

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 536/2019

Date of Institution ... 08.04.2019

Date of Decision ... 16.10.2019

Yadullah Khattak, Tehsildar, Tirah, District Khyber. ... (Appellant)

VERSUS

Senior Member Board of Revenue(SMBR), Khyber Pakhtunkhwa, Civil Secretariat,
Peshawar, and one others. ... (Respondents)

PRESENT:

MR. AIMAL KHAN BARKANDI,
Advocate

--- For appellant.

MR. ZIAULLAH,
Deputy District Attorney

--- For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER(Executive)
--- MEMBER(Judicial)

JUDGMENT.

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS:

02. Learned counsel for the appellant argued that this the second round of litigation. Previously as a sequel to judgment of this Tribunal dated 19.09.2018 passed in service appeal no. 333/2018, de-novo enquiry was conducted against the appellant and minor penalty of stoppage of one annual increment was awarded to him vide impugned order dated 04.01.2019. Feeling aggrieved, he filed an undated departmental appeal which was rejected on 11.03.2019 by passing a stereo type order against the dictates of Section-24-A of General Clauses Act, 1897. Finally, the service appeal in question was filed by the appellant. He further argued that

vague and evasive charges were leveled against the appellant. The enquiry officer failed to pin point quantum of loss sustained by the government, as a result of negligence/inefficiency on the part of the appellant. Written defense offered by the appellant was neither taken into consideration nor analyzed properly.

03. Learned DDA argued that as a sequel of the directions contained in the judgment of Peshawar High Court, Peshawar dated 15.07.2013, the appellant attested mutation without receiving government taxes which caused heavy loss to the government exchequer. Not a single word above exemption/ non-depositing of taxes was mentioned in the judgment referred to above. He further added that as per findings of the enquiry report, it was incumbent upon the appellant to have applied his mind about receipt of required taxes because it was not a case for declaration, by a court, of any rights in any property, rather a bail cancelation application was pending in the High Court. One Bakht Zada was subjected to fraud by Abdul Salam to the tune of Rs. 10 Million. As a result of out of court settlement between the parties concerned and with their consent the property was transferred in the name of Bakht Zada in lieu of Rs. 10 Million. It was a normal mode of transfer of property which was not exempted from tax. He was rightly treated according to law and rules.


CONCLUSION:

04. The appellant is before this Tribunal for the second time. Previously, due to numerous shortcomings in the disciplinary proceedings conducted against him, the matter was remitted to the respondents to conduct de-novo enquiry vide judgment dated 19.09.2018. Fresh proceedings were conducted and upon winding up minor penalty of stoppage of one increment was awarded to him vide impugned order dated 04.01.219. He filed an undated departmental appeal which was rejected vide order dated 11.03.2019 by the competent authority through a non-speaking order.

The competent authority was bound to decide/dispose of his department appeal through a well reasoned/ speaking order as provided in Section-24-A of General Clauses Act, 1897. It merits to mention here that due to this lacuna the points raised by the appellant in the departmental appeal remained unanswered.

05. Learned counsel for the appellant vehemently contested the case and was of the firm opinion that being a court verdict/judgment, it was exempted from taxes/duties. He also pressed into service notification of respondent no. 1 dated 16.04.2005 where-under a nominal fee was proposed. Attention of the respondents is further drawn to charge at serial no. A of the charge sheet which was vague and evasive and even enquiry officer did not bother to assertion the quantum of loss sustained by the government due to negligence and inefficiency of the department. He should have also specified notification of the respondents applicable in the case in hand. To cut it short the respondents failed to handle the case according to the spirit of the rules.

06. As a sequel to the above, the instant appeal is remanded back to the respondents to decide his departmental appeal through a well reasoned speaking order within a period of sixty days from the date of receipt of this judgment. Parties are left to bear their own costs. File be consigned to the record room.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER


(AHMAD HASSAN)
MEMBER

ANNOUNCED
16.10.2019

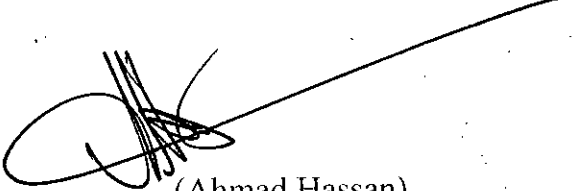
Order

16.10.2019


Appellant with counsel present. Mr. Ziaullah, DDA for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the instant appeal is appeal is remanded back to the respondents to decide his departmental appeal through a well reasoned speaking order within a period of sixty days from the date of receipt of this judgment. Parties are left to bear their own cost. File be consigned to the record room.

Announced:
16.10.2019



(Ahmad Hassan)
Member




(Muhammad Amin Khan Kundi)
Member

26.07.2019

Counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present.

Learned District Attorney requests for time to procure reply/comments from respondents. May do so positively on next date of hearing.

Adjourned to 13.09.2019 before S.B.


Chairman

13.09.2019

Junior to counsel for the appellant and Addl. AG alongwith Arif Saleem, S.I for the respondents present.

Representative of the respondents submitted parawise comments on behalf of the respondents. The appeal is assigned to D.B for arguments on 16.10.2019. The appellant may furnish rejoinder, within a fortnight, if so advised.


Chairman

12.06.2019

Counsel for the appellant present.

Contends that the mutation in question was attested under the order of Hon'ble Peshawar High Court and accordingly government taxes involved therein were recovered. However, the appellant was proceeded against departmentally on the ground that he had committed negligence which caused heavy loss to the government exchequer. As a result of the departmental proceedings the impugned order dated 04.01.2019 was passed against the appellant whereby his one increment for a period of one year was with-held as minor penalty. Learned counsel further contends that the departmental appeal of appellant was rejected through a non speaking order wherein no ground for such rejection was provided.

As the appellant is aggrieved of an order imposing minor penalty upon him, instant appeal is admitted for regular hearing but subject to all just exception in respect of its maintainability under the law. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 26.07.2019 before S.B.

Appellant Deposited
Security & Process Fee



13/6/19


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 536/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/04/2019	<p>The appeal of Mr. Yadullah Khattak resubmitted today by Mr. Aimal Khan Barkandi Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 26/4/19</p>
2-	29/04/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>12/06/19</u></p> <p style="text-align: right;"> CHAIRMAN</p>

12.06.2019

Counsel for the appellant present.

7.1.19
It is argued by learned counsel that the appellant was imposed upon major punishment in terms of reversion from the rank of Head Constable to substantive rank of Constable through order dated 14.01.2019 by DPO Kohat/respondent No.3. The contents of impugned order itself suggest that no proper /legal inquiry was conducted against the appellant. The show cause notice dated 07.01.2019 reflects that the competent authority was pleased to dispense with proper inquiry, however, no cogent or good reason was provided for the purpose. It is further contended that in case where major penalty is imposed upon a civil servant proper inquiry is all the more necessitated.

The appellant in hand is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for submission of written reply/comments on 26.07.2019 before S.B.

Chairman

The appeal of Mr. Yadullah Khattak Tehsildar Tirah District Khyber received today i.e. on 08.04.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of order dated 27.10.2017 and departmental appeal against mentioned in para-4 &5 of the memo of appeal respectively are not attached with the appeal which may be placed on it.
- 2- Annexures of the appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.
- 3- Annexure-H of the appeal is illegible which may be replaced by legible/better one.

No. 717 /S.T,


Dt. 08/4 /2019.


REGISTRAR -
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Aimal Khan Barkandi Adv. Pesh.

Sir,

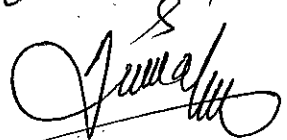
the appellants needs some more time to do the needful. It is, therefore, requested that the time may kindly be extended.

 22/4/19
Aimal Khan Barkandi
Adv, Pesh

Ten days time further extended.

Sir,

this file is resubmitted after completion.

 26/4/19
Aimal Khan Barkandi
Adv, Pesh

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No. 536 /2019

Yadullah Khattak..... Appellant

Versus

Senior Member Board of Revenue (SMBR)
& another..... Respondents

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Appellant
Yadullah Khattak

Through


Aimal Khan Barkandi

&


Faiz Bukhsh
Advocates High Court,
Peshawar

1

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 536 /2019

Diary No. 594

Dated 08/4/2019

Yadullah Khattak, Tehsildar, Tirah, District Khyber..... Appellant

Versus

1. Senior Member Board of Revenue (SMBR),
Khyber Pakhtunkhwa, Civil Secretariat, Peshawar
2. Chief Secretary, Govt. of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar..... Respondents

Service Appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunals Act, 1974 against the office order No. Estt: I/PF/Yadullah/II/8390, dated 11.03.2019 whereby the departmental appeal/representation of the appellant from the office order No. Estt:V/PF/Yadullah/S.A No. 333/425, dated 04.01.2019 of respondent No. 1 of awarding minor penalty of "withholding of one increment for period of one year", was dismissed.

Filed to-day
Registrar
8/4/19

PRAYER

Re-submitted to -day
and filed.

Registrar
26/4/19

On acceptance of this appeal the impugned orders dated 11.03.2019 and 04.01.2019 of the respondents may kindly be set aside and the appellant be exonerated of the charges leveled against him.

Respectfully submitted;

1. That the appellant was appointed as Naib Tehsildar (BPS-14) on 02.02.2009 in the Revenue Department on the recommendation of Khyber Pakhtunkhwa Public Service Commission.
2. That the appellant was posted as In-charge Service Delivery Center, Mardan during the year 2016 when Mr. Bakhtzada produced an attested copy of the order of the hon'ble Peshawar High Court, Peshawar dated 15.07.2013, the operative part of which is reproduced here below;

"Accordingly, the Revenue Circle is directed that whenever this order of the court and the verdict is produced before him, he shall direct the Patwari Halqa to enter the mutation and also in "Roznamcha". The Girdawar Circle shall carry out scrutiny about the entries of the revenue record while the Revenue Officer of the circle shall attest the mutation and file the same positively within fifteen (15) days"

(Copy of the order is annexed)

3. That the appellant had no other option but to obey and implement the order of the hon'ble Peshawar High Court, Peshawar and therefore attested mutation No. 14190 in Mouza Mardan on 11.08.2016. (Copy of the mutation is annexed)
4. That thereafter, departmental proceedings were initiated against the appellant on the allegation of attesting mutation No. 14190 without receiving/ depositing government tax/ fee and which have caused a heavy loss to the government exchequer. The Inquiry Officer

appointed in this behalf submitted his report and the competent authority (respondent No. 1) in light of the above proceedings imposed minor penalty of "withholding of promotion for a period of 3 years" vide office order No. Estt:V/Yadullah/Comm/23378, dated 27.10.2017 (Copy of the order is annexed)

5. That the appellant filed department appeal against this order but no decision was taken and ultimately the appellant had to file service appeal No. 333/2018 in the hon'ble Tribunal which was partially accepted on 19.09.2018 with the direction to the department (respondent No. 1) to conduct regular inquiry and the appellant be provided opportunity of cross examination in accordance with the law and rules. (Copy of departmental appeal and judgment is annexed)
6. That respondent No. 1 issued charge sheet and statement of allegations to the appellant and Inquiry Officer who conducted inquiry in the form of questionnaire which was properly answered by the appellant. The inquiry officer submitted his report and respondent No. 1 in light of the recommendation of the inquiry officer imposed minor penalty of "withholding of one increment for a period of one year" vide office order No. Estt:V/PF/Yadullah/S.A No. 333/425, dated 04.01.2019. (Copy of the charge sheet along with statement of allegations, inquiry report and order is annexed)
7. That the appellant filed departmental appeal/representation before respondent No. 2 against the impugned order dated 04.01.2019 which was rejected vide order No. Estt: I/PF/Yadullah/II/8390, dated 11.03.2019. (Copy of the department appeal and order is annexed)

8. That the appellant is feeling aggrieved from both the impugned orders dated 11.03.2019 and 04.01.2019 of the respondents, therefore, is now filing this service appeal on the following grounds inter alia;

GROUND

- A. That the impugned orders of the respondents are against the law and facts of the case, hence, are not tenable.
- B. That the appellant has committed no illegality rather has attested the mutation in accordance with the directions of the hon'ble Peshawar High Court, Peshawar.
- C. That as per notification No. 12967/TOSD/MF, dated 16.04.2005 of the Revenue Board no tax can be imposed on mutation attested in the light of Court verdict. Therefore, charging the appellant with this baseless allegation is unlawful and unjust and as such is liable to be set aside. Furthermore, the maximum tax applicable to the mutation mentioned above was only Rs. 50/- which cannot be said to be a heavy loss to the government exchequer. (Copy of the notification is annexed)
- D. That the inquiry officer has not conducted the inquiry in accordance with the law and rules and judgment of this hon'ble Tribunal. Moreover, no codal formalities have been observed while conducting the inquiry proceedings. The whole proceedings have been done one sided and no opportunity of cross examination has been provided to the appellant.
- E. That the inquiry officer has just alleged that heavy loss has been caused to the government exchequer but has not specified how much mutation fee/ tax was applicable or how much loss has been caused? Moreover, if any tax

is to be levied the same is recoverable from the beneficiary as arrears of land revenue. Furthermore, there is not audit report in this regard to assess the alleged loss occurred to the government exchequer or whether tax is applicable to the mutation attested on court order/ verdict?

