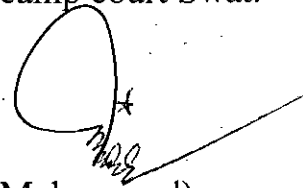


10.05.2022

None for the petitioner present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Ahmad Bashir, Litigation Officer appeared and pointed out that he has just been directed by the SMBR office Peshawar to attend the court on their behalf. He pointed out that the local office i.e DC office is not necessary party in the execution petition. Previous order sheets reflect that Arif, Supdt or Javed, Assistant have been representing the respondents. Learned AAG requested for adjournment on the ground to contact the main office i.e Board of Revenue for soliciting implementation report to be submitted on the next date. Adjourned. To come up for further proceedings on 09.06.2022 before S.B at camp court Swat:



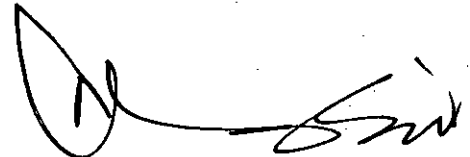
(Mian Muhammad)
Member(E)
Camp Court Swat

9th June, 2022.

1. None present for the petitioner. Kabirullah Khattak, Addl: AG alongwith Mr. Muhammad Ajmal, Assistant Secretary for respondents present.

2. The instant execution petition was called time and again but none ^{KM} present on behalf of the petitioner. In view of the above, the execution petition is dismissed in default. Consign.

3. *Pronounced in open court in Swat and given under my hand and seal of the Tribunal this 9th day of June, 2022.*



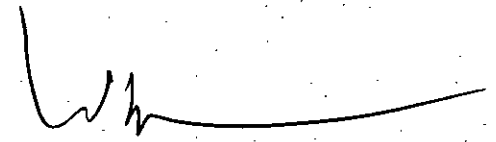
(Kalim Arshad Khan)
Chairman
Camp Court Swat

06.12.2021

Petitioner in person present.

Mr. Riaz Khan Paindkaheil, Assistant Advocate General for respondents present.

Petitioner seeks long adjournment of this Execution Petition. Therefore, case is adjourned to 07.02.2022 before S.B at Camp Court Swat.



(Atiq Ur Rehman Wazir)
Member (E)
Camp Court, Swat

07.02.2022

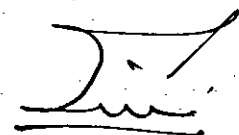
Tour is hereby canceled. Therefore, the case is adjourned to 04.04.2022 for the same as before at Camp Court Swat.



Reader

04.04.2022

Nemo for the parties. Previous date was changed on Reader Note, therefore, notice be issued to the parties and to come up for implementation report on 09.05.2022 before the S.B at Camp Court Swat.



(Salah-Ud-Din)
Member (J)
Camp Court Swat

07/04/2021

Due to COVID-19, the case is adjourned to
09/06/2021 for the same.


READER

26.07.2021

To come up for implementation report on
26.08.2021 before S.B at Camp Court, Swat. Notices be
issued to petitioner/counsel as well as respondents for
the date fixed.


Chairman

26.08.2021

Petitioner in person and Mr Muhammad Riaz Khan
Paindakhel, Asstt. AG for the respondents present.

Petitioner seeks long adjournment of this Execution
Petition. Therefore, case is adjourned to 06.12.2021 before
S.B at camp court, Swat.


Chairman
Camp Court, Swat

03.02.2021

Nemo for the parties present.

Muhammad Riaz Khan Paindakhel, Assistant Advocate
General for respondents present.

As the case had been adjourned previously on Reader
note due to Covid-19, therefore, notice to the parties be
issued.

Adjourned to 07.04.2021 before S.B at camp court
Swat.

A handwritten signature in black ink, consisting of a large, stylized letter 'M' with a star-like mark above it, followed by a long horizontal stroke extending to the right.


(Mian Muhammad)
Member(E)
Camp Court Swat

02.11.2020

Appellant in person present.

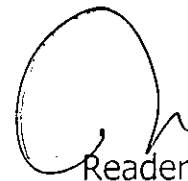
Mr. Muhammad Jan, learned Deputy District Attorney alongwith Arif, Superintendent for respondents present.

Appellant requested for adjournment as Lawyers are on general strike. Representative of respondents seeks time to submit implementation report. granted. To come up for implementation report on 09.12.2020 before S.B at Camp Court, Swat.


Member (E)
Camp Court, Swat

09.12.2020

Due to COVID-19, case is adjourned to 03.02.2021 for the same as before.



Reader

08.09.2020

Petitioner present in person.

Mr. Muhammad Jan learned Deputy District Attorney for the respondents present.

Preceding date was adjourned on a reader's note, therefore, representative of the respondents namely Arif Superintendent is not before the court. As sch notice be issued to the respondents with direction to make sure presence of their representative not below Grade-17 in order to apprise this Tribunal regarding progress in the instant case. To come up for implementation report on 07.10.2020 before S.B at Camp Court, Swat.


Member
Camp Court, Swat

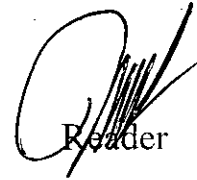
07.10.2020

Petitioner is present in person. Mr. Usman Ghani, District Attorney is also present.

Respondents were noticed but none of them or any representative on their behalf has forth come. The process be repeated once again and services of respondents has to be procured through issuance of process through registered envelope accompanied with AD Card simultaneously, directing them to depute a representative not below Grade-17, well versed and conversant with the case. They are further directed to submit implementation report on 02.11.2020 before S.B at Camp Court, Swat.


(MUHAMMAD JAMAL KHAN)
MEMBER
CAMP COURT SWAT

01.06.2020 Due to Covid-19, the case is adjourned. To come up for the same on 06.07.2020, at camp court Swat.


Reader

06.07.2020 Bench is incomplete. Therefore, the case is adjourned. To come up for the same on 05.08.2020, at camp court Swat.

5-8-2020


Due to COVID-19 the case is adjourned for the same on 8-9-2020.


Reader



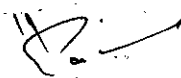
07.01.2020

Petitioner in person and Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Muhammad Arif, Superintendent for the respondents present. Petitioner requested for adjournment. Adjourned to 02.03.2020 for further proceedings before S.B at Camp Court Swat.


(Muhammad-Amin Khan Kundi)
Member
Camp Court Swat

02.03.2020

Mr. Fazal Hayan Brother of the petitioner on behalf of the petitioner present. Mr. Arif Superintendent representative of the respondent department present. Brother of the petitioner requested for adjournment on the ground that the petitioner is indisposed. Adjourn. To come up for further proceedings on 06.04.2020 before S.B at Camp Court Swat.


Member
Camp Court Swat


Due to COVID-19 various
travels to camp court swat
has been cancelled to come
up for the same on
01/06/2020


Member

E.P No. 256/2017

06.11.2019

Petitioner in person present. None present on behalf of the respondents. Notice be issued to the respondents for attendance and implementation report for 03.12.2019 before S.B at Camp Court Swat.


(Muhammad Arif Khan Kundi)
Member
Camp Court Swat

03.12.2019

Petitioner in person present. Mr. M. Riaz Khan, Painsdakhel, Assistant Advocate General alongwith Mr. M. Arif, Supdt and Mr. Arif Shahzad, Record Keeper for respondents present. Petitioner seeks adjournment as his counsel is not available. Adjourned. To come up for further proceedings on 07.01.2020 before S.B at camp court Swat.


Member
Camp Court Swat

01.07.2019

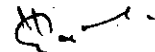
Petitioner in person present. Mr. Mian Amir Qadir learned District Attorney alongwith Muhammad Arif Superintendent present. Adjournment requested. Adjourn. To come up alongwith another execution petition filed by the petitioner on 02.09.2019 before S.B at Camp Court, Swat.



Member
Camp Court, Swat.

