

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT SWAT

Service Appeal No 1020/2016

Date of Institution... 30.09.2016

Date of decision... 06.09.2017

Abrar Ahmad presently posted as Tehsildar Babozai, Swat. ... (Appellant)

Versus

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa Peshawar and others. ... (Respondents)

MR. SHAMSUL HADI,
Advocate

...

For appellant.

MR. MUHAMMAD ZUBAIR,
District Attorney

...

For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. AHMAD HASSAN,

...

...

CHAIRMAN
MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was recruited as Patwari in 1985. Later on he was promoted to as Naib Tehsildar on acting charge basis on 09.10.2009. That against this order some of his colleagues moved a departmental appeal which was decided vide order dated 18.11.2009 and the original order of promotion was kept intact to the extent of appellant. But after lapse of 7 years respondent No. 1 through an order dated 09.09.2016 withdrew earlier promotion order on the ground that promotion/regularization was made in violation of service rules and instructions without holding of Departmental Promotion Committee. Against this order a

departmental appeal was filed which was rejected on 29.09.2016 and thereafter the present appeal.

ARGUMENTS

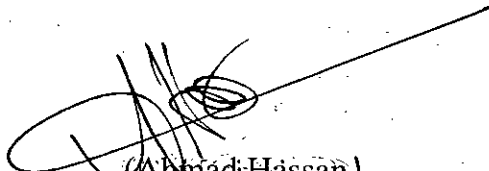
3. The learned counsel for the appellant argued the appeal on two scores. That an order of promotion once passed cannot be withdrawn on the ground that the promotion was made in violation of rules or law and in this respect the learned counsel for the appellant relied upon judgments reported as 1996-SCMR-1350 and 2004-SCMR-630. The second argument was that on the principle of *locus poenitentiae* the authority withdrawing the order must adhere to the minimum standard of due process. In this regard the learned counsel for the appellant relied upon a judgment reported as 1992-SCMR- 1420. According to the learned counsel for the appellant no chance of hearing or any notice was ever served on the appellant.

4. On the other hand the learned District Attorney argued that the original order dated 20.10.2010 was illegal and the SMBR has rightly withdrawn his earlier order.


CONCLUSION

5. There can be no two opinions about this settled proposition of law that if any irregularity or illegality is committed by the department then the sufferer should not be the civil servant and in this respect the two former reported judgments pressed into service by the learned counsel for the appellant are very much clear. Though defence of *locus-poenitentiae* is available only in those orders which are not void but before withdrawing any order the minimum standard of due process, at least, should be honored which has not been done in the instant case.

6. The nutshell of the above discussion is that the present appeal is accepted and the order dated 09.09.2016 is set aside. The appellant shall be restored to his position of acting charge basis as stood on 09.09.2016. The department is at liberty to proceed further in accordance with law while considering the appellant on acting charge basis on 09.09.2016. Parties are left to bear their own costs. File be consigned to the record room.



(Ahmad Hassan)
Member



(Niaz Muhammad Khan)
Chairman
Camp Court, Swat

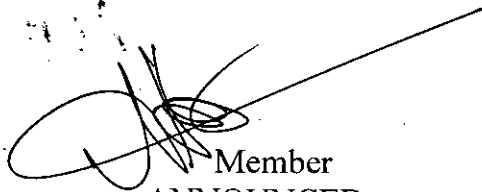
ANNOUNCED

06.09.2017.

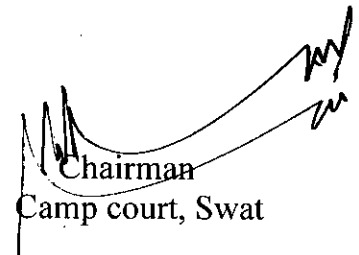
06.09.2017

Counsel for the appellant and Mr. Muhammad Zubair, District Attorney alongwith Mukhtiar Ali, Assistant Secretar for the respondents present. Arguments heard and record perused.

This appeal is accepted as per detailed judgment of today. Parties are left to bear their own costs. File be consigned to the record room.



Member
ANNOUNCED
06.09.2017




Chairman
Camp court, Swat

Ibrar Ahmad vs Govt

1020/2016

03.05.2017

Appellant in person present. Mr. Mukhtiar Ali, Superintendent alongwith Mian Amir Qadar, Deputy Attorney for the respondents also present. Due to non-availability of learned counsel for the appellant as well as incomplete bench arguments could not be heard. To come up for rejoinder and arguments on 05.07.2017 before D.B at Camp Court Swat. Status-quo be maintained.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
Camp Court Swat

10 05.07.2017

Appellant in person and Mr. Muhammad Zubair, District Attorney alongwith Mr. Mukhtiar Ali, Assistant Secretary for the respondents present. Appellant requested for adjournment as his counsel has gone abroad. Last opportunity granted. Adjourned. To come up for rejoinder and final hearing on 09.08.2017 before D.B at Camp Court, Swat. Status-quo be maintained.

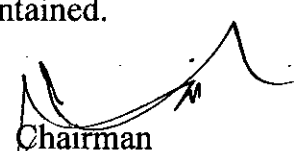

Member


Chairman
Camp Court, Swat

09.08.2017

Counsel for the appellant, Mr. Muhammad Zubair, District Attorney alongwith Mukhtiar Ali, Assistant Secretary for the respondents present. Learned counsel for the appellant seeks adjournment as similar cases are fixed for 06.09.2017. Adjourned. To come up for rejoinder and arguments on 6.9.2017 before the DB at camp court, Swat. Status quo be maintained.


Member


Chairman
Camp court, Swat


09.02.2017

Appellant with counsel, Muhammad Ibrar Assistant Secretary for respondent No. 1 alongwith Mian Amir Qadar, GP for the respondents present. Written reply by respondent No. 1 already submitted while learned GP requested for further adjournment on behalf of respondents No. 2 to 5. One more opportunity is granted subject to payment of cost of Rs. 1000/-. To come up for written reply/comments of respondents No. 2 to 5 and cost on 09.03.2017 at camp court, Swat. Status quo be maintained.


Chairman
Camp Court, Swat.

09.03.2017


Appellant with counsel and Mr. Mukhtiar Ahmad, Supdt. for respondent No. 1 alongwith Mian Amir Qadar, GP for the respondents present. Written reply on behalf of respondent No. 1 already submitted. Written reply on behalf of respondent No. 2 to 5 not submitted despite numerous opportunities including last opportunities which was further extended subject to payment of cost of Rs. 1000/-. No further opportunity is extended to respondent No. 2 to 5. The appeal is assigned to D.B for rejoinder and final hearing for 03.05.2017 at camp court, Swat. Status quo be maintained.


Chairman
Camp Court, Swat.

1020/16

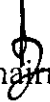
10.11.2016

Appellant in person and Mian Amir Qadar, GP for the respondents present. Requested for adjournment. To come up for written reply/comments on 09.12.2016 at camp court, Swat. Status quo be maintained.


Chairman
Camp court, Swat


09.12.2016

Appellant with counsel, M/S Mukhtiar Ali, Supdt. and Shahid Ali, Computer Operator alongwith Mian Amir Qadir, GP for the respondents present. Requested for further adjournment. To come up for written reply/comments on 06.01.2017 at camp court, Swat. Status quo be maintained.


Chairman
Camp court, Swat

06.1.2017

Appellant in person and Mr. Muhammad Ibrar, Assistant Secretary for respondents No. 1 & 5 alongwith Mian Amir Qadar, GP for the respondents present. Written reply by respondents No. 1 & 5 submitted. Learned GP requested for submission of written reply of other respondents. Last opportunity granted. To come up for written reply/comments of respondents No. 2 to 4 on 09.02.2017 before S.B at camp court, Swat. Status quo be maintained.


Chairman
Camp court, Swat

30.09.2016

Counsel for the appellant present. Learned counsel for appellant argued that the appellant is serving as Tehsildar Babuzai, Swat. That earlier appellant was transferred from the said post to the post of Naib Tehsildar Land Reforms Swat where-against appellant preferred Service Appeal No. 498/2016 wherein restraint order was issued by this Tribunal thereby facilitating the appellant to perform his duties as Tehsildar, Babuzai. That to defeat the said orders of this Tribunal, vide impugned order dated 09.09.2016, promotion/regularization order of the appellant dated 18.11.2009 was unilaterally withdrawn despite the fact that directions were issued for promotion of the appellant by respondent No. 1 containing directions for constitution of DPC in the year, 2010. That similarly placed employees including junior to appellant are serving as Tehsildars/Naib Tehsildars on acting charge basis but the appellant was singled-out with an object to defeat his service appeal referred to above and to accommodate one Shakirullah, a private respondent (No. 8) in the said appeal. That against the impugned order departmental appeal was preferred which was rejected on 29.09.2016 with a single line none speaking order and hence the instant service appeal on 30.09.2016.

That the impugned orders are against facts and law and therefore, liable to be set aside. Counsel for the appellant also argued that applicant is entitled to grant of interim relief.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 10.11.2016 before S.B at camp court, Swat as the same pertains to territorial limits of Malakand Division. Notice of application shall also be issued to the respondents for the date fixed. Status quo be maintained till then.



Security Process Fee
10.11.2016

Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1020/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	30/09/2016	<p>The appeal of Mr. Abrar Ahmad presented today by Mr. Shamsul Hadi Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	30.09.16	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>30.09.16.</u></p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE THE HON'BLE KHYBER PAKHTOONKHWA SERVICE
TRIBUNAL, PESHAWAR.**

Service Appeal No. 1020 /2016.

Ibrar AhmadAppellant

V E R S U S

Senior Member Board of Revenue and others....Respondents

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Memo of appeal along with Affidavit		1-7
2.	Addresses of the Parties.		8
3.	Copy of appointment order.	A	9
4.	Copies of office orders dated:09.10.2009 and 18.11.2009	B	10-11
5.	Copies of Notice, reply, orders of departmental authority, seniority list and minutes DPC	C	12-24
6.	Copy of impugned office order dated:09.09.2016	D	25
7.	Copy of Departmental appeal and order	E	26-29
8.	Copy of service appeal No.773/2010	F	30-47
9.	Copies of Transfer orders, service appeal and order	G	48-51
10.			
11.			
12.	Wakalat Nama.		52

Appellant

Through



Shams ul Hadi

Advocate, Peshawar.

Office: H/No.6 Near Al-Falah

Mosque, Hayat Abad, Mingora.

Clerk Cell No.0347-4773440.

Dated: 29/09/2016

①

BEFORE THE HON'BLE KHYBER PAKHTOONKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1020 /2016.