- F. That the inquiry officer in clear violation of the office letter No. SOR-V(E&AD)/Instruction/2014, dated 28.03.2014 has recommended penalty to be imposed upon the appellant. The inquiry officer has no right/ authority to recommend penalty against accused. This makes the whole proceedings illegal which are not sustainable in the eyes of law. (Copy of the letter is annexed)
- G. That in the impugned order dated 04.01.2019, respondent No. 1 has not specified the specific time period for which the penalty to be imposed. Therefore, the same is liable to be declared as illegal.
- H. That there were clear directions of the hon'ble Peshawar High Court to attest the mutation and file the same positively within fifteen days. The appellant was under legal obligation to obey the order in letter and spirit. The appellant has committed no negligence.
- I. That the appellant has always done his duty diligently and with honesty with good comments from his high-ups. The allegations leveled against the appellant are baseless and frivolous. (Copy of the letter dated 29.10.2017 is annexed)
- J. That the appellant has been condemned unheard. No opportunity of personal hearing has been provided to the appellant, which is against the natural justice.

K. That the minor penalty imposed on the appellant is too harsh and severe which does not commensurate with the facts of the case.

It is, therefore, prayed that on acceptance of this appeal the impugned orders dated 11.03.2019 and 04.01.2019 of the respondents may kindly be set aside and the appellant be exonerated of the charges leveled against him.

Appellant *Yadullah*
Yadullah Khattak

Through

Aimal Khan 8/4/19

Aimal Khan Barkandi

&

Faiz Bukhsh
Faiz Bukhsh
Advocates High Court,
Peshawar

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No. _____/2019

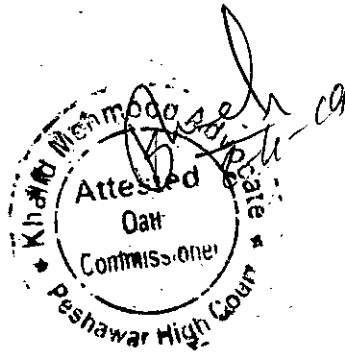
Yadullah Khattak..... Appellant

Versus

Senior Member Board of Revenue (SMBR)
& another..... Respondents

VERIFICATION

I Yadullah Khattak, Tehsildar, Tirah, District Khyber, (Appellant) do hereby verify that the contents of this service appeal are true and correct to the best of my knowledge and belief which has been drafted as per my instructions and nothing has been concealed from this hon'ble Tribunal.



Yadll
Deponent 7/4/19

Annex
"A"

8



GOVERNMENT OF KHYBER PAKHTUNKHWA,
BOARD OF REVENUE,
REVENUE & ESTATE DEPARTMENT.
Facebook ID: www.facebook.com/bor.kpk92
Twitter ID: [@RevenueBoardkp](https://twitter.com/RevenueBoardkp)
Fax No: 091.9213989

No.Estt:I/PF/Yadullah/II/ 8390

Peshawar dated the 11 /03/2019.

To

Mr. Yadullah,
Tehsildar.

Through: Commissioner Peshawar.

SUBJECT: APPEAL/PRESENTATION AGAINST ORDER NO. ESTT:V/PF/YADULLAH/ S.A NO. 333/425. DATED 04.01.201 WHEREBY THE MINOR PLENTY OF "WITHHOLDING OF ONE INCREMENT FOR PERIOD OF ONE YEAR" WAS IMPOSED UPON THE PETITIONER BY THE ORDER OF SENIOR MEMBER, BOARD OF REVENUE, REVENUE & ESTATE DEPARTMENT KPK DATED 04.01.2019 WHICH ORDER IS THE RESULT OF MISREADING OF THE ORDER OF HON'BLE PESHAWAR HIGH COURT, PESHAWAR AND IS AGAINST THE FACTS, LAW AND PROCEDURE.

Your Departmental appeal has been examined and rejected by the appellate authority.


Assistant Secretary (Estt)

Annex
"B"

9



GOVERNMENT OF KHYBER
PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

Peshawar dated the 04/01/2019

ORDER

No. Estt:V/PF/Yadullah/S.A No.333/ 425 WHEREAS, Mr. Yadullah Naib Tehsildar was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the charge sheet.

AND WHEREAS, Muhammad Zaheer-ud-Din Babar District Officer (Finance & Planning), Mardan was appointed as Inquiry Officer, to conduct inquiry against the accused official;

AND WHEREAS, the Inquiry Officer after having examined the charges, evidence on record and explanation of the accused official, submitted her report; whereby the charges leveled against the accused stand proved.

AND WHEREAS, the Competent Authority, is of the view that the accused official is inefficient and has committed negligence/slackness as he has not recovered Government Taxes on Mutation No. 14190 Mouza Mardan which caused a heavy loss to the Government exchequer.

NOW THEREFORE, in light of the recommendation of Inquiry Officer, the Competent Authority is pleased to impose minor penalty of "withholding of one increment for a period of one year" upon Mr. Yadullah the then Naib Tehsildar Mardan now Naib Tehsildar Shabqadar.

This Department order bearing No. Estt:V/Yadullah/Comm/23378, dated 27.10.2017 is hereby withdrawn.

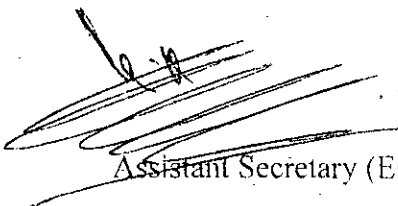
By order of
Senior Member

No. Estt:V/PF/Yadullah/S.A No.333/ 426-33

Copy forwarded to the:-

1. Commissioners Mardan and Peshawar Division.
2. Deputy Commissioners Mardan and Charsadda.
3. District Accounts Officer Mardan and Charsadda.
4. Official concerned.

A
True copy


Assistant Secretary (Estt.)

annex
"C"

10

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENTCHARGE SHEET

1. Dr. Eakhre Alam Senior Member Board of Revenue as Competent Authority, hereby charge you, Mr. Yadullah, Ex - Naib Tehsildar Mardan as follows:

That you, while posted as Naib Tehsildar Mardan committed the following irregularities:

- (a). That you while posted as Naib Tehsildar Mardan attested mutation No. 14190 Mouza Mardan without depositing Government Tax / fee which caused a heavy loss to the Government exchequer.
- (b). You did not take trouble to go through the Court order, before attestation of mutation as to whether the mutation was exempted from Government Tax or otherwise.
- (c). Your this act tantamount to misconduct and make you liable to be proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011

2. By reason of the above, you appear to be guilty of misconduct and in subordination under rules - 4 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rules 4 of the rules ibid.

You are, therefore, required to submit your written defense within seven days of the receipt of this charge sheet to the Inquiry Officer.

Your written defense, if any should reach the Inquiry Officer within the specified period, failing which it shall be presumed that you have no defense to put in and in that

A
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True copy

DISCIPLINARY ACTION

I, Dr. Fakhre Alam Senior Member Board of Revenue as competent authority, am of the opinion that Mr. Yadullah Ex - Naib Tehsildar Mardan, has rendered himself liable to be proceeded against, as he committed the following acts / omission, within the meaning of rules 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

- (a) That he while posted as Naib Tehsildar Mardan attested mutation No: 14190 Mouza Mardan without depositing Government Tax / fee which caused a heavy loss to the Government exchequer.
- b). That he did not take trouble to go through the Court order, before attestation of mutation as to whether the mutation was exempted from Government Tax or otherwise.
- (c). That his this act tantamount to misconduct and make you liable to be proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011

2. For the purpose of inquiry against the said accused with reference to the above allegations Mr. Zahid - ul - Din Babbar DO (F&D) Mardan is appointed as Enquiry Officer under Rule 10(1)(a) of the rules ibid.

3. The Inquiry Officer shall, in accordance with the provisions of the rules, ibid provide reasonable opportunity of hearing to the accused record its findings and make, within thirty days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the Deputy Commissioner Mardan shall join the proceedings on the date, time and place fixed by the Inquiry Officer.

True copy

True copy

(12)

INQUIRY REPORT ON THE CHARGES FRAMED AGAINST MR. YADULLAH, EX-NAIB TEHSILDAR, MARDAN

In pursuance of the Government of Khyber Pakhtunkhwa Board of Revenue, Revenue and Estate Department letter no. Estt:V/PF/Yadullah/S.A.No.333/18/34654-55, dated: 15-10-2018, wherein the competent authority approved to initiate an inquiry against Mr. Yadullah, Ex-Naib Tehsildar, Mardan, under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, Muhammad Zaheer Uddin Baber, District Officer (Finance & Planning) Mardan, submit the inquiry report as under.

The inquiry was initiated on 16-10-2018 (the date of receipt of inquiry order) and concluded on 23-11-2018. The delay of a period of 07 days occurred due to training of the undersigned outside the station.

BACKGROUND:

There was some monetary dispute between Mr. Bakhtzada and Abdus Salam amounting to ten (10) million rupees. Adjudication between the parties was underway in competent court for fraud. A mediator played role in resolving the issue and managed to develop consensus among the parties whereby Mr. Abdus Salam would transfer land measuring 7.5 marlas in Mouza Mardan to Mr. Bakhtzada in lieu of money which he had taken from him fraudulently. The agreement was presented in High court by the mediator and stated that the parties accept the settlement/agreement (Annexed at page:13) provided that the mutation is attested. Accordingly the High court passed an order on 15-07-2013 (Annexed at page:14-15) whereby it directed the Revenue Officer to direct the Patwari Halqa to enter the mutation in Roznamcha, the Girdawar to scrutinize the entries and Revenue Officer of the circle to attest it within fifteen (15) days.

Pursuant to court's directions Mr. Yadullah, (hereinafter to be referred as "accused") while posted as Naib Tehsildar Mardan, attested the mutation no.14190 Mouza Mardan on 11-08-2016 (Annexed at page:16). While attesting the mutation the accused did not collect government tax /fee. Resultantly the accused was charged for inflicting heavy loss to the Government exchequer for not collecting Government tax/fee and also not taking trouble to go through the court order before attesting the mutation as to whether the mutation was exempted from Government tax/fee or not.

In all four proceedings were carried out during which the accused submitted reply to the charge sheet and relevant record was perused. A visit to the Service Delivery Centre (SDC) Mardan was also made.

FINDING OF FACTS:

Charge (i) Did the accused, while posted as Naib Tehsildar Mardan, attest the mutation no. 14190 without depositing Government tax/fee which cause a heavy loss to the Government exchequer?

The accused in his reply to the charge sheet admits that he attested the said mutation. He further states the he has done so on the directions of High court Peshawar. He adds that there was

True copy

Attested
20/11/18
DISTRICT OFFICER
(FINANCE & PLANNING)
MARDAN

13

nothing mentioned in the directions of court to collect tax or not but to clarify the ambiguity he went through Board of Revenue notification dated 16-04-2005 (Annexed at page:17) in which the fee was Rs. 50/- which was a negligible amount and did not cause heavy loss the Government exchequer.