02.09.2019

Petitioner in person present. Mr. Mian Amir Qadir learned Deputy District Attorney alongwith Atta Ullah Assistant Secretary present. Adjournment requested. Adjourn. To come up alongwith another execution petition filed by the petitioner on 08.10.2019 before S.B at Camp Court, Swat.



Member
Camp Court, Swat.

08.10.2019

Petitioner in person and Mian Ameer Qadir, Deputy District Attorney for the respondents present. Petitioner requested for adjournment on the ground that his counsel is not available today. Adjourned to 06.11.2019 for further proceeding before S.B at Camp Court Swat.



(Muhammad Amin Khan Kundi)
Member
Camp Court Swat


01.04.2019

Petitioner with counsel present. Mr. Mian Amir Qadir learned District Attorney alongwith Muhammad Arif Superintendent present and seeks adjournment on the ground that CPLA before august Supreme Court of Pakistan filed against the judgment under implementation has not yet been decided. Adjourn. To come up for further proceedings on 07.05.2019 before S.B at Camp Court Swat.


Member
Camp Court, Swat.


07.05.2019

Petitioner in person present. Javid Assistant representative of respondent department present. Learned counsel for the petitioner is not in attendance. Adjournment requested. Adjourn. To come up for further proceedings on 10.06.2019 before S.B at Camp Court Swat.


Member
Camp Court, Swat.

10.06.2019

Learned counsel for the petitioner present. Javid Assistant representative of the respondent department present. Adjournment requested. Adjourn. To come up alongwith another execution petition filed by the petitioner on the next date fixed as 01.07.2019 before S.B at Camp Court, Swat.


Member
Camp Court, Swat.

07.02.2019 Junior to counsel for the petitioner and Mr. Mian Amir Qadir District Attorney alongwith Arif Superintendent present. Junior to counsel for the petitioner seeks adjournment as senior counsel for the petitioner is not in attendance. Adjourn. To come up for further proceeding/implementation report on 07.03.2019 before S.B at Camp Court Swat.



Member

— Camp Court, Swat

07.03.2019

Counsel for the petitioner present. Mian Amer Qadir, District Attorney alongwith Mr. Muhammad Arif, Supdt for respondents present.

Representative of the respondents produced a copy of letter dated 04.01.2019, wherein it is stated that the petitioner was promoted out of turn basis through administrative order. The said order was subsequently withdrawn by the competent authority but restored on acceptance of appeal vide judgment dated 09.08.2017.

On reaching the age of superannuation, he stood retired from service on 18.06.2017. A CPLA has already been filed in august Supreme Court of Pakistan and is pending adjudication. In case the said judgment is provisionally implemented, it will have adverse implications on the CPLA referred to above. A copy of this order was also handed over to the learned counsel for the petitioner. He sought adjournment to go through the same. Case to come up for further proceedings on 01.04.2019 before S.B at camp court Swat.

Member
Camp Court, Swat

05.12.2018 Appellant with counsel present Mr. Usman Ghani learned District Attorney present Mr. Hamid Iqbal Superintendent on behalf of respondent's present. Petitioner absent. Mr. Usman Ghani learned District Attorney along with Muhammad Arif Superintendent present. Representative of the respondents seeks time to furnish conditional implementation report prior to the year 2014 for implementation report/further proceedings on 09.01.2019 before S.B at camp court Swat.

service appeal was adjourned time and again, but the departmental representative did not produce the seniority lists. Today upon the repeated direction of this Tribunal the departmental representative produced only two (02) seniority lists for the year ending on 31-December-2014, produced today, the date of birth of the

09.01.2019 Counsel for the petitioner present. Mr. Muhammad Arif, appellant is mentioned as 23.02.1955 while in the seniority list for the Superintendent along with Mr. Mian Ameer Qadir, District Attorney for the respondents present. Implementation report not mentioned as 2010. Departmental representative again directed to furnish other seniority lists issued prior to the year 2014 in which the name of the appellant is included. Adjourned. To come up for implementation report on 07.02.2019 before S.B at Camp Court Swat.

07.02.2019 before S.B at Camp Court Swat. Need to mention that performance of duty, if any, by the appellant after his attaining age of this superannuation is of no legal effect and as such he cannot ask for remuneration for the same without any legal basis.

Member

Member
Camp Court Swat

05.09.2018

Neither appellant nor his counsel present. Mr. Attaullah, Assistant Secretary alongwith Mr. Usman Ghani, District Attorney for respondents present.

Vide order sheet dated 03.04.2018 respondents were directed to produce provisional implementation order as they were unable to get the judgment of this Tribunal suspended from the august Supreme Court of Pakistan by way of filing CPLA. Today the representative of the respondents produced letter dated 20.08.2018 whereby it has ^{been} clarified that ~~the~~ CPLA has been filed in the Supreme Court so the judgment of this Tribunal cannot be implemented till the final order from the august court. Last opportunity is granted to the respondents to positively submit provisional implementation order on the next date of hearing failing which salary of SMBR would be attached forthwith. Case to come up for further proceedings/implementation report on 06.11.2018 before S.B at camp court Swat.


Member
Camp Court Swat

06.11.2018

Due to retirement of the Hon'ble Chairman Service Tribunal is incomplete. Tour to Camp Court Swat has been cancelled. To come up for the same on 05.12.2018 at camp court Swat.


Reader

03.04.2018

Counsel for the petitioner and Addl: AG alongwith Mr. Attaullah, Assistant Secretary for respondents present. Representative of the respondents submitted reply to execution petition, wherein they have taken a stance that as CPLA has been filed against the judgment of this Tribunal dated 09.08.2017, so order passed by the Service Tribunal cannot be implemented till the decision of the Supreme Court of Pakistan. During the proceedings the representative of the department was directed either to get the aforementioned judgment of this Tribunal suspended through the Supreme Court of Pakistan or provisional implementation order be submitted without further loss of time. In case provisional implementation order is not submitted on the next date of hearing further coercive measure in the shape of attachment of salary and civil imprisonment would be taken against them. To come up for further proceedings on 08.05.2018 before S.B.


(AHMAD HASSAN)
MEMBER

08.05.2018

The Tribunal is non-functional due to retirement of our Hon'ble Chairman. Therefore, the case is adjourned. To come up for same on 26.07.2018.


Reader

26.07.2018

Petitioner, Mr. Muhammad Amin in person present. Mr. Attaullah, Assistant Secretary alongwith Mr. Muhammad Jan, DDA for respondents present. On previous date the execution petition was adjourned on a reader not so no proceedings could be carried out on that very day. In view of the directions of this Tribunal passed on 03.04.2018, the respondents were again directed to submit provisional implementation order. Case to come up for implementation report on 05.09.2018 before S.B at Camp Court Swat.