Khyber Pakhtukhwa Service Tribunal

Diary No. 1030

Dated 30-9-2016

Abrar Ahmad

Presently posted as Tehsildar Babozay Swat.....Appellant

V E R S U S

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa at Civil Secretariat, Peshawar.

ER-posted
9/3/17

② Commissioner Malakand Division at Saidu Sharif, Swat.

③ District Accounts Officer Swat, at Saidu Sharif Swat.

④ Govt of Khyber Pakhtunkhwa through Secretary Establishment/Revenue at Civil Secretariat, Peshawar.

5. Govt of Khyber Pakhtunkhwa through Chief Secretary at Civil Secretariat Peshawar.....Respondents

APPEAL UNDER SECTION 4 OF KHYBER PUKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED OFFICE ORDERS DATED:09.09.2016 AND

Filed to-day

29.09.2016 PASSED BY RESPONDENTS

Registrar

Nos.1 & 5 RESPECTIVELY.

30/9/16

PRAYER IN APPEAL:

On acceptance of this appeal the impugned Office Order dated:09/09/2016 and 29.09.2016 may kindly be set aside and the appellant may kindly be allow to continue/perform his services against the post of Tehsildar Babuzai (CCB).

Respectfully Sheweth:

FACTS:

1. That initially the appellant joined the respondent's department in year 1985 as Patwari and as such the appellant has more than 30 years of service with good record of his service career. (Copy of appointment order is annexure-A)
2. That latter on the appellant appeared in departmental exam conducted for the post of "Naib Tehsildar" and as such after passing the same, the appellant was promoted to the post of Naib Tehsildar on the basis of Own pay & Scale vide order dated:09.10.2009 and then according to his seniority and eligibility for the post, in continuation of the said order, the appellant was adjusted against the post of "Naib Tehsildar" on acting charge basis through office order dated:18.11.2009. (Copies of office orders dated:09.10.2009 and 18.11.2009 are annexure- B)
3. That against the said orders of promotion of the appellant, some of his colleagues filed departmental appeals before Resp No.1 and as such the appellant was properly intimated with written notice where in response to the same, the appellant through written reply responded the stance of others and as such the respondent No.1 through separate orders decided the said departmental appeals but office order dated:18.11.2009 was kept intact to the extant of the promotion of the appellant and as such the promotion order of the appellant got finality. (Copies of Notice, reply, orders of departmental authority, seniority list and minutes DPC are annexure-C)

4. That latter on after lapse of almost 7 years, Resp No.1 through impugned office order dated:09.09.2016, withdrawn his earlier promotion orders of the appellant without caring for the law and rules.(Copy of impugned office order dated:09.09.2016 is annexure-D)
5. That against the said order the appellant filed departmental appeal which was decided vide impugned office order dated:29.09.2016.(Copy of Departmental appeal & impugned office order dated:29.09.2016 are annexure-E)

That being aggrieved the appellant prefers this appeal on the following grounds amongst others inter-alia:

GROUND:

- A. That impugned office orders dated:09.09.2016 & 29.09.2016 passed by Resp No.1 & 5 are arbitrary, mechanical and without observing the legal formalities.
- B. That the impugned orders were passed on personal whims and wishes of the respondents because despite of the fact that the appellant was promoted to the post of Naib Tehsildar according to his seniority and that too after the same was further confirmed by the respondent/department after thoroughly examine the inter-se seniority and eligibility of all stake holders for the post of Naib Tehsildar but Resp No.1 without giving proper notice and personal hearing of the appellant passed the impugned orders which clearly showing the ill intention of Respondents.
- C. That through administrative order the appellant and others were promoted on acting charge basis to the post

of Naib Tehsildar so only the appellant promotion order was withdrawn which clearly showing the discriminatory approach of the respondents towards appellant.

- D. That the appellant was perfectly eligible for promotion to the post of Naib Tehsildar because he has passed the NT Examination and is most senior one in his cadre so withdrawal order at this stage clearly showing the ill intention of the respondent No.1.
- E. That the matter in hand is also subjudice before this august Tribunal as one of his colleague of the appellant challenged the promotion order dated:18.11.2009 of the appellant before this august Tribunal through Service Appeal No.773/2010 titled as "Kamalistan VS SMBR and others" but Resp No.1 without waiting for final conclusion of the title appeal withdrawn his earlier order which is against the law.(Copies of Service appeal is annexure-F)
- F. That the impugned order was passed by the respondent No.1 just to accommodate his blue eyed against the post of Tehsildar Babozay Swat on which the appellant is performing his duties because prior to impugned office order, the appellant was transferred to other place vide transfer order dated:03/02/2016 which was suspended by the Honble Service Tribunal in connection of Service Appeal No.498/2016 vide office order dated:12.05.2016 and the matter is still subjudice before the Hon,ble Tribunal so just to accommodate his blue eyed against the post, the respondent No.1 passed the impugned order.(Copies of Transfer orders, service appeal and order are annexure-G)

5

It is, therefore, humbly prayed that on acceptance of this appeal

- i) The impugned office order dated:09.09.2016 and 29.09.2016 may kindly be declare illegal and the same may also kindly be set aside
- ii) The appellant may kindly be declare eligible for the post of Naib Tehsildar BPS-15 and his promotion order may also be declare perfectly in accordance with law and rules.

Or

Any other relief which this august Court deems appropriate may kindly be awarded to meet the ends of justice.


Ibrar Ahmad

Through


Shams ul Hadi

Advocate, Peshawar.

Dated: 29/09/2016

(6)

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

C.M No. _____ of 2016

in

Service Appeal No. _____/2016.

Abrar AhmadAppellant

V E R S U S

Senior Member Board of Revenue and others....Respondents

Application for Suspension of impugned office orders/Notification dated:09.09.2016 & 29.09.2016 and further to allow the applicant/Appellant to perform/continue his duties/services against the post of Tehsildar Babuzai (CCB) at Swat till final disposal of the titled appeal .

Respectfully Sheweth:

1. That the appellant/appellant filed instant application along with service appeal in which no date is fixed so far.
2. That facts and grounds of the appeal may kindly be considered part and parcel of this application.
3. That prima facie the appellant has good case and is sanguine about its success because the applicant promotion order against the law & rules.
4. That if the impugned Notification dated:09.09.2016 & 29.09.2016 is not suspended at this stage the appellant will suffer irreparable loss.

So on acceptance of this application, the impugned Notifications dated:09.09.2016 & 29.09.2016 may kindly be suspended and the applicant may kindly be allow to continue/perform his services against the post of Tehsildar Babuzai (CCB) at Swat till final decision of the titled appeal.

Through

Applicant

Shams-ul-Hadi

Advocate High Court.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. _____/2016

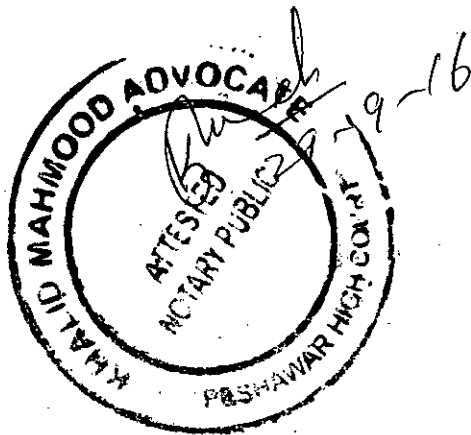
Abrar Ahmad.....(Appellant)

VERSUS

SMBR & Others.....(Respondents)

AFFIDAVIT

I, Abrar Ahmad S/o Fanosh R/o Mamglor Tehsil Babuzai District Swat, do hereby solemnly affirm and declare on oath that all the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.





DEPONENT

CNIC: 15605-2168481-9

8

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR.**

Service Appeal No. _____/2016.

Abrar AhmadAppellant

V E R S U S

Senior Member Board of Revenue and others....Respondents

ADDRESSES OF THE PARTIES

APPELLANT:

Abrar Ahmad

Presently posted as Tehsildar Babozay Swat

RESPONDENTS:

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa at Civil Secretariat, Peshawar.
2. Commissioner Malakand Division at Saidu Sharif, Swat.
3. District Accounts Officer Swat, at Saidu Sharif Swat.
4. Secretary Board of Revenue, Govt of KPK, Civil Secretariat Peshawar.
5. Govt of Khyber Pakhtunkhwa through Chief Secretary at Civil Secretariat Peshawar.

Appellant

Through

Shams ul Hadi

Advocate, Peshawar.

Dated: 29/09/2016

Better copy No. 13/9

OFFICE OF THE OFFICER ON SPECIAL DUTY, SETTLEMENT SWAT,
SAIDU SHARIF

No. 2233 / SOS-76/3.

dated 21-12-1985

OFFICE ORDER

The following 33 persons belonging to Swat District the are Matriculates and have posted the patwari examination held in December, 1985 are appointed temporary on purely adhoc basis as Patwaris in Swat Settlement against existing temporary vacancies with effect from the date of posting/assuming charge after obtaining Medical Fitness Certificate from the Medical Superintendent, Swat, Saidu Sharif. Their services may be terminated at any time without notice or assigning any reason:-

<u>S. No.</u>	<u>Name of Patwari Candidate.</u>
1.	Abdul Jabbar s/o Aziz Rahman r/o Bara Bandi, Kabal.
2.	Abdul Nasir s/o Abdul Malik r/o Kabal.
3.	Abdul Rahim s/o Jamair Mian r/o Madyan, Bahrain.
4.	Ahmad Khan s/o Fateh Khan r/o Ningolai, Kabal.
5.	Akbar Hussain s/o Shahi Said r/o Babozai.
6.	Abrar Ahmad s/o Farosh r/o Minglawar, Babuzai.
7.	Bakht Ghafar Shah s/o Sakrawat Shah r/o Nawekilay, Fanjpeo Bhr.
8.	Faiz Nazars/o Mirza Shah r/o Khaista Baba, Buner.
9.	Faizul Manan s/o Abdul Hanan r/o Nawagai, Buner.
10.	Fazal Akbar s/o Shah Gul Ambar r/o Gwalera, Matta.
11.	Fazal Ali s/o Shah Laben Mian r/o Chitor, Babuzai.
12.	Fazal Ghaffar s/o Amir Mahmood Mian r/o Charbagh.
13.	Gul Nazar s/o Bakht Zar r/o Bacha Abad, Fatehpur, Khwaza Khela.
14.	Habib Ahmad s/o Ainullah r/o Kockaray, Babuzai.
15.	Habibullah s/o ullah r/o Mingora, Babuzai.
16.	Hazrat Sher s/o Bakht Afsar r/o Tekadarai, Khwaza Khela.
17.	Husain Ahmad s/o Jehanzeb r/o Saidu Sharif-Babuzai.
18.	Ihsanullah s/o Faqir Zada r/o Bihar, Khwaza Khela.
19.	Khadim Khan s/o Alamzeb r/o Bara Bandi, Kabal.
20.	Lal Wahid s/o Khan Toti r/o Saidu Sharif, Babozai.
21.	Mohammad Karim s/o Rehmat Gul r/o Kuza Bandi, Kabal.
22.	Mohammad Khan s/o Barakzai r/o Gwalera, Matta.
23.	Mohammad Salim s/o Hazrat Umar r/o Rodingar, Matta.
24.	Niamatullah s/o Wali Muhammad r/o Kulyari, Buner.
25.	Said Ali s/o Ilahi Dad r/o Panigram, Bahrain.

