferred upon me under Rule-14 of the Khyber Pakhtunkhwa, Government Servants (Efficiency and Discipline) Rules, 2011, major penalty to the extent of "compulsory retirement" from service is hereby inflicted on Mr. Muhammad Ilyas (Revenue Patwari) the then Halqa Mouza Mundiar, Girdawar Circle Laberkot, Tehsil Mansehra with immediate effect. His suspension period is hereby treated as on duty. He is entitle for all pensionery benefit as admissible under the rules.

(Adnan Khan Belittani)

Deputy Commissioner

Mansehra

No. 16764-70 /AE

Dated: 2 /09/2022

Copy forwarded to:-

- 1. The Additional Deputy Commissioner (G), Mansehra.
- 2. The Settlement Officer, Mansehra.
- 3. The District Accounts Officer, Mansehra.
- 4. The Assistant Commissioner, Mansehra.
- 5. The Accounts Officer, Local Office.
- 6. The District Kanungo, Local Office.
- 7. Mr. Muhammad Ilyas (Revenue Patwari) the then Halqa Mouza Mundiar, Girdawar Circle Laberkot, Tehsil Mansehra.

Deputy Commissioner Mansehra



OFFICE OF THE DEPUTY COMMISSIONER MANSEHRA

ORDER

Mr. Imtiaz Ahmed, Assistant litigation Branch of this Office is hereby authorized /deputed to submit parawise comments in service appeal No.377/2023 case titled "Muhammad Ilyas versus SMBR & Others" in Khyber Pakhtunkhwa Service Tribunal Peshawar.

Deputy Commissioner Manschra

No. <u>7705</u> /Service appeal /AE Dated <u>0</u> 7 /08/2023