Chairman

07.03.2018

Counsel for the petitioner and Mr. ~~Attallah~~ DDA alongwith Mr. Yousaf Khan, Supdt for the respondents present. Representative of the respondent department produced reply to implementation of the Honorable Tribunal judgment dated 09.08.2017 which is placed on file. To come up for further proceedings on 27.03.2018 before S.B


(Gul Zeb Khan)
Member





27.03.2018

Learned counsel for the petitioner and learned District Attorney alongwith Mr. Attaullah, Assistant Secretary for the respondents present. Representative of the respondents seeks time to furnish copy of CPLA and other related documents. Adjourn. To come up for further proceedings on 03.04.2018 before S.B


Member

FORM OF ORDER SHEET

Execution Petition No. 256/2017

S.No.	Date of order Proceedings	Order or other proceedings with signature of Judge
1	2	3
1	26.12.2017	<p>The Execution Petition of Mr. Muhammad Amin submitted to-day by Mr. Shaiber Khan Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR 26/12/17</p>
2-	29/12/17.	<p>This Execution Petition be put up before S. Bench on- <u>08/01/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	08.01.2018	<p>Petitioner with counsel present. Notice be issued to the respondents for implementation report for 14.02.2018 before S.B.</p> <p style="text-align: right;"> (Muhammad Amin Khan Kundi) Member</p>
	14.02.2018	<p>Petitioner with counsel present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Muhammad Yousaf, Superintendent for the respondents also present. Implementation report not submitted. Learned Additional AG requested for further adjournment. Adjourned. To come up for implementation report on 07.03.2018 before S.B.</p> <p style="text-align: right;"> (Muhammad Amin Khan Kundi) Member (J)</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

E. P. No. 256 /2017

In

Service Appeal No. 1227/2016

Mohammad Amin Ex-Naib Tehsildar Matta, Swat

.....Petitioner/Applicant

V E R S U S

The Government of Khyber Pakhtunkhwa and others


.....Respondents

I N D E X

S.No	Description of Documents	Annex	Pages
8.	Grounds of Execution Petition along with Affidavit		1-2
9.	Copy of Service Appeal No. 1227/2016	A	3-8
10.	Copy of Judgment and Order dated 09.08.2017	B	9-12
11.	Copy of Comments	C	13-14
12.	Copy of Rejoinder	D	15-17
13.	Copy of Application	E	18-20
14.	Wakalat Nama		21

Petitioner/Applicant

Through



Shaiber Khan

&


Sheraz Ali Khan

Advocates, Peshawar

Date: 26/12/2017

1

BEFORE THE KHYBER PAKHTUNKHAWA SERVICE TRIBUNAL

E.P No 256/2017

In

Service Appeal No 1227/2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1118

Dated 26/12/2017

Mohammad Amin Ex-Naib Tehsildar Matta, Swat,

.....Petitioner/Applicant

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. The Government of Khyber Pakhtunkhwa through Secretary Revenue and Estate Department, Civil Secretariat Peshawar.
3. Senior Member Board of Revenue, Peshawar,

.....Respondents

Execution Petition for implementation of the Judgment/order Dated 09.08.2017 Passed by this Hon,ble Tribunal in Service Appeal NO.1227/2016 title Mohammad Amin vs Government of Khyber Pakhtunkhwa and others holding therein that :-

"The present appeal is accepted and the impugned order is set aside. As a result of which the appellant shall be deemed to have been retired on superannuation from the date when his superannuation was due. He shall also be entitled to the benefits of intervening period as well."

Respectfully Sheweth:-

1. That the petitioner/ appellant had filed service appeal bearing No1227/2016 (Annexure "A") before this Hon'ble Tribunal.
2. That this Hon'ble Tribunal was pleased to accept/ allow the subject appeal vide Judgment/ order dated 09/08/2017 (Copy of the said judgment and order Annexure "B").
3. That Respondent/Department contested the appeal of the petitioner/appellant by filing comments (Annexure "C") which were followed by the Rejoinder from the petitioner/appellant side (Annexure "D").

4. That the service data of the petitioner/appellant is as under :-

D.O.B: 19-06-1957.


D.O. Appointment as Patwari 06-04-1981

D.O Compulsory Retirement 26-09-2016

D.O 60 year Age Retirement 18-06-2017

5. That the petitioner/appellant has submitted to the respondent the attested copy of the Judgment/order dated: 09.08.2017 through application (Annexure "E") but the respondent/Department has not paid any heed to the written as well as verbal requests of the petitioner/appellant for execution of the Judgment/order (Annexure "B") of this Hon'ble Tribunal till dated, hence instant execution petition/Implementation petition.

It is, therefore, humbly prayed that on acceptance of this execution petition/implementation petition, the respondents/ department may please be directed to implement the Judgment/order dated: 09/08/2017 of this Hon'ble Tribunal in letter and spirit.

Petitioner/Applicant
Through 
Shaiber Khan
&
Sheraz Ali khan

Dated:- 26/12/2017

Affidavit

I, Mohammad Amin S/O Fazal Ilahi R/O Serai Mia Gan, Manglawar, Tehsil Babuzai, District, Swat do hereby solemnly affirm and declare on oath that the contents of the Execution Petition/Implementation Petition are true and correct to the best of my knowledge and belief and nothing has been kept concealed.



Deponent 

15602-0334497-5

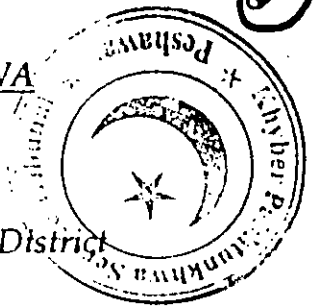
Annexure "A"

3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1227/2016

Muhammad Amin Ex-Naib Tehsildar Matta, District Swat.



Khyber Pakhtunkhwa Service Tribunal
...Appellant

VERSUS

Diary No. 1285

Dated 13-12-2016

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. The Government of Khyber Pakhtunkhwa Secretary Revenue and State Department, Civil Secretariat / Senior Member Board of Revenue, Peshawar.

...Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE NOTIFICATION NO. ESTT: V / PF / M.AMIN / 23478-83 DATED 26-09-2016, WHEREBY THE MAJOR PENALTY OF COMPULSORY RETIREMENT IS IMPOSED UPON THE APPELLANT AGAINST WHICH THE APPELLANT SUBMITTED A REVIEW PETITION, WHICH WAS REJECTED VIDE NO. ESTT: V/PF/M.AMIN/SWAT/29161 PESHAWAR DATED 06-12-2016, BOTH THE ORDERS ARE AGAINST THE LAW, RULES AND FACTS AND ARE LIABLE TO BE SET ASIDE.

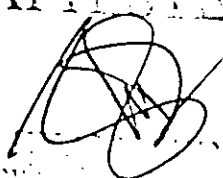
Filed to-day

Registrar

13/12/16

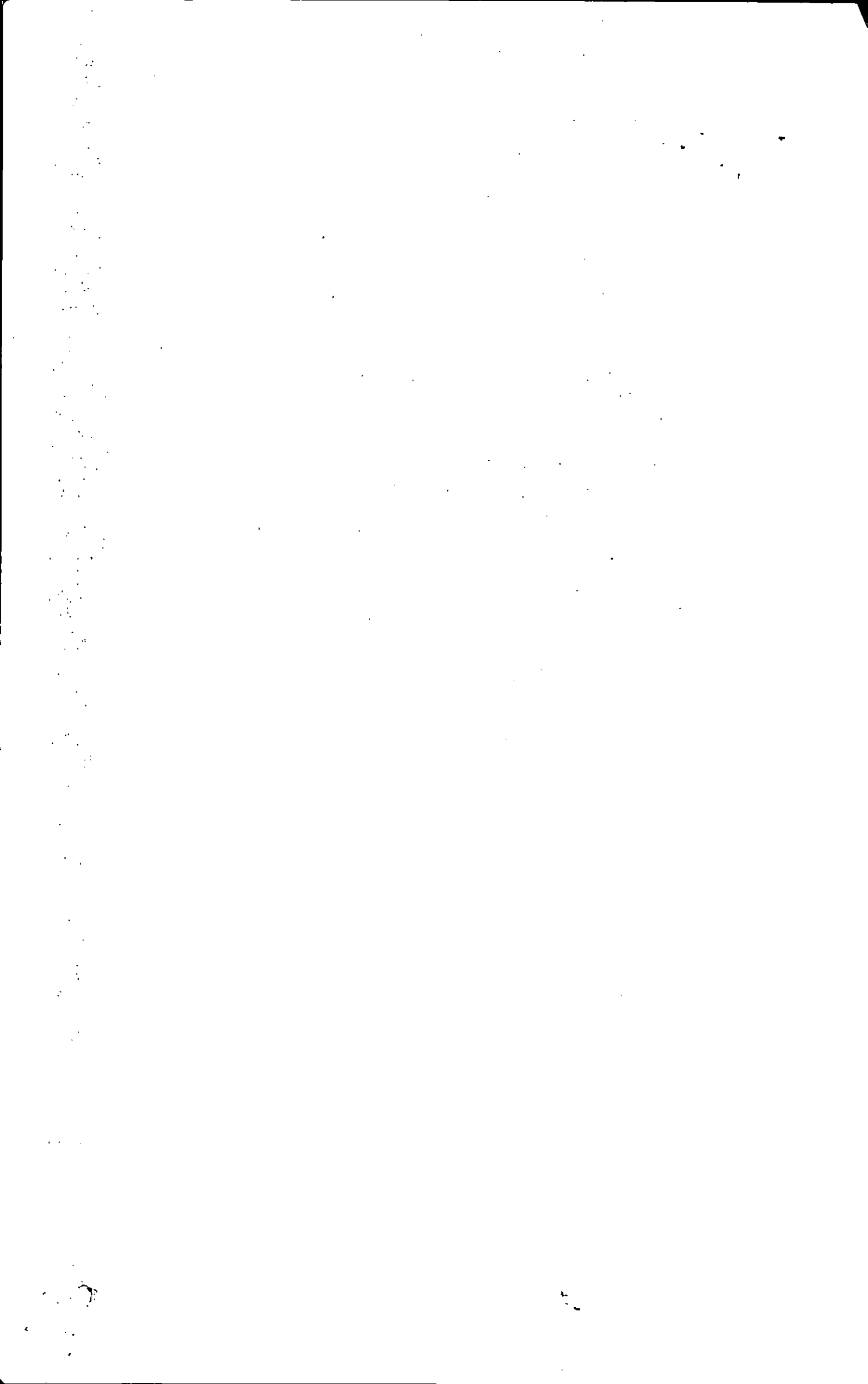
Prayer:

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

That on acceptance of this appeal both the orders impugned may very kindly be set aside and the appellant reinstated back into service as Naib Tehsildar along with all consequential benefits.


ATTESTED




Respectfully Sheweth:

Facts:

- i) That a Decree Sheet drawn on 16-10-2002 in Case No. 285/1 titled as "Laktai Khan S/o Nawsherawan Khan R/o Shakardara Tehsil Matta, District Swat VERSUS Ghat Khan S/o Faqiray Khan R/o Shakardara Tehsil Matta, District Swat", whereby a pre-emption case was decreed in favour of the plaintiff. Copy of the judgment along with decree sheet are enclosed as Annexure "A" and "B", respectively.
- ii) That the aggrieved Ghat Khan, defendant, filed an appeal before the Learned Additional District Judge / Izafi Zilla Qazi Matta Swat. On 15-05-2004 the appeal was accepted and the suit of the plaintiff Lakhtai Khan was dismissed. Copy of the judgment and the decree sheet are enclosed as Annexure "C" and "D", respectively.
- iii) That the aggrieved party (Laktai Khan) filed a Civil Revision No. 662-P of 2004 before the August Peshawar High Court, Peshawar against the judgment and decree afore said of the Learned Additional District Judge / Izafi Zilla Qazi Matta. This Civil Revision was dismissed by this August Court on 27-05-2014. Copy of the judgment is enclosed as Annexure "E".
- iv) That the appellant herein, being Revenue Officer, under Section 45 of the West Land Revenue Act, 1967 attested the Mutation No. 1236 dsted 24-11-2015 on the strength of the

ATTESTED


 Revenue Officer,
 Khwaja Muhammad
 Service Tribunal,
 Peshawar


ATTESTED

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10

3

judgment and decree of the Learned Additional District Judge / Izafi Zilla Qazi Matta and the judgment of this August Court. Copy of the Mutation is enclosed as Annexure "F".

v) That during the proceedings before the Learned Trail Court the defendant's, Ghat Khan, version for getting escapism from the pre-emption problems he stated that the pre-empted land had been purchased by him for his brother, which version was not accepted by the Learned Trail Court, as contained on page No. 6 of the judgment of the Learned Trail Court, hence Bakht Bacha rendered aggrieved and submitted an application to the District Collector Swat for the review of the Mutation aforesaid. The District Collector approved the review of the said Mutation vide his letter No. 207 dated 02-03-2016 addressed to the Assistant Commissioner Matta, who forwarded the same to the appellant vide his letter No. 557 dated 02-03-2016. Copies of the letters are enclosed as annexure "G" and "H", respectively.

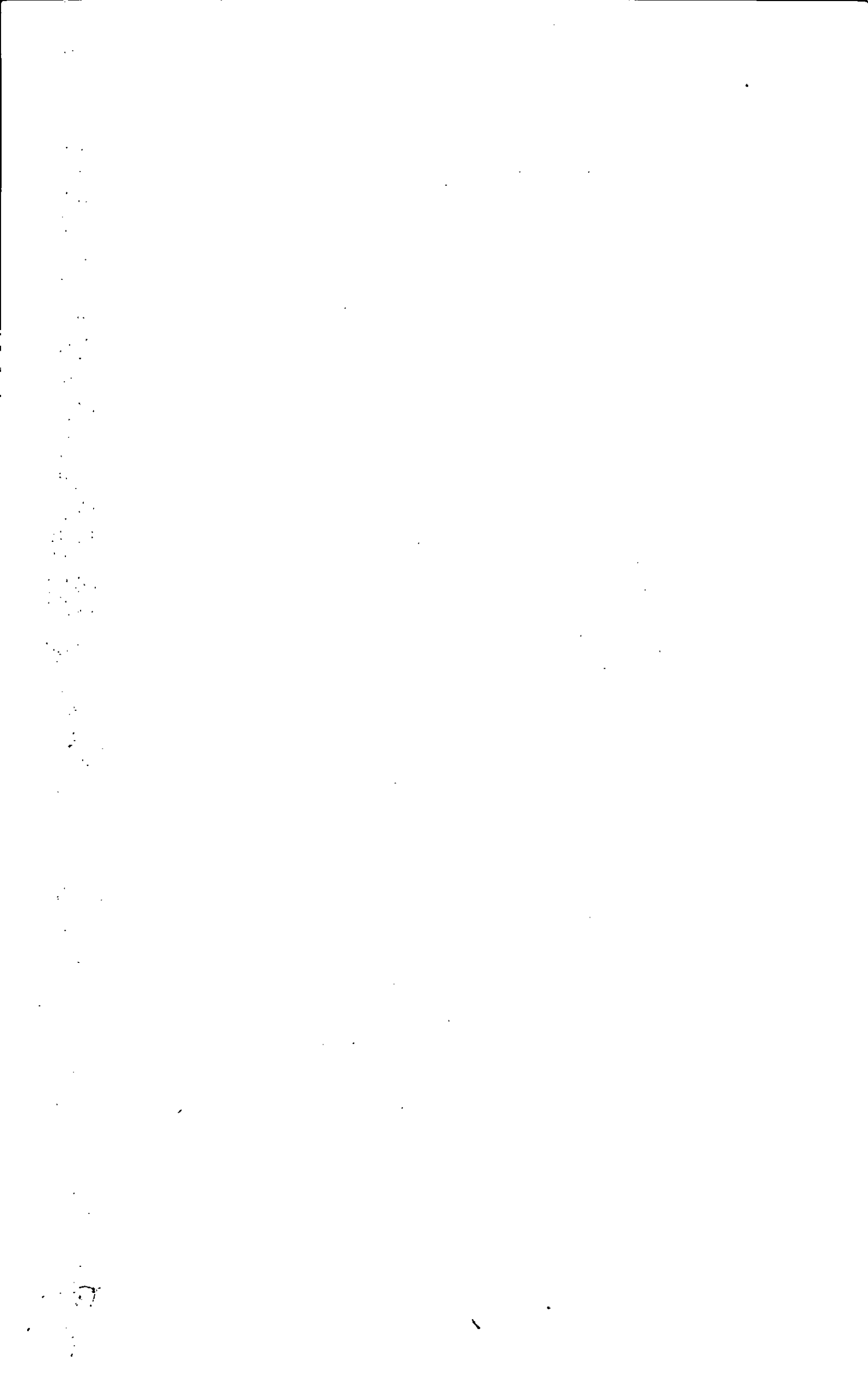
vi) That the appellant being of the opinion that the Mutation was correctly attested, did not reviewed the said Mutation and submitted his report on 26-04-2016 to the Assistant Commissioner Swat. Copy of the report is enclosed as Annexure "I".

