

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.**SERVICE APPEAL NO. 622/2016**

Date of institution ... 10.06.2016

Date of judgment ... 18.09.2018

Abdur Rehman Shah, Tehsildar, BPS-16,
Under Reversion to the post of Naib Tehsildar,
Officer of the Secretary, Board of Revenue & Estate Department , Peshawar.
... (Appellant)

VERSUS

1. The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat,
Peshawar and another.
... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 10.02.2016 WHEREBY APPELLANT WAS AWARDED MAJOR PENALTY OF REVERSION TO LOWER POST OF NAIB TEHSILDAR FROM TEHSILDAR (BPS-16) BY THE RESPONDENT NO. 2 AGAINST WHICH HE FILED DEPARTMENTAL APPEAL ON 19.02.2016 BEFORE THE RESPONDENT NO. 1 WHICH WAS REJECTED VIDE LETTER DATED 18.05.2016.

Mr. Khush Dil Khan, Advocate. .. For appellant.
Mr. Muhammad Jan, Deputy District Attorney .. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI .. MEMBER (JUDICIAL)
MR. HUSSAIN SHAH .. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the appellant. Mr. Muhammad Jan, 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 Tehsildar. He was imposed major penalty of

M. Amin
18.9.2018

reversion to lower post of Naib Tehsildar for a period of three years vide order dated 10.02.2016 on the allegations that he had kept pending 786 mutations in 50 Mauzajat at the time of conversion of manual land record into computerized SDC and did not dispose it till November, 2015, he intentionally kept the mutation of respective Muzajaat and frustrated the efforts of Provincial Government towards computerization of land record and recovery of Government dues, he had also violated the instructions of the Provincial Government that no mutation be kept pending for more than one month but he had kept the said mutations pending for more than one month, he had inflicted huge losses to the Government exchequer and his this act^{or} his part tantamount to misconduct. The appellant filed departmental appeal on 19.02.2016 which was rejected on 18.05.2016 hence, the present service appeal on 10.06.2016.

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 Tehsildar. It was further contended that the appellant was imposed major penalty of reversion to lower post of Naib Tehsildar on the aforesaid allegations. It was further contended that the appellant filed departmental appeal but the same was also rejected. It was further contended that neither charge sheet, statement of allegations was served upon the appellant, nor regular inquiry was conducted nor opportunity of hearing and defence was provided to the appellant and the appellant was condemned unheard 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

*M. Amin
19.9.2018*

contended that the appellant was serving as Tehsildar and he was imposed major penalty of reversion to lower post of Naib Tehsildar for a period of three years on the aforesaid allegations. It was further contended that all the codal formalities were fulfilled before imposing major penalty therefore, 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 Tehsildar. The record further reveals that the appellant was imposed major penalty of reversion to lower post of Naib Tehsildar vide order dated 10.02.2016 for a period of three years but before imposing of major penalty neither charge sheet, statement of allegations was served upon the appellant nor regular inquiry was conducted nor opportunity of cross examination, hearing and defence was provided to the appellant meaning thereby that the appellant was condemned unheard therefore, the impugned order is illegal and liable to be set-aside. As such, we partially accept the appeal, set-aside the impugned order and direct the respondent-department to conduct a de-novo inquiry 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

18.09.2018



(HUSSAIN SHAH)
MEMBER



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

09.05.2018

Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for same on 24.07.2018.


Reader

24.07.2018

No one present on behalf of appellant. Learned Additional Advocate General for the respondents present. Clerk to counsel for the appellant seeks adjournment as learned counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 18.09.2018 before D.B


Member


Member

18.09.2018

Learned counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Javed Iqbal, Senior Clerk for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of three pages placed on file, we partially accept the appeal, set-aside the impugned order and direct the respondent-department to conduct a de-novo inquiry 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
18.09.2018



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER


(HUSSAIN SHAH)
MEMBER

14.11.2017

Clerk of the counsel for the appellant and Kabeerullah Khattak, Addl. AG alongwith Mukhtiar Ali, Assistant Secretary for the respondents present. Seeks adjournment as learned counsel for the appellant is ill. Granted. To come up for arguments before the D.B on 24.01.2018.