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26. SaifulMaluk s/o Kharonay r/o Amankot, Babozai.
27. Saniullah s/o Haji Mullah r/o Kulyari, Buner.
28. Sar Mir Khan s/o Bahadur Khan r/o Karapa, Buner.
29. Shamsul Huda s/o Manzaray r/o Kotli, Kabal.
30. Sharif Khan s/o Afrin Khan r/o Ser. Charbagh.
31. Sher Akbar s/o Khairati r/o Amankot, Babozai.
32. Siraj Ahmad s/o Mohibullah r/o Chail, Madyan, Bahrain.
33. Talimuddin s/o Jan Bakht R/o Didhara, Kabal.

Sd
O.S.D, Settlement Swat.

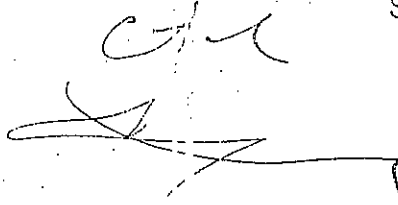
No. 2234-42 / SOS-76/3.

dated 21-12/1985

Copy forwarded for information and necessary action to:-

1. The Extra Assistant Settlement Officer, Swat.
2. The District Accounts Officer, Swat.
3. All four Settlement Tehsildar, Swat.
4. Offices Nazir.
5. Office Kanungo.
6. Personal Files / Officials concerned.

Sd
O.S.D, Settlement Swat,
Saidu Sharif, Gulkada.



ATTESTED



GOVERNMENT OF NWFP
REVENUE & ESTATE DEPARTMENT

Dated Peshawar the 10/10/2009
D.O. No. 100/2009
Collector, Swat.

ORDER

No. _____ /Admn:V/PF(A) With the approval of Competent Authority Mr. Ibrar Ahmad Kanungo (BPS-9) Dir Upper is hereby transferred and posted as Naib Tehsildar Charbagh District Swat (Own Pay & Scale) against vacant post with immediate effect.

SW-6259

Vendor No-30072070

By Order of,
Senior Member
Board of Revenue NWFP

No. 2600-07 /Admn:V/PF(A)

Copy to:-

1. Commissioner, Malakand Division, Saidu Sharif.
2. District Officers (R&E)/Collectors, Swat & Dir Upper.
3. District Accounts Officers Swat & Dir Upper.
4. Official concerned.
5. Personal File.
6. Office Order.

Assistant Secretary (Estt)
Board of Revenue NWFP

ATTESTED

etc

(11)
(12)

GOVERNMENT OF NWFP,
REVENUE & ESTATE DEPARTMENT.

Dated Peshawar the 18 /11/2009.

ORDER.


No. 30405 /Admn: V/PF (A). In partial modification of this office order bearing No. 26002-09/Admn: V/PF (A) dated 09-10-2009. The words Own Pay & Scale may be read as acting charge (BPS-14) basis with immediate effect in the public interest.

Sd/-
Senior Member,
Board of Revenue, NWFP

No. 30406-11 /Admn: V/PF (A).

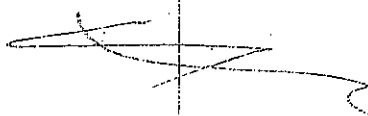
Copy forwarded to the: -

1. Commissioner, Malakand Division, Saiglu Sharif, Swat.
2. District Officers (R&E), Swat & Dir Upper.
3. District Accounts Officers, Swat and Upper Dir.
4. Official concerned.
5. Personal file.
6. Office order file.


Senior Member,
Board of Revenue, NWFP.


ATTESTED

c.f.c



MOST IMMEDIATE
COURT MATTERS.

GOVERNMENT OF KHYBER PAKHTUNKHWA
REVENUE AND ESTATE DEPARTMENT

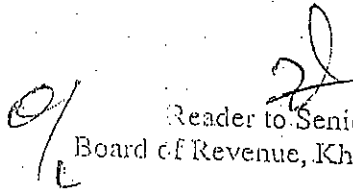
No. 407 / JUDG. SMBR
Peshawar dated the 21 / 03 / 2011.

The District Officer, (Revenue & Estate)
Collector SUZAT

SUBJECT: APPEARANCE BEFORE THE SENIOR MEMBER, BOARD OF REVENUE,
KHYBER PAKHTUNKHWA IN UNLAWFUL PROMOTION CASES.

I am directed to enclosed a notice on the subject, which may kindly be served upon Mr. Bashir Ahmad P.T. Kalan with the direction to appear before the Senior Member, Board of Revenue, Khyber Pakhtunkhwa on 26-3-2011.

You are further requested to return the served notice before the date fixed for hearing.


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


ATTESTED

(13) (16)

(17)

BEFORE THE HONOURABLE SENIOR MEMBER BOARD OF REVENUE,
KHYBER PAKHTUNKHWA, PESHAWAR.

Subject: NOTICE DATED 21.3.2011

Sir,

In reference to above referred notice, it is submitted that I joined the Revenue Department in the year 1985 and has more than 25 years service with good record at my credit. I have already passed Departmental exam for Naib Tehsildar and also Graduate Degree holder. There are no complaint against me regarding my performance duty till date.

I have performed my duty efficiently in far flung areas and especially in Earth-Quack affected areas in the year 2005.

I have promoted on acting charge basis as N/T in the year 2009 by the competent authority keeping in view my excellent performance eligibility plus 25 years service at my credit.

Since, I have been working for the last 2-1/2 years as N/T which created valuable rights in my faovur under the principle of Locus Poenetentiae and as such my promotion order could not be withdrawn under the above referred principle as held by the Supreme Court of Pakistan in various Judgments.

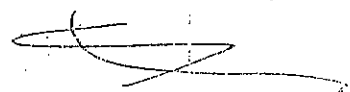
There is a proper procedure for withdrawing/ canceling the promotion order and keeping in view those provisions of law my promotion order could not be withdrawn on the basis of a notice alone and by ignoring the mandatory provision of rules, regulation and law.

That if in view of your good-self, there is anything wrong with my promotion order then for that I can not be penalized because the august Supreme Court held in many cases that the authority can not claim lapses in its own orders.

Since the matter of my promotion is already subjudice before the Honourable Service Tribunal Peshawar in Appeal No.773/2010 in which the next date is 21.7.2011. Therefore, it would be appropriate to wait for the decision of legal forum meant for such dispute, because the

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August Service Tribunal is the higher forum created under the Article-212 of the Constitution.


It is, therefore, requested that keeping in view the above submission the above referred notice may very kindly be withdrawn/dropped or at-least the same may be held in abeyance till the decision of the Service Tribunal to avoid further complication and multiple litigation.

Yours Sincerely



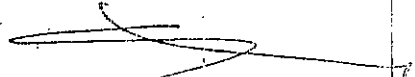
Abrar Ahmad
Naib Tehsildar
Kalam, Swat.

04/06/2011



ATTESTED.

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① #15

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

Case No. 78/2010
Date of Institution 14/01/2010
Date of Decision 18/03/2010

Department Appeal of Muhammad Amin Girdawar Circle, Charbagh District
Swat..... Appellant

ORDER

This is a departmental appeal/representation filed by Muhammad Amin Girdawar Circle, Charbagh District, Swat against the order bearing No. 26002/Admn; V/P F(A) dated 09/10/2009 and No. 30405/Admn; V/P.F (A) dated 18/11/2009, whereby Abrar Ahmad Kanungo was posted as Naib Tehsildar Charbagh (Own Pay & Scale) against vacant post and later on converted the words (Own Pay & Scale) as Acting Charge Basis (BPS-14).

Briefly the facts as mentioned in the appeal are that the appellant is senior most regular Kanungo of Malakand Division and his name appears at S. No. 13 of the seniority list of Kanungo of Malakand Division as stood on 31/12/2008 issued by the Board of Revenue NWFP. The Kanungo at S. No. 1 to 17 of the list in question have already been promoted as Naib Tehsildars. The appellant has now come with request that he is senior most Kanungo of Malakand Division and has also passed the prescribed departmental examination of Naib Tehsildars and is eligible for promotion as Naib Tehsildar on regular basis, but was ignored.

Appellant present and heard. Comments offered by the Assistant Secretary (Estt.) Board of Revenue NWFP and District Officer (Revenue & Estate)/Collector, Swat as well as record of the case file perused.

From perusal of the case file it would be evident that the appellant is senior most Kanungo of Malakand Division and has passed the departmental examination of Naib Tehsildar and deserved to be promoted as Naib Tehsildar according to the prescribed rules as he fulfills the requisite qualification. The appeal of the appellant is therefore accepted with the directions to the Commissioner Malakand Division to convene a meeting of Departmental Promotion Committee within a fortnight positively and consider the promotion of the appellant as Naib Tehsildar on regular basis against the vacant post in Malakand Division strictly on merits/law.

ANNOUNCED
18/03/2010

~~ATTESTED~~

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

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

Case No. 289/2010.
Date of Institution, 20/10/2010.
Date of Decision, 20/10/2010.



Kamilistan Girdawar Circle, Kabal District Swat

Petitioner

Versus

Commissioner, Malakand Division

Respondent

ORDER

This is a review petition against this court order dated 18/03/2010, presented by Kamilistan Girdawar Circle Kabal, District Swat, vide which the appeal/representation of the petitioner was accepted and the Commissioner, Malakand Division was directed to hold a Departmental Promotion Committee Meeting and consider the petitioner for promotion as Naib Tehsildar (BPS-14) on regular basis against the vacant post.