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

vii) That vide No. 3337 dated 02-05-2016 the respondent, i.e. SMBR initiated disciplinary proceedings, appointed the Additional Deputy Commissioner Swat as Inquiry Officer, issued

ATTESTED



6

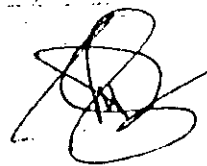
6

Charge Sheet and Statement of Allegations to the appellant on account of attestation of Mutation aforesaid. Copies are enclosed as Annexure "J".

- viii) That the appellant submitted his reply to the Charge Sheet and Statement of Allegations to the respondent No. 1. Copy is enclosed as Annexure "K", which was not accepted by the respondent No. 1 and finally issued a Show Cause Notice, wherein tentatively decided to impose the penalty of Compulsory retirement. The appellant submitted his reply. Copy of the Show Cause Notice and that of the reply is enclosed as Annexure "L" and "M", respectively.
- ix) That finally the appellant was issued the impugned order of compulsory retirement vide Notification No. Estt:V/PF/M.Amin/23478-83 dated Peshawar the 26-09-2016. Feeling aggrieved of the same the appellant preferred a review petition which was also rejected in a summary manner vide No. Estt: V/PF/M.Amin/Swat/29161 Peshawar dated 06-12-2016. Copy of the order dated 26-09-2016 is enclosed as Annexure "N", that of the review petition as Annexure "O" and copy of the order 06-12-2016 is enclosed as Annexure "P", respectively.
- x) That the appellant still feeling aggrieved filed this service appeal on the following grounds.

Grounds:

ATTESTED

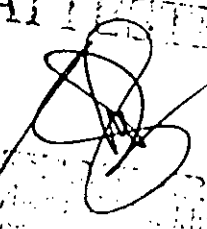



ATTESTED

7 (S)

(S)

- a) That the appellant is not being treated in accordance with the law and rules and the respondent is exercising the powers not vested in him.
- b) That for the cancellation of the Mutation aforesaid Bakht Bacha has served a notice on Ghat Khan and Others under the Paragraph 9 of the Regulation of 2009 with the copy of the plaint likely to be filed in the Civil Court for the Declaration of the land being subject matter of the pre-emption case, the Mutation and the disciplinary proceedings, wherein he has also in para 7 sought the cancellation of the Mutation. Copy of the plaint is enclosed as Annexure "Q".
- c) That all these proceedings are pertaining to the ownership of the land. The judgments of the Learned Lower Courts as well of this August Court neither suggest / declare the land to be of Bakht Bacha and when the suit of Lkhtai was finally dismissed the ownership of the land according to the Court Decision remained unchanged and in the ownership of Ghat Khan.
- d) That the proceedings initiated against the appellant by the respondent are a result of the abuse of authority and is amounting to override the decisions of the Learned Courts.
- e) That the disciplinary proceedings are based on mala fide.

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

f) That the appellant has been condemned as unheard, moreover his defence version has not been considered neither chance of self defence has been


ATTESTED

afforded to the appellant nor any chance of cross examination has been afforded to the appellant.

g) That it is also pertinent to mention that another service appeal is also pending before this Honourable Tribunal in which the appellant has challenged his reversion against the law and rules, therefore, this appeal may very kindly be clubbed with the same in order to avoid conflicting judgments.

It is, therefore, very respectfully prayed that on acceptance of this service appeal both the orders impugned may very kindly be set aside and the appellant reinstated back into service as Naib Tehsildar with all back benefits.

Any other relief deemed appropriate in the circumstances and not specifically prayed for may also very kindly be granted.

M
Appellant

Muhammad Amin
Through Counsels,

Aziz-ur-Rahman

Imdad
Imdad Ullah
Advocates Swat

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Annexure "B"

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT SWAT

Service Appeal No. 1227/2016

Date of Institution... 13.12.2016

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 another. ... (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 proceeded against by the department under the disciplinary rules for attesting a Mutation as Naib Tehsildar, Matta, District Swat. The impugned order of compulsory retirement of the appellant was passed on 26.09.2016. Against which he filed a departmental appeal on 29.09.2016 which was rejected on 06.12.2016. Thereafter, the appellant filed the present appeal before this Tribunal on 13.12.2016. The facts culminated into the initiation of departmental proceedings were that some property was sold on the basis of a

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

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written dead. That sale was pre-empted in a Civil Court. That vendee was shown as Ghat Khan. During proceedings before the Civil Judge the dispute arose as to whether Ghat Khan is the real owner or benamidar on behalf of Bakht Bacha (his brother). The Civil Court while decreeing the Civil Suit, held that it was Ghat Khan and not Bakht Bacha who was the owner of the said property. Against the said decision of the learned Civil Judge, appeal succeeded and the Suit was dismissed. In the judgment by the Appellate Court, the opinion of the court was that the property was purchased by Bakht Bacha and not by Ghat Khan. The Worthy High Court maintained the order of Appellate Court. Thereafter the appellant being Naib Tehsildar Matta attested a Mutation of the said property in favour of Ghat Khan. Bakht Bacha lodged complaint to the Deputy Commissioner against that Mutation. The then A.D.C namely Ghulam Saeed passed an order on that complaint and addressed to the Assistant Commissioner Matta, directing him to review the mutation under Section 163 of the West Pakistan Land Revenue Act, 1967. The appellant after considering the said order of the A.D.C came to the conclusion that on merit the Mutation does not warrant to be reviewed. Thereafter the department initiated disciplinary proceedings against the appellant regarding the same very Mutation. The authority appointed the same Ghulam Saeed as enquiry officer who found the appellant guilty and proposed penalty of compulsory retirement of the appellant and on the basis of the said enquiry, the impugned order was passed.

ARGUMENTS

3. The learned counsel for the appellant argued that the appellant had not committed any illegality or irregularity by attesting the Mutation as according to the appellant the dismissal of Pre-emption Suit by the court means decision in favour of Ghat Khan and he attested the Mutation in his favour. The other

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objection of the learned counsel for the appellant was that due process was not adhered to by not allowing the appellant to cross-examine the star witness (complainant). He also objected to the very punishment proposed by the enquiry officer, Mr. Ghulam Saeed, who had already passed order for review as discussed above. The learned counsel for the appellant further argued that if a Suit of Pre-emption is dismissed, it means that ownership of plaintiff is declared.

4. On the other hand, the learned District Attorney argued that the dismissal of Pre-emption Suit never decides the issue of title. He argued that the Suit was dismissed on the point of limitation and no merits were touched. He further argued that, at least, there is an opinion of the learned appellate court regarding ownership of Bakht Bacha.

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CONCLUSION

5. The facts as narrated above show that Mr. Ghulam Saeed who entertained the first complaint of the complainant and expressed his opinion against the attestation of Mutation in favour of Ghat Khan, cannot be appointed as enquiry officer because this a cardinal principle of justice that enquiry officer should be a person who has no bias or who has got no involvement in the case which is being enquired into. Impartial tribunals/arbiters are pillars of procedural due process and propriety. The very order of Mr. Ghulam Saeed directing the review of the Mutation has made him dis-entitled to be the enquiry officer because once he has given his opinion against the Mutation, then he was under commitment bias to defend his that very order directing the appellant to review the Mutation. Any report by any such person is no report in the eyes of law and any penalty awarded on the basis of such report is bound to collapse.

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6. As a sequel to the above discussion the present appeal is accepted and the impugned order is set aside. As a result of which the appellant shall be deemed to have been retired on superannuation from the date when his superannuation was due. He shall also be entitled to the benefits of intervening period as well. Parties are left to bear their own costs. File be consigned to the record room.

SD/-
(Gul Zeb Khan)
Member

SD/-
(Niaz Muhammad Khan)
Chairman
Camp Court, Swat

ANNOUNCED
09.08.2017

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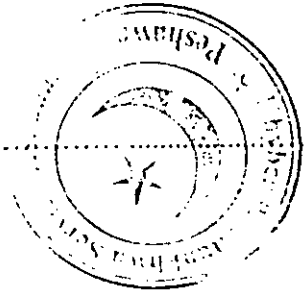
Annexure C

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No: 1227/2016

Muhammad Amin Ex-Naib Tehsildar.....

Appellant



VERSUS

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

Put up to the court with regard

PRELIMINARY OBJECTIONS.

1. That the appellant has got no cause of action or locus standi.
2. That the appeal is bad for non- joinder and mis- joinder of un-necessary 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.
5. That the appellant has been estopped by his own conduct to file the appeal.

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

ON FACTS

- i. Pertains to record of Court therefore no comments.
- ii. As stated in para - 1 above.
- iii. Pertain to record.
- iv. Incorrect. There was no mention of attestation of any mutation in the name of any person, but despite the order of Deputy Commissioner Swat to review the impugned mutation the appellant avoided to comply with the legal order.
- v. Incorrect. The Review application, was marked to the appellant with the direction from the District Collector Swat, but the appellant decline to review the mutation.
- vi. Incorrect. As in para - IV and V above. Beside, being District Collector, the Deputy Commissioner Swat has ordered the appellant to review the mutation, but inspite of clear cut orders, the appellant decline to review the impugned mutation.
- vii. Pertains to record.
- viii. Incorrect. Proper inquiry was conducted and opportunity of personal hearing and cross examination was afforded to the appellant, which was not found satisfactory and on the recommendation of Enquiry Officer he was compulsorily retired from Government service (Copy of the report is "A").
- ix. Correct to the extent that his review petition was rightly rejected by the Competent Authority.
- x. The appeal of the appellant is not maintainable.

SA COMMENTS

ATTESTED

ATTESTED

[Signature]

Khyber Pakhtunkhwa
Chief Secretary
Peshawar

14 (14)

GROUNDS

- a. Incorrect. The appeal of the appellant was treated accordance with law / rules.
- b. Incorrect. The appellant has been proved guilty of the charges.
- c. Incorrect. As in para - b above.
- d. Incorrect. All the proceedings have been carried out according to law / rules.
- e. Incorrect. All the proceedings are in accordance with law.
- f. Incorrect. Proper chance of hearing was afforded to the appellant.
- g. Pertains to record.

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

17/1/2017
Respondent No. 1 & 2

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Services Tribunal,
Peshawar

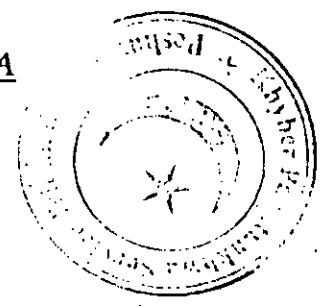
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BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1227 of 2016



Muhammad Amin.

...Appellant

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary and Others.

...Respondents

REJOINDER ON BEHALF OF THE APPELLANT.

Respectfully Sheweth:

Preliminary Objections:

That all the preliminary objections are incorrect, baseless, against the law, rules and facts, thus the same are denied specifically. Moreover the appellant has got a prima facie case in his favour and has approached this Honourable Tribunal well within time and this Honourable Tribunal has got the jurisdiction to adjudicate upon the same.

On Facts:

- i. Para i of the comments amounts to admission thus needs no comments.
- ii. Para ii of the comments also is amounting to admission thus needs no comments as well.
- iii. Para iii of the comments being admission as well needs no reply.

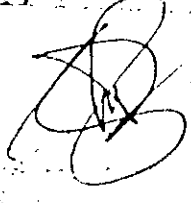
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Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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- iv. Para iv of the comments is incorrect and based on misconception, the law is very much clear on the subject, thus the para is denied specifically. *The enclosed order of the AOC Swat has confirmed the mutation in question as correct.*
- v. Para v of the comments as drafted is also against the law and the appellant was to adopt the course and not to honor the illegal orders and directions of the superiors, thus the para is denied.
- vi. Para vi of the comments as drafted is also against the law and rules and the appellant has but acted in accordance to the law, thus the para is denied.
- vii. Para vii of the comments needs no reply being admission.
- viii. Para viii of the comments is incorrect and based on misstatement and is against the record. Neither the codal formalities have been adopted nor the due course has been adopted necessary for the imposition of the major penalty, thus the para is denied specifically.
- ix. Para ix of the comments as drafted is also whimsical and reflects the colourful exercise of powers of the respondents as the appellate / review order is bald of any reasons, the same being mandatory, thus the para is denied.
- x. Para x is vague and evasive thus amounting to admission, hence needs no comments.

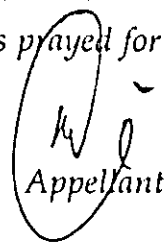

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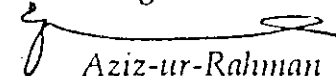

On Grounds:

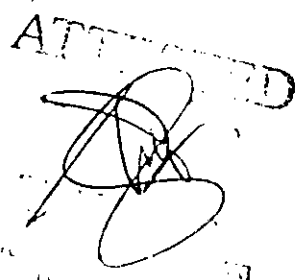
- a. Ground a of the comments as drafted is incorrect and devoid of merits as neither the codal formalities have been adopted nor the due course has been adopted, thus the para is denied specifically.
- b. Ground b of the comments as drafted is incorrect, devoid of merits and in need of prof, hence the same is denied.
- c. Para c of the comments being vague and evasive is amounting to admission, hence needs no comments.
- d. Para d of the comments as drafted is incorrect and devoid of merits, hence the same is denied specifically.
- e. Para e of the comments as drafted is also evasive and devoid of merits, hence denied.
- f. Para f of the comments as drafted also is incorrect as no proper chance of defence has been afforded to the appellant, hence the para is denied.

It is, therefore, very respectfully prayed that on acceptance of this rejoinder the appeal of the appellant may very kindly be decided as prayed for originally.


Appellant

Muhammad Amin
Through Counsels,


Aziz-ur-Rahman

Imdad Ullah
Advocates Swat

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Annexure 'E'

18



19
OFFICE OF THE DEPUTY COMMISSIONER, SWAT.

Tel No: 0946-9240336

Fax No: 0946-9240329

E-mail: Deputycommissionerswat1@gmail.com

No. 13791/2/DK

Dated: 24/11/2017

To,

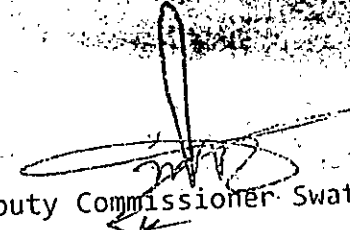
The Secretary to Commissioner,
Malakand Division at Saidu Sharif.

Subject: APPLICATION OF MUHAMMAD AMIN NAIB TEHSILDAR FOR
RETIREMENT.

Memo:

Mr. Muhammad Amin Ex-Naib Tehsildar of this office has submitted an application that he was serving as Naib Tehsildar in this office and he was to be retired on 18-06-2017 (60 years), however, his promotion order was withdrawn by the Board of Revenue on 05-09-2016. He preferred an appeal before the Honorable Service Tribunal which has been accepted vide order/judgment dated 09-08-2017.

His application along with copies of the above mentioned orders are enclosed for further orders at your end please.


Deputy Commissioner Swat.