Member


Chairman

24.01.2018


Clerk of the counsel for appellant present and Mr. Zia Ullah, DDA alongwith Mr. Mukhtiar Ali, Assistant Secretary for the respondents present. Clerk of the counsel for appellant seeks adjournment as his senior counsel is not attendance today. Adjourned. to come up for arguments on 12.03.2018 before D.B.



Member


Chairman

12.03.2018

Clerk of the counsel for appellant and Mr. Riaz Ahmed Painsa Kheil, Assistant AG for the respondents present. Clerk of the counsel for appellant seeks adjournment on the ground that learned counsel for the appellant is not available today. Adjourned. To come up for arguments on 09.05.2018 before D.B


(Muhammad Amin Khan Kundi)
Member



(Muhammad Hamid Mughal)
Member



02.06.2017

Appellant in person present. Mr. Muhammad Adeel Butt, Additional AG for the respondent present. Appellant submitted rejoinder which is placed on file. To come up for arguments on 06.09.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

06.09.2017


Counsel for the appellant present. Mr. Kabir Ullah Khattak, Assistant AG for respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 28.09.2017 before D.B.


(Muhammad Hamid Mughal)
Member

28.09.2017

Appellant in person present. Mr. Muhammad Adeel Butt, Additional AG alongwith Mr. Muhammad Azhar, Assistant for the respondents also present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 14.11.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

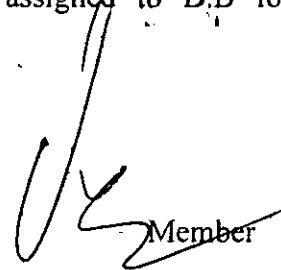
29.09.2016

Appellant in person and Mr. Ziaullah, GP for the respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments before S.B on 03.11.2016.


Chairman

03.11.2016

Clerk to counsel for the appellant and Mr. Mukhtiar Ali, Supdt. alongwith Addl. AG for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing on 13.01.2017.


Member

13.01.2017

Appellant in person and Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for time to file rejoinder. Request accepted. To come up for rejoinder and final hearing on 02.06.2017.


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

30.6.2016

Counsel for the appellant present. Learned counsel for appellant argued that the appellant was serving as Tehsildar Mardan when major penalty in the shape of reversion to the post of Naib Tehsildar was awarded vide impugned order dated 10.2.2016 on the allegations of in-efficiency and mis-professional mis-conduct where-against he preferred departmental appeal on 19.02.2016 which was rejected on 18.05.2016 and hence the instant the instant service appeal on 10.06.2016.

That no enquiry whatsoever was conducted despite involvement of factual controversy and as such the impugned orders are against facts and law and liable to be set aside.

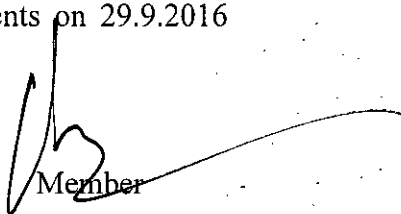
Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 15.08.2016 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

15.08.2016



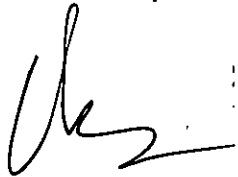
Appellant in person and Addl. AG for respondents present. Written reply not submitted. Requested for adjournment. Request accepted. To come up for written reply/comments on 29.9.2016 before S.B.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 622/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	10/06/2016	<p>The appeal of Mr. Abdur Rehman Shah presented today by Mr. Khushdil Khan 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</p>
2-	14-6-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on. <u>21-06-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p>
3.	13.6.2016	<p>Counsel for the appellant present. Requested for adjournment. Request accepted. To come up for preliminary hearing on 30.6.2016.</p> <p style="text-align: right;"> Member</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 622/2016

