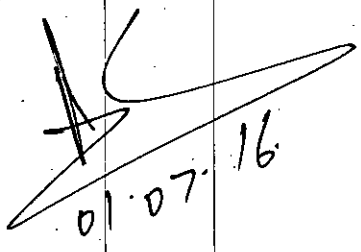


Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	01.07.2016	<p><u>BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR</u></p> <p>Appeal No. 1296/2014</p> <p>Niaz Wali Versus Government of Khyber Pakhtunkhwa through Secretary Revenue, Civil Sectt. Peshawar and two others.</p> <p><u>JUDGMENT</u></p> <p><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-</u></p> <p>Counsel for the appellant, M/S Tanveer Khan, Addl. Assistant Commissioner and Mukhtiar Ali, Supdt. alongwith Mr. Muhammad Jan, GP for respondents present.</p> <p>2. Niaz Wali S/O Muhammad Rahman hereinafter referred to as the appellant has preferred the instant service appeal on 31.10.2014, under Section 4 of the Khyber Pakhtunkhwa Service Tribunal At, 1974 against original order dated 08.08.2014 wherein appellant was dismissed from service as well as order of the appellate authority dated 13.10.2014 vide which the appeal of the appellant was dismissed.</p> <p>3. Brief facts giving rise to the present appeal are that the appellant was serving as Patwari Halqa Kahi when subjected to enquiry on the allegations of altering the actual transfer area from 2 kanals to 4 kanals without recording statement</p>


01.07.16

of the seller in the Daily Diary and not handing over the Daily Diary ~~Registered~~ to Mr. Inayatullah, his Successor-in-office, after relinquishing the charge.

4. During the enquiry the appellant was found guilty and, therefore, dismissed from service vide impugned orders referred to above.

5. Learned counsel for the appellant has argued that the enquiry was not conducted in the mode and manners prescribed by law as no charge sheet or statement of allegations were ever issued nor opportunity of cross examination extended. That a criminal case was also registered regarding the same episode vide FIR No. 03 dated 22.5.2014 at P.S ACE, Nowshera U/Ss 201/420/468/471 of PPC read with Section 5(2) of Prevention of Corruption Act but the enquiry officer did not wait for the decision of the same. That subsequently the appellant and other accused in the said case were acquitted of the criminal case vide judgment dated 06.04.2016 and hence the penalty imposed against the appellant is against facts and law and therefore liable to be set aside.

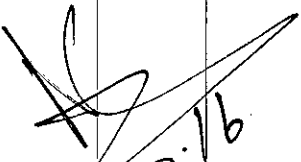
6. Mr. Muhammad Jan, learned Government Pleader has argued that the enquiry was conducted in the prescribed manners. That full opportunity of hearing was afforded to appellant but he failed to put-forth explanation and justification for the said alteration and thus depriving the

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01.07.18.


seller of his valuable property. That the impugned order is in consonance of provisions of rules and law and therefore warrants no interference.

7. We have heard arguments of learned counsel for the appellant as well as learned Government Pleader for respondents and perused the record.

8. Perusal of the record would suggest that pre-requisite for enquiry i.e. charge sheet and statement of allegations are not made integral part of the enquiry proceedings. The witnesses were also not examined in the mode and manners prescribed by law as opportunity of cross examination was not afforded to the appellant. The criminal court of competent jurisdiction has acquitted the appellant vide judgment dated 06.04.2016 and observations recorded therein, a subsequent development but essential for consideration, would also require appraisal by the enquiry officer. In such circumstances we are left with no option but to hold that the enquiry proceedings were not conducted as mandated by the Government Servants (E&D) Rules, 2011 and as such we are constrained to accept the instant appeal and set aside the impugned orders referred to above and reinstate the appellant in service, placing the respondents at liberty to conduct denovo enquiry, if deemed appropriate, but within a period of two months after the date of receipt of this judgment. In case the respondents fail^d to conduct and conclude the enquiry within the period specified then it shall


01.07.16

be deemed that the appellant has been reinstated in service with back benefits by treating the intervening period from the date of dismissed till date as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.


(Abdul Latif)
Member


(Muhammad Azim Khan Afridi)
Chairman

01.07.16

ANNOUNCED
1.07.2016

09.03.2016

Appellant in person and Mr. Mukhtiar Ali, Supdt: alongwith Mr. Ziaullah, GP for respondents present. Due to general strike of the bar, counsel for the appellant is not available. Therefore, the case is adjourned to 11.05.2016 for arguments.



Member



Member

11.5.2016

Junior to counsel for the appellant, M/S. Mukhtiar Ali, Supdt. and Tanveer Khan, AAC alongwith Mr. Ziaullah, GP for the respondents present. Learned counsel for the appellant is stated busy before the august Supreme Court of Pakistan. Adjourned for final hearing to 05.09.2016 before D.B.



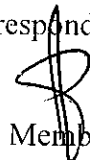
Member



Chairman

23.05.2016

Junior to counsel for the appellant, M/S Mukhtiar Ali, Supdt. and Tanveer Khan, AAC alongwith Mr. Ziaullah, GP for respondents present. Learned counsel for the appellant submitted an application for early hearing which is date fixed on 07.7.2016 instead of 5.9.2016. Notice be issued to the respondents.



Member

5

27.03.2015


Appellant in person, M/S Mukhtiar Ali, Supdt. for respondent No. 1 and Tanveer Khan, Additional Assistant Commissioner for respondent No. 2 alongwith Addl: A.G for all respondents present. Para-wise comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 16.10.2015.


Chairman

16.10.2015

Appellant in person and Mr. Tanveer Khattak, A.C alongwith Mr. Ziaullah, GP for respondents present. Appellant requested for adjournment as his counsel was busy before the Peshawar High Court, Peshawar. To come up for arguments on

15-1-16


Member


Member

15.01.2016

Appellant in person and Mr. Tamheer Khan, ADC alongwith Mr. Ziaullah, GP for respondents present. Appellant requested for adjournment because his counsel is busy in the office of Supreme Court.

To come up for arguments on 09-3-2016


Member


Member

Appeal No. 1296/2014
Mr. Niaz Wali

27.01.2015

Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, the appellant has impugned order dated 08.08.2014, vide which the major penalty of dismissed from service has been imposed upon the appellant. Against the above referred impugned order appellant filed departmental appeal on 26.08.2014 which was rejected vide order dated 13.10.2014, hence the instant appeal on 31.10.2014.

Since the matter pertains to terms and conditions of service of the appellant, hence admit for regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 06.03.2015 before the learned Bench-III.

Member

06.03.2015

Counsel for the appellant and Mr. Tanveer Khan, Addl: Assistant Commissioner for respondent No.2 with Asst: AG for the respondents present. To come up for written reply/comments on 27.03.2015.

Member

3.
appellant not deposited process fee & security
MD

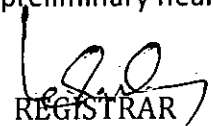

4.

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1296/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	31/10/2014	<p>The appeal of Mr. Niaz Wali presented today by Mr. Amjid Ali Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	6-11-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>27-1-2015</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL,

PESHAWAR


Service Appeal No. 1296 /2014

Niaz Wali. Appellant

Versus

Govt. of Khyber Pakhtunkhwa & others. Respondents

I N D E X

S.No	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Service Appeal with Affidavit		1-9
2.	Copy of FIR and order dt 10-11-2010	A	10-11
3.	Copy of bail granting order dated 30.05.2014	B	12-15
4.	Copy of mutation	C	16-17
5.	Copy of show cause notice and reply	D & E	18-22
6.	Copy of inquiry report	F	23-28
7.	Copy of handing/ taking over charge report	G	29-30
8.	Copy of the dismissal order dated 08.08.2014	G/1	31-
9.	Copy of appeal, comments and dismissal order dated 13.10.2014	G/2	32-42
10.	Copy of compromise/ affidavit	H	43-45
11.	 statement of Patwari Inayatullah	I	46
12.	Copy of suit	J	47
13.	Wakalatnama		

Through Appellant


AMJAD ALI
Advocate
Supreme Court of Pakistan
Cell #: 0321-9882434

Dated: 28.10.2014

(1)

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1296 /2014

W. P. Province
Case No. 1328
31-10-2014

Niaz Wali S/o Muhammad Rehman

R/o Mauza Kahi, Tehsil & District Nowshera.Appellant

Versus

1. Govt. of Khyber Pakhtunkhwa through Secretary Revenue Civil Secretariat, Peshawar.
2. Deputy Commissioner, Nowshera.
3. Commissioner, Peshawar Division, Peshawar.

.....:Respondents

APPEAL U/S 4 OF THE, SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER OF RESPONDENT NO.2 DATED 08.08.2014, WHEREIN APPELLANT HAS BEEN DISMISSED FROM SERVICE AND ORDER DATED 13.10.2014 OF RESPONDENT NO.3, WHICH ARE ILLEGAL, AGAINST LAW AND FACTS.

31/10/14

Respectfully Sheweth:

Appellant humbly submits as under:

1. That appellant was appointed as Patwari vide order dated 10.11.2010.
2. That appellant performed duty to the entire satisfaction of his superiors and was never charge sheeted.
3. That FIR No.3 dated 22.05.2014 u/s 420/468/471/201 P.P.C r/w section 5(2) PC Act of Police Station ACE Nowshera has been lodged against the appellant. (Copy of FIR is attached as annexure "A").
4. That appellant was granted bail vide order dated 30.05.2014 on the ground of compromise and being a matter of further inquiry, as the civil suit is also pending. (Copy of bail granting order dated 30.05.2014 is attached as annexure "B").
5. That appellant is innocent and falsely charged.
6. That mere filing of FIR does not mean that appellant is guilty but he has to be presumed innocent unless proved guilty after regular trial.
7. That appellant has merely entered mutation No.3048 on 26.01.2012 on consent of vendor (Khurshid Khan) and vendee (Khanze Gul) for an area of 2 Kanals and changed to 4 Kanals 10 Marlas with consent of

both the parties as there was a dispute as to apportionment of money due to vendor on behalf of vendee. (Copy of mutation is attached as annexure "C").