Brief facts of the case are that the petitioner Kamilistan had filed an appeal/representation before this court wherein he had prayed that he was the Senior most Kanungo of Malakand Division and his name existed at S. No. 18 of the seniority list of Kanungos of Malakand Division as stood on 21/12/2008 issued by the Board of Revenue, Khyber P. Khunkhwa. Out of which Kanungos at S. No. 1 to 17 had been promoted against the post of Naib Tehsildars (BPS-14) and the appellant was at the top of the seniority list and was eligible for promotion as Naib Tehsildar (BPS-14) on regular basis against the vacant post. The appeal of the appellant was considered and accepted by this court with the directions, to the Commissioner, Malakand Division to call for Departmental Promotion Committee Meeting and consider the petitioner for promotion to the post of Naib Tehsildar (BPS-14) on regular basis against the vacant post vide this court order dated 18/03/2010. Accordingly, the petitioner approached the Commissioner, Malakand Division for the purpose time and again, but in vain. Lastly, the Commissioner, Malakand Division told the petitioner that he has no powers to call for Departmental Promotion Committee Meeting for promotion of the petitioner to the post of Naib Tehsildar (BPS-14) on regular basis. The petitioner has now come with the prayer that the order dated 18/03/2010 passed by this court may kindly be reviewed and the petitioner be promoted as Naib Tehsildar (BPS-14) on regular basis instead of directions to the Commissioner, Malakand Division for holding Departmental Promotion Committee Meeting.

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Petitioner is present and heard. Record of the case file perused which reveals that the petitioner is senior most Kanungo of Malakand Division. He has passed the prescribed Departmental Examination of Kanungo and Naib Tehsildar in the year 1996 and 2007 respectively. Moreover several posts of Naib Tehsildars are reported to be lying vacant in Malakand Division. According to the Tehsildari and Naib Tehsildari Service Rules 2008, 30% quota of the posts have been reserved for promotion of Kanungos to the post of Naib Tehsildars (BPS-14). The appellant being senior most Kanungo of Malakand Division is required to be promoted to the post of Naib Tehsildar (BPS-14) against the quota of Kanungos meant for promotion of Naib Tehsildars on regular basis.

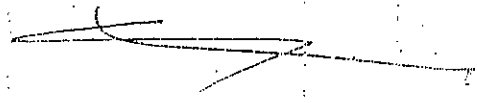
In light of the above facts, the present review petition is accepted and the Petitioner is promoted as Naib Tehsildar (BPS-14) against Kanungo quota on regular basis with immediate effect.

ANNOTNCED.
20/10/2010


(AHSANULLAH KHAN)
SENIOR MEMBER,
BOARD OF REVENUE,
MULDER PAKHTUNKHWA.


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Parties of the case are that the appellant was appointed as Settlement Officer in the Settlement Operation (Patwar) on 18.10.1986; he continued to serve as Settlement Officer till 31.12.1996. Due to winding up of the Settlement Operation (Patwar) he was relieved from duty. Thereafter he was adjusted as Patwar in District Upper Dir on 20.01.2006. He was promoted to the post of Kanungo on 08.03.2009. He filed a Departmental Appeal before the Senior Member, Board of Revenue, Khyber Pakhtunkhwa for grant of back benefits from the date of appointment in Settlement Operation (Patwar) and termination w.e.f 18.10.1986 to 31.12.1996 and condonation of break in service for pensionary benefits.

Parties summoned and heard, record perused.

Senior Member,
Board of Revenue,
Khyber Pakhtunkhwa

ATTESTED

1. Hazrat Hussain Kanungo.
2. Jamil-ul-Hadi Kanungo.
3. Sahibzada Kanungo.
4. Habib-ur-Rehman Kanungo.
5. Abrar Ahmad Kanungo.

Muhammad Riaz Kanungo (RPS - 11) Upper Dir submitted departmental appeal against the seniority list of Kanungos of Malakand Division for the year 2010 issued by Commissioner, Malakand Division. The appeal submitted that he was appointed as Patwar in the year 1986 and was promoted to the post of Kanungo in the year 2007, promoted to the post of Naib Tehsildar in the year 2009. He became senior to the following officials:

Departmental Appeal No.	104/2012
Date of Institution	13.07.2012
Date of Decision	08.09.12

Hazrat Hussain District Kanungo, Lower Dir.

VERSUS

Muhammad Riaz Kanungo District Lower Dir.

IN THE COURT OF SENIOR MEMBER BOARD OF REVENUE, KHYBER PAKHTUNKHWA

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The Senior Member Board of Revenue Khyber Pakhtunkhwa accepted his appeal and condoned the period w.e.f 31.12.1996 to 19.04.2006 only for the purpose of pensionary benefits by granting him 3307 days extra ordinary leave without pay.

So as to his seniority over the others as mentioned in Departmental list is concerned, the position will be as under:-

S. NO.	NAME	DATE OF APPOINTMENT AS PATWAR	DATE OF PROMOTION TO THE POST OF M.A. P.T.
1.	Hazart Hussain	31.08.2005	14.04.2009
2.	Jamil-ul-Hadi	6.04.2007	14.04.2009
3.	Sahibzada	2.06.2007	14.04.2009
4.	Habib-ur-Rehman	2.01.2008	14.04.2009
5.	Abrar Ahmad	22.12.1985	10.06.2009

From perusal of above panel records that the officials at S. No. 1 to 4 were promoted earlier to the appellants furthermore, they belong to District Lower Dir, while the appellant is District Upper Dir. Similarly Mr. Abbas Ahmad Kanungo who belongs to District Upper Dir and his date of appointment as patwari is 22.12.1985 while the date of adjustment as patwari of appellant is 26.01.2006. If he is granted seniority of the Settlement Operation Mardan from 18.10.1986 which was not granted by any forum then too he is junior to respondent No. 5. Furthermore, he was not promoted to the post of M.A. P.T. rather only posted as M.A. P.T. in (Own Pay & Scale).

In view of the above, there is no force in the departmental appeal. Dismissed accordingly without cost.

ATTESTED

14/10/09
Secretary
Board of Revenue,
Khyber Pakhtunkhwa

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ATTESTED

SECRETARY
BOARD OF REVENUE
KHYBER PAKHTUNKHWA

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20/01/2014 09:43:1139

DDO UPPER DIR

No 209 /DC/Estt:(Seniority list)

Dated Upper Dir the 29 /01/2014

From:

The Deputy Commissioner,
Dir Upper.

To

The Commissioner,
Malakand Division Saidu Sharif Swat.

Subject:

DIVISIONAL SENIORITY LIST OF KANUNGOS (SPS-11) OF
MALAKAND DIVISION AS STOOD ON 31/12/2013

Memo:

Reference your letter No. 502-08/2/16-Kanungos/Estt: dated
15/01/2014 on the subject noted above.

No such promotion/appointment of Kanungos during the period
from 01/07/2012 to 31/12/2013 has been made in District Dir Upper, however the
required seniority list of Kanungos in respect of District Dir Upper is enclosed for further
necessary action as desired please.

Encl: 01

Deputy Commissioner
Dir Upper

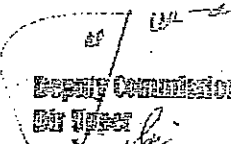

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PRIORITY LIST OF REGULAR KANUNGO IN RESPECT OF DISTRICT DIR UPPER AS STOOD ON 31/12/2018

#	Name of Official	Qualification	D/o Birth	Domicile	Date of 1 st entry into Govt. Service	Date of entry into Govt. Service as Patwari	Date of regular appointment/promotion to the present post	Method of appointment	Remarks
1	Niamat Ullah	F.A	02/02/1963	Buner	22/12/1985	22/12/1985	01/10/2007	By promotion	Transferred to District Buner as NT (OPS)
2	Abrar Ahmad	B.A	15/04/1967	Swat	22/12/1985	22/12/1985	10/06/2009	-do-	Transferred to District Swat as NT (OPS)
3	Muhammad Riaz	F.A	20/11/1958	Mardan	01/02/1988	20/01/2006	10/06/2009	-do-	Transferred to Commissioner Office Swat
4	Shaukat Ali	SSC	02/02/1964	-do-	12/06/2007	12/06/2007	10/06/2009	-do-	---
5	Abdur Rashid	F.A	09/11/1979	Peshawar	12/06/2007	12/06/2007	28/09/2010	-do-	---
6	Asef Ullah	B.A	25/11/1983	-do-	12/06/2007	12/06/2007	28/09/2010	-do-	---
7	Sajjad Ahmed	F.A	13/09/1976	Charsadda	12/06/2007	12/06/2007	28/09/2010	-do-	---

ATTESTED


 Deputy Commissioner
 Dir Upper Dir

310 UPPER DIR

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GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

MINUTES OF THE DEPARTMENTAL PROMOTION COMMITTEE MEETING REGARDING PROMOTION OF KANUNGO (BPS-11) TO THE POST OF DISTRICT KANUNGO AND DISTRICT REVENUE ACCOUNTANT (BPS-14) IN DISTRICTS SWAT, SHANGLA AND DIR UPPER HELD ON 07.02.2014 AT 10.00 AM UNDER THE CHAIRMANSHIP OF SECRETARY REVENUE & ESTATE DEPARTMENT, KHYBER PAKHTUNKHWA.

A meeting of Departmental Promotion Committee was held on 07.02.2014 at 10.00 am in the office of Secretary Revenue & Estate Department under his Chairmanship for consideration of promotion of Kanungo (BPS-11) against vacant posts of District Kanungo and District Revenue Accountant (BPS-14) one each in Districts Swat, Shangla and Dir Upper.

The following attended:-

- | | |
|--|-----------------|
| 1. Mr. Chulam Muhammad
Secretary-I, Board of Revenue | Member |
| 2. Mr. Muhammad Tahit,
Director, Land Records, | Member |
| 3. Mr. Niaz Muhammad Khan,
Assistant to Commissioner (Rev/GA),
Malakand Division | Co-opted Member |
| 4. Muhammad Ajmal
Assistant Secretary (Estt)
Board of Revenue | Secretary |

The Committee examined Seniority List and record of Kanungos of Districts Swat, Shangla and Dir Upper and made the following recommendations:-

Item No. 1.

Promotion to the post of District Kanungo and District Revenue Accountant BPS-14 in District Swat.

1	Mr. Iqbal Hussain Kanungo (BPS-11)	He was considered and found suitable for promotion to the post of District Kanungo (BPS-11) on regular basis.
2	Mr. Akbar Badshah Kanungo (BPS-11)	He was considered and found suitable for promotion to the post of District Revenue Accountant (BPS-14) on regular basis.

Item No. 2.

Promotion to the post of District Kanungo and District Revenue Accountant BPS-14 in District Shangla.