Abdur Rehman Shah,
Tehsildar, BPS-16,
Under Reversion to the Post of Naib Tehsildar,
Office of the Secretary, Board of Revenue &
Estate Department, PeshawarAppellant

Versus

The Chief Secretary,
Govt. of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar & others.....Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal			1-4
2.	Copy of show cause notice issued by respondent No. 2 to appellant.	03-02-2016	A	0-5
3.	Copy of reply to show cause notice filed by appellant.	08-02-2016	B	0-6
4.	Copy of the impugned order whereby appellant was reverted to the post of Naib Tehsildar.	10-02-2016	C	0-7
5.	Copy of departmental appeal under the registered post.	19-02-2016	D	8-9
6.	Copy of letter whereby departmental appeal of appellant was rejected.	18-05-2016	E	0-10
7.	Copy of Tatima Dawra Program of appellant.		F	0-11
8.	Copy of proforma shown the number of attested mutations.		G	0-12
9.	Copy of the monthly statement of the Office of Kanungo.	08-01-2016	H	0-13
10.	Wakalat Nama			

Through


Appellant

Khush Dil Khan
Advocate,
Supreme Court of Pakistan
Cell # 091-2213445

Dated: 08/06/2016

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 622/2016

Abdur Rehman Shah,
 Tehsildar, BPS-16,
 Under Reversion to the Post of Naib Tehsildar,
 Office of the Secretary, Board of Revenue &
 Estate Department, PeshawarAppellant

Khyber Pakhtunkhwa
Service TribunalDiary No. 608Dated 10-6-2016

Versus

1. The Chief Secretary,
Govt. of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.
2. The Secretary/Senior Member,
Board of Revenue and Estate Department,
Khyber Pakhtunkhwa, Peshawar and ~~Other~~ Respondents.

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 10-02-2016 THEREBY APPELLANT WAS AWARDED MAJOR PENALTY OF REVERSION TO LOWER POST OF NAIB TEHSILDAR FROM TEHSILDAR (BPS-16) BY THE RESPONDENT NO. 2 AGAINST WHICH HE FILED DEPARTMENT APPEAL ON 19-02-2016 BEFORE THE RESPONDENT NO. 1 WHICH WAS REJECTED VIDE LETTER DATED 18-05-2016.

Filed to-day

Respectfully Sheweth,

10/6/16

Facts giving rise to the present appeal are as under:-

1. That appellant is the employee of respondent No. 2 and he was regularly promoted from position to position and at the time of

passing the impugned order he was holding the post of Tehsildar (BPS-16).

2. That appellant was served with show cause notice by the respondent No. 2 on 03-02-2016 (**Annexed-A**) containing of allegations of general nature to which he filed reply on 08-02-2016 (**Annexed-B**) and denied the same being false and without substance.
3. That without conducting any regular inquiry, the respondent No.2 passed the impugned order on 10-02-2016 (**Annexed-C**) and awarded major penalty of reversion to lower post from Tehsildar to Naib Tehsildar to appellant with immediate effect for the period of three years against which he filed departmental appeal on 19-02-2016 (**Annexed-D**) under registered post before the respondent No. 1 which was rejected vide letter dated 18-05-2016 (**Annexed-E**).

Hence the present appeal is submitted on the following amongst other grounds:-

Grounds:

- A. That appellant as blamed for the charges mentioned in the show cause notice are frivolous, baseless and unproved which were denied by him in his reply to show cause notice but same was not considered in true spirit by the respondent No. 2 the detail of which is as under: -
 - i. *that on 23-11-2015 a meeting was called by the Deputy Commissioner, Mardan wherein instructed to dispose of all the pending manual mutations before 30-11-2015 and not to entertain any fresh mutation keeping in view the computerization of mutation/record. In pursuance*

of which, appellant issued Tatima Dawra program from 24-11-2015 to 30-11-2015 for the attestation of mutations of all Mauzajat which was done accordingly as evident from Dawra program (Annexed-F).