ATTESTED



By U.M.S

20

OFFICE OF THE
COMMISSIONER MALAKAND DIVISION
SAIDU SHARIF SWAT

Tel# 0946-9240458
Email: secretarytocmd@gmail.com

No. 4495 /2/18/Estt;
Dated 08/12/2017

To:

The Secretary Board of Revenue,
Khyber Pakhtunkhwa, Peshawar.

Subject:-

APPLICATION OF MUHAMMAD AMIN, NAIB TEHSILDAR FOR
RETIREMENT FROM SERVICE.

Dear Sir,

I am directed to refer to the subject noted above and to enclose herewith a copy of the Deputy Commissioner, Swat letter No. 1379/1/2/DK, dated 24.11.2017 alongwith application in respect of Mr. Muhammad Amin, Ex-Naib Tehsildar and to convey that promotion order of the applicant was withdrawn vide your office Order No. Estt:V/PF/(M.Amin)/22730, dated 09.09.2016, which has been set aside vide Khyber Pakhtunkhwa, Service Tribunal decision, dated 09.08.2017 (copy enclosed).

I am further to convey that the applicant was compulsory retired from service vide Notification bearing Endst: No. Estt:V/PF/M.Amin/23478-83, dated 26.09.2016, which has also been set aside vide Service Tribunal decision, dated 09.08.2017 in the Service Appeal No. 1227/16 of the applicant (copy enclosed).

I am therefore to request for appropriate action in the matter, please.

Encl: As above.

(NAEEM AKHTAR)
SECRETARY TO COMMISSIONER
MALAKAND DIVISION

No. 4496 /2/60/Estt

Copy forwarded to the Deputy Commissioner, Swat with reference to his letter quoted above, for information, please.

SECRETARY TO COMMISSIONER
MALAKAND DIVISION

Received
7/12/2017

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ATTESTED

RS:- 50

	
پشاور بار ایسوسی ایشن، خیبر پختونخواہ	86502
بار کونسل ایسوسی ایشن نمبر: BC-1342-67	
رابطہ نمبر: 0300-599548	

بعدالت جناب: محیر عین کروس ٹریڈنگ سول صاحب پشاور

مخانب: Appellant	دعویٰ: Execution Petition
محمد آصف بنام گنوار حفیظ	علت نمبر: _____
	مورخہ: 26-12-2017
	م: _____
	تھانہ: _____

باعث تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
 آن مقام - لہذا وریلیہ سید سید محمد خان و سید سید ارمین خان کو وکیل مقرر
 کیا گیا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو
 اراضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اپیل نگرانی و نظرتالی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ 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 وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخیت منظور و قبول ہوگا
 دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے
 المرقوم: 26-12-2017

PESHAWAR BAR ASSOCIATION
KHYBER

واہ شد

کے لیے منظور ہے۔

محمد آصف ولد فضل الہی

نوٹ: اس وکالت نامہ کی فونو کاپی ناقابل قبول ہوگی۔

مقام
 Attested
 and
 Accepted
 محمد آصف

Attested
 محمد آصف



GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

No. Estt:V/M.Amin/E.PNo.256/16.S.A No.1227/16/20602
Peshawar dated the 26/04/2018.

Khyber Pakhtunkhwa
Service Tribunal

To

Diary No. 509


Dated 30/04/2018

✓
The Registrar,
Service Tribunal Khyber Pakhtunkhwa.

SUBJECT: - MOHAMMAD AMIN EX - NAIB TEHSILDAR MATTA SWAT VERSUS
GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH CHIEF
SECRETARY PESHAWAR.

EXECUTION PETITION FOR IMPLEMENTATION OF THE
JUDGMENT / ORDER DATED 09.08.2017 PASSED BY THIS HONBLE
TRIBUNAL IN SERVICE APPEAL NO. 1227/2016 TITLED
MOHAMMAD AMIN VERSUS GOVERNMENT OF KHYBER
PAKHTUNKHWA AND OTHERS HOLDING THEREIN THAT:-

I am directed to refer to Member Khyber Pakhtunkhwa Service Tribunal
order dated 03.04.2018 on the subject case and to state that original order of service tribunal
has already been challenged by this department, before the Supreme Court of Pakistan, if the
order of the Service Tribunal is implemented, the department will loose its locus standi
before the Supreme Court of Pakistan. However final order of Supreme Court of Pakistan
will be implemented as and when received.


Assistant Secretary (Estt.)

put up to the court with
relevant appeal/petition.


2/5/18

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE

REVENUE & ESTATE DEPARTMENT

No. Estt: V/M.Amin, E.P No.255 in S.A No. 1155/16/ 365/9
Peshawar dated the 20/08/2018

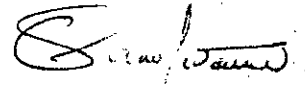
To

The Registrar,
Service Tribunal Khyber Pakhtunkhwa.

**SUBJECT: MOHAMMAD AMIN EX - NAIB TEHSILDAR VERSUS GOVERNMENT OF
KHYBER PAKHTUNKHWA THROUGH CHIEF SECRETARY PESHAWAR**

I am directed to refer to Chairman Service Tribunal Khyber Pakhtunkhwa order dated 26.07.2018 on the subject case and to state that this department has already challenged the original order of Service Tribunal dated 09.08.2017 before the Supreme Court of Pakistan which has not yet been decided. However final order of Supreme Court of Pakistan will be implemented as and when received.

Therefore I am directed to request you to kindly withdraw the order dated 26.07.2018 till the decision of Supreme Court of Pakistan Order please.


Secretary - I

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No. 256/2017

Service Appeal No. 1227/2016

Mr. Mohammad Amin Ex - Naib Tehsildar Matta Swat.....Appellant

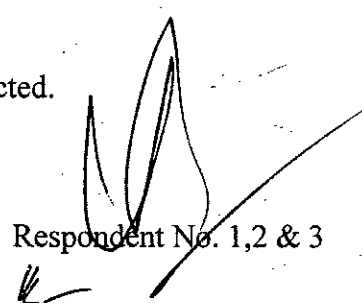
VERSUS

The Government of KPK, through Chief Secretary and othersRespondents

**REPLY TO EXECUTION PETITION FOR IMPLEMENTAION OF THE JUDGMENT /
ORDER DATED 09.08.2017.**

1. Correct to the extent of filing appeal by the petitioner.
2. Correct to the extent of judgment dated 09.08.2017 passed by Service Tribunal.
3. On receipt of judgment dated 09.08.2017 the Department approached Law Department for filling of CPLA before the Supreme Court of Pakistan which was accordingly allowed by Scrutiny Committee (Annexure - A). Since the Department has already assailed the judgment of Service Tribunal therefore, the order of Service Tribunal cannot be implemented till final decision of the Supreme Court of Pakistan. Copy of CPLA is at (Annexure - B).
4. No comments.
5. As in para - 3 above. The order of Service Tribunal will be implemented in light of Supreme Court judgment as and when received.

The execution petition having no legal ground may be rejected.


Respondent No. 1,2 & 3

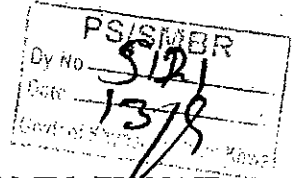


GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS AND
HUMAN RIGHTS DEPARTMENT

No.SO(Lit)/LD/9-23(5)Rev/2017/25331-34 W/B
Dated Peshawar the 13/9/2017

To

1. The Advocate General,
Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Govt. Khyber Pakhtunkhwa,
Revenue & Estate Department.



Subject:

SERVICE APPEAL NO.1127/2016 MUHAMMAD AMIN EX-NAIB
TEHSILDAR VS SENIOR MEMBER BOARD OF MEMBER BOARD
OF REVENUE AND OTHERS.

Dear Sir,

I am directed to refer to Government of Khyber Pakhtunkhwa Revenue & Estate Department letter No.Estt:V/S.A.1127/16/M.Amin/18691, dated 31-08-2017 on the subject noted above and to forward herewith minutes of the meeting held on 08-09-2017 under the Chairmanship of Secretary Law Department (which are self explanatory) for perusal and further necessary action, please.

Yours faithfully,

(ALAMZEB)
SECTION OFFICER (Lit)

12-9-17

Endst: No.& Date Even.

Copy alongwith copy of minutes is forwarded to the:

1. PS to Secretary Law Department Khyber Pakhtunkhwa.
2. PA to Deputy Solicitor Law Department.

SECTION OFFICER (Lit)

SERVICE APPEAL NO.1127/2016 MUHAMMAD AMIN EX-NAIB TEHSILDAR
VS SENIOR MEMBER BOARD REVENUE AND OTHERS.

A meeting of the Scrutiny Committee was held on 08-09-2017 at 14:00 hours in the office of Secretary Law Department under his Chairmanship being Convener of the Committee in order to determine the fitness of the subject case for filing of appeal / CPLA in the proper forum. Additional Advocate General (Mujahid Ali Khan) was also present during the meeting being representative of Advocate General Khyber Pakhtunkhwa. List of participants is annexed.

2. The meeting started with the recitation from the Holy Quran and thereafter Convener of the Committee invited the representative of Revenue Department to apprise the Committee about the background of the case which he did accordingly.

3. The representative of Revenue & Estate Department during the discussion informed the Committee that a complaint was received against the appellant namely Mr. Muhammad Amin Naib Tehsildar that he has attested mutation No.1236 illegally when he was posted as a Naib Tehsildar Swat. Inquiry conducted and Deputy Commissioner Swat recommended major penalty of compulsory retirement from service. The appellant filed an appeal in the Service Tribunal. The Tribunal accepted his appeal and set-aside the impugned order of compulsory retirement from the Service. As a result of which the appellant shall be deemed to have been retired on his superannuation with all due benefits. The representative of Revenue & Estate Department pointed out this appeal is connected with appeal No.1155 decided by the Scrutiny Committee as a fit case therefore the CPLA in this case may be filed.

DECISION:-

4. Hence in view of above explained legal and factual position of the case it was decided with consensus that the subject case is a fit case for filing of appeal / CPLA in the Supreme Court of Pakistan.

5. The representative of Revenue & Estate Department was directed to approach the office of Advocate General alongwith complete record of the case for doing the needful within the period of limitation under intimation to this Department.


(Section Officer (Lit))



2. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly and legally exercised its jurisdiction in the matter in hand?
3. Whether the impugned judgment and order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar is not in utter disregard of law and facts of the case?
4. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has not properly and legally construed the record and material in its true prospective?
5. Whether the respondent has not committed gross misconduct by attesting the mutation on wrong name instead of original owner?
6. Whether the respondent has not deprived the actual owner from his right by misusing his power for ulterior motive?
7. Whether despite of clear cut direction by the high ups for reviewing the mutation the respondent was not bound to obey the order of high ups which also constitute gross-misconduct?
8. Whether a proper show cause notice with statement of allegation was not issued to the respondent by the Competent Authority which was not satisfactorily replied by the respondent?
9. Whether the allegation of gross-misconduct was not enquired by the duly appointed enquiry officer properly by associating the respondent in the enquiry proceeding?
10. Whether the allegation of gross- misconduct was not proved against the respondent in the enquiry proceeding and was rightly recommended for major punishment of compulsory retirement?
11. Whether the punishment awarded to the respondent does not commensurate with the charge leveled against the respondent which was proved against the respondent in the enquiry proceeding?

(3)

12 Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has not pointed out any material in the enquiry proceeding conducted by the enquiry officer against the respondent who recommended the respondent for major punishment?

FACTS

1 Facts relevant to the above points of law, inter alia, are as under:-

1 That the respondent was serving in the Revenue Department and posted as Naib Tehsildar Matta, District Swat.

2 That the respondent attested a wrong mutation by depriving the actual owner from his ownership whereon a complaint was made against the respondent by the aggrieved person.

3 That the appellate authority/ Collector directed the respondent to review and correct the mutation but the respondent did not comply the order of high ups and was bent upon to retain the old illegal entry in the revenue record.

4 That the show cause notice along-with statement of allegation was issued to the respondent by the competent authority who did not satisfactorily reply the same, therefore enquiry officer was appointed to scrutinize the charge leveled against the respondent.

5 That the respondent was associated by the enquiry officer in the enquiry proceeding and after scrutinizing the charge leveled against the respondent was proved therefore the enquiry officer recommended the respondent for major punishment.

6 That in the light of enquiry report the competent authority imposed the punishment of compulsory retirement on the respondent vide order dated 20/9/2016.

(4)

That the respondent filed departmental appeal against his punishment which was also rejected vide order dated 6/12/2016.

That the respondent filed Service Appeal No.1227/2016 before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar wherein Para-wise, comments was asked from the petitioners which was filed accordingly.

That the petitioners mortally aggrieved from the impugned judgment/order of the Honble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 09/08/2017 in Service Appeal No.1227/2016 prefer this CPLA before this august Court.

That the petitioners seek leave to appeal against the impugned judgment and order of the Honble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 09/08/2017 in Service Appeal No.1227/2016.

It is, therefore, prayed that on acceptance of this petition, leave to appeal against the impugned judgment and order of the Honble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 09/08/2017 in Service Appeal No.1227/2016 may graciously be granted.

(Mian Saadullah Jandoli)
Advocate-on-Record
Supreme Court of Pakistan
For Government

NOTE:

Learned Advocate General, KPK/ Addl. AG /State Counsel shall appear at the time of hearing of this petition.

ADDRESS

Office of the Advocate General, KPK, High Court Building, Peshawar. (Telephone No.091-9210119, Fax No.091-9210270)

CERTIFICATE Certified that no such petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.

Advocate-On-Record

(5)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 12272016

Muhammad Amin Ex-Naib Tehsildar Matta, District
Swat.

Khyber Pakhtunkhwa
...Appellant Service Tribunal

VERSUS

Diary No. 1285

- Dated 13-12-2016
1. The Government of Khyber Pakhtunkhwa through
Chief Secretary, Peshawar.
 2. The Government of Khyber Pakhtunkhwa Secretary
Revenue and State Department, Civil Secretariat /
Senior Member Board of Revenue, Peshawar.

...Respondents

APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
NOTIFICATION NO. ESTT: V / PF /
M.AMIN / 23478-83 DATED 26-09-2016,
WHEREBY THE MAJOR PENALTY OF
COMPULSORY RETIREMENT IS
IMPOSED UPON THE APPELLANT
AGAINST WHICH THE APPELLANT
SUBMITTED A REVIEW PETITION,
WHICH WAS REJECTED VIDE NO.
ESTT: V/PF/M.AMIN/SWAT/29161
PESHAWAR DATED 06-12-2016, BOTH
THE ORDERS ARE AGAINST THE LAW,
RULES AND FACTS AND ARE LIABLE
TO BE SET ASIDE.

Filed to-day

Registrar

13/12/16.

ATTESTED



Registrar
Service Tribunal,
Peshawar

Prayer:

That on acceptance of this appeal both the orders
impugned may very kindly be set aside and the appellant
reinstated back into service as Naib Tehsildar along
with all consequential benefits.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Execution Petition No.256/2017

Service Appeal No. 1227/2016

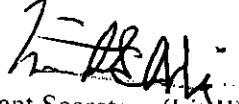
Mr. Muhammad Amin Ex-Naib Tehsildar Matta Swat.....Appellant

VERSUS

Government of KPK, through Chief Secretary & Others.....Respondents

AFFIDAVIT

I, Mr. Mukhtiar Ali, Assistant Secretary (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 has been provided to me and nothing has been deliberately concealed from this Honourable Tribunal.


Assistant Secretary (Lit-II)
Board of Revenue