

**Before the Khyber pukhtoonkhwa service tribunal at Peshawar .**

Iftihar Ali presently serving as tehsile revenue accountant (TRA) Mandanr district buner

.....Appellant

**Vs**

Deputy commissioner Buner at daggar and others.....respondents

**Written arguments on behalf of the appellant iftihar ali.**

The captioned connected appeals No 1463 of 2018 and 269 of 2020 on behalf of appellant Iftihar Ali along with appeal No 1083 of 2020 on behalf of Muhammad irfan were fixed for argument by this worthy tribunal and the honorable tribunal was pleased to hear the appeals partially and now for convenience sake the following written arguments are submitted for proper adjudication of the aforesaid appeals.

1. As per law and rules notified on 23.1.2015, the private respondent no 5 namely Muhammad Irfan could not be appointed as TRA but the respondents illegally and due to political pressure appointed him in the year 2016 and later on promoted him to the post of DRA and have now withdrawn his order which has rightly been done because as per rules ibid the patwari could not have been promoted to the post of TRA. in relevant columns i.e 9,8 and 5 of the afore said the procedure of appointment to the post of Naib tehsile revenue accountant (NTRA), tehsile revenue accountant (TRA) and district revenue accountant (DRA) has clearly been mentioned according to which the post of TRA can only be filled by Naib Tehsile revenue accountant and not by patwari. when a patwari is promoted to the post of naib tehsile revenue accountant and he serve on the post for 3 years then he can be appointed to the post of TRA. the respondent never remain as naib tehsile revenue accounted hence he could not be appointed on the post of TRA. this worthy tribunal has also decided the issue in fawad ali case and it has been held by the tribunal that after the above notification dated 23/1/2015 patwari cannot be promoted to the post of TRA. the afore said judgment have been submitted before the worthy tribunal on the date of arguments. More over Relevant rules/notification dated 23/1/15 is available on case file.

2. That the appellant iftihar ali was also appointed as patwari but in the year 2014 i.e before the notification dated 23/1/2015. the notification mentioned above have prospective effect and his case is not governed by the rules dated 23/1/2015 rather governed by the provincial rule dated 26/12/2008 and as per these rules post of TRA is filled from patwari. these rules were applicable to the cases of the candidates before the 2015 rules and these were continuously followed and acted upon by the department and in this respect detail document of retired TRA kifayatullah has been provided by the appellant iftihar ali which are available on case file and is affixed with the rejoinder. hence the appellant has rightly been appointed on the post of TRA. it is pertinent to highlight here that Muhammad irfan was first appointed on the post of TRA in the year 2014 but later on was again transferred to the post of patwari vide order dated 13/8/15 i.e Anx E in appeal No 1463, which was challenged by him before the worthy service tribunal but was later on withdrawn by him and after serving as patwari he was appointed in the year 2016 as TRA hence it was a break of his service as TRA and while appointing him in 2016 the rules of 2008 were not available for his appointment rather the rules of 2015 were applicable at that time and as per these rules he could not be appointed on the post of TRA.
3. The learned opposite counsel had objected on the appointment letter of the appellant iftihar ali but issuance of the appointment letter was not the job of the appellant but of the department and if any lapse in this regard has been done the same cannot be attributed to the appellant as the competent authority has itself endorsed the letter and this factum is clear from the letter that appellant was appointed on the direction of DC Buner. moreover the appellant iftihar ali has been working as TRA for the last 9 long years and is still on the post, hence his inclusion in the list of TRA was indispensable and has rightly been sought through appeal NO 1463 of 2018. it is pertinent to mention here that the impugned order of the respondent Muhammad irfan has been withdrawn which was challenged by the applicant through appeal no 269 of 2020 and grievance of the appellant in that respect has been ventilated but his appeal no 1463 is still alive wherein he has sought the inclusion of his name in the list of TRA in district Buner.
4. That the opposite counsel had also objected that the appellant has no locus standi. in this respect the authoritative precedent of the august supreme court of Pakistan reported in 2022 SCMR 694 citation b is worth reading which clearly states that "a legitimate expectation ascended in consequence of a promise, assurance, practice or policy made, adopted or announced by or on behalf of the Government or public authority.... when legitimate expectation was obliterated, it afford locus standi to challenge the administrative action and even in absence of substantive right, a legitimate expectation may allow an

individual to seek judicial review of wrong doing." in the very first para and 2<sup>nd</sup> para of facts in appeals the appellants have stated about the assurance and legitimate expectation. Similarly ground No 3 of appeal no 1463 is also about legitimate expectancy hence the objection of the learned counsel is legally misconcieved.

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