ii. *that the appellant had attested about 2935 mutations within short period of seven months with effect from May 2015 to November 2015 which is attached as (Annexed-G).*

iii. *that it is further evident from the monthly statement prepared by the Office Kanungo Mardan wherein shown only 72 mutations pending against appellant as evident from (Annexed-H) and these remaining mutations were not attested because of laxity of the Patwari.*

iv. *that Patwari is the custodian of the revenue record and it is his responsibility to put up the mutations for attestation before the Tehsildar after observing all the codal formalities in due course.*

B. That the alleged allegations have since been denied by the appellant which were pertaining to factual controversies which could not resolved without evidence which is only possible in the regular inquiry which is not held in this case without legal justification and cause. Therefore the impugned order is illegal, without lawful authority, unjust and unfair liable to be set aside.

C. That the impugned order has been passed in violation of Articles 4 and 10A of the Constitution, 1973 and not sustainable liable to be set aside.

D. That the appellant condemned unheard and the impugned order passed at his back without providing a proper opportunity of defence and personal hearing. Thus the impugned order is

unlawful and of no legal affect being violative of the principle of natural justice.

- E. That the impugned punishment awarded to appellant is harsh, unjustified and unfair so not sustainable in the eyes of law and liable to be set aside.
- F. That respondent No. 1 also acted in arbitrary manner and unlawfully rejected the departmental appeal of the appellant without touching the merits of the case. Thus the impugned appellate order is also illegal and void not sustainable liable to be set aside.

It is therefore humbly prayed that on acceptance of this service appeal the impugned order dated 10-02-2016 may kindly be set aside and appellant be restored to original post of Tehsildar with all back benefits.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.

Through



Appellant

Khush Dil Khan,
Advocate,
Supreme Court of Pakistan

Dated: 08 / 06 / 2016

SHOW CAUSE NOTICE

Annex

I, Muhammad Humayun Khan Secretary Revenue and Estate Department, Competent Authority, under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, serve you Mr. Abdur Rehman Shah Tehsildar Mardan Peshawar show cause notice. That you have kept 786 mutations pending unattested for illegal gratification.

- a) That you had kept pending 786 mutation in 50 Mauzajat at the time of conversion of manual land record into computerized SDC and did not dispose it till November, 2015. The matter has been probed by the Additional Assistant Commissioner (Revenue), Mardan vide letter No. 170/AACR dated 25.01.2016 conveying the dates of entries of such pending mutations.
- b) That you intentionally kept the mutation of your respective Mauzajaat and frustrated the efforts of Provincial Government towards computerization of land record and recovery of Government dues.
- c) That you had also violated the instructions of the Provincial Government that no mutation be kept pending for more than one month but he had kept the said mutations pending for more than one month.
- d) That you had inflicted huge losses to the Government exchequer.
- e) This act on your part tantamount to misconduct and is liable to be proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011.

2. As a result thereof, I, as Competent Authority, am of the view to impose major penalty as indicated in Rule-4 of the Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011.

3. You are therefore require to show cause as to why the penalty of dismissal from service should not be imposed upon you. Furthermore, you are directed to appear on **09.02.2016 at 11:00 A.M** before the undersigned for personal hearing.

4. If no reply to this Notice is received within 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.

ATTACHED

[Signature]
Senior Member

No. Estt:/Abdur Rehman Shah/ 3842
Peshawar, dated 03/2.2016.

Subject: REPLY TO SHOW CAUSE NOTICE.

Reference show-cause notice served upon the undersigned vide No. Estt:1/Abdur Rehman Shah/3842 dated 03.02.2016 directing to reply the charges from points a to e of the notice.

That the undersigned has been accounted for kept pending 786 mutations in 50 mauzajats at the time of conversion of manual land record into computerized SDC and that it were not disposed off till November-2015 is not justified and against the facts and reality, based on mala-fide.