Charge (ii) Did the accused do not take trouble to go through the court order before attestation as to whether it was exempted from Government tax/fee or not?

The accused in his reply to the charge sheet states that there was nothing mentioned in the court directions regarding Government tax/fee but to clarify the ambiguity he went through Board of Revenue notification dated 16-04-2005.

In order to further probe into the matter and ascertain guilt of the accused, if any, a seven questions "questionnaire" (Annexed at page:18) was given to the accused which he answered (Annexed at page:19-20) as under:

Question # 01: In reply of the charge sheet you have stated that the fee on this particular mutation was Rs. 50/- in light of Government's notification dated 16-04-2005 for court verdict cases, which is a negligible amount, so why it may not be presumed that you had wrongly assessed/calculated the actual tax/fee payable in the case?

Answer: I assessed and calculated the actual tax according to BOR notification which is still applicable and no further notification was issued by BOR regarding collection of taxes on court verdict/decre. As far as this 14190 mutation was concerned I perused all the details of notification in which only 50 Rs tax was applicable on the said mutation.

Question # 02: Is it correct that normally in cases where a mutation is attested pursuance to a court verdict in which nothing is mentioned explicitly regarding Govt tax/fee, the Revenue Officer collects tax/fee?

Answer: While in normal circumstances if Revenue Officer collects taxes on court decree he should have proper notification for collection. Let's presume I am the revenue officer I would follow the instructions issued by BOR and would facilitate the applicants according to law.

Question # 03: Is it true that the computer operator (dealing hand at that time) put a note on initial copy of the report published to ascertain as to whether tax is applicable on it or not but the mutation was processed without it (tax) being ascertained?

Answer: Yes it is true that the computer operator put a note on initial copy of report that whether tax on this particular mutation was applicable or

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DISTRICT OFFICER
(FINANCE & PLANNING)
MARDAN

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not. After perusal that note I went through the said notification of BOR and finalized the mutation.

Question # 04: During perusal of record it revealed that the court verdict was announced on 15-07-2013 and you attested the mutation on 11-08-2016, i.e: after a lapse of three years. So did you enquire about the delay because the court had directed to attest it within 15 days but was not attested in due time by the then official?

Answer: As far as the time period was concerned i.e: 3 years, it was a huge delay on the part of my predecessor and he was supposed to attest the said mutation in the stipulated time period. Apparently there were no intricacies for such a delay the said mutation attestation process. I assume the charge of SDC on dated 08-02-2016. The applicant came to the SDC along with a bulky file in the end of July 2016. The applicant had severe grievances against the revenue officers and brought a complaint letter by (Director Human Rights cell Peshawar High Court Peshawar dated 26-01-2016. He was of the view that he would go in contempt of court against the revenue officials. After went through that complaint no 8368 I thoroughly discussed the said issue with SDC Girdawar/ computer operator and directed them to initiate the mutation process.

Question # 05: The order of Tehsildar on face of mutation at serial no. 13 shows reference of Supreme Court order no. 50, dated 23-07-2013, which could not be traced in official record provided by Deputy Commissioner office Mardan. Why it may not be presumed that no such order ever existed?

Answer: The order of Tehsildar on face of mutation at serial no.13 shows reference of Supreme Court order No. 50 dated 23-07-2013 is existed and attached here for your perusal please.

Question # 06: Being incharge SDC, did you have access to the system?

Answer: Being incharge of SDC yes I had access to the system upto some extent.

Question # 07: Why it may not be presumed that you had access to the system and by virtue of that access you made print of mutation and attested it without it being reached to you through prescribed procedure?

Answer: I had access to the system and I exhibited that access to facilitate the public at large especially old citizens. I did not use my access personally but any computer operator could use the access on my behalf for

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(FINANCE & PLANNING)
MARDAN

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smooth working affairs of SDC. As far as the print of this particular mutation was concerned there was no specific procedure for getting copy of the attested mutation furthermore there was no need of secret print out from my access as the mutation was attested and any computer operator could get print out accordingly.

The answers to the questions, in a nutshell, show that the computer operator put note on initial copy of the report to ascertain actual tax (Annexed at page:21) and the accused assessed Rs.50/- as the applicable tax according to BOR's notification. The accused directed the Girdawar & computer operator to initiate mutation process and attested the mutation after three years of it being ordered, considering there were no intricacies for such a delay and to avoid contempt of court apprehensions. Astonishingly the document provided by the accused, showing reference of Supreme Court's order No. 50, dated 23-07-2013, is actually order of Civil Judge-II/Rent Controller Mardan (Annexed at page:22), and not of Supreme Court, with no mention of any entry in record of rights etc.

Apart from questionnaire, a visit was also paid to SDC Mardan in order to examine the procedures adopted in disposal of business pertaining to digitalized land record. Section 42A of West Pakistan Land Revenue Act, 1967, inserted through Khyber Pakhtunkhwa Land Revenue (Amendment) Act, 2014, provides for report of acquisition of right in a Service Delivery Centre. A few portions from section 42A are reproduced below:

Section: 42A. Report of acquisition of rights. (1) After notification by Board of Revenue regarding operationalization of service delivery centre in an estate, a person, acquiring a right in an estate by inheritance, purchase, mortgage, gift or otherwise as a land owner or a tenant for a fix term, exceeding one year, shall, within three months from the date of acquisition, report his acquisition of the right to the service delivery centre official of the estate.

(3) The service delivery centre official shall enter the particular of the report and the prescribed document identity in the computerized system, and shall also obtain the signatures or thumb impression and computerized national identity card number of the person making the report.

(4) The service delivery centre official shall, in the prescribed manner, inform the person making the report, about the particulars of the mutation requested, and other documents required for processing the mutation, fee or tax payable, any other prescribed requirements, and the date on which the parties shall appear in the service delivery centre official for enquiry and order on the requested mutation by the Revenue Officer.

When visited SDC Mardan, the following were observed:

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DISTRICT OFFICER
(FINANCE & PLANNING)
MARDAN

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- (i) At SDC the duties of service delivery centre official are being performed by a computer operator, who has replaced a Patwari when we talk of manual record. He is also not properly trained in revenue matters hence high margin of errors are always expected.
- (ii) There are no prescribed procedures, what so ever, duly approved by competent authorities, in disposal of business at SDC, except those devised at local level which do not have any authority. For example tax assessment, under section 42A of the Act mentioned above, is the job of service delivery centre official (computer operator in case of SDC Mardan) but he is otherwise professionally not competent in revenue matters. A pro forma (Sample Annexed at page:23) has been devised to attested by Girdawar who specifies therein as to whether tax/ fee is applicable or not but which is actually the job of Revenue Officer. The Revenue Officer (Tehsildar) who orders attestation in SDC is not computer literate (in majority cases) and is dependent on computer operator to type it due to which typo errors cannot be outclassed just like in the instant case where references of court orders in the mutation have been erroneously mentioned as incorrect, i.e; the covering memo number of Additional Registrar High Court has been mentioned instead of High Court case number (Annexed at page:24) and Supreme Court order has been mentioned, instead of Civil Judge-II/Rent Controller, Mardan order (Annexed at page:22).


OPINION:

From perusal of the available record and statements of the accused, there is sufficient ground to say that the accused is inefficient and guilty of misconduct under Rule 3(a) & (b) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, for the following reasons.

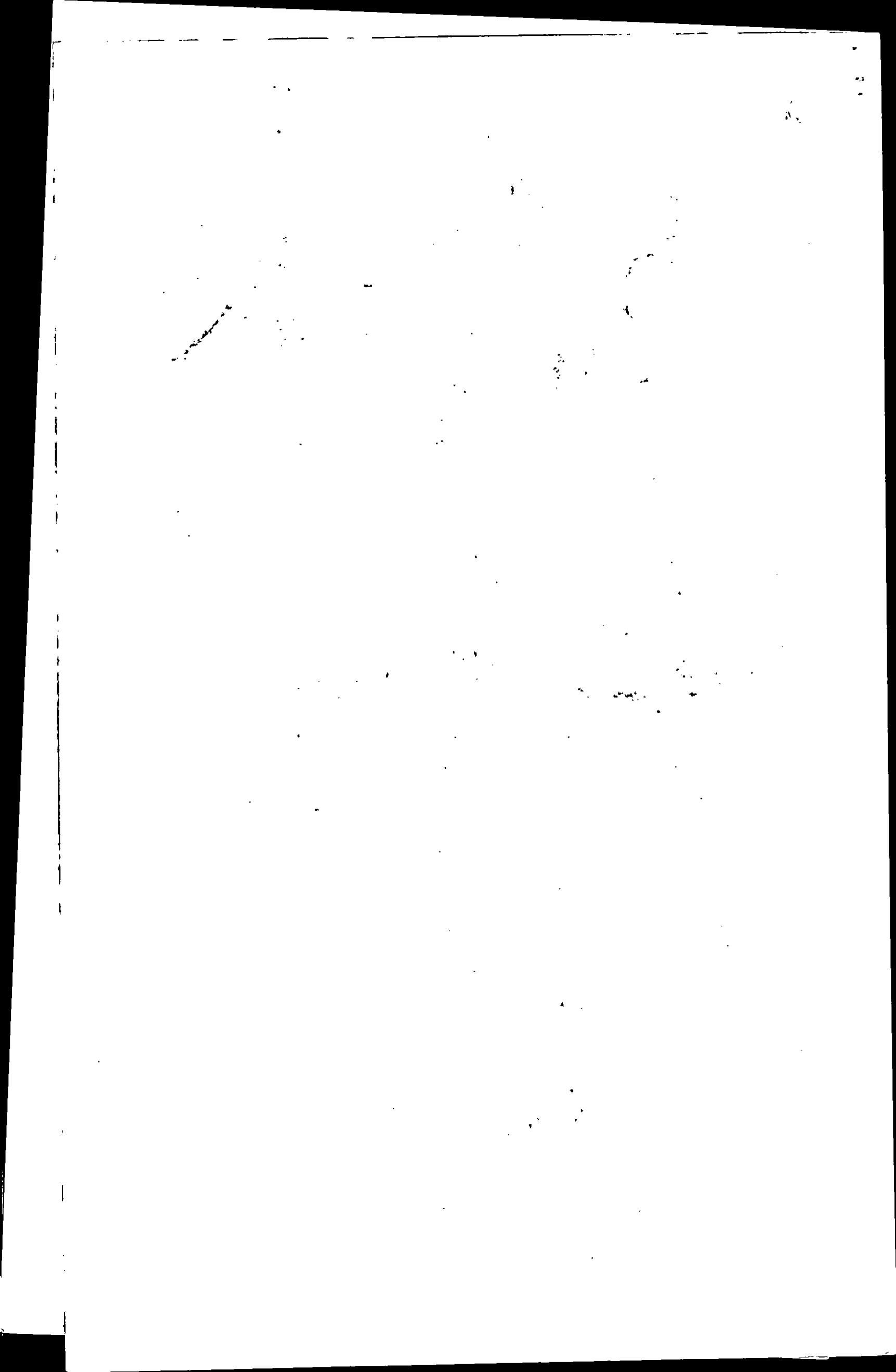
- i. That the accused mis-calculated the actual tax payable by wrongly relying on the Government of Khyber Pakhtunkhwa Board of Revenue notification dated: 16-04-2005, which caused a heavy loss to the Government exchequer. The stance of the accused that it was a Court verdict and comes under S # VI of the said notification is incorrect reason being that the agreement (Annexed at page:13) of transfer of property was reached privately between the parties through mediation in lieu of certain amount of money and the High court had given directions to revenue staff only to give it (agreement) effect in a Bail Cancellation Appeal (BCA) No. 31-P/2013, filed in case FIR No. 58, dated: 08-10-2011, U/S: 419/420/489-F-PPC (Annexed at page:25-26), as obvious from the court order dated: 15-07-2013(Annexed at page:14-15):

"The mediator (Dost Muhammad) stated at the bar that he negotiated the matter between the parties and ultimately reached at the conclusion. He produced the verdict, he has given, that all the parties accept the same provided the mutation is attested."