S.No.	Name of official	Recommendation
1	Mr. Bakht Naseeb Kanungo (BPS-11)	He was considered and found suitable for promotion to the post of District Revenue Accountant (BPS-14) on regular basis.

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ATTENTION

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Item No. 3.

Promotion to the post of District Kanungo and District Revenue Accountant BPS-14 in District, Dir Upper.

1	Mr. Niamatullah Kanungo (BPS-11)	He was considered and promoted to the post of District Kanungo (BPS-14) on regular basis.
2	Mr. Abrar Ahmad	His case was discussed and it was observed that seniority list provided by Deputy Commissioner, Dir Upper and Commissioner, Malakand shows that Abrar Ahmad Kanungo is senior to Muhammad Riaz Kanungo whereas the seniority list for the year 2011 issued by District Officer (R&E) Collector, Dir Upper shows that Muhammad Riaz is senior to Abrar Ahmad. Representative of Commissioner, Malakand was requested to clarify the position as soon as possible. The Departmental Promotion Committee will be convened once the requisite clarification is received.

(Muhammad Tahir)
Director, Land Records,
(Member)

(Ghulam Muhammad)
Secretary-I
Board of Revenue,
(Member)

(Muhammad Ajmal)
Assistant Secretary (Estt)
Board of Revenue
(Secretary)

Niaz Muhammad Khan
Assistant to Commissioner (Rev/GA),
Malakand Division
(Co-opted Member)

(Waqar Ayub) 7-2-2014
Secretary,
Revenue & Estate Department
(Chairman)

ATTESTED

(Signature)

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OFFICE OF THE
COMMISSIONER MALAKAND DIVISION
SAIDU SHARIF SWAT

No. 1151 / 2014-2015
Dated 17 / 02 / 2014

To

The Assistant Secretary (Estt),
Board of Revenue, Revenue & Estate Deptt,
Khyber Pakhtunkhwa, Peshawar.

Subject:- MEETING OF DPC FOR PROMOTION OF KANUNGO

Memorandum

Reference verbal directions to the representative of this office in the DPC meeting held on 07/02/2014.

Clarifications regarding the seniority of M/S Muhammad Riaz and Abrar Ahmad, Kanungos are as under:-

1. Mr. Muhammad Riaz, Kanungo was shown at S.No 25 and Mr. Abrar Ahmad, Kanungo at S.No.28 in the Tentative Seniority List of Kanungos of Malakand Division as it stood on 31.12.2010. On the objection Mr. Abrar Ahmad who was aggrieved, a committee constituted for removal of the objections (Copy enclosed as Annex "A") it was observed that the date of promotion as Kanungo of all four officers is 10.06.2009. Thus their inter se seniority is to be determined on the basis of their services in the lower cadre.

Their dates of appointment as Patwari are:-

Mr. Abrar Ahmad.....	22.12.1985
Mr. Muhammad Riaz.....	20.01.2006
Mr. Shaukat Ali.....	12.06.2007
Mr. Arshad Khan.....	12.06.2007

2. Final S/List of Kanungos of Malakand Division as it stood on 31.12.2010 was issued (Copy enclosed as Annex "B") in which Mr. Abrar Ahmad was placed at S.No.27, shown senior to Mr. Muhammad Riaz at S.No. 28 in light of the recommendations of the committee.
3. The Departmental Appeal No. 104/2012 lodged by Mr. Muhammad Riaz in the Court of Senior Member Board of Revenue has been dismissed vide Decision dated 28.03.2012 (Copy enclosed as Annex "C").

Encl:As above.

SECRETARY TO COMMISSIONER
MALAKAND DIVISION
PH/0346 924058

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GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

Peshawar Dated 9/09/2016

ORDER

No. Estt:V/PF/(Abrar)/ 22670 Whereas, Abrar Ahmad was appointed to the post of Naib Tehsildar on 18.11.2009 on acting charge basis through administrative order without holding of Departmental Promotion Committee meeting.

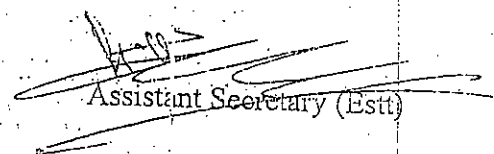
NOW THEREFORE, in pursuance of order passed by Senior Member, Board of Revenue on 01.09.2016 the promotion / regularization order bearing No. 30405-11/ Adm:V/PF(A), dated 18.11.2009 being made in violation of Service Rules and instructions governing promotions is hereby withdrawn with immediate effect.

By Order of
Senior Member

No. Estt:V/PF/(Abrar)/ 22671-74

Copy forwarded to the:-

1. Commissioner, Malakand Division.
2. Deputy Commissioner, Swat and Dir Upper.
3. District Accounts Officer, Swat and Dir Upper.
4. Official concerned.


Assistant Secretary (Estt)


ATTESTED


etc

Amir
"E" (98)
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BEFORE THE CHIEF SECRETARY KHYBER PAKHTUNKHWA AT PESHAWAR

Subject: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED OFFICE ORDER DATED:09.09.2016 THROUGH WHICH PROMOTION ORDER AS "Naib Tehsildar" OF THE PETITIONER DATED 09.10.2009 & 18.11.2009 WAS WITHDRAWN.

Respectfully Sir:

1. That initially the appellant joined the respondent's department in year 1985 as Patwari and as such the appellant has more than 30 years of service with good record of service career.(Copy of appointment order is annexure-A)
2. That latter on the appellant appeared in departmental exam conducted for the post of "Naib Tehsildar" and as such after passing the same; the appellant was promoted to the post of Naib Tehsildar on the basis of Own pay & Scale vide order dated:09.10.2009 and then according to his seniority and eligibility for the post, in continuation of the said order, the appellant was adjusted against the permanent post of "Naib Tehsildar" on permanent basis through office order dated:18.11.2009.(Copies of office orders dated:09.10.2009 and 18.11.2009 are annexure-B).
3. That against the said orders of promotion of the appellant, some of his colleagues filed departmental appeals before Resp No. and as such the appellant was properly intimated with written notice where in response to the same, the appellant through written reply responded the stance of others and as such the

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respondent No.1 through separate orders decided the said departmental appeals but office order dated:18.11.2009 was kept intact to the extent of the promotion of the appellant and as such the promotion order of the appellant got finality.(Copies of Notice, reply, orders of departmental authority, seniority list and minutes DPC are annexure-C)

4. That latter on after lapse of almost 7 years, Resp No.1 through impugned office order dated:09.09.2016, earlier promotion orders of the appellant were withdrawn without caring for the law and rules.(Copy of impugned office order dated:09.09.2016 is annexure-D)

That being aggrieved the appellant prefer this appeal on the following grounds amongst others inter-alia:

GROUNDS:

- A. That impugned office order dated:09.09.2016 passed by Resp No.1 is arbitrary, mechanical and without observing the legal formalities.
- B. That the impugned order was passed on personal whims and wishes of the respondent No.1 because despite of the fact that the appellant was promoted to the post of Naib Tehsildar on seniority cum fitness and that too after the same was further confirmed by the respondent/department after thoroughly examine the inter-se seniority and eligibility of all stake holders for the post of Naib Tehsildar so after issuing the final seniority list and conducting the meeting of the Departmental Promotion Committee the promotion order was confirmed but Resp No.1 without giving proper notice and personal hearing of the appellant passed the impugned order which clearly showing the ill intention of Resp No.1.

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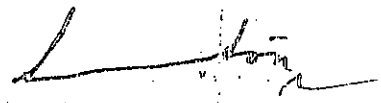
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C. That the impugned order was passed by the respondent No.1 just to accommodate his blue eyed against the post of Tehsildar Babozay Swat on which the appellant is performing his duties because prior to impugned office order, the appellant was transferred to other place vide transfer order dated:03/02/2016 which was suspended by the Honble Service Tribunal in connection of Service Appeal No.498/2016 vide office order dated:12.05.2016 and the matter is still subjudice before the Honble Tribunal so just to accommodate his blue eyed against the post, the respondent No.1 passed the impugned order.

D. That the promotion order of the appellant and others got finality, and only the withdrawal of appellant's promotion order is clearly showing the discriminatory approach of the Resp No.1 towards appellant

It is, therefore, humbly prayed that on acceptance of this departmental appeal, the impugned office order dated:09.09.2016 may kindly be declare illegal and the same may also kindly be set aside.

Appellant



Abrar Ahmad

Tehsildar Babozay, Swat

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GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

No. Estt:V/PF/Abrar Ahmad/MKD/23958
Peshawar dated the 23/09/2016


To

Mr. Abrar Ahmad
Tehsildar Babozai (CCB) Swat.

SUBJECT: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED OFFICE ORDER
DATED 09.09.2016 THROUGH WHICH PROMOTION ORDER AS NAIB
TEHSILDAR OF THE PETITIONER DATED 09.10.2009 AND 18.11.2009
WAS WITHDRAWN.

Your departmental appeal dated 15.09.2016 on the subject has been
examined and dismissed by the Appellate Authority.


Assistant Secretary (Estt)


Allsew

Annexure "F"

30

BEFORE THE N.W.F.P. SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 773 /2010

Kamalistan

VS

SMBR & Others.

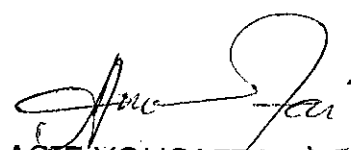
INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Appeal	---	1 - 3
2.	Copy of Seniority List	A	4 - 6
3.	Copy of Revised Seniority List	B	7 - 9
4.	Copy of Order dated. 23.12.2008	C	10
5.	Copy of Order dated 10.01.2009	D	11
6.	Copy of Order Dated 9.10.2009	E	12
7.	Copy of Order dated 18.11.2009	F	13
8.	Copy of Order dated 18.11.2009	G	14
9.	Copy of Appeal	H	15
10.	Copy of Order dated 18.3.2010	I	16
11.	Vakalat Name	---	17

KAMALISTAN

THROUGH:


ATTESTED


M. ASIF YOUSAFZAI
ADVOCATE


PIR IMAMUDDIN
ADVOCATE

31

BEFORE THE N.W.F.P. SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 773 /2010

N.W.F.P. Service Tribunal
Board of Revenue
Circular No. 828
Dated 16/4/10

Mr. KAMALISTAN, Girdawar,
Circle Kabal, Swat.

APPELLANT

VERSUS

1. The Senior Member Board of Revenue, NWFP, Peshawar.
- ② The Commissioner, Malakand Division, Malakand.
3. Te D.O.R & E.C, Swat.
4. Mr. Abrar Ahmad, Naib Tehsildar (OPS),
Charbagh, Swat.