In fact, the Deputy Commissioner, Mardan convened a meeting on 23.11.2015 wherein it was instructed to dispose off all the pending manual mutations before 30.11.2016 and further instructed not to entertain any fresh mutations keeping in view the computerization of the mutations/record. Following the instructions, the undersigned immediately issued tatima dawra programme from 24.11.2016 to 30.11.2016 for attestation of mutations of all mauzajat (**Annex-A**). During the period upto 30.11.2015 all the mutations produced by the respective patwaris/ROs were attested and also send to the OK office for computerization purpose.

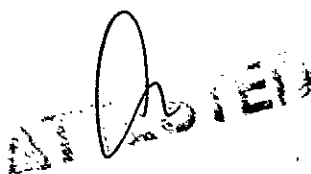
To the extent, during a short span of 07 days of November 2015, a total of 1213 mutations were attested which is 4 times more than the average monthly progress of attestation of mutations (**Annex-B**).

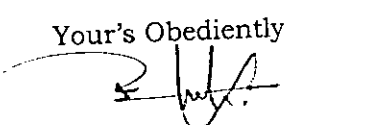
From the monthly statement prepared by the OK office, Mardan regarding pending mutations, it is crystal clear that 72 mutations have been shown pending against the undersigned (**Annex-C**). It is further submitted that the mutations of various mauzajat produced before the undersigned by the patwaris were attested/disposed off in to and no mutation has been left un-attended. The mutations which have not been attested have neither been produced before the undersigned nor was in knowledge of the number of the balanced mutations with patwaris, though in the monthly statement of November-2015, its strength was shown as 72, while later-on its number gone up to 378, however, he has attested all the mutations produced before him during the period and ensured quick action on the instructions of the government.

A Patwari is the custodian of the revenue record (like mutations) and it was responsibility of the patwaris to have produced him the complete record of mutations. The undersigned is not at fault in using any delaying tactics or intentionally ignoring/avoiding the instructions of the Provincial Government. No any mutation has been kept pending for more than one month nor any maligned intentions involved in keeping the mutations pending unnecessarily.

In view the above explanation based on factual position it is prayed that the show-cause notice served upon the undersigned regarding the allegations contained there-in, may kindly be withdrawn and no ex-parte action shall be taken against the undersigned, being not at fault and has a clean and clear service record at the credit.

Dated 08.02.2016



Your's Obediently

(ABDUR REHMAN SHAH)
TEHSILDAR (BPS-16)

Annex: C
P. 7

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT
Peshawar dated the 10 /02/2016

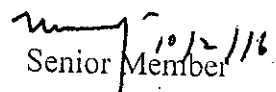
NOTIFICATION.

No. Est: I/A. Rehman Shah/ 4274 WHEREAS, Mr. Abdur Rehman Shah Ex-Tehsildar Mardan was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules 2011 for the charges mentioned in the Show Cause Notice dated 03.02.2016.

AND WHEREAS, the Deputy Commissioner Mardan after having examined the charges, evidence on record submitted his report, whereby the charge leveled against the accused official stand proved;

AND THEREFORE I, Muhammad Humayun Khan, 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 Deputy Commissioner Mardan.

NOW THEREFORE while considering his written reply as Competent Authority, in exercise of powers conferred by Rule 4 (b) (i) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 impose the major penalty of reversion to lower post of Naib Tehsildar upon Mr. Abdur Rehman Shah Tehsildar with immediate effect for the period of three (3) years.

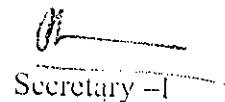

Senior Member

Est: I/A. Rehman Shah/ 4275-81

Copy is forwarded to:-

- Accountant General Khyber Pakhtunkhwa.
- PS to Senior Member, Board of Revenue.
- Bill Assistant, Board of Revenue.
- Official concerned.
- Office order file.
- Personal file.

ATTESTED


Secretary - I

To

The Chief Secretary,
Govt of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar

Annex: D
P. 8

Subject: Departmental appeal under rule 3 of the Khyber Pakhtunkhwa Civil Servant (Appeal) Rules, 1986 read with Section 22 of the Khyber Pakhtunkhwa, Civil Servants Act, 1973 against the impugned order dated 10-02-2016 thereby awarded major penalty of reversion to lower post from Tehsildar to Naib Tehsildar to appellant by the Senior Member of Board of Revenue.