Accordingly, the revenue officer is directed that whenever this order of the Court and the verdict is produced before him, he shall

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DISTRICT OFFICER
(FINANCE & PLANNING)
MARDAN

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annex
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18

Before the Authority/Chief Secretary KPK, Peshawar.

Subject: APPEAL/PRESENTATION AGAINST ORDER NO. ESTT:V/PF/YADULLAH/S.A NO. 333/425. DATED 04.01.2019 WHEREBY THE MINOR PLENTY OF "Withholding of One Increment for Period of One Year" WAS IMPOSED UPON THE PETITIONER BY THE ORDER OF SENIOR MEMBER OF BOARD OF REVENUE, REVENUE AND ESTATE DEPARTMENT KPK DATED 04.01.2019 WHICH ORDER IS THE RESULT OF MISREADING OF THE ORDER OF HON'BLE PESHAWAR HIGH COURT, PESHAWAR AND IS AGAINST THE FACTS, LAW ANDPROCEDURE

Relief Sought:

By acceptance of this appeal the impugned order may kindly be set-aside and the Petitioner be exonerated honorably.

Respectfully Sheweth:

1. That the Petitioner was posted as Incharge Service Delivery Centre Mardan/Naib Tehsildar during the year 2016 when Mr. Bakhthzada produced attested copy of the order of Hon'ble Chief Justice Peshawar High Court, Peshawar dated 15.07.2013. The operative part of the order is reproduced for ready reference.

Accordingly, the Revenue Officer is directed that whenever this order of the court and the verdict is produced before him, he shall direct the Patwari Halsa to enter the mutation and also in 'Roizamcha'. The Girdawar Circle shall carry out scrutiny about the entries of the revenue record while the Revenue Officer of the circle shall attest the mutation and file the same positively within fifteen (15) days."

2. That the Petitioner had no alternative but to carry out the categorical and clear-cut orders of the Hon'ble Peshawar High Court, Peshawar. The Petitioner processed the matter in the light of directions of Peshawar High Court and got the mutation attested under No. 14190.

3. That the Petitioner was proceeded departmentally for this attestation under the following charges:-

Charge (i). Did the accused, while posted Naib Tehsildar Mardan attested the mutation No. 14190 without depositing government tax/fee which causes a heavy loss to the government exchequer.

Charge (ii). Did the accused do not take trouble to go through the Court order before attestation as to whether it was exempted government tax/fee are not.

4. That the Petitioner replied that since the mutation was attested in the light of detailed order of the court dated 15.07.2013, the Petitioner could not, of his own, Levi any tax as it would have been violation of court order.

This was also pleaded by the Petitioner that even if any fee was livable then according to notification regarding Levy of fee issued by the SMBR, dated 16.04.2005, court verdicts can be subjected to payment of a tax of rupees fifty only as mutation fee/tax.

5. That faced with this clear and legal position taken by the Petitioner in his defense, the Inquiry Officer, in pursuance of his bias, issued a second charge sheet in the shape of questionnaire consisting of seven questions which step was beyond the scope of departmental proceedings and the role of the Inquiry Officer. The Inquiry Officer could not issue fresh charge sheet in any shape without the approval of competent authority.

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6. That the Petitioner was blamed for not reading the court order before the attestation of mutation but, if allowed to submit sir, this was the Inquiry Officer who could not appreciate the wordings, implication and spirit of the court order.

7. That clandestinely nowhere in his inquiry report he could give a semblance of the loss allegedly inflicted upon the government exchequer because, most probably, he was avoiding the wrath of interpretation of the court order against the spirit of the order itself.

8. That in his detailed replies to the second charge sheet/questions, the Petitioner gave detailed submission but dishonestly the Inquiry Officer quoted from the answers out of context.

(Copy of detailed replies to the second charge sheet/questionnaire is attached).

9. That the Inquiry Officer has opined that it was a simple matter of transfer between two parties and hence tax should have been collected on the amount of Rs. 10 million. He himself has quoted from the court order which shows that fraud was committed and an FIR u/s 419/420 PPC was lodged. That matter was settled through mediator and the court accepted mediation and ordered transfer of property. The Inquiry Officer referred to mediation accepted by court in a fraud case yet has blamed the Petitioner for implementing a Court's order.

10. That nowhere the Inquiry Officer has opined regarding the amount of fee which should have been, according to his opinion, collected by the Petitioner but has used the abject word heavy loss to create sensation.

11. That by recommending punishment, the Inquiry Officer has exceeded his mandate as held by (E & D Rules, 2011).

12. That the impugned order is bad in law, arbitrary and not taxable on the following, amongst others GROUNDS:-

- (a) That the Inquiry Officer has no legal authority to recommend punishment;
- (b) That the Inquiry Officer has no legal authority to issue second charge sheet/questionnaire;
- (c) That the Inquiry Officer did not interpret the order of his Lordship correctly;
- (d) That the Authority/SMBR also did not try to appreciate the legal implication of the Court's verdict and accepted the illegal recommendation of the Inquiry Officer;
- (e) That the recommendation of the Inquiry Officer was wrong ab-initio and not sustainable in eyes of law;
- (f) That a pure legal question has been used to punish the Petitioner without any justification;
- (g) The SMBR/Authority could not appreciate his own notification dated 16.04.2005 without any legal reasoning.

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Yadullah Khattak
Tehsildar

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annex
"E"

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 333/2018

Date of institution ... 08.03.2018

Date of judgment ... 19.09.2018

Yaad Ullah Khattak, Naib Tehsildar Takht Bhai
District Mardan.

... (Appellant)

VERSUS

1. Senior Member Board of Revenue Khyber Pakhtunkhwa Civil Secretariat
Peshawar and another.

... (Respondents)

APPEAL UNDER SECTION-4 OF KPK SERVICE TRIBUNAL ACT, 1974 AGAINST ORDER DATED 27.10.2017, PASSED BY SENIOR MEMBER BOARD OF REVENUE, KP PESHAWAR, WHEREIN A PENALTY OF WITHHOLDING OF PROMOTION FOR A PERIOD OF 3 YEARS AND A FURTHER PENALTY OF NOT POSTING IN REVENUE CIRCLE FOR 3 YEARS HAS BEEN IMPOSED UPON APPELLANT, WHICH IS ILLEGAL, AGAINST LAW AND FACTS.

Mr. Tariq Kamal, Advocate.

.. For appellant.

Mr. Ziaullah, Deputy District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. AHMAD HASSAN

.. MEMBER (EXECUTIVE)

*M. Amin
19.9.2018*

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the appellant. Mr. Ziaullah, Deputy District Attorney for the respondents also present. Arguments heard and record perused.

2. Brief facts of the present service appeal are that the appellant was serving in Revenue Department as Naib Tehsildar. During service he was imposed minor penalty of withholding of promotion for a period of three years and also not posted on revenue circle for three years by the competent

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

authority vide order dated 27.10.2017 on the allegations that he while posted as Naib Tehsildar Mardan attested mutation No. 14190 Mouza Mardan without depositing Government Tax/fee which caused a heavy loss to the Government exchequer, that he did not take trouble to go through the Court order before attestation of mutation as to whether the mutation was exempted from Government Tax or otherwise and that his this act tantamount to misconduct.

The appellant filed departmental appeal on 06.11.2017 which was not responded hence, the present service appeal on 08.03.2018.

3. Respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving in Revenue Department as Naib Tehsildar. It was further contended that during service he was imposed aforesaid minor penalty on the aforesaid allegations. It was further contended that neither charge sheet, statement of allegations was served upon the appellant, nor proper inquiry was conducted, nor opportunity of hearing and defence was provided to the appellant nor the competent authority has dispensed the regular inquiry in show-cause notice served upon the appellant therefore, the impugned order is illegal and liable to be set-aside and prayed for acceptance of appeal.

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in Revenue Department as Naib Tehsildar. It was further contended that the appellant was imposed aforesaid minor penalty on the aforesaid allegations. It was further contended that a proper inquiry was conducted and the appellant was provided opportunity of

M. A. Khan
19.9.2018

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hearing and defence thereafter, the impugned order was rightly passed by the competent authority and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Revenue Department as Naib Tehsildar and during service he was imposed minor penalty of withholding of promotion for a period of three years and also not posted on revenue circle for three years vide order dated 27.10.2017, the appellant filed departmental appeal but the same was not responded. The record further reveals that neither charge sheet, statement of allegation was served upon the appellant nor proper/regular inquiry was conducted nor opportunity of hearing and defence was provided to the appellant nor regular inquiry was dispensed by the competent authority in the show-cause notice therefore, the appellant was condemned unheard. As such, we partially accept the appeal, ~~and~~ set-aside the impugned order dated 27.10.2017. However, respondent-department is directed to conduct regular inquiry and the appellant be provided opportunity of cross examination in accordance with law and rules within a period of three months from the date of receipt of this judgment. Parties are left to bear their own cost. File be consigned to the record room.

ANNOUNCED
19.09.2018

// Sd-

Muhammad Amin Khan Khan
member

Sd-

Ahmad Hassan
member

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[Signature]

Revenue Department
Tehsil
District

annex
"F"

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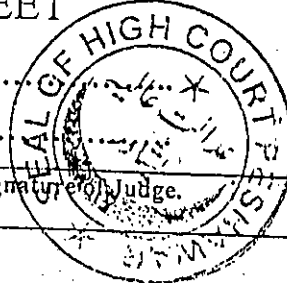
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PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Court of.....

Case No.....of.....



Date of Order of Proceedings	Order of other Proceedings with Signature of Judge.
1	2
15.07.2013	<p><u>Cr.Misc. (BCA) No. 31-P/2013.</u></p> <p>Present: M/s. Shah Faisal Utmankhel & Waheed Ullah Khan, Advocates, along with the petitioner.</p> <p>Mr. Naveed Akhtar, AAG, for the State along with Dost Muhammad, mediator.</p> <p>M/s. Abul Latif Afridi, Fazal Shah Mohmand & Wakeel Khan Shinwari, Advocates, along with the accused-respondent.</p> <p>***</p> <p>The mediator (Dost Muhammad) stated at the bar that he negotiated the matter between the parties and ultimately reached at the conclusion. He produced the verdict, he has given, that all the parties accept the same provided the mutation is attested.</p> <p>Accordingly, the revenue officer is directed that whenever this order of the Court and the verdict is produced before him, he shall direct the Patwari Halqa to enter the mutation and also in "Roznamcha", the</p>

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Peshawar High Court
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Girdawar Circle shall carry out scrutiny about the entries of the revenue record while the Revenue Officer of the Circle shall attest the mutation and file the same positively within fifteen (15) days. If any of the accused deviates from this verdict, his / their conditional bail would be recalled. Adjourned to 29.07.2013.

Justice Iftikhar Ahmad

CHIEF JUSTICE

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Seal of the Court
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Constitution of Pakistan

17 AUG 2017

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THE
PESHAWAR HIGH COURT
PESHAWAR

No. 3457 /Judl: Dated Peshawar, the 18/7 /2013

From
The Additional Registrar (J),
Peshawar High Court,
Peshawar

To
The Revenue Officer,
Mardan.

Subject: Cr.M BCA No. 31-P/2013.

Bakhtzada s/o Bakht Munir -----Petitioner

Versus

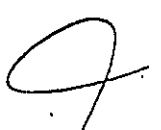
The State & others -----Respondents

Case FIR No. 58, dated 08.10.2011, U/S: 419/420/489-F-PPC,
P.S. FIA, District Peshawar.

Memo:

I am directed to forward herewith copy of order dated 15.07.2013,
passed by this Court in the above noted case alongwith copy of verdict, for
immediate compliance.

Enclosed:
Copy of order & verdict.


ADDITIONAL REGISTRAR (J)
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17/7/13

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THE
PESHAWAR HIGH COURT
PESHAWAR

No. 3467/Judl:

Dated Peshawar, the 18/7/2013

From:

The Additional Registrar (J),
Peshawar High Court,
Peshawar.

The Revenue Officer,
Mardan.

Subject:

Cr.M BCA No. 31-P/2013

Bakhtzada S/o Bakht Munir

.....Petitioner

vs

The State & Others

Case FIR No. 58, dated 08.10.2011, U/S:
419/420/489-F-PPc, P.S.FIA, District Peshawar.

