

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

Service Appeal No. 273/2014

Date of Institution ... 21.02.2014

Date of Decision... 11.10.2023

Muhammad Hayät, Tehsildar, Tangi District Charsadda.

... (Appellant)

**VERSUS**

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

MR. KAMRAN KHAN,  
Advocate

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--- For appellant.

MR. ASIF MASOOD ALI SHAH,  
Deputy District Attorney

--- For official respondents.

SALAH-UD-DIN  
FAREEHA PAUL

--- MEMBER (JUDICIAL)  
--- MEMBER (EXECUTIVE)

**JUDGMENT:**

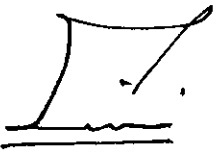
SALAH-UD-DIN, MEMBER:- Through the instant appeal,  
the appellant has invoked the jurisdiction of this Tribunal with the  
prayer copied as below:-

*“On acceptance of the instant appeal, the  
impugned Notification dated 23.01.2014 may  
graciously be set-aside by restoring the  
Notification dated 04.06.2013 with all  
consequential back benefits.”*



2. Precise facts giving rise to filing of the instant appeal are that  
the appellant alongwith other 38 officials were promoted as  
Tehsildar (BPS-16) on regular basis on 04.06.2013 on the  
recommendations of Departmental Promotion Committee. Some  
Naib Tehsildars challenged the promotion of the appellant by way

of filing Writ Petition No. 1720-P/2013 before the Peshawar High Court, Peshawar, which was disposed of vide order dated 05.11.2013, whereby copy of Writ Petition was transmitted to Secretary Revenue and Estate Departmental Khyber Pakhtunkhwa for treating the same as departmental appeal and to decide the same in prescribed limits of time strictly in accordance with rules and law. Copy of the Writ Petition No. 1720-P/2013 was thus treated as departmental appeal/representation and the same allowed vide impugned Notification dated 23.01.2014, whereby promotion order of the appellant and 38 other officials was withdrawn and they were reverted to their original posts, hence the instant appeal.




3. On receipt of the appeal and its admission to regular hearing, respondents were summoned. Official respondents No. 1 & 2 contested the appeal by way of filing written reply, while private respondents were proceeded ex-parte vide order dated 26.01.2016.

4. Learned counsel for the appellant argued that the appellant was one of the senior most employee of the department and he was promoted as Tehsildar (BPS-16) vide Notification dated 04.06.2013 after observing all legal and codal formalities. He next contended that the requirement of graduation for promotion to the post of Tehsildar remained reflected in the service rules inadvertently and was later on done away with through subsequent amendment in the concerned service rules. He further argued that in view of principle of locus poenitentiae, the appellate Authority was not justified in withdrawal of promotion order of the appellant. He also argued that

the appellate Authority without any notice to the appellant issued the impugned reversion order of the appellant and as such he was condemned unheard.

5. Conversely, learned Deputy District Attorney for official respondents has contended that the condition of graduation was intact in service rules in vogue for promotion to the post of Tehsildar (BPS-16) at the relevant time and as the appellant was lacking the prescribed qualification, therefore, his promotion order was rightly withdrawn and he was reverted to his original post.

6. We have heard the arguments of learned counsel for the parties and have perused the record.




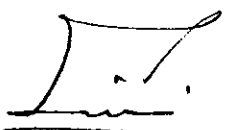
7. The service rules in vogue for promotion to the post of Tehsildar (BPS-16) would show that graduation was a basic requirement for such promotion. The appellant was not having the prescribed qualification for promotion to the post of Tehsildar (BPS-16), therefore, the appeal filed by Mr. Shakirullah and others was accepted and vide the impugned Notification dated 23.01.2014, the appellant as well as other officials promoted as Tehsildars (BPS-16) vide Notification dated 04.06.2013 were reverted back to the posts held by them prior to their promotion as Tehsildars (BPS-16). Learned counsel for the appellant was unable to point out any illegality in the impugned Notification dated 23.01.2014. Supreme Court of Pakistan in its judgment reported as 2014 SCMR 949 has exhaustively dilated on such nature issue and has held that ill-gotten gains cannot be defended/protected under

any cannon of law or even on humanitarian consideration. Moreover, Waheed Ahmed, Abdul Haleem and Muhammad Taj, who were similarly placed employees being reverted vide same impugned Notification dated 23.01.2014 had filed Service Appeals No. 252/2014, 253/2014 & 254/2014 before this Tribunal, which were dismissed vide consolidated judgment dated 24.07.2017 passed by this Tribunal.

8. Consequently, the appeal in hand being devoid of any merits stand dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
11.10.2023

  
(FAREEHA PAUL)  
MEMBER (EXECUTIVE)

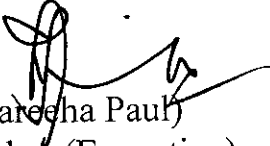
  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)


ORDER  
11.10.2023

Appellant alongwith his counsel present. Mr. Ghulam Shabbir, Assistant Secretary alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for official respondents No. 1 & 2 present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand being devoid of any merits stand dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
11.10.2023

  
(Fareeha Paul)  
Member (Executive)

  
(Salah-Ud-Din)  
Member (Judicial)