Respected Sir,

1. That appellant was served with show cause notice by the SMBR dated 03-02-2016 containing of different nature of allegations to which he filed reply on 08-02-2016 and denied the allegations being false and without substance.
2. That without holding any regular inquiry, the SMBR passed the impugned order on 10-02-2016 and awarded major penalty of reversion to lower post from Tehsildar to Naib Tehsildar to appellant with immediate effect for the period of three years.
3. That the alleged charges is leveled against appellant in the show cause notice are frivolous, baseless and unproved which are denied by him in his reply to show cause notice but same was not considered in true spirit. Thus the impugned order based on such unproved charges is not sustainable under the law and rules and liable to be set aside.
4. That the alleged allegations have since been denied by the appellant and pertaining to factual controversies which could not resolve without evidence; which is only possible in the regular inquiry which is not held in this case without legal justification and cause.
5. That the authority acted in arbitrary manner and without passing any proper reasonable order regarding dispensation with inquiry. It did not conduct inquiry mala fide and deprived the appellant of the opportunity of defence which is against the fundamental rights as guaranteed in Chapter I of Part II of the Constitution, 1973
6. That the appellant was condemned unheard and the impugned order passed at his back which is illegal, without lawful authority being violative of the principle of natural justice.

A

7. That punishment as awarded to appellant is harsh, unjustified and unfair so not sustainable and liable to be set aside.

It is, therefore, humbly requested that on acceptance of this departmental appeal the impugned dated 10-02-2016 may kindly be set aside and appellant be restored to original post of Tehsildar with all back benefits

Yours faithfully

Abdur Rahman Shah,

Tehsildar, BPS-16,

Reverted to the post of

Naib Tehsildar, office

of the Secretary, Board

of Revenue and Estate

Department, Peshawar

Dated: 19/02/2016

No.216

For Insurance Notices see reverse
Stamps affixed except in case of
uninsured letters of not more than
the initial weight prescribed in the
Post Office Guide or on which no
acknowledgement is due.

20/02/2016

40 -

Received a registered* addressed to _____ Date Stamp _____

*Write here "letter", "postcard", "packet" or "parcel" with the word "insured" before it, when necessary. (in words) _____

Initials of Receiving Officer _____

Insured for Rs. (in figures) _____

Weight _____ Kilo _____ Grams _____

Insurance fee Rs. _____ Ps. (in words) _____

Name and address of sender _____

If insured. {

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

No. Estt:I/PF/A-Rehman Shah/14594
Peshawar dated the 8/05/2016

Annex: E
P.10

To

Mr. Abdur Rehman Shah,
Ex- Tehsildar Mardan presently FATA Secretariat,
Warsak Road Peshawar.

SUBJECT: DEPARTMENTAL APPEAL.

I am directed to refer to your Departmental Appeal dated 19.2.2016 on the subject and to say that your Departmental Appeal has been examined by the Appellate Authority and filed .

Assistant Secretary (Estt)