Memo:

I am directed to forward hereby copy of order
dated 15.07.2013. passed by this Court in the above noted
case along with copy of verdict, for immediate compliance.

ADDITIONAL REGISTRAR (J)

Enclosed:

Copy of order & verdict



اندراج بحسنی یا آخری واقعہ جسکی قسم مطلوب ہے۔

رقبتہ	رقبہ نمبر	رقبہ علاقہ	رقبہ کلاں	رقبہ جھنجھوڑ	رقبہ کھنڈا	رقبہ گڑھی	رقبہ کھنڈا	رقبہ کھنڈا	رقبہ کھنڈا	رقبہ کھنڈا	رقبہ کھنڈا	رقبہ کھنڈا
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	عبدالسلام ولد حنیف انڈانفان											
	200.5		مستقل 134.983									
	دیگر دستور 1257.5		فوش رقبہ مستقل 0-7-136									
فروخت کی صورت میں قیمت قرض کی ادائیگی آزر من کی صورت میں 0.00 روپے پورٹ گرداورد: غیر پڑتاں شدہ م تحصیلدار:												
		نوٹل رقبہ انتقال کرنا 0-7-136										

میں نے اپنا منہل حنا بدیدار اور دریا شمس علی
مکملات لقا ویلو بدیدار میں
میں نے اپنا منہل حنا بدیدار اور دریا شمس علی
میں نے اپنا منہل حنا بدیدار اور دریا شمس علی
12/7/2016

Amir

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Amir

**BOARD OF REVENUE
GOVERNMENT OF THE NORTH-WEST FRONTIER PROVINCE**

annex
"H" (27)

NOTIFICATION

Peshawar dated the 16/04/2005.

No. T/OSD/MF. In exercise of the powers conferred by Section-46 of the West Pakistan Land Revenue Act, 1967 (W.P. Act-XXVII of 1967), and in supersession of all previous notifications in this behalf, the Board of Revenue, NWFP hereby directs that mutation fee for entries relating to acquisition of any right or interest in an estate made in a mutation register regarding various transfers of properties shall, with effect from the first day of July, 2005, be charged in accordance with the Table given below:-

TABLE

S. No. 1.	Nature of transfer 2.	Fee to be charged 3.
i.	By inheritance	No fee
ii.	By partition	No fee
iii.	By gift to a legal heir (TAMLEEK)	No fee
iv.	By exchange of agricultural land within the same revenue circle.	(a) Fifty rupees where the land does not exceed five acres; and (b) Fifty rupees plus one hundred rupees for every acre or part thereof in excess of five acres.
v.	Transfer made to a wife in lieu of dower (Haq-e-Mehar) according to Islamic Law (Sharia).	At the same rate as fixed for transfer at serial No. iv.
vi.	Transfer in pursuance of a duly registered deed or a verdict of a Court.	At the same rate as fixed for transfer at serial No. iv.
vii.	Transfer of property through a mode other than those mentioned at Serial Nos. (i) to (vi) above.	At the rate of 2.5 per cent of the value of the property so transferred.

2. The fee in respect of transfer at serial No. (iv) to (vii) shall be charged irrespective of the fact whether the mutation is accepted or rejected.
3. The fee in respect of transfer covered by serial No. (vii) shall be charged in case the mutation is accepted.
4. Fee at the rate fixed for transfer covered by serial No. (vii) shall also be charged in relation to gift mutation where accepted, if the gift is in favour of a person other than a legal and presumptive heir.

Sd/-
SENIOR MEMBER,
BOARD OF REVENUE, N.W.F.P.

No. 9501-9528 T/OSD/MF.

Copy is forwarded for information and necessary action to:-

1. The Secretary to Government of NWFP, Finance Department.
2. The Section Officer (Cabinet), E&AD, NWFP, w/r to his letter No. SOG (E&AD) 27-164/2004 dated, 01/01/2005.
3. All District Officers (Revenue & Estate) / Collectors, in NWFP. *Mardan*
4. The Director, Land Records, NWFP.
5. The Manager Government Printing and Stationery Department, NWFP, Peshawar with the request that the Notification may be published in the extra-ordinary official Gazette of NWFP Government and supply, to this Board (20) copies of the Gazette in which the Notification is published.

Nasirwan
SECRETARY,
BOARD OF REVENUE, NWFP.

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 BOARD OF REVENUE
 GOVERNMENT OF THE NORTH WEST FRONTIER PROVINCE
 NOTIFICATION
 Peshawar dated the 16/04/2005.

No. /TOSD/MF. In exercise of the powers conferred by Section-46 of the West Pakistan Land Revenue Act, 1967 (W.P. Act-XVII of 1967), and in supervision of all previous notification in this behalf, the Board of Revenue, NWFP hereby directs that mutation free fro entries relating to acquisition of any right or interest in an estate made in a mutation register regarding various transfers of properties shall, with effect from the first day of July, 2005, be charged in accordance with the Table given below.

TABLE

S.No. 1	Nature of trans. 2	Fee to be charged 3
i.	By inheritance	No fee
ii.	By partition	No fee
iii.	By gift to a legal heir (TMLEEK)	No fee
iv.	By exchange of agriculture land within the same revenue circle	(a) Fifty rupees where the land does not exceed five acres and (b) Fifty rupees plus one hundred rupees for every acre or part thereof in excess of five acres.
v.	Transfer made to a wife in lieu of dower (Haq-e-Mehar) according to Islamic Law (Sharia)	All the same rate as fixed for transfer at serial No. iv.
vi.	Transfer in pursuance of a duly registered deed or a verdict of a Court.	All the same rate as fixed for transfer at serial No. iv.
vii.	Transfer of property through a mode other than those mentioned at Serial Nos. (i) to (vi) above	All the rate of 2. Per cent of the value of the property so transferred.

2. The fee in respect of transfer at serial No (iv) to (vii) shall be charged irrespective of the fact whether the mutation is accepted or rejected.
3. The fee in respect of transfer covered by serial No. (vii) shall be charged in case the mutation is accepted.
4. Fee at the rate fixed for transfer covered by serial No. (vii) shall be charged in relation to gift mutation where accepted, if the gift is in favour of a person other than a legal and presumptive heir.

Sd/-
 Senior Member
 Board of Revenue, NWFP

No. 9501-9528/TOSD/MF.

Copy is forwarded for information and necessary action for:-

1. The secretary to Government of NWFP, Finance Department.
2. The Section Officer (Cabinet) F&AD, NWFP, w/r to his letter No. SOC (F&AD) 27-164/2004 dated, 01/01/2005.
3. All District Officers (Revenue & Estate)/Collectors, in NWFP, Mardan.
4. The Director, Land Records, NWFP.
5. The Manager Government Printing and Stationery Department, NWFP, Peshawar with the request that the Notification may be published in the extraordinary official Gazette of NWFP Government and supply to this Board (20) copies of the Gazette in which the Notification is published.

SECRETARY
 BOARD OF REVENUE, NWFP

annex
"I"

28

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)

No.SOR-V(E&AD)/Instruction/2014
Dated 28^h March, 2014

1. The Additional Chief Secretary,
P&D Department Govt. of Khyber Pakhtunkhwa.
2. The Additional Chief Secretary (FATA),
FATA Secretariat, Peshawar.
3. The Senior Member,
Board of Revenue, Khyber Pakhtunkhwa.
4. All the Administrative Secretaries
to Government of Khyber Pakhtunkhwa.
5. All the Divisional Commissioners in Khyber Pakhtunkhwa
6. All Heads of the Attached Departments in Khyber Pakhtunkhwa
7. All the Deputy Commissioners in Khyber Pakhtunkhwa

**PROCEDURE UNDER THE KHYBER PAKHTUNKHWA GOVERNMENT
SERVANTS EFFICIENCY AND DISCIPLINE RULES 2011**

It has been observed that the inquiry officers/inquiry committees
under Rule-10 of Khyber Pakhtunkhwa Government Servants (E&D) Rules,
do not follow strictly the procedure as laid down in rule-11 of the rules ibid but
beyond the limit of their duties.

It is to clarify that the inquiry officer or the inquiry committee is supposed
to determine whether the charges against the accused officers/officials have been proved
or not proved fully or partially and whether he/they is/are found guilty or not. The
inquiry officer or the inquiry committee shall as the case may be clearly fix responsibility
and apportionment of the losses caused to the provincial exchequer, work out apportionment of
losses amongst accused officers/officials and recommend recovery thereof from the
officials held responsible.

Contrary to the above provisions of the rules, the inquiry officer/inquiry
committee may recommend against the accused officers/officials either exoneration from the
penalty levied against them or recommend major penalty and in most cases
minor penalty. It is to be noted that it is the prerogative/privilege of the
inquiry officer or the inquiry committee on the basis of the findings of the enquiry whether to
levy minor penalty or major penalty or exoneration. The inquiry officer/inquiry
committee is not required to recommend exoneration or any other recommendation of
penalty unless otherwise specifically asked for.


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4. I am directed to request you that it should be brought to the notice of all concerned to conduct the inquiries in a very objective manner strictly in accordance with the Khyber Pakhtunkhwa Government Servant E&D Rules, 2011 and avoid the breach of their domain/limits as laid down in these rules.

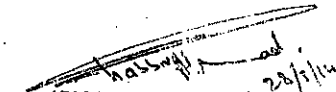
Yours faithfully,


(SHABBIR AHMAD)
SECTION OFFICER (REG-V)

Endst: No. & date even.

Copy forwarded to:

1. Registrar Peshawar High Court, Peshawar.
2. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
3. The Secretary, Khyber Pakhtunkhwa Public Service Commission.
4. All Additional Secretaries, Deputy Secretaries and Section Officers in Establishment & Administration Department.
5. The Principal Secretary to Governor, Khyber Pakhtunkhwa
6. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
7. Private Secretaries to all Provincial Ministers in Khyber Pakhtunkhwa
8. Private Secretary to Chief Secretary, Khyber Pakhtunkhwa
9. Private Secretary to Secretary Establishment Department
10. Private Secretary to Secretary Administration Department.
11. The Director General, Provincial Disaster Management Authority Provincial Reconstruction, Rehabilitation and Settlement Authority.


(SHABBIR AHMAD)
SECTION OFFICER (REG-V)

↓
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annex
"J"

30



OFFICE OF THE
DEPUTY COMMISSIONER MARDAN
No. 1406 /DC(M)/PS Dated. 29/10/2017



To

The Secretary-I
Board of revenue
Khyber Pakhtunkhwa,

Subject:

**OPINION REGARDING PROMOTION CASES OF MR. YADULLAH KHAN
KHATTAK, NAIB TEHSILDAR TAKHTBHAI.**

Enclosed please find herewith an application submitted by Mr. Yadullah Khan Khattak, Naib Tehsildar Takhtbhai received in this office vide dairy No. 1406 dated. 29.10.2017 regarding his upcoming DPC in which he has requested the undersigned to submit opinion about ~~the~~ ^{ke} case lodged against him by Anti-Corruption Establishment.

It is submitted that Mr. Yadullah Khan Khattak, Naib Tehsildar Takhtbhai has been found dutiful officer and his immediate supervisory officers have passed good comments about him in his PERs. As far as the said case is concerned, it is subjudice in the court of law and any action should be taken regarding him, as per court order.

M. J. 29/10/17
DEPUTY COMMISSIONER
MARDAN

No & date even:
Copy to

Mr. Yadullah Khan Khattak, Naib Tehsildar Takhtbhai

M. J. 29/10/17
DEPUTY COMMISSIONER
MARDAN

True copy



GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

31

Peshawar dated the 27/10/2017

Annex
"K"

O.R.D.E.R.

No.Estt:V/Yadullah/Comm/23378. WHEREAS; Mr. Yadullah Khattak Naib Tehsildar Takht Bhai was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules 2011 for the charge mentioned in the Show Cause Notice dated 10.08.2017.

AND WHEREAS; after affording proper opportunity of hearing, he failed to defend the charges leveled against him.

AND WHEREAS, I, Zafar Iqbal Senior Member Board of Revenue after having examined the charges, evidence produced, statement of accused official, and after personal hearing of the accused official concur with the report of Inquiry Officer.

NOW THEREFORE; while considering his written reply I, as Competent Authority in exercise of powers conferred by Rule 4 (1) (a) (ii) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 impose minor penalty of "withholding of promotion" for a period of 03 years upon Mr. Yadullah Khan Naib Tehsildar with immediate effect. He shall also not be posted on Revenue Circle in the next 03 years.

By order of
Senior Member

No.Estt:V/Yadullah/Comm/23379-03

Copy forwarded to the:-

1. Commissioner, Mardan Division, Mardan.
2. Deputy Commissioner, Mardan.
3. District Accounts Officer Mardan.
4. Official concerned.
5. Personal File.

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Ammer
"L"

2W- 43184

32

PS/O.S.I. Peshawar
Entry No. 7904 WLF
Date 06-11-2017

PS/SMR
35
6/11/17

To,

The Chief Secretary,
Civil Secretariat, Peshawar

Subject: **Departmental appeal against the order dated 27.10.2017, passed by Senior Member Board of Revenue, KP Peshawar, wherein a penalty of withholding of promotion for a period of 3 years and a further penalty of not posting in Revenue Circle for 3 years has been imposed upon appellant, which is illegal, against law and facts.**

Sejt

SMR
6/11/17

AS-
DS-1/17

PRAYER

On acceptance of this appeal order dated 27.10.2017 passed by Senior Member Board of Revenue KP, Peshawar may please be asset-aside and the appellant may please be considered for promotion as Tehsildar alongwith his batch-mates/ colleagues w.e.f 01.11.2017 when his batch-mates/ juniors were promoted with all back/ monetary and service benefits. Any other relief deemed fit may also be graciously granted.

3/11
relates to
8/11

Sir

Appellant humbly submits as under:-

1. That appellant has been appointed as Naib Tehsildar vide order dated 02.02.2009 upon the recommendation of KP Public Service Commission.

True WPT

2. That appellant performed his services to the entire satisfaction of his superiors and there has been no complaint against appellant.
3. That a show cause notice has been served upon the appellant by SMBR to the effect that appellant attested mutation No.14190, Mauza Mardan without depositing Govt. Tax/ Fee, which caused a heavy loss to Govt. Exchequer. (Copy of show cause notice is attached)
4. That appellant replied the same properly by submitting that Tax is received as per notification dated 16.04.2005, issued by the worth SMBR and as per Para-IV and VI of the same being Court verdict, normal fees of Exchange has been levied in accordance with said notification, which has got the force of law. (Copy of notification dated 16.04.2015 alongwith reply to show cause notice, Court decree is attached)
5. That astonishingly, the Inquiry Officer without associating appellant with inquiry proceedings, without examining any witness in front of appellant, without affording opportunity of hearing, without holding appellant guilty, fixed responsibility of levy of Tax on mutation against the notification referred above, issued by the worthy SMBR (Copy of Inquiry report is attached)

A
True copy

6. That no opportunity of personal hearing was offered to appellant by the Inquiry Officer as well as competent authority.
7. That to the utter shock and dismay of appellant penalty as detailed in the heading of the appeal is imposed upon appellant for no good reason vide order dated 27.10.2017. (Copy of order dated 27.10.204 is attached)
8. That feeling aggrieved from the said order, appellant approaches your good-self on following grounds:-

GROUND

- A. Because appellant is innocent and falsely charged.
- B. Because when Para-VI and IV of notification referred above says no levy of Tax, then issuing of charge sheet, when it is not an offence under the service law is unprecedented.
- C. Because there is no mention, whether appellant is misinterpreting the notification or Inquiry Officer or Anti-Corruption Department then in such eventuality holding appellant responsible and depriving him of promotion is a very harsh penalty, not commensuration in the facts and circumstances of the case.

True *ASR*

- D. Because Tax is to be levied as per Land Revenue Act, after attestation of mutation, however, Revenue Officer cannot refuse attestation of mutation on Court decree at it amounts to disobedience of Court order leading to contempt proceedings in Court of law.
- E. Because attestation of mutation does not mean that decree holder is absolved from payment of Tax as the same can be recovered as arrears of land revenue after attestation of mutation.
- F. Because even after lapse of more than one year, even the subsequent Revenue Officers/ Tehsildars and even Inquiry Officer in the capacity of Assistant Commissioner, Mardan has not ordered for recovery of Tax as arrears of Land Revenue upon the mutation in question.
- G. Because no opportunity of personal hearing has been afforded by worthy SMBR.
- H. Because appellant request for hearing in person.
- I. Because as per judgment of Hon'ble Service Tribunal there is no penalty of stopping of posting and can't be imposed.

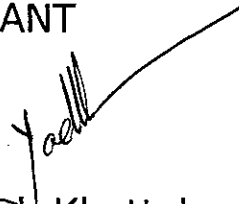
It is, therefore humbly prayed that, On acceptance of this appeal order dated 27.10.2017

True bpr

passed by Senior Member Board of Revenue KP, Peshawar may please be asset-aside and the appellant may please be considered for promotion as Tehsildar alongwith his batch-mates/colleagues w.e.f/06.11.2017 when his batch-mates/ juniors were promoted with all back/monetary and service benefits. Any other relief deemed fit may also be graciously granted.

Dated: 06.11.2017

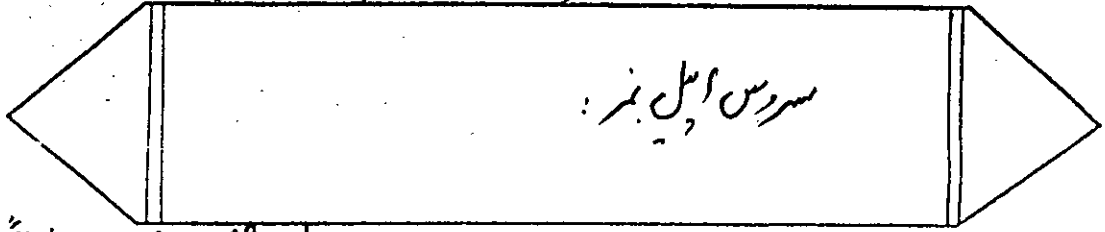
APPELLANT



Yad Ullah Khattak
Tehsildar Takht Bhai,
District Mardan

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بعدالت سندس ائیل نمبر، صبر بخشو نمبر، شمار



سندس ائیل نمبر

2019ء منجانب 2 اپریل 19-4-2 (باد اللہ منگ نام smBR) بنام پیرا، ضلع فیصلہ۔ (ایمپلائٹ) سندس ائیل

باعث تحریر آئیکہ

آن مقام شمار کیلئے ائیل خان بارگندی و فیصلہ بخش ائیل کش شمار مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دی وکل کاروائی متعلقہ کے مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ بر حلف دیئے جواب دی اور اقبال دعوی اور بصورت ڈگری کرنے اجراء اور صولی چیک در و پیہار عرضی دعوی اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

المرقوم 2 ماہ اپریل 2019

Accepted by Faiz Bukhsh Adv. Pesh

Accepted by Aimal Khan (Barkandi) Adv. Pesh 2/4/19

باد اللہ منگ، ضلع فیصلہ، (ایمپلائٹ)



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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 536/2019.

Yadullah Tehsildar Tirah.....Appellant

VERSUS

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

INDEX

S. No	Description of documents	Annexure
1.	Comments	-
2.	Affidavit	-
3.	Peshawar High Court Judgment dated 15.07.2013.	A
4.	Order regarding minor penalty dated 27.10.2017.	B
5.	Service Tribunal order dated 19.09.2018.	C
6.	Order regarding penalty of withholding of one increment dated 04.01.2019.	D
7.	Rejection of appeal of the appellant.	E
8.	The appellant informed regarding rejection of the appellant.	F
9.	Inquiry report	G
10.	Show Cause Notice	H

Assistant Secretary (Lit – I)
Board of Revenue KPK

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 536/2019.

Yadullah Khattak Tehsildar Tirah..... Appellant.

VERSUS

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

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 & 2 ARE AS UNDER:-

RESPECTFULL SHEWETH.

PRELIMINARY OBJECTIONS.

1. That the appellant has got no cause of action.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the Appellant has been estopped by his own conduct to file the appeal.
4. That the appeal is time barred.


ON FACTS.

1. Pertains to record.
2. Correct to the extent of order of the Peshawar High Court, but he attested the mutation without receiving Government taxes which caused heavy loss to the Government Exchequer.
3. Incorrect. There was not a single word about non-depositing the Government taxes in Peshawar High Court judgment dated 15.07.2013 (Annexure-A).
4. Correct to the extent that on the recommendation of Inquiry Officer minor penalty of withholding of promotion for a period of three years was imposed upon the appellant vide order dated 27.10.2017 (Annexure-B).
5. Correct to the extent that the appellant filed Appeal before the Service Tribunal whereby his appeal was partially accepted by setting aside the order dated 27.10.2017 with the direction to conduct regular inquiry and the appellant be provided opportunity of cross examination vide Service Tribunal order dated 19.09.2018 (Annexure-C).
6. Correct to the extent that in light of order of Service Tribunal dated 19.09.2018 regular inquiry was conducted against the appellant, and on the recommendation of Inquiry Officer minor penalty of withholding of one increment for a period of one year was imposed upon the appellant vide order dated 04.01.2019 (Annexure-D).
7. Incorrect. Departmental appeal of the appellant was examined and rejected by the appellate authority. The appellant was informed accordingly vide letter dated 11.03.2019 (Annexure-E & F).
8. Incorrect. Appeal of the appellant is not maintainable.

GROUNDS

- A. Incorrect. The impugned order was issued after conducting proper enquiry in light of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and on the recommendation of Inquiry Officer.
- B. Incorrect. There was not a single word in Peshawar High Court order regarding not to deposit the Government taxes.
- C. Incorrect. As in para-B above.
- D. Incorrect. As in para-A above.
- E. Incorrect. The Inquiry Officer in his report stated that the accused did not thoroughly perused the court order before attestation of mutation as to whether it was exempted from Government Tax / fee or not because it was never a case for declaration, by a court, of any rights in any property rather a Bail Cancellation Application (BCA) was lying pending in High Court. A man naming Bakhtzada was made subject to fraud by one Abdus Salam, to an amount of Rs. ten (10) million rupees. An out of court settlement was reached between the parties by a mediator (Dost Muhammad) on consent of both the parties in which Abdus Salam would transfer property in the name of Bakhtzada in lieu of ten (10) million rupees. The mediation was put to Black & White (Verdict) and produced before the court so that the culprits may continue their bail. It was as normal as a simple mode of transfer of property where there is a definite area and definite amount (7.5 marlas and ten million rupees in the instant case). Inquiry report is at (Annexure-G).
- F. Incorrect. The inquiry was conducted strictly in accordance with Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.
- G. Incorrect. The Competent Authority imposed minor penalty of **“withholding of once increment for a period of once year”** upon of the appellant.
- H. Incorrect. Peshawar High Court passed order to the effect that, “the revenue officer is directed that whenever this order of the Court and the verdict is produced before the him, he shall direct the Patwari Halqa to enter the mutation and also in “Roznamcha”, the Girdawar Circle shall carry out scrutiny about the entries of the revenue record while the Revenue Officer of the Circle shall attest the mutation and file the same positively within fifteen (15) days”. There was not a single word about non-depositing the Government taxes.
- I. Incorrect. As in para E & H above.
- J. Incorrect. Show cause notice was served upon the appellant and proper opportunity of personal hearing was given to the appellant on 11.12.2018 before the Senior Member, Board of Revenue (Annexure-H).
- K. Incorrect. On the recommendation of Inquiry Officer minor penalty of **“withholding of one increment for a period of once year”** was imposed upon of the appellant under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

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


Senior Member,
Board of Revenue
Respondent No. 1, & 2

annex

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23

PESHAWAR HIGH COURT, PESHAWAR
FORM OF ORDER SHEET

Court of.....of.....
Case No.....of.....