8. That appellant has not been given any charge sheet or statement of allegation, which are mandatory as per E&D Rules, 2011 as well as basis of inquiry.
9. That appellant was given show cause notice on 10.07.2014, which appellant properly replied. (Copy of show cause notice and reply are attached as annexure "D" & "E" respectively).
10. That the allegations in show cause notice are as under:-
 - i. Altered/changed actual transfer area from 2 Kanals to 4 Kanals 10 Marlas.
 - ii. Accepted alteration in mutation No.3048 of Mauza Kahi.
 - iii. Not recorded statement of seller in Roznamcha Waqiyati.
 - iv. Not handed over Roznamcha Waqiyati during relinquish to Mr. Inayatullah Patwari.

11. That in inquiry proceedings, none of the witnesses/ complainant was examined in presence of appellant, nor appellant was offered any opportunity of cross examination. (Copy of inquiry report is attached as annexure "F").
12. That the recommendation of I.O that appellant himself admitted cutting does not mean admission of guilt but speaks of innocence of appellant, as the R.O has attested the same area, while confirming from vendor alongwith the sale consideration.
13. That the daily diary 2011-12 was handed over to Inayatullah Patwari for Mauza Kahi at the time of handing/ taking over and he is responsible for its safe custody. (Copy of handing/ taking over charge report is attached as annexure "G").
14. That it is strange that show cause notice has been issued first and inquiry later on.
15. That the inquiry also seems to be fact finding inquiry and not regular inquiry in terms of E&D Rules.
16. That the matter is already subjudice in Anti-Corruption Court and Civil Court and, if finally they decide/ declare appellant innocent on the basis of same charges it will be highly injustice to dismiss appellant from service.

(5)

17. That appellant is jobless.
18. That dismissal order dated 08.08.2014 is illegal, against law and facts. (Copy of dismissal order is attached as annexure "G/1").
19. That appellant filed departmental appeal dated 26-8-2014, which was dismissed vide order dated 13.10.2014. (Copy of appeal, comments and dismissal order dated 13.10.2014 are attached as annexure "G/2").
20. That appellant approaches this Honourable Tribunal, inter alia, on the following grounds;

GROUND S:

- A. Because appellant is innocent and falsely charged.
- B. Because penalty is too harsh and his past record has not been considered.
- C. Because the vendor has submitted affidavit and exonerated the appellant. (Copy of compromise/ affidavit is attached as annexure "H").
- D. Because the correct procedure as per E&D Rules is to wait till the decision of criminal/civil court, which has been down trodden.

- E. Because complainant or any other witness has not been examined in presence of the appellant, nor the appellant was given opportunity to cross-examine them.
- F. Because appellant entered mutation for 2 Kanals with the consent of vendor and vendee and changed the area from 2 Kanals to 4 Kanals 10 Marlas with the consent of both the parties.
- G. Because no charge sheet or statement of allegation has been given to the appellant.
- H. Because appellant himself admitted cutting, which speaks about the innocent of the appellant.
- I. Because the daily diary for the year 2011-12 was handed over to Inayatullah Patwari at the time of handing over the charge and he was responsible for its safe custody.
- J. Because the show cause notice has been given first and then the inquiry was conducted, which is illegal.
- K. Because the inquiry was not under the proper E&D Rules, rather seems to be fact finding inquiry.

- L. Because the matter is already subjudice before Anti-Corruption Court and Civil Court and before its final decision the dismissal of appellant is highly injustice as if appellant is declared innocent and is acquitted of the charges and admittedly the findings of competent court of law are superior to the departmental proceedings, so, dismissal on the basis of such defective inquiry will become void-ab-initio and illegal.
- M. Because the inquiry officer has exonerated the appellant from charges No.1 to 4 and has found the appellant guilty only to the extent of not writing the transaction in the daily diary whereas the true facts are that it was recorded into the daily diary No.146 and the daily diary was handed over to Inayatullah Patwari at the time of transfer/handing over charge which is visible from the charge report as well as admitted by the Inayatullah Patwari by submitting his statement before the inquiry officer in Anti-Corruption proceedings that the daily diary has been misplaced from him thus, appellant cannot be held guilty for the negligence of said Patwari. (Copy of charge report/ statement of Patwari Inayatullah is attached as annexure "I").

- N. Because the same matter is subjudice in civil suit titled "Khurshid .Vs. Khanze Gul" bearing No.198/1 instituted on 27.06.2013 pending before the court of learned Civil Judge, Nowshera. (Copy of suit is attached as annexure "J").
- O. Because the learned Commissioner has wrongly placed the responsibility of missing of daily diary upon appellant as the same was handed over to successor of appellant as per charge report as well as his statement.
- P. Because the Commissioner has incorrectly held that appellant consented to change of area, whereas transfer of excess area is alleged by the complainant, which is an honest, straightforward admission of appellant as per consent of parties. The worthy Commissioner ignored acceptance of changed area before Tehsildar/ Revenue Officer and even finding of I.O, mutation to be genuine is ignored, which is against recur, arbitrary and whimsical.
- Q. Because appellant is jobless since termination.
- R. Because appellant has not been permitted for duty due to fault of respondents, therefore, entitled for back benefits.

It is, therefore, humbly requested that dismissal order dated 08.08.2014 of respondent No.2 and order dated 13.10.2014 of respondent No.3 may please be set aside and the appellant may please be re-instated in service with all back benefits.



Appellant

Through

AMJAD ALI

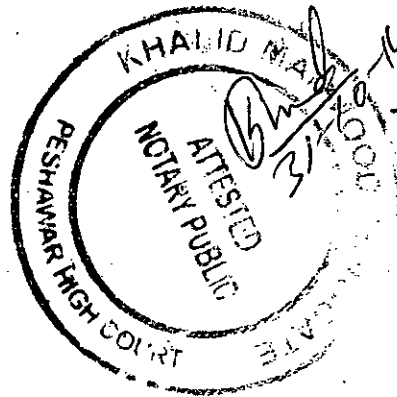
Advocate,

Supreme Court of Pakistan

Dated: 28.10.2014

AFFIDAVIT

I, Niaz Wali S/o Muhammad Rehman R/o Mauza Kahi, Tehsil & District Nowshera, do hereby solemnly affirm and declare on oath that the contents of instant **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Court.



DEPONENT

CO. FACE MSR
22-5-014

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امجد علی کا پتہ

AMJAD ALI
Advocate
SUPREME COURT

10

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ADP

OFFICE OF THE DISTRICT OFFICER (R & E) COLLECTOR NOWSHERA.

NO 419 /DK/DOR/NSR.

DATED 6^o / 11 / 2010.

OFFICE ORDER

Consequent upon the recommendation of the Departmental Selection Committee meeting held on 24.10.2010, under the chairmanship of the undersigned, the following patwar candidates are hereby appointed as Patwari (BPS- 5) against the newly created /sanctioned posts on regular basis :

<u>S/No.</u>	<u>Name</u>	<u>Father Name</u>
1.	Arshad Ali	Mirza Ali Shah
2.	Niaz Wali	Muhammad Rehman
3.	Tariq Raheem	Ghulam Hussain.
4.	Azmat Shah	Muslim Shah

Note : They will provide medical fitness certificates from the M.S. of DHQ Hospital Nowshera.

Sd.
District Officer
Revenue & Estate /Collector
Nowshera.

Even No. & Date.

- Copy forwarded to the :
1. District Coordination Officer, Nowshera.
 2. Secretary Board of Revenue Peshawar.
 3. D.A.O. Nowshera.
 4. M.S. DHQ Hospital Nowshera.
 5. Tehsildar Nowshera.
 6. Establishment Assistant Office of DOR NSR.
 7. Revenue Bill Clerk .
 8. Official concerned.
 9. Office Copy.

Ka
District Officer
Revenue & Estate /Collector
Nowshera.

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B.A. No. 63 of 2014

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03.30.5.2014

ORDER.

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Through this order I propose to decide the following two separate post arrest bail applications, being the outcome of same FIR No.3 dated 22.05.2014 u/s 420/468/471/201/PPC read with section 5(2)Pe Act of P.S. ACE, Nowshera.

- 1) B.A. No.63 of 2014 of petitioner Inayatullah patwari moza Kahi, Nizampur Tehsil & District Nowshera.
- 2) B.A.No.64 of 2014 of Niaz Wali khan S/o Muhammad Rehman R/o Mohallah Manjan khel, Shaidu Tehsil & District Nowshera.

Handwritten signature of the Special Judge.

30.5.2014

Special Judge
Anti Corruption
Khyber Pakhtunkhwa Peshawar

Brief facts of the case are that complainant Khurshid S/o Adam khan R/o Tarkhel Payan Nizampur lodged a complaint that he sold 2 kanal of land to khanza Gul for Rs.45.000/- vide mutation No.3048 but the patwari halqa with the connivance and collusion and to misappropriate the government taxes and to cause loss to him, made tempering in the mutation by cutting the 2 kanal and changed the area to 4 kanal 10 marlas.

Upon this complaint open inquiry was ordered and after collecting relevant record and recording statements of all concerned, the tempering with the record is confirmed hence resulting the registration of present case.

I have heard arguments of counsel for both the petitioners and P.P. for state. Counsel for petitioners also submitted separate applications alongwith

Attested
In witness
AAE II/IO
09/06/14

ATTESTED

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9/6/2014

Cor
Anti Corruption

AMJAD ALI
Advocate
SUPREME COURT

30.5.2014.

2

9

(13)

compromise deed and stated that parties have patched up the matter and in the event of compromise, the complainant being star witness in the case may not support its case against the accused during trial. He also placed reliance on the judgment published in 2010 PCRLJ Lahore 1482 in support of above arguments. Besides the above, he submitted attested copy of suit filed by complainant before the civil court, and submitted that when the matter is subjudice before a competent forum then the matter is one of further inquiry and petitioner become entitle for grant of bail.

30.5.2014.

30-5-2014

30-5-2014

After hearing the above arguments and considering the record tentatively, undeniably, the cutting in the record mutation is conspicuous and unambiguous in respect of area and sale amount. However, the report submitted by C.O. ACE Nowshera refer to an earlier dispute between complainant Khurshid Khan and accused Khanza Gul which was settled through arbitration which resulted in the change of area and the present petitioner Niaz Wali Khan. At present the complainant has compromised the matter and at the same time a civil suit in competent court is also filed. thus the case prima-facie, is open to further inquiry into the guilt of accused/petitioners. Offence u/s 420/471/PPC are bailable whereas u/s 468/201/PPC does not fall within the prohibitory clause of section 497 Cr.Pc, hence grant of bail is a rule and refusal an exception.