21
ATTESTED

کیفیت	تفصیل حلقہ جات۔	آیام	تاریخ دورہ
-	-	اتوار	01-11-2015
-	-	پیر	02-11-2015
-	-	منگل	03-11-2015
-	-	بدھ	04-11-2015
-	-	جمعرات	05-11-2015
-	-	جمعہ	06-11-2015
-	-	ہفتہ	07-11-2015
-	-	اتوار	08-11-2015
-	-	پیر	09-11-2015
-	-	منگل	10-11-2015
-	-	بدھ	11-11-2015
-	-	جمعرات	12-11-2015
-	-	جمعہ	13-11-2015
-	-	ہفتہ	14-11-2015
-	-	اتوار	15-11-2015
-	-	پیر	16-11-2015
-	-	منگل	17-11-2015
-	-	بدھ	18-11-2015
-	-	جمعرات	19-11-2015
-	-	جمعہ	20-11-2015
-	-	ہفتہ	21-11-2015
-	-	اتوار	22-11-2015
تصدیق انتقالات۔	باغ ارم، روڈیا۔	پیر	23-11-2015
تصدیق انتقالات۔	طورو، چک طورو آبپاشی دورہ تصدیق انتقالات سالم سرکل۔	منگل	24-11-2015
تصدیق انتقالات۔	چک مردان، ساولڈھیر و آبپاشی دورہ تصدیق انتقالات سالم سرکل وصولی سرکاری واجبات۔	بدھ	25-11-2015
تصدیق انتقالات۔	مردان خاص و آبپاشی دورہ تصدیق انتقالات سالم سرکل وصولی سرکاری واجبات۔	جمعرات	26-11-2015
تصدیق انتقالات۔	آبپاشی دورہ تصدیق انتقالات سالم سرکل وصولی سرکاری واجبات۔	جمعہ	27-11-2015
-	عام تعطیل	ہفتہ	28-11-2015
-	عام تعطیل	اتوار	29-11-2015
تصدیق انتقالات۔	آبپاشی دورہ تصدیق انتقالات سالم سرکل وصولی سرکاری واجبات۔	پیر	30-11-2015

تخصیص دار مردان۔

۲۔ جناب ڈپٹی کمشنر صاحب مردان۔

۳۔ جناب اسٹنٹ کمشنر صاحب مردان۔

۴۔ جناب ایڈیشنل اسٹنٹ کمشنر صاحب مردان۔

سرکس ڈیلوری سنٹر مردان (دورہ مورخہ 27-11-2015 منسوخ کیجاتی ہے۔

۵۔ گردادارن سرکل مردان، حقوتی۔ سدھم کوہدایت کیجاتی ہے کہ جملہ پٹوایان کوہدایت کی جائے کہ جملہ زیر تجویز انتقالات برائے تصدیق اپنے ریونیو افسر کو پیش کر کے

بحر صورت ختم کرے۔

کاپی برائے اطلاع


'B'

Annex: 5

تفصیل تصدیق شدہ منتقلات از مئی 2015 تا نومبر 2015۔

P. 12

کیفیت	تعداد تصدیق شدہ منتقلات	نام ماہ	نام سرکل تحصیلدار	نمبر شمار
	199	مئی 2015	تحصیلدار مردان۔	1
	380	جون 2015	=	2
	188	جولائی 2015	=	3
	375	اگست 2015	=	4
	283	ستمبر 2015	=	5
	297	اکتوبر 2015	=	6
	522 1213	نومبر 2016	=	7
	2935	میزانکل		


تحصیلدار مردان۔



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No: 622/2016.

Abdur Rehman Shah Ex-Tehsildar Mardan.

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary and others

PRELIMINARY OBJECTIONS.

1. 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 appeal is time barred.
5. That the appeal is not maintainable in its present form.

JOINT PARAWISE COMMENTS ARE AS UNDER.

1. Pertains to record.
2. Incorrect. The appellant kept 786 mutations pending with him to get illegal gratification from buyer/sellers.
3. Incorrect. Under Rule 5 of the Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011 if the Competent Authority is of the opinion that sufficient grounds for initiating proceedings are available, the Competent Authority itself can proceed against the accused by issuing a Show Cause Notice.

GROUND.

- A. Incorrect. As in Para-2 of the facts the appellant kept 786 mutations with him un-attested for bad intention to get bribe from the buyer/sellers due to which the Government sustained huge loss by not depositing Government fees/taxes.
- B. Incorrect. Show Cause Notice and penalty imposed upon the appellant was imposed by the Competent Authority in the light of rules.
- C. Incorrect. No violation of Article 4 and 10A of the constitution of Islamic Republic of Pakistan has been made.
- D. Incorrect. The appellant was properly heard and major penalty of reversion to lower post of Naib Tehsildar was awarded by the Competent Authority in light of Rules.
- E. Incorrect. Penalty was rightly awarded by the Competent Authority in light of relevant rules.