Date of Order of Proceedings	Order of other Proceedings with Signature of Judge.
1	2
15.07.2013	<p><u>Cr. Misc. (BCA) No. 31-P/2013.</u></p> <p>Present: M/s. Shah Faisal Utmankhel & Waheed Ullah Khan, Advocates, along with the petitioner.</p> <p>Mr. Naveed Akhtar, AAG, for the State along with Dost Muhammad, mediator.</p> <p>M/s. Abul Latif Afridi, Fazal Shah Mohmand & Wakeel Khan Shinwari, Advocates, along with the accused-respondent.</p> <p style="text-align: center;">***</p> <p>The mediator (Dost Muhammad) stated at the bar that he negotiated the matter between the parties and ultimately reached at the conclusion. He produced the verdict, he has given, that all the parties accept the same provided the mutation is attested.</p> <p>Accordingly, the revenue officer is directed that whenever this order of the Court and the verdict is produced before him, he shall direct the Patwari Halqa to enter the mutation and also in "Roznamcha", the</p>

SEED
PESHAWAR
HIGH COURT
15.07.2013

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Girdawar Circle shall carry out scrutiny about the entries of the revenue record while the Revenue Officer of the Circle shall attest the mutation and file the same positively within fifteen (15) days. If any of the accused deviates from this verdict, his / their conditional bail would be recalled. Adjourned to 29.07.2013.

Full Court

[Signature]
CHIEF JUSTICE

CERTIFIED TO BE TRUE COPY

[Signature]
Peshawar High Court, Peshawar
Authorized Under Article 47 of
The Constitution of Pakistan

17 AUG 2017

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16/7*



GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

Peshawar dated the 27/10/2017

annex
" K "

31

O.R.D.E.R.

No.Estt:V/Yadullah/Comm/23378 WHEREAS; Mr. Yadullah Khattak Naib Tehsildar Takht Bhai was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules 2011 for the charge mentioned in the Show Cause Notice dated 10.08.2017.

AND WHEREAS; after affording proper opportunity of hearing, he failed to defend the charges leveled against him.

AND WHEREAS, I, Zafar Iqbal Senior Member Board of Revenue after having examined the charges, evidence produced, statement of accused official, and after personal hearing of the accused official concur with the report of Inquiry Officer.

NOW THEREFORE; while considering his written reply I, as Competent Authority in exercise of powers conferred by Rule 4 (1) (a) (ii) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 impose minor penalty of "withholding of promotion" for a period of 03 years upon Mr. Yadullah Khan Naib Tehsildar with immediate effect. He shall also not be posted on Revenue Circle in the next 03 years.

By order of
Senior Member

No.Estt:V/Yadullah/Comm/23379-83

Copy forwarded to the:-

1. Commissioner, Mardan Division, Mardan.
2. Deputy Commissioner, Mardan.
3. District Accounts Officer Mardan.
4. Official concerned.
5. Personal File.

A
True copy

Zafar Iqbal (Senior Member)

authority vide order dated 27.10.2017 on the allegations that he while posted as Naib Tehsildar Mardan attested mutation No. 14190 Mouza Mardan without depositing Government Tax/fee which caused a heavy loss to the Government exchequer, that he did not take trouble to go through the Court order before attestation of mutation as to whether the mutation was exempted from Government Tax or otherwise and that his this act tantamount to misconduct. The appellant filed departmental appeal on 06.11.2017 which was not responded hence, the present service appeal on 08.03.2018.

3. Respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving in Revenue Department as Naib Tehsildar. It was further contended that during service he was imposed aforesaid minor penalty on the aforesaid allegations. It was further contended that neither charge sheet, statement of allegations was served upon the appellant, nor proper inquiry was conducted, nor opportunity of hearing and defence was provided to the appellant nor the competent authority has dispensed the regular inquiry in show-cause notice served upon the appellant therefore, the impugned order is illegal and liable to be set-aside and prayed for acceptance of appeal.

M. Amin
S.O. 5.6/17

[Signature]
ATTORNEY

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in Revenue Department as Naib Tehsildar. It was further contended that the appellant was imposed aforesaid minor penalty on the aforesaid allegations. It was further contended that a proper inquiry was conducted and the appellant was provided opportunity of

True copy

annex
"B"

9



GOVERNMENT OF KHYBER
PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

Peshawar dated the 04/01/2019

ORDER

No. Estt:V/PF/Yadullah/S.A No.333/ 425 WHEREAS, Mr. Yadullah Naib Tehsildar was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 for the charges mentioned in the charge sheet.

AND WHEREAS, Muhammad Zaheer-ud-Din Babar District Officer (Finance & Planning), Mardan was appointed as Inquiry Officer, to conduct inquiry against the accused official;

AND WHEREAS, the Inquiry Officer after having examined the charges, evidence on record and explanation of the accused official, submitted her report; whereby the charges leveled against the accused stand proved.

AND WHEREAS, the Competent Authority, is of the view that the accused official is inefficient and has committed negligence/slackness as he has not recovered Government Taxes on Mutation No. 14190 Mouza Mardan which caused a heavy loss to the Government exchequer.

NOW THEREFORE, in light of the recommendation of Inquiry Officer, the Competent Authority is pleased to impose minor penalty of "withholding of one increment for a period of one year" upon Mr. Yadullah the then Naib Tehsildar Mardan now Naib Tehsildar Shabqadar.

This Department order bearing No. Estt:V/Yadullah/Comm/23378, dated 27.10.2017 is hereby withdrawn.


By order of
Senior Member

No. Estt:V/PF/Yadullah/S.A No.333/ 426-33

Copy forwarded to the:-

1. Commissioners Mardan and Peshawar Division.
2. Deputy Commissioners Mardan and Charsadda.
3. District Accounts Officer Mardan and Charsadda.
4. Official concerned.

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True copy


Assistant Secretary (Estt:)



GOVERNMENT OF KHYBER PAKHTUNKHWA,
BOARD OF REVENUE,
REVENUE & ESTATE DEPARTMENT.
Facebook ID: www.facebook.com/bor.kpk92
Twitter ID: [@RevenueBoardkp](https://twitter.com/RevenueBoardkp)
Fax No: 091.9213989



REVD-1355

NOTE FOR CHIEF SECRETARY

SUBJECT:- APPEAL/PRESENTATION AGAINST ORDER NO. ESTT:V/PF/YADULLAH/
S.A NO. 333/425. DATED 04.01.201 WHEREBY THE MINOR PLENTY OF
"WITHHOLDING OF ONE INCREMENT FOR PERIOD OF ONE YEAR"

WAS IMPOSED UPON THE PETITIONER BY THE ORDER OF SENIOR
MEMBER, BOARD OF REVENUE, REVENUE & ESTATE DEPARTMENT
KPK DATED 04.01.2019 WHICH ORDER IS THE RESULT OF
MISREADING OF THE ORDER OF HON'BLE PESHAWAR HIGH COURT,
PESHAWAR AND IS AGAINST THE FACTS, LAW AND PROCEDURE

1 : Attention is requested to Departmental Appeal filed by Mr. Yadullah Tehsildar (Annexure-A) against Notification dated 04.01.2019 (Annexure-B) whereby minor penalty of withholding of one increment for a period of one year was imposed upon the appellant.

Parawise reply is as under.

1. Pertains to record.
2. Correct to the extent of order of the Peshawar High Court. but he attested the mutation without receiving Government taxes which caused heavy loss to the Government Exchequer.
3. Correct to the extent of disciplinary proceedings against the appellant under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.
4. Incorrect. There was not a single word about not to depositing the Government taxes. (Peshawar High Court judgment dated 15.07.2013 is at (Annexure-C).
5. Incorrect. The Inquiry Officer has not issued second charge sheet other than the charge sheet issued by Board of Revenue.
6. Incorrect. Peshawar High Court order/judgment is very clear. where there is no mention not to receive Government taxes.
7. Incorrect. The Inquiry Officer in his findings has clearly mentioned that the appellant attested the mutation mala fide without receiving Government taxes. (Copy of report of first Inquiry Officer is at (Annexure-D)
8. Incorrect. The Inquiry Officer has conducted the enquiry strictly in accordance with Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011.
9. As in Para-8 above.
10. Incorrect. As per law, the appellant was bound to collect Government taxes on attestation of the mutations.
11. Incorrect. The report of the Inquiry Officer is according to law/rules.
12. Incorrect appeal of the appellant is not maintainable.

GROUNDS:-

- a. Incorrect. The punishment, was awarded by the Competent Authority on the basis of findings of the Inquiry Officer.
- b. Incorrect. The Inquiry Officer has not issued any charge sheet rather it was questionnaire.
- c. As in Para-2 & 4 of the facts.
- d. Incorrect. Order dated 04.01.2019 (Annexure-E) is in accordance with law/rules.
- e. Incorrect. Findings of the Inquiry Officer is in accordance with Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.
- f. Incorrect. The appellant was penalized by the Competent Authority after thorough examination of the report of Inquiry Officer as well as orders of Peshawar High Court.
- g. Incorrect. Notification dated 16.05.2005 is very clear, where there is no mention not to collect Government taxes on court decrees.

In view of the above the appeals of the appellants having no legal ground may be rejected please.

P.O. Ref-IV
SAGAD, Diary No. 94
Date 22-2-19

Secretary Establishment

M. Jala
20/02/19
Senior Member
Senior Member
Board of Revenue
Khyber Pakhtunkhwa

PS/SMBR
By No. 36
PTS/REVD 1355
Date 22-2-19
Govt. of Khyber Pakhtunkhwa

Ps / Secy (E) & AD
Diary No. 389
Dated 22-2-19

N. P. P.

3. The Note for Chief Secretary, Khyber Pakhtunkhwa has been examined. Mr. Yadullah, Tehsildar has filed Departmental appeal against impugned order dated 04.01.2019 (Annex-B), whereby minor penalty of "withholding of one increment for a period of one year" was imposed upon him.

4. According to finding of the Inquiry Report, the accused has attested mutation No.14190 without depositing Government tax/fee which caused losses to the government exchequer and was therefore guilty of misconduct. Senior Member, Board of Revenue being the competent authority after completing codal formalities under the Government Servants (Efficiency and Discipline) Rules, 2011 imposed minor penalty of "withholding of one increment for a period of one year" upon him. The Administrative Department after examining the departmental appeal has stated that the appeal having no genuine grounds may be rejected.

5. In the light of Rule-17(2) of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 (Annex-F), the competent authority may dispose of the appeal as under:-

- (a) uphold the order of penalty and reject the appeal or review petition; or
- (b) set aside the orders and exonerate the accused; or
- (c) modify the orders or reduce the penalty

6. Foregoing in view proposal of the Administrative Department contained in Para-2 ante is submitted for orders of the Chief Secretary, Khyber Pakhtunkhwa under Rule-17(2)(a-c) of the rules ibid, as deemed appropriate.

AS
Secretary Establishment
4, March, 2019

Chief Secretary, Khyber Pakhtunkhwa

Appeal dismissed

Secy Revenue Estab

AS
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Chief Secretary
Govt. of Khyber Pakhtunkhwa

M Jala
05/04/2019

Secy - 1

AS (F&D) S/E

6/7/19

PS/Body No. 389
Diary No. 1
FTS No. 4-3-19
Date. 4-3-19

Chief Secretary
Govt. of Khyber Pakhtunkhwa
No. 1032
Date. 5/3/19

Annex
"A"

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GOVERNMENT OF KHYBER PAKHTUNKHWA,

BOARD OF REVENUE,

REVENUE & ESTATE DEPARTMENT.

Facebook ID: www.facebook.com/bor.kpk92

Twitter ID: [@RevenueBoardkpk](https://twitter.com/RevenueBoardkpk)

Fax No: 091.9213989

No. Estt: I/PF/Yadullah/II/ 8890

Peshawar dated the 11 /03/2019.


To

Mr. Yadullah,
Tehsildar:

Through: Commissioner Peshawar.

SUBJECT: APPEAL/PRESENTATION AGAINST ORDER NO. ESTT:V/PF/YADULLAH/
S.A NO. 333/425. DATED 04.01.201 WHEREBY THE MINOR PLENTY OF
"WITHHOLDING OF ONE INCREMENT FOR PERIOD OF ONE YEAR"
WAS IMPOSED UPON THE PETITIONER BY THE ORDER OF SENIOR
MEMBER, BOARD OF REVENUE, REVENUE & ESTATE DEPARTMENT
KPK DATED 04.01.2019 WHICH ORDER IS THE RESULT OF
MISREADING OF THE ORDER OF HON'BLE PESHAWAR HIGH COURT,
PESHAWAR AND IS AGAINST THE FACTS, LAW AND PROCEDURE.

Your Departmental appeal has been examined and rejected by the appellate authority.


Assistant Secretary (Estt)

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INQUIRY REPORT ON THE CHARGES FRAMED AGAINST MR. YADULLAH, EX-NAIB TEHSILDAR, MARDAN

In pursuance of the Government of Khyber Pakhtunkhwa Board of Revenue, Revenue and Estate Department letter no. Estt:V/PF/Yadullah/S.A.No.333/18/34654-55, dated: 15-10-2018, wherein the competent authority approved to initiate an inquiry against Mr. Yadullah, Ex-Naib Tehsildar, Mardan, under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011, Muhammad Zaheer Uddin Baber, District Officer (Finance & Planning) Mardan, submit the inquiry report as under.

The inquiry was initiated on 16-10-2018 (the date of receipt of inquiry order) and concluded on 23-11-2018. The delay of a period of 07 days occurred due to training of the undersigned outside the station.

BACKGROUND:

There was some monetary dispute between Mr. Bakhtzada and Abdus Salam amounting to ten (10) million rupees. Adjudication between the parties was underway in competent court for fraud. A mediator played role in resolving the issue and managed to develop consensus among the parties whereby Mr. Abdus Salam would transfer land measuring 7.5 marlas in Mouza Mardan to Mr. Bakhtzada in lieu of money which he had taken from him fraudulently. The agreement was presented in High court by the mediator and stated that the parties accept the settlement/agreement (Annexed at page:13) provided that the mutation is attested. Accordingly the High court passed an order on 15-07-2013 (Annexed at page:14-15) whereby it directed the Revenue Officer to direct the Patwari Halqa to enter the mutation in Roznamcha, the Girdawar to scrutinize the entries and Revenue Officer of the circle to attest it within fifteen (15) days.

Pursuant to court's directions Mr. Yadullah, (hereinafter to be referred as "accused") while posted as Naib Tehsildar Mardan, attested the mutation no.14190 Mouza Mardan on 11-08-2016 (Annexed at page:16). While attesting the mutation the accused did not collect government tax /fee. Resultantly the accused was charged for inflicting heavy loss to the Government exchequer for not collecting Government tax/fee and also not taking trouble to go through the court order before attesting the mutation as to whether the mutation was exempted from Government tax/fee or not.

In all four proceedings were carried out during which the accused submitted reply to the charge sheet and relevant record was perused. A visit to the Service Delivery Centre (SDC) Mardan was also made.

FINDING OF FACTS:

Charge (i) *Did the accused, while posted as Naib Tehsildar Mardan, attest the mutation no. 14190 without depositing Government tax/fee which cause a heavy loss to the Government exchequer?*

The accused in his reply to the charge sheet admits that he attested the said mutation. He further states the he has done so on the directions of High court Peshawar. He adds that there was

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DISTRICT OFFICER
(FINANCE & PLANNING)
MARDAN

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nothing mentioned in the directions of court to collect tax or not but to clarify the ambiguity he went through Board of Revenue notification dated 16-04-2005 (Annexed at page:17) in which the fee was Rs. 50/- which was a negligible amount and did not cause heavy loss the Government exchequer.

Charge (ii) Did the accused do not take trouble to go through the court order before attestation as to whether it was exempted from Government tax/fee or not?

The accused in his reply to the charge sheet states that there was nothing mentioned in the court directions regarding Government tax/fee but to clarify the ambiguity he went through Board of Revenue notification dated 16-04-2005.

In order to further probe into the matter and ascertain guilt of the accused, if any, a seven questions "questionnaire" (Annexed at page:18) was given to the accused which he answered (Annexed at page:19-20) as under:

Question # 01: In reply of the charge sheet you have stated that the fee on this particular mutation was Rs. 50/- in light of Government's notification dated 16-04-2005 for court verdict cases, which is a negligible amount, so why it may not be presumed that you had wrongly assessed/calculated the actual tax/fee payable in the case?

Answer: I assessed and calculated the actual tax according to BOR notification which is still applicable and no further notification was issued by BOR regarding collection of taxes on court verdict/decre. As far as this 14190 mutation was concerned I perused all the details of notification in which only 50 Rs tax was applicable on the said mutation.

Question # 02: Is it correct that normally in cases where a mutation is attested pursuance to a court verdict in which nothing is mentioned explicitly regarding Govt tax/fee, the Revenue Officer collects tax/fee?

Answer: While in normal circumstances if Revenue Officer collects taxes on court decree he should have proper notification for collection. Let's presume I am the revenue officer I would follow the instructions issued by BOR and would facilitate the applicants according to law.

Question # 03: Is it true that the computer operator (dealing hand at that time) put a note on initial copy of the report published to ascertain as to whether tax is applicable on it or not but the mutation was processed without it (tax) being ascertained?

Answer: Yes it is true that the computer operator put a note on initial copy of report that whether tax on this particular mutation was applicable or

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(FINANCE & PLANNING)
MARDAN

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not. After perusal that note I went through the said notification of BOR and finalized the mutation.

Question # 04: During perusal of record it revealed that the court verdict was announced on 15-07-2013 and you attested the mutation on 11-08-2016, i.e: after a lapse of three years. So did you enquire about the delay because the court had directed to attest it within 15 days but was not attested in due time by the then official?

Answer: As far as the time period was concerned i.e: 3 years, it was a huge delay on the part of my predecessor and he was supposed to attest the said mutation in the stipulated time period. Apparently there were no intricacies for such a delay the said mutation attestation process. I assume the charge of SDC on dated 08-02-2016. The applicant came to the SDC along with a bulky file in the end of July 2016. The applicant had severe grievances against the revenue officers and brought a complaint letter by (Director Human Rights cell Peshawar High Court Peshawar dated 26-01-2016. He was of the view that he would go in contempt of court against the revenue officials. After went through that complaint no 8368 I thoroughly discussed the said issue with SDC Girdawar/ computer operator and directed them to initiate the mutation process.

Question # 05: The order of Tehsildar on face of mutation at serial no. 13 shows reference of Supreme Court order no. 50, dated 23-07-2013, which could not be traced in official record provided by Deputy Commissioner office Mardan. Why it may not be presumed that no such order ever existed?

Answer: The order of Tehsildar on face of mutation at serial no.13 shows reference of Supreme Court order No. 50 dated 23-07-2013 is existed and attached here for your perusal please.

Question # 06: Being incharge SDC, did you have access to the system?

Answer: Being incharge of SDC yes I had access to the system upto some extent.

Question # 07: Why it may not be presumed that you had access to the system and by virtue of that access you made print of mutation and attested it without it being reached to you through prescribed procedure?

Answer: I had access to the system and I exhibited that access to facilitate the public at large especially old citizens. I did not use my access personally but any computer operator could use the access on my behalf for

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DISTRICT OFFICER
(FINANCE & PLANNING)
MARDAN

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smooth working affairs of SDC. As far as the print of this particular mutation was concerned there was no specific procedure for getting copy of the attested mutation furthermore there was no need of secret print out from my access as the mutation was attested and any computer operator could get print out accordingly.

The answers to the questions, in a nutshell, show that the computer operator put note on initial copy of the report to ascertain actual tax (Annexed at page:21) and the accused assessed Rs.50/- as the applicable tax according to BOR's notification. The accused directed the Girdawar & computer operator to initiate mutation process and attested the mutation after three years of it being ordered, considering there were no intricacies for such a delay and to avoid contempt of court apprehensions. Astonishingly the document provided by the accused, showing reference of Supreme Court's order No. 50, dated 23-07-2013, is actually order of Civil Judge-II/Rent Controller Mardan (Annexed at page:22), and not of Supreme Court, with no mention of any entry in record of rights etc.

Apart from questionnaire, a visit was also paid to SDC Mardan in order to examine the procedures adopted in disposal of business pertaining to digitalized land record. Section 42A of West Pakistan Land Revenue Act, 1967, inserted through Khyber Pakhtunkhwa Land Revenue (Amendment) Act, 2014, provides for report of acquisition of right in a Service Delivery Centre. A few portions from section 42A are reproduced below:

Section: 42A. Report of acquisition of rights. (1) After notification by Board of Revenue regarding operationalization of service delivery centre in an estate, a person, acquiring a right in an estate by inheritance, purchase, mortgage, gift or otherwise as a land owner or a tenant for a fix term exceeding one year, shall, within three months from the date of acquisition, report his acquisition of the right to the service delivery centre official of the estate.

(3) The service delivery centre official shall enter the particular of the report and the prescribed document identity in the computerized system, and shall also obtain the signatures or thumb impression and computerized national identity card number of the person making the report.

(4) The service delivery centre official shall, in the prescribed manner, inform the person making the report, about the particulars of the mutation requested, and other documents required for processing the mutation, fee or tax payable, any other prescribed requirements, and the date on which the parties shall appear in the service delivery centre official for enquiry and order on the requested mutation by the Revenue Officer.

When visited SDC Mardan, the following were observed:

Attested
2022
DISTRICT OFFICER
(FINANCE & PLANNING)
MARDAN

True Copy



GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

SHOW CAUSE NOTICE

I, Fakhre Alam Senior Member, Board of Revenue Khyber Pakhtunkhwa; Competent Authority, under the Khyber Pakhtunkhwa, (Efficiency & Discipline) Rules 2011 do hereby serve show cause notice on you Mr. Yadullah Naib Tehsildar as follow :-

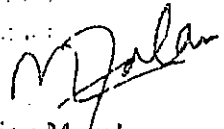
I am satisfied that you have committed the following acts of omissions / commission:-

- a) That you while posted as Naib Tehsildar Mardan attested mutation No. 14190 Mouza Mardan without depositing Government Tax / fee which caused a heavy loss to the Government exchequer.
- b) You did not take trouble to go through the Court order, before attestation of mutation of mutation as to whether the mutation was exempted from Government Tax or otherwise.
- c) Your this act tantamount to misconduct and make you liable to be proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

2. As a result thereof, I as Competent Authority have tentatively decided to impose upon you the penalty under Rule - 4 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

3. You are therefore required to show cause as to why the aforesaid penalty should not be imposed upon you. Furthermore, you are directed to appear on 11-15-2018 at 11:00 am before the undersigned for personal hearing.

4. If no reply to this Notice is received within seven (07) days of its delivery, it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.


Senior Member

No.Est: V/PF/Yadullah/Comm/ 38388

Peshawar, dated 03/11/2018

Mr. Yadullah Naib Tehsildar

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

No. 1897 /ST

Dated 29 /10 2019

To


The Senior Member Board of Revenue,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: -

JUDGMENT IN APPEAL NO. 536/2019, MR. YADULLAH KHATTAK.

I am directed to forward herewith a certified copy of Judgement dated 16.10.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR,
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.



GOVERNMENT OF KHYBER PAKHTUNKHWA,
BOARD OF REVENUE,
REVENUE & ESTATE DEPARTMENT.
Facebook ID: www.facebook.com/bor.kpk92
Twitter ID: [@RevenueBoardkp](https://twitter.com/RevenueBoardkp)
Fax No: 091.9213989

No. Estt:I/S.A/536/19/Yadullah/
Peshawar dated the 20/11/2019.

To

Mr. Yadullah Khattak,
Tehsildar.

Through: **Commissioner,
Peshawar Division, Peshawar.**



SUBJECT:- PERSONAL HEARING.

I am directed to refer to the subject and to inform you to appear before Senior Member, Board of Revenue for personal hearing on 27.11.2019 at 11:00 AM in light of order dated 16.10.2019 passed by Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No. 536/2019 alongwith written statement if any.

Assistant Secretary (Estt)

No. Estt:I/S.A/536/19/Yadullah / 36456

Copy forwarded to the Registrar Service Tribunal Khyber Pakhtunkhwa with reference to his letter No. 1897/S.T dated 29.10.2019.

Assistant Secretary (Estt)

put up to the court with
relevant appal.

Reader

Reader
25/11/19