RESPONDENTS

*Respondent No. 2 should
be set aside vide order
dated 11.2.2010*

**APPEAL UNDER SECTION-4 OF THE NWFP
SERVICE TRIBUNAL ACT 1974 AGAINST THE
APPELATE ORDER DATED 18.3.2010
WHEREBY THE IMPUGNED ORDERS DATED
23.12.2008, 10.01.2009 AND 18.11.2009 HAVE
NOT BEEN SET ASIDE DESPITE OF FULL PROOF
AND EVIDENCE.**

PRAYER:

16/4/10

THAT ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER DATED 23.12.2009 AND 18.11.2009 MAY BE SET ASIDE BEING PASSED IN VIOLATION OF RULES, SENIORITY MANNER. THE RESPONDENTS MAY FURTHER PLEASE BE DIRECTED TO CONSIDER THE APPELLANT FOR PROMOTION AS N.T. BEING QUALIFIED, ELIGIBLE AND SENIOR MOST. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS PROPER THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

R. SHEWETH;

ATTESTED

1. That the appellant joined the Revenue Department on 06.04.1981 and regularly promoted as Girdawar on 29.06.2007. As the officials from S.No.1 to 17 have already been stood

promoted, therefore, the appellant becomes at S.No.1 of the seniority list of Girdawar. Moreover the private respondent No.4 joined the Revenue Department on 22.12.1985 and is at S.No.40 of the seniority list of Patwaris as stood on 26.5.2008. Copies of the Seniority Lists in which all the dates are mentioned, are attached as Annexure-A & B.

2. That the private resplendent No.4, despite being junior most, was firstly promoted as Kanungo (BPS-9) on acting charge basis on 23.12.2008 and 10.01.2009. This order was totally based on favoritism and there is no record of such order in the concerned offices. Copy of Order is attached as Annexure-C and D.
3. That then just after 11 days on 21.1.2009 the private respondent No.4 was transferred to Dir Upper as Assistant District Kanungo. Copy of the order is attached as Annexure-E.
4. That then just after 9 months, on 9.10.2009, the private respondent No.4 was transferred back to Swat and posted as Naib Tehsildar (OPS) Charbagh Swat. Copy of the Order is attached as Annexure-F.
5. That on 18.11.2009, the words (OPS) were omitted/deleted in order dated 9.10.2009 and the respondent No.4 stood promoted as N.T (BPS-14) on acting charge basis. Copy of the Order is attached as Annexure-G.
6. That the appellant being eligible and senior most filed an appeal to SMBR against the illegal orders. The SMBR vide order dated 18.3.2010 decided the appeal of appellant but no set aside. The illegal orders of respondent No.4 but directed the Commissioner Malakand to convene the DPC for promoting the appellant. Thus the appeal of the appellant was partially accepted. Copies of Appeal and Order are attached as Annexure H & I.
7. That now the appellant comes to this august Tribunal on the following ground amongst others:

~~ATTESTED~~

GROUNDS:

- A. That the impugned orders dated 23.12.2008, 10.1.2009 and 18.11.2009 have been passed in total violation of law, rules and norms of justice, therefore, liable to be set aside.
- B. That the private respondent No.4 is a junior most patwari, while the appellant is senior most Kanungo, but to favour a

blue eyed person, the respondent department has passed illegal orders.

- C. That the respondent No.4 has not passed N.T. exam nor regular promotee as Kanungo, therefore, the orders in favour of private respondent No.4 are totally illegal and against the rules.
- D. That the respondent department has violated the section-9 and APT Rules, 1989, hence the impugned orders are liable to be set aside.
- E. That the appellant has not been treated according to law and rules and deprived the appellant from his right of promotion in an arbitrary manner.
- F. That the impugned orders are based on malafide, favouritism and nepotism, therefore, liable to be set aside.
- G. That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

APPELLANT
[Signature]
KAMALISTAN

THROUGH:

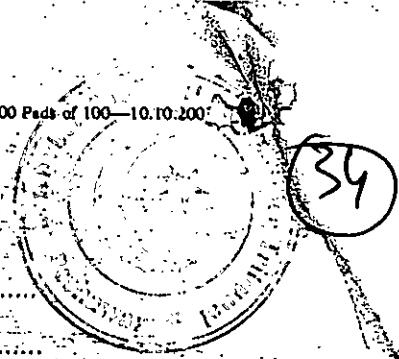
[Signature]
M. ASIF YOUSAFZAI
ADVOCATE

[Signature]
PIR IMAMUDDIN
ADVOCATE.

[Signature]
ATTESTED

FORM "A"

FORM OF ORDER SHEET



Court of.....
Case No. 773 of 2010

Serial No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1-	16/4/2010	<p>The appeal of Mr. Kamalistan presented to-day by M.Asif Kousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"><i>Registrar</i></p>
2-	22-4-10	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>04-5-10</u>.</p> <p style="text-align: right;"><i>sdl Chairman</i></p>
3.	4.5.2010	<p>Counsel for the appellant needs time To come up for preliminary hearing on 26.5.</p> <p style="text-align: right;"><i>sdl - Number</i></p>
4.	26.5.2010	<p>Counsel for the appellant present and requested for adjournment due to his pre-occupation in the High Court. To come up for P.H on 10.6.2010.</p>

ATTESTED

[Signature]
Khyber Pakhtunkhwa
Service Commission
Peshawar

*sdl -
Chairman*

~~ATTESTED~~

35

and
disk-10

No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
5.	10.6.2010	<p>Counsel for the appellant present & heard. The learned counsel for the appellant argued that in the seniority list notified on 17.4.2009, the appellant is listed at S.No.18 of the seniority list of Kanungos of erstwhile Malakand Division, while respondent No.4 is at S.No.40 of the seniority list of Patwaris in District Swat, but he was first appointed as Kanungo (BPS-9) on acting charge basis on 23.12.2008, followed by the order of District Officer (R&E) Swat dated 10.1.2009 and within 10/11 days he was made as Assistant District Kanungo Dir Upper vide order dated 21.01.2009 and then on 9.10.2009 he was posted as Naib-Tehsildar in Charbagh in his own pay & scale which order was subsequently modified on 18.11.2009 and the words 'own pay & scale' were replaced with the words 'acting charge basis' in BPS-14. The learned counsel further contended that the appellant preferred appeal to the SMBR (Respondent No.1), who accepted the appeal without setting aside the orders in favour of respondent No.4, vide his order dated 18.3.2010 hence this appeal on 16.4.2010. The points raised at the Bar need consideration. Admit. Process fee & security be deposited within 10 days. There-after, notices be issued to respondents for written reply/comments on 20.7.2010.</p>

ATTESTED

[Signature]

Kh...awa
S...
...shawan

[Signature]

36

Order of
Ss.

Serial No. of Order or Proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3

Appellant deposited
Process fee & Security
Rs. 200/- Bank Receipt
is attached with file

6

10.6.2010

This case be put up before Final Bench I for further proceedings.

sd/-
Chairman

20-7-2010

Appellant in person. A.G.P
Jamal Abdul Nasir alongwith
Attallah, Assistant for Respo
dent. No. 1, ShaFi-ur-Rehman
District Kamungo, swat for
Respondent No. 3 and private
Respondent No. 4 present in
person. No one is present
for Respondent No. 2. Notice
be issued to him. To come
up for submission of
written Reply on 27-08-2010

sd/- Member *sd/-* Member

ATTESTED

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

37

Serial No. of Order or Proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3

8.

27.8.2010

Appellant with counsel, Mr. Sher-Afgan Khattak, AAG alongwith Attaullah, Asstt: for respondent No.1, Shafi-ur-Rehman, D.K for respondent No.3 and private respondent No.4 with counsel present Wakalat Nama on behalf of private respondent No.4, and written reply/comments on behalf of official respondents No. 1 & 3 filed. To come up for written reply/comments on behalf of official respondent No.2 and private respondent no.4 on 06.10.2010.

Sd/-
Member *Sd/-*
Chairman

9.

06.10.2010

Appellant in person, Mr. Sher-Afgan Khattak, AAG alongwith Attaullah, Asstt for official respondents No.1 & 3 and private respondent No.4 in person present. No one is present on behalf of respondent No.2. Respondent No.2 be summoned afresh through registered post. Private respondent No.4 requested for further time. Another chance is given for written reply/comments of official respondent No.2 & private respondent No.4 on 26.11.2010.

Sd/-
Chairman

ATTESTED

[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Serial No. of Order or Proceeding 1	Date of Order or Proceedings 2	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary 3
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1- 26.11.2010

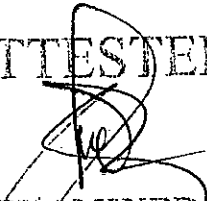
Appellant in person, Mr. Sher Afgan-Khattak, AAG alongwith Attaullah, Asstt: for respondent No.1, Shafi-ur-Rehman, D.K for respondent No.3 and private respondent No.4 person present. Respondent No.2 has been served through registered post, but no one is present on his behalf, hence proceeded against ex-parte. Written reply also filed on behalf of respondent No.4, copy whereof is handed over to the appellant for rejoinder on 14.01.2011

Sd/- Member *Sd/-* Chairman

11. 14.1.2011

Counsel for the appellant alongwith appellant, Mr. Sher Afgan Khattak, AAG along with Attaullah, Assistant for official respondents and private respondent No.4 in person are present. Counsel for the appellant does not want to file rejoinder. To come up for arguments on 17.3.2011.

Sd/- Member *Sd/-* Member

ATTESTED

 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

57

Serial No. of Order or Proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3

12.