Incorrect. All the proceedings were carried out by the Competent Authority in light of Government Servant (Efficiency and Discipline) Rules, 2011.

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

G. H. L. L. 12/8/2016.
Senior Member
(Respondent No.1 & 2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.622/2016

Abdur Rehman Shah, Ex-Tehsildar Mardan,.....Appellant

VERSUR

Government of Khyber Pakhtunkhwa through Chief Secretary & Others.....Respondents

AFFIDAVIT

I Mr.Mukhtiar Ali, Superintendent (Lit-II), Board of Revenue Khyber Pakhtunkhwa do hereby solemnly affirm that the contents of the written reply are true and correct to the best of my knowledge and belief information provided to me and nothing has been deliberately concealed from this Hon'able Tribunal.


Assistant Secretary (Lit-II),
Board of Revenue

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 622/2016

original

Abdūr Rehman Shah,
Tehsildar, BPS-16,
Under Reversion to the Post of Naib Tehsildar,
Office of the Secretary, Board of Revenue &
Estate Department, PeshawarAppellant

Versus

The Chief Secretary,
Govt. of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar & others.....Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Rejoinder.			1-3

[Signature]
Appellant

Through

[Signature]
Khush Dil Khan
Advocate,
Supreme Court of Pakistan

Dated: 31 / 05 / 2017

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 622/2016

Abdur Rehman Shah,
Tehsildar, BPS-16,
Under Reversion to the Post of Naib Tehsildar,
Office of the Secretary, Board of Revenue &
Estate Department, PeshawarAppellant

Versus

The Chief Secretary,
Govt. of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar & others.....Respondents

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE TO
REPLY FILED BY RESPONDENTS NO 1 & 2.**

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

Preliminary objections raised by answering respondents are erroneous and frivolous which are denied in toto. The detail reply of each one is given as under:-

- I. That the impugned order of his reversion to lower post of Naib Tehsildar from the post of Tehsildar (BPS-16) since illegal therefore given him cause of action to file the present appeal.
- II. That all the necessary parties are arrayed as per rules on subject.
- III. That question of legal right is involved in the matter so the principle of estoppel is not applicable.

IV. That the appeal is maintainable in all respects.

REJOINDER TO REPLY OF FACTS:

1. Furnished no reply meaning thereby the answering respondents have admitted the facts thereof.
2. That the reply is totally incorrect and based on exaggeration so denied.
3. That the reply is incorrect so denied. The allegations as mentioned in show cause notice are pertaining to factual controversy which could only be resolved through cogent evidence which is only possible in the regular inquiry. It is a principle of law that where major penalty is proposed there must be regular inquiry which has not done in this case. Moreover in such rule as quoted by the answering respondents, it is very clear that if the authority proceeds itself then he must issue a written reasonable order to dispense with inquiry which is not done in this case so the authority acted in arbitrary manner and passed the impugned order which is illegal and not sustainable.

REJOINDER TO REPLY OF GROUNDS:

- A. That the reply is incorrect so denied. Neither the appellant has kept such number of mutation for attestation nor any complaint from any quarter has been made against appellant.
- B. That the reply is incorrect so denied.
- C. That the reply is incorrect so denied.
- D. That the reply is incorrect so denied.
- E. That the reply is incorrect so denied.


F. That the reply is incorrect so denied.

It is, therefore, humbly prayed that the reply of answering Respondents No. 1 & 2 may graciously be rejected and the appeal as prayed for may graciously be accepted with costs.



Appellant,

Through



Khush Dil Khan
Advocate,
Supreme Court of
Pakistan

Dated: 31/05/2017

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1931 /ST

Dated 25 /9/ 2018


To

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

Subject: - JUDGMENT IN APPEAL NO. 622/2016, MR. ABDUR RAHMAN SHAH.

I am directed to forward herewith a certified copy of Judgement dated 18.09.2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.