As a result of above, these petitions are accepted and all the above named petitioners are released on bail subject to furnishing bail bonds of Rs.1,00,000/- (One lac) with two sureties each, who must be local and reliable, to the satisfaction of this court.

ATTESTED

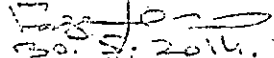
EXAMINER
Court of Sessions
Anti-Corruption Cell
9/6/14

14

0.3. 30.5.2014.

Order announced and the case file be consigned to the record room after its necessary completion.

Announced.
Mardan.
30.05.2014.


30.5.2014.
Special Judge,
Anti-Corruption KPK,
(Camp at Mardan).

18/29/14 BBA راجا 3
فیروز خان بیگ
11/6/12
2
34/5/14

TESTESTED



9/6/2014

Anti-Corruption

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Special Judge
Mardan
30.05.2014

Announced
Mardan
30.05.2014

Court of Special Judge
Mardan
30.05.2014

Counsel for Petitioners/accused and PP for state present. Arguments heard and file perused. Vide my detailed consolidate order recorded today and also placed on connected BA No.63 of 2014 (Nayyullah-vs-state) the petition in hand is accepted and petitioner/accused Niaz Wali is admitted to bail subject to furnish bail bonds in sum of Rs.1,00,000/- (One lac) with two local and reliable sureties each to the satisfaction of this court. Order announced and the case file be consigned to the record room after its necessary completion.

RECORDED

Handwritten signature and date: 8. 2014

30.5.2014

ORDER

BA No 63 of 2014
Mardan

(15)

(10)

18

(S)

Ann-D



Office of the
Deputy Commissioner
Nowshera.

(Office Phone#0923-9220098, Fax#0923-92200159, Email: dconsrpk@yahoo.com)

No: 820/DK/DC/NSR

: 10th July 2014

SHOW CAUSE NOTICE

Whereas an FIR was lodged against you Mr. Niaz Wali Patwari Halan Mandrak (Ex-Patwari Kahi) by Anti-Corruption Police Nowshera, subsequently you were suspended from service and Mr. Tanveer Khattak, Additional Assistant Commissioner -II, Nowshera appointed as Inquiry Officer to probe the allegation.

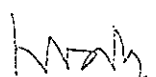
The Inquiry Officer has submitted report which is set out in the following but you have been contradicted

- 1- That you attacked charged found guilty for the same.
- 2- That you were paid salary for the period of 01/07/14 to 10/07/14.
- 3- That you not received statement of order in Roznamcha Roznamcha.
- 4- That you not handed over said Roznamcha during charge relinquish to Inayat Ullah Patwari.

Keeping in view the inquiry report and recommendation you are directed to explain reason of offence you committed mentioned above and also you directed to show cause why should not your service laid off for the above commission of offence and also intimate whether you desire to be heard in person.

If no reply to this notice is received within seven days of its delivery, it shall be presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

Copy of the statement of inquiry report is attached.


Deputy Commissioner,
Nowshera

 **AMJAD ALI**
Advocate
SUPREME COURT

جانب سے جارجنرل سیکرٹری سپریم کورٹ کو ارسال کیا گیا ہے۔

Ann, E

(B)

19

بخدمت جناب ڈپٹی کمشنر صاحب اہلدار با اختیار ضلع کنگڑ صاحب نوشہرہ۔

شو کاز نوٹس

بیتام

نیاز ولی خان سابقہ پتواری حلقہ موضع گاھی۔

جواب شو کاز نوٹس۔

جناب عالی!

حضور والائے من سائل اکتبرین کو مورخہ 10-07-2014 کو تحریری شو کاز

نوٹس بابت الزامات ذیل جاری فرما کر جواب طلبی فرمائی ہے۔

الزامات:

1. That you altered/ changed actual transfer area from 02K-9M to 04K-9M.
2. That you accepted alteration in mutation No. 3048 of mouza Kahi.
3. That you not recorded statement of seller in Roznamcha Washak.
4. That you not handed over said Roznamcha during charge relinquish to Inayat Ullah Patwari.

الزام نمبر 1۔ That you altered/ changed actual transfer area from 02K-9M to 04K-9M۔

عالی جاہ!

بجواب الزام نمبر عرض ہے کہ الزام طذا قطعاً غلط، خلاف قانون، خلاف واقعات ہے۔

کیونکہ زمین کترین نے انتقال تنازعہ امتداد نمبر 3048 مورخہ 25-01-2012 کو خود اپنے ہاتھوں

قلم سے درج کیا تھا جو کہ بعد مورخہ 16-10-2012 کو حسب ضابطہ منظور ہو چکا تھا۔ من کترین نے

پرت انتقال ریکورڈ بالا میں کوئی تغیر و تبدل Variation نہ کی ہے۔ اور نہ ہی کسی Tampering کا

ارتکاب کیا ہے۔ بلکہ سہمی خورشید خان پسر آدم خان (بائع) نے موجودگی جملہ ممبران مصالحتی کمیٹی بہ دورہ

جناب قیصر خان نائب تحصیلدار خیر آباد ضلع نوشہرہ پیش ہو کر رقبہ دو کنال سے چار کنال دس مرلے انتقال

تنازعہ امتداد نمبر (Mutation in Question) میں درستی کر کے بائع متذکرہ بالا و گواہان نے اپنے

اپنے دستخط و نشان انگوٹھے جات روہڑے تحصیلدار صاحب ثبت کئے۔ یوں انتقال صحیح تنازعہ درست طور

AMJAD ALI
Advocate
SUPREME COURT

(Signature)

بمطابق مغربی پاکستان، قانون معاملہ زمین 1967ء بموجودگی بائع، مشتری، گواہان، ممبران مصہبتی کمیٹی، نائب تحصیلدار صاحب خیر آباد درج، تصدیق ہوا ہے۔

الزام نمبر ۲۔ 2. That you accepted alteration in mutation No. 3048 of mouza Kahi.

جناب عالی!

الزام نمبر ۲ زیر نظر قطعاً غلط، بے بنیاد، بلا جواز، من گھڑت، خلاف قانون، خلاف واقعات ہے۔ الزام ہذا کا مفصلہ جواب (Detailed answer) بجواب الزام نمبر ۱ میں درج تحریر ہے۔ مختصراً عرض ہے کہ انتقال متنازعہ امتدعوئیہ میں رقبہ منقلہ کی ایزادگی، مسی خوردشید خان پسر آدم خان (بائع) کی آزادانہ مرضی و منشاء، فیصلہ مسابھت کمیٹی و جملہ ممبران کمیٹی کی موجودگی مشتری و گواہان بیع کی موجودگی میں بہ دورہ ریویو افسر کی گئی تھی۔ جو تحصیلدار صاحب نے بعد از تحقیق منظور و تصدیق کیا گیا ہے۔

الزام نمبر ۳۔ 3. That you not recorded statement of seller in Roznamcha Waqhaiti.

حضور والا!

الزام نمبر ۳ زیر نظر بھی خلاف قانون، خلاف واقعات و بے بنیاد ہے۔ کیونکہ من کترین نے قبل از اندراج و تصدیق انتقال متنازعہ باقاعدہ فریقین معاملہ بیع کے تحریری بیانات بروئے روز نامچہ واقعاتی رپٹ نمبر 146 قلم بند کر دائے تھے۔ من کترین کے تبادلہ کے وقت جملہ ریکارڈز پٹوار خانہ درز نامچہ واقعاتی رپٹ نمبر 146 حوالہ عنایت اللہ پٹواری کیا تھا۔ من کترین کے خلاف بھلت نمبر 03 مورخہ 22-05-2014 کی چاکیڈگی کے بعد عنایت اللہ پٹواری حاقہ مذکورہ نے حکمہ انجی کرپشن کے تفتیشی افسر کو بیان بھی کیا تھا کہ روزنامچہ واقعاتی رپٹ 146 زیر بھت اس کو من کترین نے ہمراہ جملہ ریکارڈز پٹوار خانہ حوالہ کیا تھا۔ مزید برآں اگر روزنامچہ واقعاتی رپٹ 146 یا کوئی دیگر ریکارڈز پٹوار خانہ بوقت Handing/Taking کم تھا تو عنایت اللہ پٹواری مذکورہ کو چاہے تھا کہ وہ باقاعدہ تحریر طور پر افسران بالا خود کے نوٹس میں لے آتے۔ (تقریرات، چارج Handing/Taking لف ہے)

الزام نمبر ۴۔ 4. That you not handed over said Roznamcha during charge

relinquish to Inayat Ullah Patwari.

عالی جاہ۔

-- الزام نمبر ۳ بھی قطعاً، خلاف قانون، خلاف واقعات ہے۔ الزام ہذا کا مفصلہ جواب بجواب الزام

نمبر ۳ متذکورہ بالا میں دیا جا چکا ہے۔ تائید میں نقولات Charge of Handing/Taking. ہمراہ

جواب شوکار نوٹس ہذا الف ہیں۔ بوقت تبدیلی من کترین At the time of my posting

عنایت اللہ پٹواری کیا گیا تھا۔ مزید براں عنایت اللہ پٹواری نے بھی حکمہ انٹی کرپشن کے تفتیشی افسر کو اپنا بیان

قلم بند کرایا تھا اور اس نے اقرار کیا ہے کہ روزنامہ چاندنی رپٹ نمبر 146 بھی بوقت حوالگی جاری ہوا ہے۔

ریکارڈز شامل تھا۔

حضور والا۔

من کترین کے خلاف حکمہ انٹی کرپشن کے ذریعہ جو FIR چاک کی گئی تھی۔ کترین کی گرفتاری عمل

میں لائی گئی تھی۔ پابند سلاسل کیا گیا تھا۔ زمانہ، معاشرہ میں رسوائی، جگ ہنسائی ہوئی تھی۔ یہ سب غیر قانونی،

بے بنیاد، بلا جواز تھی۔ کیونکہ انتہائی متنازعہ استدعا کو خورشید خان پیر آدم خان (بالع) نے بمقدمہ

نمبر 1981/1981-06-27 ذریعہ جو یہ بحالت عادل میر فاضل سول کورٹ جج صاحب نوشہرہ

دیوانی دعوئی استغریہ حق کے ذریعے چیلنج بھی کیا تھا۔ ارجاع نالاش ہذا کے بعد قانوناً کوئی FIR چاک نہیں

ہو سکتی۔ کوئی استغریہ فوجداری دائر نہیں کیا جاسکتا۔ کوئی استغریہ۔ تادیبی کارروائی قانوناً نہ ہو سکتی ہے۔ من

کترین، میرے چھوٹے چھوٹے بچوں کے ساتھ نہایت زیادتی، نا انصافی ہوئی ہے۔ کیونکہ فریقین نے جت

بجائز عدالت قانون دیوانی سے رجوع کیا تو اسکے بعد کوئی فوجداری کارروائی بشکل چاک گیری FIR فوجداری

استغریہ قانوناً ناقابل چیلن، ناقابل سماعت، ناقابل پزیرائی Not maintainable/ Not

maintainable (Defective) ہوتی ہے۔ اسی طرح اختتامی رپورٹ تخریب خنک ایڈیشنل

اسسٹنٹ کمشنر صاحب نوشہرہ انکوائری آفیسر حکمہ مال قطعاً ذلک، خلاف قانون، خلاف واقعات ہے۔ فاضل

انکوائری افسر نے روزنامہ چاندنی رپٹ نمبر 146 کی نسبت قطعاً غلط رائے دی ہیں۔ ایک طرف عرضی دعوئی میں

روزنامہ چاندنی رپٹ کی بابت درست رائے دی ہے۔ جبکہ دوسری طرف روزنامہ چاندنی رپٹ متناظر رائے دی ہیں۔

حالانکہ خورشید خان پیر آدم نے بمقدمہ نمبر 1981/1981 کے عرضی دعوئی فقرہ واقعاتی نمبر ۲ میں روزنامہ چاندنی رپٹ

نمبر 146 کی بابت کو درست رائے تسلیم کیا ہے۔

الرقم: 15-07-2014م

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تاریخ: 15-07-2014م

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Amirulmomin
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Amuramham
AFC-II/10

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95

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 ۱۰- ...

Amirul Uloom
 AAE-1/150

96



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Amsterdam
Ane II 110

(10)

(11)



Office of the
Deputy Commissioner
Nowshera.

(Office Phone#0923-9220099, Fax#0923-92200159, Email: dconsrpk@yahoo.com

08/08/2014 August, 2014

Ann- G/1

311

OFFICE ORDER

No. 881-38/DK/DC/NSR/2014. Whereas, an FIR was lodged against Mr. Niaz Wali Patwari Halqa Nandarak (Ex-Patwari halqa Kahi) by Anti-Corruption Police Nowshera. Subsequently services were placed under suspension and Mr. Tanveer Khattak, Additional Assistant Commissioner-II Nowshera appointed as Inquiry Officer to probe the allegation.

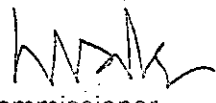
And whereas, it has been proved by Inquiry Officer that the said patwari has committed the following offences:-

- 1- Altered/ changed actual transfer area from 02-0M to 04K-0M.
- 2- Accepted alteration in mutation No.3048 of mouza Kahi.
- 3- Not recorded statement of seller in Roznamcha Waqhiati.
- 4- Not handed over Roznamcha Waqhiati during charge relinquish to Mr. Inayat Ullah patwari.

And whereas the Inquiry Officer recommended major penalty on the patwari halqa Mr. Niaz Wali, followed by Show Cause notice issued by the undersigned on 10-7-2014 regarding of imposition of major penalty.

The undersigned has gone through inquiry report, show cause notice reply and reply to explanation by Naib Tehsildar Khairabad Mr. Qaiser Khan and found the offence committed by Mr. Niaz Wali patwari serious enough to be forgiven.


Therefore, I Zakauallah Khattak Deputy Commissioner Nowshera, being competent authority, in exercise of powers conferred upon me under section 4 (1)(b)(iv) of Government of Khyber Pakhtunkhwa Servants (Efficiency and Discipline) Rule, 2011 agrees with Inquiry Officer and dismiss the services of Mr. Niaz Wali patwari (BPS-09) from service with immediate effect.


Deputy Commissioner
Nowshera

Even No & date.

Copy forwarded to the:-

- 1- Commissioner Peshawar Division Peshawar.
- 2- Settlement Officer Nowshera.
- 3- Assistant Commissioner Nowshera.
- 4- Additional Assistant Commissioner -II Nowshera/ Enquiry Officer.
- 5- Accounts Officer, Deputy Commissioner Office Nowshera for necessary action.
- 6- Tehsildar Jehangira.
- 7- Official concerned (Mr. Niaz Wali).


Deputy Commissioner
Nowshera


AMJAD ALI
Advocate
SUPREME COURT

(32) Ana G/2

BEFORE THE COMMISSIONER, PESHAWAR.

Niaz Wali son of Muhammad Rehman r/o Mauza Kahe, Tehsil & District Nowshehra.

.....Appellant.

Versus

Deputy Commissioner Nowshehra.

.....Respondent.

Subject: - Appeal against the order of Deputy Commissioner Nowshehra dated 8th August 2014 wherein appellant has been dismissed from service which is illegal, against law and facts.

Sir,

Appellant humbly submits as under.

- 1. That appellant was appointed as Patwari vide order dated 10-11-2010
- 2. That appellant performed duty to the entire satisfaction of his superiors and was never charge sheeted.
- 3. That FIR No. 3 dated 22.5.2014 u/s 420/468/471/201 PPC read with S. 5(2) PC Act of PS ACE Nowshehra has been lodged against the appellant. (Copy of FIR is annexure A).

AMJAD ALI
Advocate
SUPREME COURT

4. That appellant was granted bail vide order dated 30.5.2014 on the ground of compromise and being a matter of further inquiry, as the Civil suit is also pending. (Copy of Bail granting order dated 30.5.2014 is annexure B).
5. That appellant is innocent and falsely charged.
6. That mere filing of FIR does not mean that appellant is guilty but he has to be presumed innocent unless proved guilty after regular trial.
7. That appellant has merely entered mutation NO. 3048 on 26.1.2012 on consent of vendor (Khurshed Khan) and vendee (Khanze Gul) for an area of 2 kanal and changed to 4 kanal 10 marla with consent of both the parties as there was a dispute as to apportionment of money due to vendor on behalf of vendee. (Copy of mutation is annexure C).
8. That appellant has not been given any charge sheet or statement of allegation which are mandatory as per E&D Rules 2011 as well as basis of inquiry.
9. That appellant was given show cause notice on 10th July 2014 which appellant properly replied. (Copy of show cause notice is Annexure D and reply is Annexure E).
10. That the allegations in show cause notice are as under:-
 - a. Altered/changed actual transfer area from 02 kanal 0 marla to 04 kanal 0 marla.
 - b. Accepted alteration in mutation No. 3048 of Moauza Kahi.
 - c. Not recorded statement of seller in Roznamcha waqiyati.

(34)

d. Not handed over Roznamcha waqiyati during charge relinquish to Mr. Inayat Ullah Patwari.

11. That in inquiry proceedings, none of the witnesses/complainant was examined in presence of appellant, nor appellant was offered any opportunity of cross examination. (Copy of inquiry report is Annexure F).

12. That the recommendation of I.O that appellant himself admitted cutting does not mean admission of guilt but speaks of innocence of appellant as the R.O has attested the same area while confirming from vendor along with the sale consideration.


13. That the daily dairy 2011/2012 was handed over to Inayat Patwari for Mauza Kahi at the time of handing taking over and he is responsible for its safe custody. (Copy of handing/taking charge report is Annexure G).

14. That it is strange that show cause notice has been issued first and inquiry later on.

15. That the inquiry also seems to be fact finding inquiry and not regular inquiry in terms of E & D Rules.

16. That the matter is already subjudice in Anti Corruption Court and Civil Court and if finally they decide/declare appellant innocent on the basis of same charges it will be highly injustice to dismiss appellant from service.

17. That appellant is jobless.

(35) 

18. That dismissal order dated 8.8.2014 is illegal, against law and facts on following grounds. (dismissal order 8-8-2014 9-1)

GROUND;

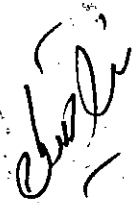
- A. Because the appellant is innocent and falsely charged.
- B. Because penalty is too harsh and his past record has not been considered.
- C. Because the vendor has submitted affidavit and exonerated the appellant. (Copy of compromise/affidavit is annexure H).
- D. Because the correct procedure as per E & D Rules is to wait till the decision of criminal/civil court which has been town trodden.
- E. Because the complainant or any other witness has not been examined in presence of the appellant nor the appellant was given opportunity to cross examine them.
- F. Because the appellant entered mutation for two kanal with the consent of vendor and vendee and changed the area from 2 kanal to 4 kanal 10 marlas with the consent of both the parties.
- G. Because no charge sheet or statement of allegation has been given to the appellant.
- H. Because the appellant himself admitted cutting which speaks about the innocent of the appellant.
- I. Because the daily dairy for the year 2011-12 was handed over to Inayat Patwar at the time of handing over the charge and he was responsible for its safe custody.

- J. Because the show cause notice has been given first and then the inquiry was conducted which is illegal.
- K. That the inquiry was not under the proper E&D rules rather seems to be fact finding inquiry.
- L. Because the matter is already subjudice before Anti Corruption court and Civil Court and before its final decision the dismissal of appellant is highly injustice as if appellant is declared innocent and is acquitted of the charges and admittedly the findings of competent court of law are superior to the departmental proceedings, so, dismissal on the basis of such defective inquiry will become void ab-initio and illegal.
- M. Because the inquiry officer has exonerated the appellant from charges No. 1 to 4 and has found the appellant guilty only to the extent of not writing the transaction in the daily dairy whereas the true facts are that it was recorded into the daily dairy No. 146 and the daily dairy was handed over to Inayat Patwari at the time of transfer/handing over charge which is visible from the charge report as well as admitted by the Inayatullah Patwari by submitting his statement before the inquiry officer in Anti corruption proceedings that the daily dairy has been misplaced from him thus, appellant can not be held guilty for the negligence of said Patwari.
- N. Because the same matter is subjudice in Civil suit titled Khurshed vs Khanze Gul bearing No. 198/1 instituted on 27.6.2013 pending before the court of learned Civil Judge Nowshehra.

(37)

It is, therefore, humbly requested that dismissal order dated 8.8.2014 may please be set aside and appellant may please be re-instated in the service with all back benefits.

Appellant



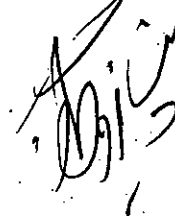
Through  Advocate
Supreme Court of Pakistan,
Office at Mardan.

Affidavit.

I, Niaz Wali son of Muhammad Rehman r/o Shaiddo
Jehangira, Nowshehra solemnly affirm and declare
On oath that the contents of the appeal are true
& correct to the best of my knowledge & belief and
Nothing has been concealed from this honorable court.

Dated 26-8-2014

Niaz Wali



BEFORE THE COMMISSIONER, PESHAWAR DIVISION
PESHAWAR

NIAZ WALI S/O MUHAMMAD REHMAN R/O MAUZA KANE, TEHSIL AND
DISTRICT NOWSHERA.
.....(Applicant)

Versus

DEPUTY COMMISSIONER NOWSHERA.
.....(Respondent)

Subject: APPEAL AGAINST THE ORDER OF DEPUTY
COMMISSIONER NOWSHERA DATED 08TH AUGUST 2014
WHEREIN APPELLANT HAS BEEN DISMISSED FROM
SERVICE WHICH IS ILLEGAL, AGAINST LAW AND FACTS.

Preliminary Objection:-

- 1) Appellant has no cause of action.
- 2) Appeal of the appellant is liable to be dismissed.

Respectfully Sheweth:

- 1) Correct
- 2) No Comments
- 3) Correct.
- 4) No-Comments
- 5) Incorrect.
- 6) No Comments.
- 7) Incorrect. Firstly 02 Kanals property was entered in mutation No. 3048 on 26-01-2012 and illegally changed 04 Kanal 10 Marla from 02 Kanal. No statement of the seller was recorded in Roznamcha.
- 8) Incorrect. Statement of allegation issued vide No. 820/DK/DC/NSR, Dated 10th July 2014.
- 9) Correct.
- 10) Correct.
- 11) Incorrect. Complainant Mr. Khurshid S/o Adam Khan was properly examined. His statement is placed in inquiry file.
- 12) Correct to the extent of appellant admission to cutting. Attestation of mutation is the responsibility concerned RO.
- 13) Incorrect. Appellant has himself stated in his statement dated 09-06-2014 before inquiry officer that Roznamcha was with Girdawar, Therefore not handed over to Inayat Patwari.

AMJAD ALI
SUPREME ADVOCATE
PESHAWAR

- 14) Incorrect. Inquiry was ordered on 30th May, 2014 and after recommendations of inquiry officer, show cause notice was issued on 10-07-2014 vide No. 820/DK/DC/NSR.
- 15) Incorrect. Regular inquiry has been conducted under the E & D rules 2011, on the order of competent authority i.e. Deputy Commissioner Nowshera.
- 16) No Comments.
- 17) No Comments.
- 18) Incorrect. Dismissal of the appellant is proper and as per law.

GROUND:-

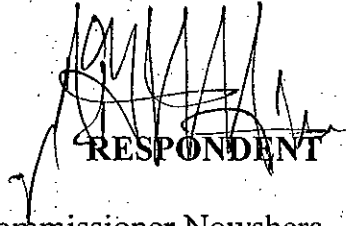
- A) Appellant is correctly dismissed from service and rightly charged.
- B) Penalty awarded as per rules. Illegality wherever committed must be punished as per rules.
- C) Private understanding does not give clean chit to government official for the wrongs committed by him.
- D) No Comments.
- E) Inquiry officer properly examined complainant and other necessary parties.
- F) Alteration from 02 Kanal to 04 Kanal 10 Marlas is without the consent of seller. No statement of the seller was recorded in Roznamcha on record. No consent was obtained, therefore vendor complained.
- G) Incorrect.
- H) No Comments.
- I) Incorrect. Appellant himself stated in his statement before Inquiry officer on 09-06-2014 that Roznamcha was with Girdawar, Therefore not handed over to Inayat Patwari. During Inquiry Roznamcha was handed over to Inquiry officer by appellant.
- J) Incorrect. Replied in para 14.
- K) Incorrect.
- L) Incorrect. Deputy Commissioner is competent authority under E & D rules and can order departmental inquiry.

40

- M) Incorrect. Inquiry officer has never exonerated appellant from charges 1 to 4. Inquiry officer has recommended Major penalty against appellant on the basis of 1 to 4 charges which proved against him during inquiry.
- N) No Comments.

IT IS THEREFORE, HUMBLLY REQUESTED THAT DISMISSAL ORDER DATED 08-08-2014 MAY PLEASE BE MAINTAINED.

Dated: 29-09-2014



RESPONDENT

Deputy Commissioner Nowshera
**DEPUTY COMMISSIONER
NOWSHERA**



IN THE COURT OF
COMMISSIONER PESHAWAR DIVISION
PESHAWAR

411

APPEAL NO: /2014

DATE OF INSTITUTION: 26.08.2014

DATE OF DECISION: 13.10.2014

M. AMJAD ALI
Advocate
SUPREME COURT

Niaz Wali Patwari Ex Patwari Halqa Nandrak Nowshera.....(Appellant)

VERSUS

Deputy Commissioner Nowshera.....(Respondent)

ORDER

This order will dispose off the instant departmental appeal filed by the above named appellant against the Deputy Commissioner Nowshera order bearing No. 881-88/DK/DC/NSR/2014 dated 08.08.2014, whereby he was awarded major penalty of dismissal from service under section-4(1)(b)(iv) of Govt: of Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011.

Facts of the case are that an FIR was lodged on the complaint of Mr. Khurshid Khan by the Anti Corruption Establishment against Mr. Qaiser Khan Naib Tehsildar Circle Khairabad, Inayatullah Patwari & the appellant, Ex- Patwari Patwar Halqa mauza Kahi as well as Mr. Khanza Gul etc leveling allegations of tempering mutation No. 3048. The complainant further stated that he sold out 2 Kanals land at the rate of 45000/- per kanal to Mr. Khanza Gul s/o Sher Muhammad r/o Inzary in Khasra Nos. 1197, & 1198 vide mutation No. 3048 but later-on, the appellant tempered the record, by cutting 2 kanals and wrote 4 Kanals & 10 marias fraudulently.

The Deputy Commissioner Nowshera suspended the appellant and appointed Mr. Tanveer Khattak Additional Assistant Commissioner-II, Nowshera as Enquiry Officer to probe the allegations against him. The Enquiry Officer conducted enquiry and submitted his report wherein he found the appellant guilty of not entering details/statement of seller regarding the said transaction in Roznamcha Waqiyati. He also held the appellant responsible for hiding Roznamcha Waqiyati 2011-12 and recommended him for awarding major penalty under section-4(1)(b)(iv) of Govt: of Khyber Pakhtunkhwa, Government Servants (Efficiency & Discipline) Rules, 2011.

Based on the recommendations of the Enquiry Officer, the Deputy Commissioner Nowshera/Competent Authority imposed a major penalty of dismissal from service upon the appellant u/s 4(1)(b)(iv) of the Government of Khyber Pakhtunkhwa, Government Servants (Efficiency & Disciplinary) Rules-2011.

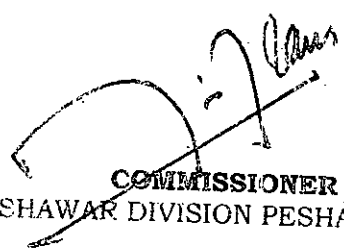
Aggrieved of the order of Deputy Commissioner Nowshera/competent authority the appellant filed the instant appeal.

Appellant as well as representative of the Deputy Commissioner Nowshera present and heard. Comments received from Deputy Commissioner Nowshera also examined. Perusal of the record reveals that the appellant himself admitted this fact that he has made changes in mutation in question by changing the land from 2 kanals to 4 Kanals & 10 marlas on the consent of buyer/seller as according to him they had a dispute of money and in lieu of that the owner transferred an extra land in the said mutation while the seller/complainant stated in FIR that an extra land has been transferred from his share fraudulently. Furthermore, though the Enquiry Officer termed the mutation as correct, however, to know the facts of the statements of seller/complainant as well as genuiness of mutation, Roznamcha Waqiyati is an important record of Patwari which in the instant case is missing and the enquiry officer has held the appellant responsible for that which he has not handed over to his predecessor Patwari.

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As charge against the appellant has been proved, I see no reasons to interfere in the impugned order of the Deputy Commissioner Peshawar dated 08.08.2014 which is thus upheld. The appeal in hand stands rejected. File to GRR.



COMMISSIONER
PESHAWAR DIVISION PESHAWAR

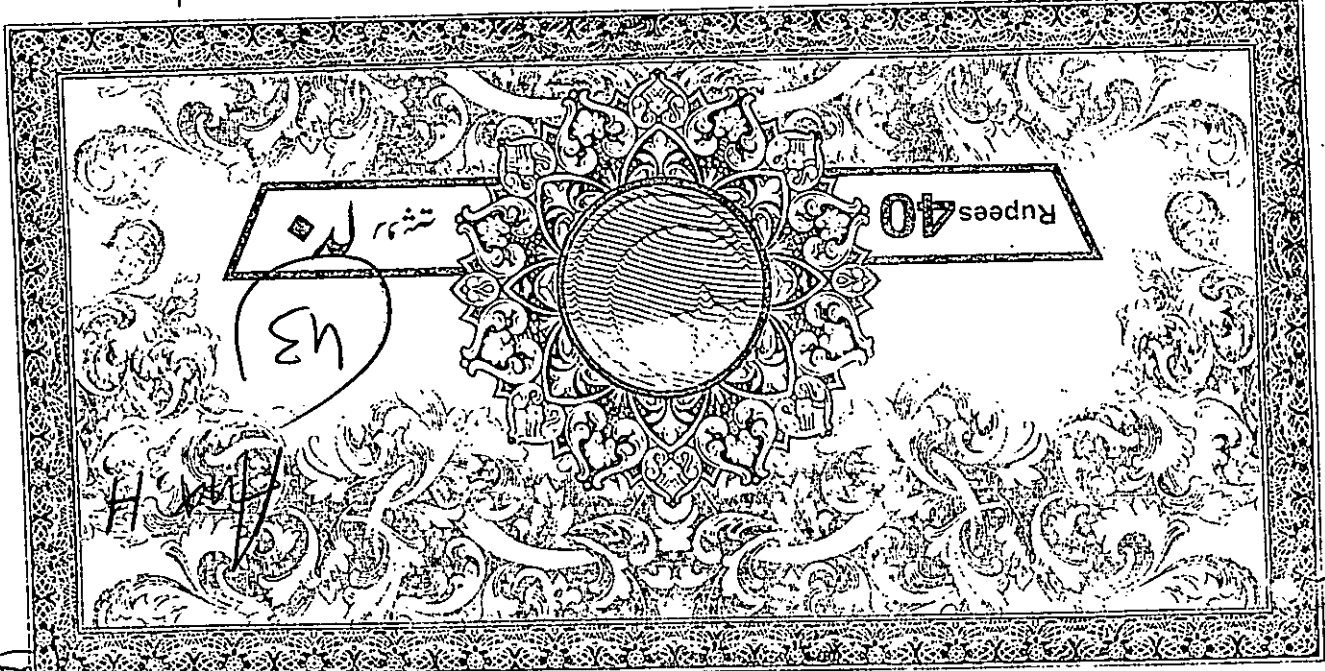
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Part I

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Section header: **مقامی اور قومی سطح پر**

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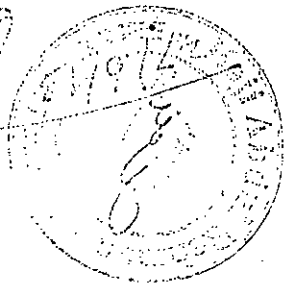
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Branch, E. J. Kowshera
Examined 27/05/2013

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1296/2014

Niaz Wali, s/o Muhammad Rehman

R/o Mauza Kahi, Tehsil & District Nowshera ,Appellant.


VERSUS

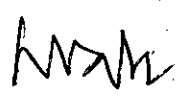
1. Government of Khyber Pakhtunkhwa through Secretary, Revenue Civil Secretariat, Peshawar.
2. Deputy Commissioner, Nowshera.
3. Commissioner, Peshawar Division Peshawar.

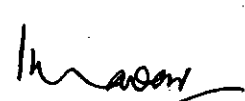
..... Respondents

INDEX

S.No	Description of documents	Annexure	Pages
1	Joint para wise comments		1-3
2	Affidavit		4
3	FIR No.03, order dated 30-05-2014	A	5-6
4	Inquiry Report, Statement appellant	B	7-13
5	Copy of Roznamcha and copy of mutation No.3048 mouza Kahi	C	14-16
6	Statement and question /answer session of complainant and appellant	D	17-24
7	Statement of Girdawar	E	25


Commissioner
Peshawar Division Peshawar
(Respondent No.3)


Deputy Commissioner
Nowshera
(Respondent No.2)


Secretary
Board of Revenue
Khyber Pakhtunkhwa
(Respondent No.1)

0-5
27.03.15

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1296/2014

Niaz Wali, s/o Muhammad Rehman

R/o Mauza Kahi, Tehsil & District Nowshera ,Appellant.

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary, Revenue Civil Secretariat, Peshawar.
2. Deputy Commissioner, Nowshera.
3. Commissioner, Peshawar Division Peshawar.

..... Respondents.

PARA WISE COMMENTS OF RESPONDENT NO. 1 TO 3 ARE AS UNDER:

Respectfully Sheweth:-

Preliminary Objection

- 1) That the appellant has got no cause of action and locus standi.
- 2) That the instant appeal is not maintainable in its present form.
- 3) That the instant appeal is barred by law and limitation.
- 4) That the appellant has not come to this honorable tribunal with clean hands.
- 5) That the appellant has been estopped by his own conduct to file the instant appeal.

1- Pertains to record.

2- **Incorrect.** Appellant was charged under section 420/468/471/201 of P.P.C r/w section 5(2) Prevention of Corruption Act by Anti-Corruption Establishment police station Nowshera on Complaints of Mr. Khurshid Khan s/o Adam Khan R/o Tar Khel Payyan Nizam Pur and subsequent to the arrest of appellant his services were placed under suspension by appointing inquiry officer to probe the complaint vide office order No.643-50/DK/DC/NSR/2014 dated 30-05-2014 (**Annexure-A**).

3- **Correct.** That FIR No.03 dated 22-05-2014 was registered against appellant.

4- Pertains to record.

5- **Incorrect.** That appellant was found guilty as he accepted alteration in mutation No.3048 of mouza Kahi before Inquiry Officer. i.e altered/ changed actual transfer of area from 2K-0M to 04K-10M . (**Annexure-B**).

6- **Incorrect.** subsequent to the arrest of appellant by Anti-Corruption police Nowshera on 22-5-2014 vid FIR No.03 his services were placed under suspension and appoint Additional Assistant Commissioner-II Nowshera as inquiry officer to probe the complaint vide office order No.643-50/DK/ DC/ NSR / 2014 dated 30-05-2014.The inquiry officer conducted an impartial inquiry according to law in which appellant found guilty and was given the major penalty according to law.

Wali
14/3

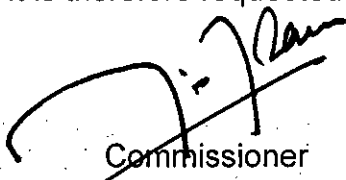
- 7- **Incorrect.** Firstly 02Kanal area was entered in mutation No 3048 on 25-01-2012 and then illegally changed 04Kanal 10Marla from 02kanal. No statement of the seller was recorded in Roznamcha. **(Annexure-C).**
- 8- **Incorrect.** After completion of Inquiry a show cause notice was issued to appellant as per Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 on basis of Inquiry report alongwith copy of inquiry report.
- 9- **Correct** to the extent that he replied to show cause notice on 15-7-2014 and found unsatisfactory.
- 10-**Correct** that according to inquiry report appellant have been committed these acts mentioned in appeal.
- 11-**Incorrect.** Complainant Mr. Khurshid s/o Adam Khan was properly examined and his statement recorded by Inquiry Officer as well as statement of the appellant was recorded and question/answer session was also held. All the codel formalities were fulfilled. **(Annexure-D).**
- 12- **Correct** to the extent that appellant admitted cutting.
- 13- **Incorrect:** Appellant has himself stated in his statement dated 09-06-2014 before Inquiry Officer that Roznamcha was with Girdawar, therefore, not handed over to patwari Inayat Ullah. **(Annexure-E).** So the appellant proved to be responsible for the same.
- 14- **Incorrect:** Subsequent to the arrest of appellant by Anti-Corruption police Nowshera vide FIR No.03, his services were placed under suspension and Inquiry Officer appointed to probe vide office order No.643-50/DK/DC/NSR/2014 dated 30-5-2014 and after completion of Inquiry a show cause Notice vide No.820/DK/DC/NSR dated 10-07-2014 was served upon appellant to which who replied on 15-07-2014.
- 15-**Incorrect.** Regular inquiry has been conducted on the order of competent authority i.e Respondent No.02 according to law.
- 16- **Incorrect:** Proceeding in court and departmental proceeding are different from each other and can run parallel to each other side by side.
- 17- **No Comments.**
- 18-**Incorrect.** Dismissal order dated 08-08-2014 of appellant is correct and as per law.
- 19- **Correct.** That as the charge against appellant has been proved.
- 20- **No Comments.**

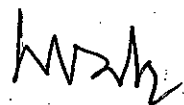
GROUNDS:-


- A. **Incorrect:** Appellant is correctly dismissed from service and rightly charged.
- B. **Incorrect:** penalty awarded is according to law.
- C. **Incorrect:** private understanding / appease does not give clean chit to government official for the wrongs committed by him. He was proved guilty of misconduct in departmental inquiry.
- D. **Incorrect:** Court and departmental proceeding are different from each other can run parallel to each other in an identical charge.

- E. **Incorrect:** All codel formalities were fulfilled.
- F. **Incorrect:** Alteration from 02Kanal to 04Kanla 10Mrala is without the consent of seller. No statement of the seller was recorded in Roznamcha on record. No consent was obtained; therefore vendor complained. Further appellant admitted his guilt in this para.
- G. **Incorrect:** Show cause notice was served upon appellant regarding the act he has committed.
- H. **Incorrect:** Appellant admitted his guilt.
- I. **Incorrect:** Appellant himself stated in his statement before Inquiry Officer on 09-06-2014 that Roznamcha was with Girdawar, therefore not handed over to Inayat Ullah Patwari. Girdawar stated and refused the availability of Roznamcha but later on during Inquiry Roznamcha was handed over to Inquiry Officer by appellant.
- J. **Incorrect.** On the recommendation of Inquiry Officer show cause notice was served upon appellant regarding act he committed.
- K. **Incorrect:** Proper Inquiry was conducted according to Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011
- L. **Incorrect:** Deputy Commissioner Nowshera i.e Respondent No. 2 is competent authority and can order departmental inquiry. As Court and departmental proceeding can run parallel to each other in an identical charge.
- M. **Incorrect:** Inquiry Officer has never exonerated appellant from charges 1 to 4. Inquiry Officer has recommended major penalty under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules 2011.
- N. **Incorrect.** As per para's mentioned above.
- O. **Incorrect.** Appellants himself handover the Roznamcha during inquiry.
- P. **Incorrect.** Respondent No.03 i.e Commissioner Peshawar Division Peshawar, appellate authority correctly rejected the appeal as charge against him has been proved.
- Q. No Comments.
- R. **Incorrect:** Appellant was dismissed on the recommendation of an impartial inquiry.

It is therefore requested that appeal of the appellant may kindly be dismissed with cost.


 Commissioner
 Peshawar Division Peshawar
 (Respondent No.3)


 Deputy Commissioner
 Nowshera
 (Respondent No.2)


 Secretary
 Board of Revenue
 Khyber Pakhtunkhwa
 (Respondent No.1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1296/2014

Niaz Wali, s/o Muhammad Rehman

R/o Mauza Kahi, Tehsil & District Nowshera ,Appellant.

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary, Revenue Civil Secretariat, Peshawar.
2. Deputy Commissioner, Nowshera.
3. Commissioner, Peshawar Division Peshawar.

..... Respondents.

AFFIDAVIT

I, _____, do hereby solemnly affirm and declare that contents of para wise comments on the behalf of respondent No 1 to 3 are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble tribunal.

Deponent



(A)

Office of the
Deputy Commissioner
Nowshera.

5

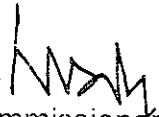
(Office Phone#0923-9220099, Fax#0923-9220159, Email: dconsrpk@yahoo.com)

30th May, 2014

OFFICE ORDER.

No 643-50 /DK/DC/NSR/2014. Subsequent to the arrest of Mr. Niaz Wali Patwari halqa Nandarak by the Anti -Corruption-Police Nowshera on 22-5-2013 vide FIR No. 03, the undersigned is pleased to placed his services under suspension with immediate effect. And appoint Mr. Tanveer Khattak, Additional Assistant Commissioner -II Nowshera, as enquiry Officer to probe and submit his recommendation within 10days.


The undersigned is further pleased to assign the charge of Patwar halqa Nandarak to Muhammad Fayyaz patwari halqa Mughalkai, in addition to his own duties till further order.


Deputy Commissioner
Nowshera.

Even No & Date.

Copy forwarded for information to

- 1- The Commissioner Peshawar Division Peshawar.
- 2- The Additional Deputy Commissioner Nowshera.
- 3- The Settlement Officer Nowshera.
- 4- The Additional Assistant Commissioner Nowshera/ Enquiry Officer.
- 5- The Tehsildar Jehangira.
- 6- Official Concerned for strict compliance.


Deputy Commissioner
Nowshera.

CO 1 ACE MSR
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12 mth

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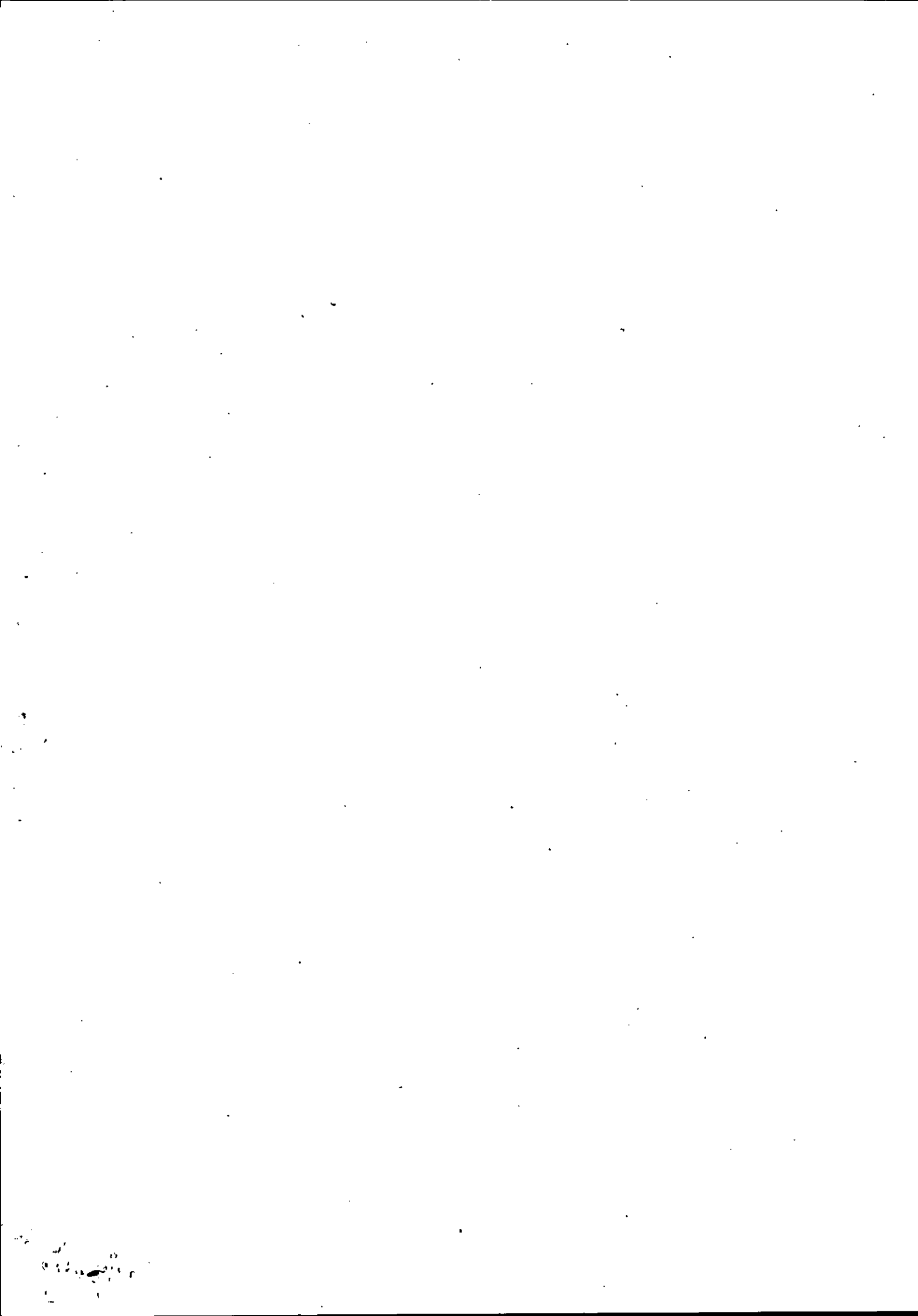
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Amir Khan
AME-II/IO

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DR
The Registrar - Alwar College

03-07-2013

APE-II / IO

Amirulhameed

(Efficiency and discipline) rules, 2011
Govt of Punjab
Major Penalties - 2

Govt of Punjab
Amirulhameed

APE-II / IO

Amirulhameed
APE-II / IO

Amirulhameed
APE-II / IO

(E) حلیفہ بیان

میں مسمی نیاز دی خان پٹواری حلقہ کا ہی (سابقہ) حلیفہ بیان کرتا ہوں۔ کہ میرے خلاف مسمی فورشیڈ خان ولد آدم خان نے درخواست بابت انتقال نمبری 3048 مورخہ 2012-10-16 میں رد بہل کے بابت ڈائریکلر انٹی کرپشن کوٹرازی ہے۔ جس پر اپنی انٹراکٹری مقرر تھی۔ جس میں میں نے بیان دی ہے اور دیگر گواہوں نے بھی عدالت انٹی کرپشن میں بیان دی ہے۔ جسکی بنا پر میرا اظہار مختلف منظور ہو گیا ہے۔

لیکن بعد میں بروری آرڈر 50-643 مورخہ 14-5-30 کو مجھے معطل کیا گیا ہے۔ اور جو ہے
DK/DC/NSR/2014

جواب طلبی کی گئی

جناب عالی! میں نے انتقال 3048 بیع مورخہ 12-01-25 خود درج کی تھی۔ اور میں نے انتقال مذکورہ میں اپنی طرف سے کوئی رد بہل نہ کی ہے۔ بلکہ مسمی فورشیڈ خان ولد آدم خان بائع اور مصداحتی یکٹی کی موجودگی میں انتقال مذکورہ میں درستگی کر کے بد درجہ جناب تحصیلدار صاحب مسمی فورشیڈ خان موجودگی گواہان پیش کر کے درست تسلیم کیا۔ اور تحصیلدار صاحب نے انتقال مذکورہ مورخہ 12-10-16 کو منظور کیا۔ جناب عالی یہ میرے ساتھ بڑی سازش ہو رہی ہے۔ لہذا آپ صاحبان میری جان کر کے مجھے اسی سازش سے چھٹکارہ دلا کر مشکور فرمادیں۔ اور مجھے اپنے ڈیوٹی پر بحال کیا جائے

بیان نیاز دی خان پٹواری
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Attested
Anwar
AAE-II / IO
05/06/14

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مصدقہ لکھی گئی (مطابق) اور مورخہ 14-10-14
کھیلے اور موجود آگے، ریکارڈ 2-10-14

کتابت بر حسب دستاویز
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 کمرہ نمبر انتقال 2992
 تاریخ انتقال 2012

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اندر زمین جمعہ کی حد نشانی آخری واقعہ انتقال جس کی ترمیم مطلوب ہے۔
 نام مالک و احوال
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جانب عالی
 نقل و حرکت اصل و ریکارڈ درج ہے
 3/6/15

بیان خوردگی و خوردگی در تمام حالتی که در فصل بیان بیان
انتقال رقم 3048 فرم کاغذی

حلق بیان کرتا حول کم میں سے حالت زہریلے گل و لہ شیر محمد پر
 2 انتقال زمین فرم کا بی میں فرم (45000) ریفر فرم نقل فرم
 کے ہے۔ اس کے بعد میں نے بیوانی حالت میں فرم کو روزانہ واقعہ
 میں بیان دیا۔ جو معروف و نقل کے بارے میں تھا۔ اور نامی
 واقعہ میں میں نے درحقیقت کیا لیکن یہ یاد دلاتا حول کہ
 بیوانی بیوانی سے اور نامی واقعہ میں میں بیان میں
 پر لکھا تھا۔ اس کے علاوہ میں نے حالت چار نقل کے فرم کا سوال
 کسی بیوانی کو کہہ دیا کہ وہ اس کے بعد فرم کو فرم میں تو
 اور نہ میں دوران کے فرم انتقال میں موجود تھا اور نہ رقم منتقل
 کے نقل سے (4) چار نقل کے فرم کے بعد میں نے کسی قسم کی
 رقم سازی میں نہیں کیا۔ البتہ کہ 2 نقل کے علاوہ
 زمین فرم والی فرم

محمد
 محمد

محمد حسن
 محمد حسن
 n. 20/10
 e. 12/06/14

جواب - جوان - خواہشمند اور ملازم خانہ بابت انتقال پر 3043

01

کیا یہ درست ہے کہ آپ نے پتواری صاحب کو 10 مارچ کا بیان
زود ناچہ واقعات میں دیا ہے ؟

جواب - جی نہیں - میں نے صرف 2 سوال کا بیان دیا ہے -

02

میں یہ درست ہے کہ آپ نے پتواری صاحب کو یہاں تک کہ 2 سوال
کی نقل کا تعلق 10 مارچ لکھا ہے ؟

جواب - جی نہیں - اس کا تعلق مجھے کوئی علم نہیں ہے - میں نے صرف 2 سوال
کے بارے میں بیان دیا تھا -

03

کیا یہ درست ہے کہ آپ اور صاحب خانہ زہری و لاہ شہر کے بارے میں
انتقال پر 3043 کوئی پروگرام نہیں ہوا ہے ؟

جی ہاں - یہ درست ہے۔ صاحب خانہ نے کہا کہ جو واقعات میں صرف
2 سوال کا تعلق تھا - ضلع میں نے اس میں چار دن بعد
میں نے پتواری صاحب کو ضلع کا یہ پروگرام چھ واقعات میں بیان
دیا - جس میں ضلع نے کہا کہ یہ پروگرام بیان اور ناچہ واقعات
میں لیکے ہوا تھا - بعد میں کسی قسم کا پروگرام نہیں ہوا -

لہذا تھوڑی رقعہ منسلک 2 سوال سے لگاتار 10 مارچ کا سوال
میں یہاں نہیں ہوتا

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Attested
Amir Khan
Date 12/06

برگ معاہدے کی یا برنگ کی تفصیل بتائیں؟

04
xxx

صواب۔ میرٹ اور خان زہ گل کے درمیان لین دین کا مسئلہ تھا۔
میرٹ نے خوارگل کو 80000 روپیہ دے کر لے لیا تھا۔
اور خان زہ گل نے خاص خاص خان زہ گل اور خوارگل کو 80000 روپیہ
دے کر لے لیا تھا۔

05
xxx

اب نے خان زہ گل سے لے لیا تھا اور میرٹ نے
کتنی زمین کا مسورا خوارگل کو دیا۔

06
xxx

صواب۔ میرٹ نے خان زہ گل سے لے لیا 170000 روپیہ لے کر جو گل
اور خان زہ گل کے درمیان تھا۔

06
xxx

میرٹ نے میرٹ سے لے کر 20000 روپیہ لے کر لے لیا تھا۔

06
xxx

صواب۔ میں نے میرٹ سے لے کر 20000 روپیہ لے کر لے لیا تھا۔
میرٹ نے میرٹ سے لے کر 20000 روپیہ لے کر لے لیا تھا۔
میرٹ نے میرٹ سے لے کر 20000 روپیہ لے کر لے لیا تھا۔

میرٹ نے میرٹ سے لے کر 20000 روپیہ لے کر لے لیا تھا۔
میرٹ نے میرٹ سے لے کر 20000 روپیہ لے کر لے لیا تھا۔
میرٹ نے میرٹ سے لے کر 20000 روپیہ لے کر لے لیا تھا۔

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Amrothani
AAE II/10
12/06/11

بیان میٹرولی خان مائیکرو سٹوری طقمہ کا پس خیر آمد

سوالات، جواب (13)

سوال نمبر 1۔ کیا یہ درست ہے کہ انتقال 3048 آ کے بحیثیت

سٹوری اندراج کیا ہے؟

جواب 1۔ جی ہاں۔ مائل درست ہے۔

سوال نمبر 2۔ انتقال اندراج سے پہلے آ کے مذکورہ انتقال کے بارے میں

کیا کارروائی کی ہے؟

جواب 2۔ خلیقین سے روزنامی واعمال میں بیان ثابت اراچی

مذکورہ کیا اور جس سے دستخط/انگریز لکھا گیا۔

سوال نمبر 3۔ روزنامی واعمال کے بیان میں خلیقین نے کتنی زمین کا ذکر کیا

لوف 2-00 کا ذکر کیا گیا۔ جو روزنامی واعمال میں 05/05/2012

سوال نمبر 4۔ کیا یہ درست ہے کہ روزنامی واعمال کے مطابق آ کے

انتقال 3043 ممبر 10/16 کا اندراج کیا ہے؟

جواب 4۔ جی ہاں۔ میں نے روزنامی واعمال کے مطابق انتقال 3048

میں 2-00 کا اندراج کیا۔

سوال نمبر 5۔ رقبہ مستقیم 2-00 ملکین روزنامی واعمال کے 146 سے

بڑھا کر 10-04 کیسے کیوں کیا گیا؟

جواب 5۔ مصلحتی طبعی منافع اور مبالغہ کی موجودگی میں مدورہ صواب

کھیلے اور موجودگی کو، یہاں رقبہ 2-00 سے 10-04 کیا

اور کھیلے اراچی نے مبالغہ کی مبالغہ اور گورنر مان انتقال مذکورہ

Amir Khan AAE 10/10

05/06/14

1

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سوال نمبر 6: انتقال بر 3048 میں حصوں اور رتبہ منتقلہ میں کمی یا تبدیلی آئے گی ہے؟

جواب: 1۔ انتقال مندرجہ میں Cutting حالت رتبہ موجودگی (رضی اور گورنمنٹ کیا گیا جس پر فریقین راہی لگے اور پانچ فیصد مادورہ صبا - کھنڈاراج۔ موجودگی گورنمنٹ میں ہو کر کسٹریک کیا ہے۔

سوال نمبر 7: انتقال کا اندراج کبھی رتبہ منتقل میں تبدیلی میں کیا انتقال کا اندراج فروری میں یا Cutting؟

جواب: 2۔ اگر پانچ اور مشرکی میں ہوں جو پہلے سے دن 1000 اور دونوں فریقین راہی ہوں اور صبا - کھنڈاراج کو کوئی اعتراض نہ ہو تو درستگی ہو سکتی ہے۔

سوال نمبر 8: روزنامہ دار صاحبی میں آئے کیا دونوں فریقین میں کیا ہے؟

جواب: 3۔ روزنامہ دار صاحبی میں بین دونوں فریقین سے موجودگی راہی کل ولر قاسم اور غیر لیا گیا۔

سوال نمبر 9: کیا یہ درست ہے کہ دوران کسٹریک انتقال دونوں فریقین

جواب: 4۔ موجودگی ہے مادورہ صبا - کھنڈاراج۔ دونوں فریقین موجودگی ہے۔ اور گورنمنٹ میں موجودگی ہے۔

M. W. Khan
Ane-4/10
05/06/14

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حکومتی بیان سواروں کی حالت پر اور اس موقع کا یہی

(32)

روزنامہ زبر کا صدر برائے پرنسپل گورنمنٹ اور اس وقت
کے گورنر سرکل عبدالحیہ خان کے پاس کچھ عجب سے خارج

بابت موقع کا یہی عسائیت سواروں پر روزنامہ خارج کا 11 اپریل 2013

دعا تھا اس وقت روزنامہ واعظانی بابت اشتعال 3048

زبر کا اس وقت کے گورنر سرکل عبدالحیہ خان کے پاس تھی

خارج حوالہ کرنے کے بعد میں عبدالحیہ خان کے پاس بھی محفل لیا
گوئی کہ سہارا سہارا کو جنرل ٹرانسپورٹ میں عبدالحیہ خان کا سہارا کو جنرل آباد
سرکل سے لے کر سرکل سہارا گیا۔ محفل میں دفتر میں ملاقات کے بعد
میں نے عبدالحیہ خان سے کہا کہ روزنامہ واعظانی زبر کا عسائیت اللہ
سواروں کو حوالہ کریں، گوئی کہ اب وہ موقع کا یہی کا خارج عسائیت
اللہ کو حوالہ کیا گیا ہے جس پر عبدالحیہ خان نے کہا کہ میں منورہ
روزنامہ واعظانی کا گزارا عسائیت اللہ سواروں کو حوالہ کر دے
اس کے بعد میں نے عسائیت اللہ سواروں سے بابت روزنامہ واعظانی
کا گزارا عنون کر لیا جس پر عسائیت اللہ سواروں نے کہا کہ سہارا
راہم عبدالحیہ خان سے یہاں آجروہ مجھے اور نامیہ کا گزارا واعظانی
حوالہ کر دے۔

سنہ در سنہ

Amir Khan

۰۹/۰۶/۱۶

۹۱۶

سوالرٹ، چار ماہات سنا زوری شیخ اری موعنہ کلیمی
ماہیت روزنامہ واعصائی و کارگزاری سال 13-2012ء

سوال نمبر 1
عابین آپ اور عنایت اللہ شیخ اری خارج حوالہ کرنے بابت موعنہ کلیمی
14 فروری 2013ء کا ایس ایم اے کے دن روزنامہ واعصائی اور کارگزاری
آپ نے حوالہ عنایت اللہ شیخ اری کیا یا نہیں؟

جی نہیں۔ چونکہ روزنامہ واعصائی اور کارگزاری 13-2012ء اور 14 فروری
کے گزراور سرکاری عید الجہاد کے ساتھ بھی جس کی وجہ سے میں نے حوالہ
نہیں کیا۔

سوال نمبر 2
عابین آپ اور عنایت اللہ شیخ اری خارج حوالہ کرنے بابت موعنہ کلیمی
آیا روزنامہ واعصائی کے ذریعہ حوالہ کیا یا سادہ گزراور؟

میں نے اپنے روزنامہ واعصائی میں خارج حوالہ کرنے اور اس
شہادت انگ سے ان کے بارے میں عنایت اللہ شیخ اری آفس حالہ کے
حوالہ کیا۔ اور روزنامہ واعصائی کی رپورٹ کی کاپی موجود ہے۔
2014/06/09

مذرت شمیم
Amroha
ایڈیشنل سیکرٹری
09/06/14

(26) بیان عبدالحمید، سردار جمال علی صالح خیر آباد

(26)

حلقہ بیان کرتا ہوں کہ دو دنہ نامہ واقعاتی موقع گاہی
میں نے لکھی تھی پٹواری صلا سے نہیں لیا۔ صحت صرف روزنامہ
گاہ گزاری سے اندر لیا گیا۔ سرکل میں خیر آباد سے
میں نے صرف تقریباً 50 سینے گزاری ہیں۔ اس دوران
موقع گاہی گاہ دور نامہ واقعاتی اپنی تحویل میں نہیں لیا

اور نہ میں نے علی گاہ گزاری پٹواری وقت گاہی
روزنامہ واقعاتی سے اندر لیا کرتا رہا ہے

عبدالحمید، سردار جمال علی
09/06/2014

M. H. H. H.

09/06/14