17.3.2011

Appellant in person, Mr. Yousof, Asstt: for official respondents No. 1 to 3 and private respondent No. 4 in person present. Arguments could not be heard due to non-availability of learned counsel for the appellant and private respondent No. 4. They requested for adjournment. To come up for arguments on 17.5.2011.

sdf. sdf.
Member Chairman

13

17.5.2011

Appellant in person, Mr. At Asstt: for respondent No. 1 with official respondents No. 1 Private respondent No. 4 in the appellant stated that No. 4 has contacted him and his intention to replace his appellant, therefore, request To come up for argument

Member

Private respondent

Note Below
17.5.2011

ATTESTED

14

EXAMINED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar


40

NWFP J. Criminal No. 210

GS&PD.NWFP-673/17-F.S.-500 Pads of 180L-24.11.08/P4(2)/Form Stor.Jobs/NWFP Criminal 210

1 No. of Order or Proceedings	2 Date of Order or Proceedings	3 Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
14-	21.7.2011.	<p>Appellant in person, AAG for official respondents and private respondent No. 4 in person present. Arguments could not be heard due to the strike of lawyers. To come up for arguments on 27.09.2011.</p>

Member *Chairman*

ATTESTED

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

(41)

15

27.9.2011

Appellant with counsel, Habibullah Wazir Assistant on behalf of Respondent No. 1 with A.A.G for Respondents No. 1 and 3 and Respondent No. 4 with counsel present. Mr. Ijaz Anwar Advocate filed fresh Vakalat Nama on behalf of Respondent No. 4 and requested for adjournment. To come up for arguments on 29.11.2011.

sdf -
Member
sdf -
Chairman

16 - 29.11.2011

Appellant in person A.A.G for official respondents and private respondent No. 4 with co-counsel present. Arguments could not be heard due to non-availability of co-counsel for the appellant. To come up for arguments on 19.01.2012.

sdf -
Member
sdf -
Member

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

92

17 - 19.01.2012

Counsel for the appellant, Mr. Arshad Alam, AGP for official respondents No.1 to 3 and counsel for private respondent No.4 present. The learned counsel for the appellant requested for adjournment due to some mis-understanding about the date fixed in the appeal. To come up for arguments on 13.4.2012.

Sd/-
Member *Sd/-*
Chairman

18 - 13.4.2012

Counsel for the appellant, Mr. Zubair-Muhammed, AGP for official respondents and private respondent No.4 in person present. Arguments could not be heard due to pre-occupation of learned counsel for private respondent No.4 in the august Supreme-Court of Pakistan. To come up for arguments on 9.7.2012.

Sd/-
Member *Sd/-*
Member

19 - 9.7.2012

Appellant with counsel and Mir Qasim, Asstt: Secretary for respondent No.1 with AAG for official the respondents present. Counsel for private respondent No.4 also present. Learned counsel for the appellant wants to file rejoinder. Rejoinder be filed in the meantime, with copies for the opposite side, and case to come up for arguments on 11.10.2012.

Sd/-
Member *Sd/-*
Member

ATTESTED
[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

20

11.10.2012

Appellant with counsel, Mr. Attaullah Assistant for respondent No. 1 with Mr. Arshad Alam, GP for official respondents and private respondent No. 4 in person present. Arguments could not be heard due to pre-occupation of learned counsel for private respondent No. 4 in the august Supreme Court of Pakistan. To come up for arguments on 4.2.2013.

sdf
Number *sdf*
Number

21

4.2.2013

Clerk to counsel for the appellant, Mr. Attaullah, Superintendent for respondent No. 1 with Mr. Arshad Alam, GP for official respondents and private respondent No. 4 with counsel present. Arguments could not be heard due to non-availability of the counsel for the appellant. To come up for arguments on 13.6.2013.

sdf
Chairman

22 -

13.06.2013

Clerk of counsel for the appellant and Mr. Attaullah, Supdt for respondent No.1 with Mr. Usman Ghani, Sr. GP for the respondents present. Arguments could not be heard due to incomplete Bench owing to the promulgation of Khyber Pakhtunkhwa Ordinance No. II of 2013. To come up for arguments on 07.11.2013.

sdf
Chairman

ATTESTED

[Signature]
EX. JUDGE
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(44)

23

07.11.2013

Appellant with counsel, Mr. Mir Qasim, Assistant Secretary for respondent No.1 with AAG for official respondents No.1 to 3 and private respondent No.4 in person present. The learned counsel for the appellant requested for adjournment due to his pre-occupation in the High Court, while counsel for private respondent No.4 is also not available. To come up for arguments on 21.4.2014.

Sd/-
Chairman

24

21.4.2014

Appellant with counsel, Mr. Mukhtiar Ali, Supdt. for respondent No. 1 with Mr. Usman Ghani, Sr. GP for official respondents No. 1 to 3 and private respondent No. 4 in person present. Arguments could not be heard due to pre-occupation of learned counsel for private respondent No. 4 in the High Court. To come up for arguments on 22.8.2014.

Sd/-
Chairman

25-

22.8.2014

Counsel for the appellant and Mr. Mukhtiar Ali, Supdt. for respondent No. 1 with Mr. Kabir Khan Khattak, Assistant Advocate General for official respondents present. Private respondent No. 4 is not present. Arguments could not be heard due to non-availability of private respondent No. 4/counsel for private respondent and incomplete bench. To come up for arguments on 29.1.2015.

ATTESTED

[Signature]
Khyber Pakhtunkhwa
Service Commission
Peshawar

Sd/-
Chairman

(45)

26

29.01.2015

Appellant with counsel and Mr. Mukhtiar Ali, Supdt. for respondent No. 1 alongwith learned Addl: AG for official respondents No. 1 to 3 present. Counsel for private respondent No. 4 is not in attendance. Last chance granted for arguments. To come up for final hearing/arguments before D.B on 14.04.2015

sdf
Chairman

14.04.2015

Appellant in person, Mr. Ziaullah GP with Mukhtioar Ali, Supdt. for the official respondents and private respondent No. 4 in person present. Counsel for the parties are not available due to strike of the Bar. To come up for arguments on 27.7.2015.


MEMBER

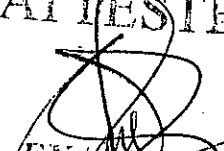
sdf
Member

27.07.2015

Counsel for the appellant and Mr. Mukhtiar Ali, Supdt alongwith Addl: AG for the respondents present. Due to incomplete bench, case is adjourned to 16.11.2015 for arguments before D.B.

sdf
Chairman

ATTESTED


EXAMINED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(46)

16.11.2015

Appellant with counsel and Mr. Mukhtiar Ali, Supdt. alongwith Mr. Ziaullah, GP for official respondents No. 1 to 3 present. Learned counsel for the appellant requested for adjournment. Adjourned to ~~14-4-16~~ for arguments before D.B.

sdf
Member

sdf
Member

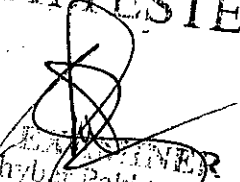
14.04.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. No one is present on behalf of private respondent No.4. The case is adjourned to 01.08.2016 for arguments.

sdf
Member

sdf
Member

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

01.08.2016

(47)



Counsel for the appellant and Mr. Muhammad Jan, GP for official respondents No. 1 to 3 present. None present on behalf of private respondent No. 4. Fresh notice be issued to private respondent No. 4. To come up for arguments on ~~5-12-16~~ before D.B.

sd/-
Number *sd/-*
Number

Certified to be true copy

[Signature]
Khwy Pakhtukhya
Service Tribunal
Peshawar

Date of Presentation of 15-09-16
Number of Writs 5600
Copying Fee 3000
Urgent 22
Total 32
Name of Officer [Signature]
Date of Issuance 15-9-16
Date of Delivery 15-9-16

Amman

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

Peshawar dated the 18/01/2016

NOTIFICATION

No. Estt./PF/Jehanzeb/_____ The Competent Authority is pleased to order the following posting /transfer amongst Tehsildar and Naib Tehsildars with immediate effect and in public interest: -

S.No	Name of Tehsildar / Naib Tehsildar	From	To
1.	Mr. Jehanzeb Khan Tehsildar	Tehsildar Havelian	Tehsildar Katlang
2.	Mr. Waheed Ahmad Tehsildar	Tehsildar Katlang	Tehsildar Havelian
3.	Mr. Muhammad Saleem Naib Tehsildar	Naib Tehsildar Abbottabad	Tehsildar Abbottabad (CCB)
4.	Mr. Shakirullah Naib Tehsildar	Tehsildar Babuzai (CCB)	Naib Tehsildar Land Reform Swat
5.	Mr. Abrar Ahmad Naib Tehsildar	Naib Tehsildar Land Reform Swat	Tehsildar Babuzai (CCB)

By Order of
Senior Member

No. Estt./PF/Jehanzeb/ 2-86-2/01

Copy forwarded to :-

1. Commissioners, Mardan, Hazara and Manakand Divisions.
2. Deputy Commissioners of the respective Districts.
3. District Accounts Officers of the respective Districts.
4. Officer / Officials concerned.
5. Office Order file.
6. Personal file.

ATTESTED

Secretary - I

D.K. C.A. to Post

1 Dec 2016

1329
22-01-2016

49

[Handwritten mark]

32

FROM SENIOR OFFICE

FRS NO. : 0919213999

3 Feb. 2016



GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

Peshawar dated the 3/02/2016

NOTIFICATION

No. Estt: /PP/ Jehan Zeb/ _____ The Competent Authority is pleased to cancel/withdraw this Department Notification bearing No. Estt: /PP/ Jehan Zeb/ 2086-2101, dated 18.01.2016 to the extent of posting / transfer of M/S Shakerullah and Abrar Ahmad appearing at S.No. 4 & 5. Rest of the order shall remain intact.

By order of
Senior Member

No. Estt: /PP/ Jehan Zeb/ 3242-13

Copy forwarded to the:-

1. Commissioner Malakand Division at Saidi Sharif Swat.
2. Deputy Commissioner Swat.
3. District Accountant Officer Swat.
4. Official concerned.
5. Office Order file.
6. Personal files.

Secretary - I

ATTESTED

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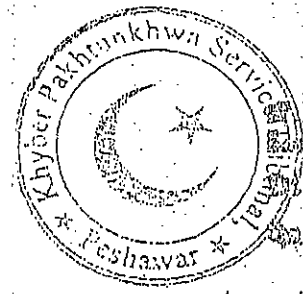
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CB

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 498 /2016



W.P. Province
Service Tribunal
No. 465
Dated 21-3-2016

Ibrar Ahmad

Presently posted as Tehsildar Babozay, Swat..... Appellant

VERSUS

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa at Civil Secretariat, Peshawar.
2. Commissioner Malakand Division at Saidu Sharif Swat.
3. Deputy Commissioner Swat at Gulkada, Swat.
4. District Accounts Officer Swat at Saidu Sharif Swat.
5. Government of Khyber Pakhtunkhwa through Secretary Establishment/Revenue at Civil Secretariat, Peshawar.
6. Secretary Board of Revenue, Govt. of KPK, Civil Secretariat Peshawar.
7. Govt. of Khyber Pakhtunkhwa through Chief Secretary at civil Sectt. Peshawar.
8. Shakirullah (Naib Tehsildar).
Presently posted at Naib Tehsildar Reforms at Saidu Sharif Swat..... Respondents.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED OFFICE ORDER DATED 03.02.2016 PASSED BY RESPONDENT NO. 1.

PRAYER IN APPEAL

sd/ So-Adil

7/16

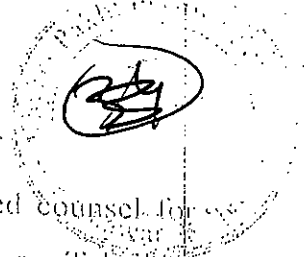
On acceptance of this appeal the impugned office order dated 03.02.2016 may kindly be set aside and the appellant may kindly be allowed to continue/perform his services against the post of Tehsildar Babozai (CCB).

~~ATTESTED~~

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(S)

(SC)



12.05.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant is posted as Tehsildar Baboza vide order dated 18.1.2016 and that on the basis of the said order private respondent No. 3 (Shakirullah) was posted as Naib Tehsildar Land Reform Swat. That vide impugned order dated 03.02.2016 order dated 18.01.2016 referred to above was cancelled to the extent of appellant and private respondent No. 3 where against appellant preferred departmental appeal on 12.02.2016 as well as Writ Petition No. 89-M/2016 before Hon'ble Darul Qaza Swat which was dismissed for want of jurisdiction vide order dated 10.05.2016 and hence the instant service appeal on 12.05.2016.

That the original order dated 18.1.2016 was withdrawn with mala fide intentions after lapse of a period of about 14 days without assigning any reason and without allowing the appellant to complete his tenure. That the appellant has yet not relieved the charge of the said post.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 09.06.2016 before S.B at camp court, Swat as the case pertains to territorial limits of Malakand Division. Notice of stay application shall also be issued to the respondents for the date fixed. Status quo be maintained.

Appellant Deposited Security & Process Fee



~~ATTESTED~~

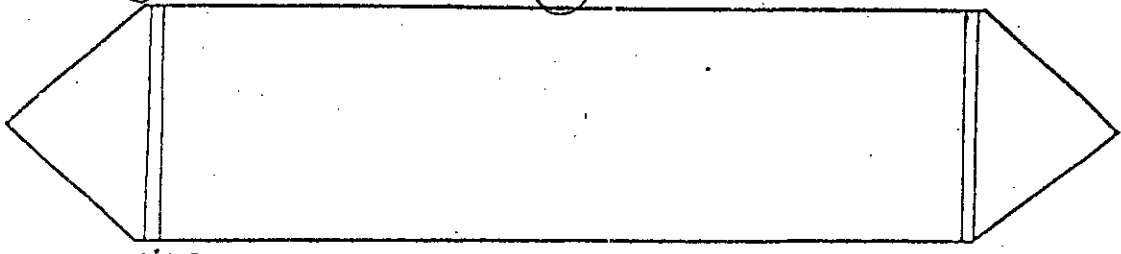
Sd/- Chairman

CAC

Certified true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 12-05-2016
Number of Words 800
Copying Fee 6
Urgent 2
Total 6
Name of Clerk S.M.P.
Date of Submission 12-05-2016
Date of Delivery 12-05-2016

بعد الت
کرسٹین سٹریٹس



2، منجانب

آبدر احمد بنام SMBR معین

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام سے اس کے لیے کیے گئے ہیں۔
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک درو پیہا عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل ٹکرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ
پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ درجہ التوائے مقدمہ کے سبب سے وہ ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سندر ہے۔

المرقوم 29 - ماہ ستمبر 2016

بمقام کرسٹین سٹریٹس کے لئے منظور ہے۔

Attested and accepted by

Shams ul Habi Achwanata.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No: 1020/2016

Abrar Ahmad Ex-Naib Tehsildar.....Appellant

VERSUS

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

PRELIMINARY OBJECTIONS.

1. That the appellant has no cause of action or locus standi.
2. That the appeal is bad for non- joinder and mis- joinder of unnecessary parties.
3. That appellant is estopped by his own conduct to institute the instant appeal.
4. The appellant has not come to the Tribunal with clean hands.

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 & 5 ARE AS UNDER.

ON FACTS

1. Pertains to record, needs no comments.
2. Incorrect. Passing of Departmental examination cannot make a person eligible for out of turn promotion. The appellant only posted in his (own pay scale). His services were also regularized as Naib Tehsildar through Administrative order without holding of Departmental Promotion Committee meeting in violation of mandatory provision of Khyber Pakhtunkhwa Civil Service (Appointment, Promotion, Transfer) Rules, 1989.
3. Incorrect. Appeal lies before the authority against an order by the aggrieved person since there is no order against which the petitioner filed appeal therefore his appeal for out of turn promotion does not cover the rules and illegal promotion order cannot get finality.
4. Void and illegal order can any time be withdrawn by the Competent Authority.
5. Incorrect. His Departmental appeal has been examined and filed by the appellate authority.

GROUND

- A. Incorrect. The order dated 09.09.2016 has been passed by the Competent Authority according to law / rules.
- B. Incorrect. The appellant was promoted as Naib Tehsildar through Administrative order without holding of Departmental Promotion Committee meeting in violation of rules, which has rightly been withdrawn.
- C. Incorrect. As the appellant was Naib Tehsildar (ACB) and also most junior and at S No. 15 of the seniority list of Kanungo for promotion as Naib Tehsildar on regular basis. Therefore his illegal promotion order was reviewed by the Competent Authority.
- D. Incorrect. He was not eligible being the junior most, therefore, his promotion was made in violation of rules.

- E. Incorrect. Case of the appellant is different from the case of Kamalistan who was also reverted on 09.09.2016, but being senior he was promoted on 04.10.2016 after observing codal formalities.
- F. Incorrect. The appellant was illegally posted as Tehsildar Babozai due to status quo issued by Service Tribunal (Annexure - A).

Keeping in view of the above appeal of the appellant may be dismissed with costs.

2/12/2016
Respondent No. 1 & 5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1020/2016

Abrar Ahmad.....Appellant

VERSUS

Senior Member Board of Revenue and others..... Respondents

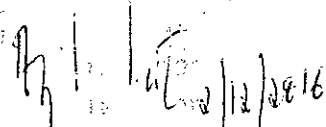
APPLICATION FOR SUSPENSION OF IMPUGNED OFFICE ORDER / NOTIFICATION DATED 09.09.2016 AND FURTHER TO ALLOW THE APPLICANT / APPELLANT TO PERFORM / CONTINUE HIS DUTIES / SERVICES AGAINST THE POST OF TEHSILDAR BABUZAI (CCB) AT SWAT TILL FINAL DISPOSAL OF THE TITLED APPEAL.

RESPECTFULLY SHEWETH.

ON FACTS

1. Incorrect. Pertains to record of Service Tribunal.
2. Facts and ground of appeal cannot be considered as part of stay application.
3. Incorrect. The promotion of the appellant was made through Administrative order in violation of Appointment Promotion and Transfer Rules, 1989 therefore his reversion order was rightly withdrawn.
4. Incorrect. No loss has been sustained by the appellant, as he was promoted illegally. Therefore was rightly withdrawn.

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


Respondent No. 1 & 5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1020/2016

Ibrar Ahmad

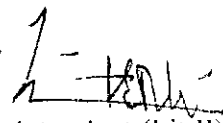
Appellant

VERSUR

Senior Member Board of Revenue & 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.


Superintendent (Lit-II),
Board of Revenue, K.P.

Similar case

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT SWAT

Service Appeal No 1155/16

Date of Institution... 16.11.2016

Date of decision... 09.08.2017



Muhammad Amin Ex-Naib Tehsildar Matta, District Swat. ... (Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 2 others. ... (Respondents)

MR. AZIZUR RAHMAN,
Advocate

For appellant.

MR. MUHAMMAD ZUBAIR,
District Attorney

For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. GUL ZEB KHAN,

CHAIRMAN
MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was shown at S.No. 19 in the seniority list of Kanungos issued on 31.12.2008. Thereafter he was promoted as Naib Tehsildar on 08.11.2010 by the order of the Senior Member Board of Revenue, purportedly on the basis of a judicial order dated 20.10.2010. Then another seniority list was prepared on 26.4.2013 and he was shown at S.No. 166 in the seniority list of Naib Tehsildars as it stood on 31.12.2012. But on 09.09.2016 an order was passed by the Senior Member Board of Revenue by withdrawing the order of promotion

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

dated 20.10.2010 on the ground that the promotion/regularization was made in violation of the service rules and instructions without holding the meeting of the Departmental Promotion Committee. Against this order a departmental appeal was preferred by the appellant on 19.9.2016 which was dismissed on 03.11.2016 and thereafter the present appeal was filed on 16.11.2016.

ARGUMENTS

3. The learned counsel for the appellant argued the appeal on two scores. That an order of promotion once passed cannot be withdrawn on the ground that the promotion was made in violation of rules or law and in this respect the learned counsel for the appellant relied upon judgments reported as 1996-SCMR-1350 and 2004-SCMR-630. The second argument was that on the principle of *locus poenitentiae* the authority withdrawing the order must adhere to the minimum standard of due process. In this regard the learned counsel for the appellant relied upon a judgment reported as 1992-SCMR-1420. According to the learned counsel for the appellant no chance of hearing or any notice was ever served on the appellant.

4. On the other hand the learned District Attorney argued that the original order dated 20.10.2010 was illegal and the SMBR has rightly withdrawn his earlier order.

ATTESTED

CONCLUSION

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

There can be no two opinions about this settled proposition of law that if any irregularity or illegality is committed by the department then the sufferer should not be the civil servant and in this respect the two former reported judgments pressed into service by the learned counsel for the appellant are very much clear. Though defence of *locus-poenitentiae* is available only in those orders

which are not void but before withdrawing any order the minimum standard of due process, at least, should be honored which has not been done in the instant case.

6. The nutshell of the above discussion is that the present appeal is accepted and the order dated 09.09.2016 is set aside. The appellant shall be entitled to all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

Announced
09.08.2017 *Sh Niaz Muhammad Khan,*
Chairman

Certified to be true copy
EMANUJAN
Khyber Pakhtunkhwa
Services Tribunal,
Peshawar

Sh Gulzeb Khan,
Member

Date of Presentation of Application 16-08-17
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Name of Applicant *[Signature]*
Date of Completion of Copy 16-8-17
Date of Delivery of Copy 16-8-17



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No. 1235 /ST Dated: 19 / 9 /2017

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

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


To,

The SMBR,
Government of Khyber Paktunkhwa,
Peshawar.

Subject: - **JUDGMENT IN APPEAL NO. 1020/2016, ABRAR AHMAD.**

I am directed to forward herewith a certified copy of judgment dated 06/09/2017 passed by this tribunal on the above subject for strict compliance.

Encl: as above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR