

**BEFORE THE HONOURABLE PESHAWAR HIGH COURT**  
**ABBOTTABAD BENCH**

W.P No.194-A/2022

**SCANNED**  
**KPST**  
**Peshawar**

Abdur Rauf Girdawar (OPS) Circle Orash-II, Abbottabad.

.....PETITIONERS

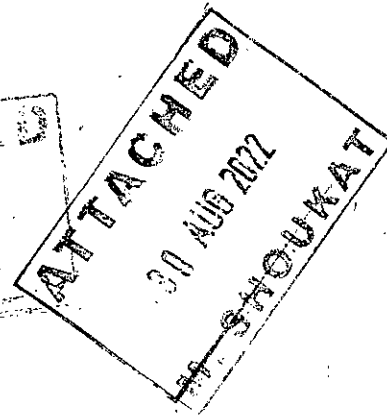
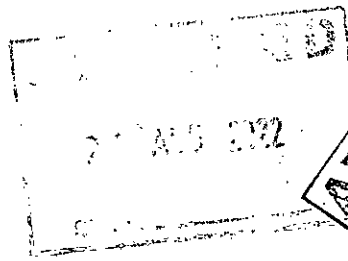
**VERSUS**

Govt. of Khyber Pakhtunkhwa through Senior Member Board of Revenue, KPK

..... RESPONDENTS

**INDEX**

S. No.	Description of Documents	Annexure	Page
1.	Parawise comments with affidavit.	-	1- 4
2.	Copy of FIR	A	5
3.	Section-IX of Promotion Policy	B	6
4.	DPC committee	C	7- 8
5.	Decision of DPC	D	9



~~FILED~~  
ADDITIONAL REGISTRAR  
PESHAWAR HIGH COURT  
ABBOTTABAD BENCH  
21/8/22

Office of the Additional Advocate General  
Abbottabad  
Writ Petition Branch

File Received By Mashay  
Signature of Officer [Signature]  
Date of Receiving 14/8/22

(1)

**BEFORE THE HONOURABLE PESHAWAR HIGH COURT**  
**ABBOTTABAD BENCH**

**W.P.No.194-A/2022**

Abdur Rauf Girdawar (OPS) Circle Orash-II, Abbottabad.

...PETITIONER.

**VERSUS**

Govt. of Khyber Pakhtunkhwa through Senior Member Board of Revenue, KPK  
Peshawar & others.

...RESPONDENTS

**Respectfully sheweth.**

Parawise Comments on behalf of Respondent No. 03 are submitted as under:-

**Preliminary objections.**

- File*
1. That the petitioner has no locus standi.
  2. That the petitioner has not come to this Honorable Court with clean hands.
  3. That the petitioner has ignored proper forum of appeal i.e. Service Tribunal. Thus the petition is liable to be dismissed.
  4. That the petitioner has suppressed the material facts from this Honorable Court, hence not entitled for any relief and petition is liable to be dismissed without any further proceedings.
  5. That both the decisions issued by the authorities i.e. DPC forum and the Commissioner Hazara Division, Abbottabad are true and correct as per law and rules, hence petition is liable to be dismissed.
  6. That further points shall be agitated at the time of arguments.

**ON FACTS:**

- No 272 / 19-08-22*
1. Pertains to record.
  2. No comments.
  3. No comments.
  4. No comments.

**GROUND:-**

*3-9-22*

As per requirement of Departmental Promotion Committee, Tehsildar Abbottabad submitted a certificate mentioned therein that the official was caught red handedly in corruption case while taking bribe in a trap set by Judicial Magistrate. The Anti-Corruption Establishment, Abbottabad registered FIR against the official u/s-161 PPC 5(2)PC Act . Copy of FIR is added next as **Annexure-A**.

ADDITIONAL REGISTRAR  
PESHAWAR HIGH COURT  
ABBOTTABAD BENCH

As defined in Section-IX of Promotion Policy (**Annex-B**), case of the petitioner for appointment on Acting Charge Basis was placed before the DPC for consideration, where committee discussed the case in detail and it came to their notice that his case is still subjudice in the Anti-Corruption Court, therefore, his promotion was unanimously deferred by the Committee keeping in view the seriousness of the case (**Annex-C**). Moreover, the appointments were made on Acting Charge Basis and not on regular basis, so deferment did not affect seniority position of the petitioner. Thus no discrimination was made with the petitioner. His case will be considered for promotion purely on merit as per his seniority position on occurrence regular vacancy of Kanungo as well as on receipt of the decision of the said case from Anti-Corruption Court.

Against the decision of DPC, the petitioner filed appeal before Commissioner Hazara Division, Abbottabad which was also rejected and decision of DPC dated 06.10.2021 was upheld (**Annex-D**).

- b) Incorrect. As explained above, the appointments were made on Acting Charge Basis, as no regular vacancy was available, so these promotions did not affect his seniority position.
- c) Incorrect. The judgment referred to and other legal instruments available primarily dwells upon such issues where charges are yet to be probed/proved, however, cases has been registered. The legal principle and wisdom behind these is that in cases where the accused and allegations are innocent and unfound respectively, then his right shall remain protected.

In the instant case the accused has been apprehended red handedly.

As per section-IX of the Promotion Policy, promotion case of the petitioner was placed before the DPC for consideration. However, in view of his involvement in corruption as stated above in Para-(a) of the grounds his case was deferred by DPC being competent forum as per law.

- d) Incorrect. All the legal formalities have been fulfilled by the DPC and decision for deferment of appointment on Acting Charge Basis was made purely as per law/rules.
- e) Incorrect. The petitioner is involved in corruption case; in this respect detail reply has already been given in the preceding paras. However, it is clarified here that the "promotion" means regular promotion, where all requirements of promotion i.e. time required of service in present post; ACRs, trainings if any. On the other hand Acting Charge Promotion is merely appointment in which the time required of service in existing grade is less than as required under rules. Similarly, the official is not shifted to seniority list of above grade in Acting Charge Basis.

- f) Incorrect, as explained above.
- g) Incorrect. Detail reply has been given in the aforementioned paras.
- h) Incorrect. The petitioner did not follow proper forum for appeal and the argument in this respect offered by the petitioner is not based on facts, as the petitioner has

not attached any letter/order of rejection of his appeal from Service Tribunal.  
Therefore, the instant writ petition is liable to be dismissed.

- i) No comments.
- j. No comments.

No regular promotion against the post of Kanungo in BPS-11 was made by the DPC due to non-availability of regular vacancy, hence the question of regular promotion to the post of Kanungo (BPS-11) does not arise. The decision of DPC dated 06.10.2021 was made purely as per facts and law/rules.

It is therefore, prayed that petition of the petitioner being baseless may kindly be dismissed on above factual grounds, please.

*vetted by*  
*Mr. Na*  
**Syedur-Rahman Khan**  
 Assistant Advocate General  
 KPK (Abbottabad Bench)

*[Handwritten Signature]*  
**DEPUTY COMMISSIONER**  
**ABBOTTABAD**  
**(Respondent No. 3)**

**FILED FOR**  
**ADDITIONAL REGISTRAR**  
**PESHAWAR HIGH COURT**  
**ABBOTTABAD BENCH**  
*[Handwritten Signature]*

**BEFORE THE HONOURABLE PEHSAWAR HIGH COURT**  
**ABBOTTABAD BENCH**

W.P No.194-A/2022

Abdur Rauf Girdawar (OPS) Circle Orash-II, Abbottabad.

.....PETITIONERS

VERSUS

Govt. of Khyber Pakhtunkhwa through Senior Member Board of Revenue, KPK

..... RESPONDENTS

**AFFIDAVIT**

I, Ali Sher Khan, Additional Assistant Commissioner-I, Abbottabad do hereby solemnly affirm and declare that the contents of the accompanying parawise comments are true and correct to the best of my knowledge and belief.

DEPONENT

*Identified by*

*Yr. N O*  
**Sajid-ur-Rehman Khan**  
Assistant Advocate General  
KPK (Abbottabad Bench)

**AFFIDAVIT**

No. 6405/790 Receipt No: 780  
I affirm that the above was verified on Solemn  
Affirmation Atel before me on this  
13-10-2022 by  
Ali Sher Khan Sr. Tehsil, Muz  
Ab. Roshanpur 2011/2011  
Ab. Roshanpur who is personally known to me  
*[Signature]*  
Additional Assistant Commissioner  
(Additional Assistant Commissioner)  
Abbottabad Bench

*[Signature]*  
ADDITIONAL REGISTRAR  
PEHSAWAR HIGH COURT  
ABBOTTABAD BENCH  
*19/10/22*

(5)

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INITIAL REPORT.

Name of Police Station: A.C.E Abbottabad.  
F.I.R. No. and date: (02) 07.08.2019.  
Section of law: 161 PPC 5(2) PC Act.  
Name of complainant: Ghulam Muhammad S/o Mir Sultan Khan Cost Tanoli  
R/o Pand Sherwan District Abbottabad.  
Place of occurrence: Office of Patwari Halqa Damtor.1 old Tehsil Building  
Abbottabad.  
Name of accused involved: Abdul Rauf, Patwari Halqa Damtor.1 Abbottabad.

The above mentioned complainant submitted a complaint to Circle Officer Police Station ACE Abbottabad that the above mentioned accused Patwari demanded the bribe of Rs: 15,000/= for registration of mutation. The complainant does not want to give the bribe for his legal work and wish to become a trap agent against the accused.

After lodging F.I.R a trap proceeding was conducted under the supervision of Judicial Magistrate and the tainted amount of Rs. 15,000/= was recovered from the personal search of the above mentioned accused and legal formalities were adopted. The accused was arrested red handed. The case is under investigation.

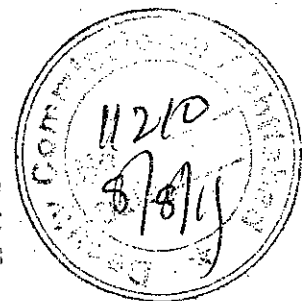
Further progress will be forwarded in due course of time.

  
Assistant Director Crimes,  
Anti-Corruption Establishment,  
Abbottabad.

No. 159-63  
/ADC/ACE dated Abbottabad the 08/08/2019.

Copy of the above is forwarded for information to the:-

1. Worthy Director, A.C.E, Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner, Abbottabad.
3. S.A, A.C.E, Khyber Pakhtunkhwa Peshawar.
4. Record Keeper, Directorate A.C.E, Peshawar.
5. Circle Officer, Police Station A.C.E Abbottabad.



within a period of six months from such recommendations, they would lapse. The case of such civil servant would require placement before the PSB/DPC afresh.

VI. Date of Promotion:

Promotion will always be notified with immediate effect.

VII. Notional Promotion:

In respect of civil servants who retire (or expire) after recommendation of their promotion by the PSB/DPC, but before its approval by the competent authority, their promotion shall be deemed to have taken effect from the date of recommendation of the PSB/DPC, as the case may be, and their pension shall be calculated as per pay which they would have received had they not retired/expired.

VIII. Promotion of Civil Servants who are awarded minor penalties.

- (a) The question of promotion to BS-18 and above in case of civil servants who have been awarded minor penalties has been settled by the adoption of quantification of PERs and CEI which allows consideration of such cases for promotion subject to deduction of 5 marks for each major penalty, 3 marks for each minor penalty and 1 mark for each adverse PER from the quantified score and recommendation for promotion on attaining the relevant qualifying threshold.
- (b) However, the CEI policy is not applicable to civil servants in BS-16 and below. In this case, the concerned assessing authorities will take into consideration the entire service record with weightage to be given for recent reports and any minor penalty will not be a bar to promotion of such a civil servant.

IX. Promotion in case of pending investigations by NAB:

If there are any NAB investigations being conducted against an officer, the fact of such investigations needs to be placed before the relevant promotion forum which may take a considered decision on merits of the case.

2. All the existing instructions on the subject shall stand superseded to the above extent, with immediate effect.



OFFICE OF THE  
COMMISSIONER HAZARA DIVISION  
ABBOTTABAD

No. CHD/Rev/10/2/ATD/17255-58  
Dated 23/12/2021

**ORDER**  
**10/12/2021**

The instant appeal pertains to Mr. Adbul Rauf, Patwari, Deputy Commissioner Office, Abbottabad currently serving in Orash Circle-II, Tehsil and District Abbottabad hereby referred to as appellent.

The appellent submitted that he was the senior most Patwari as per the seniority list issued by the office of Deputy Commissioner, Abbottabad vide letter No.1572-75 dated: 24/03/2021 and was considered for promotion on the principle of seniority-cum-fitness in the DPC meeting held on 06/10/2021 but was deferred due to pending adjudication in a criminal case lodged by Anti Establishment, Abbottabad and he prayed that the impugned notification be set aside as devoid of merit and fairplay.

The Deputy Commissioner, Abbottabad submitted that the appellent was in fact considered for promotion by the DPC in the said meeting and all members unanimously decided to defer his promotion as the charges were of serious nature and a criminal case registered. He further submitted that while deferring the promotion of the appellent the other so promoted was made on an acting charge basis and not on a Regular basis which did not affect the seniority of the appellent.

After going through the application, comments of the DC Abbottabad, record on file the appeal in hand is hereby rejected and promotion order dated 06/10/2021 is upheld with the direction that the Deputy Commissioner, Abbottabad to initiate departmental action against the official under relevant law/rules.

**Announced.**  
**10/12/2021**

**By Order**  
**Commissioner Hazara Division**  
**Abbottabad**

**Endst: No.** \_\_\_\_\_

Copy forwarded to the:

1. The Deputy Commissioner, Abbottabad necessary action, please.
2. District Comptroller of Accounts, Abbottabad.
3. PS to the Commissioner Hazara Division, Abbottabad.
4. Official Concerned.

(Dr. Adil Ayub)  
Assistant to Commissioner (Rev/GA)  
Hazara Division, Abbottabad

23.12.21





(7)

**OFFICE OF THE  
DEPUTY COMMISSIONER  
ABBOTTABAD**

No.1/2 / 5896-153/AE (Rev)

Dated 06 / 10 /2021

**MINUTES OF THE DEPARTMENTAL PROMOTION COMMITTEE MEETING HELD ON  
06.10.2021 AT 11.00 AM UNDER THE CHAIRMANSHIP OF DEPUTY COMMISSIONER  
ABBOTTABAD**

A Meeting of Departmental Promotion Committee was held on 06/10.2021 at 11.00 AM under the Chairmanship of Deputy Commissioner, Abbottabad. The following attended:-

- |   |              |
|---|--------------|
| 1. Deputy Commissioner Abbottabad.  | ... In chair |
| 2. Additional Deputy Commissioner Abbottabad.   | ... Member   |
| 3. Assistant to Commissioner (Poll/Dev), Hazara Division, Abbottabad<br>(Rep of Commissioner Hazara Division, Abbottabad) | ... Member   |

**1. PROMOTION OF PATWARIS (BPS-09) TO THE POST OF KANUNGO (BPS-11).**

In the commencement of meeting, the forum was informed that against the sanctioned strength of 15 posts of Kanungos, 13 Kanungos are presently working whereas, 02 posts are lying vacant due to promotion of Mr. Gul Nawaz Khan and Tariq Mehmood Kanungos to the post of Naib Tehsildar on acting charge basis vide Board of Revenue, Revenue & Estate Department Peshawar order bearing No. Estt:V/DPC/Naib Tehsildar/2021/13321 dated 12.07.2021.

The method of promotion to the post of Kanungo as per Tehsildar, Naib Tehsildar, subordinate Revenue Service Rules 2008 as revised vide Notification No. 1942/Estt:I/135/SSRC dated 23.01.2015 by the Secretary to Government of Revenue & Estate Khyber Pakhtunkhwa Peshawar is as under. -

*“By promotion, on the basis of seniority-cum fitness, from amongst the Patwaris and Naib Office Kanungos of the district concerned with three years, service as such and who have passed the Departmental examination of Kanungo”*

After examination of relevant record i.e Final Seniority list of Patwaris as stood on 31.12.2020 issued vide No.1572-75 dated 24.03.2021 alongwith list of penal of senior most Patwaris, who have passed their Kanungo Departmental Examination, the synopsis of ACRs alongwith original ACRs and certification to the affect that no departmental enquiry is pending against the concerned patwari, the DP&SC made the following decision/recommendation.

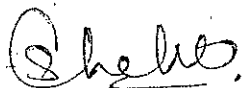
**PENAL OF SENIOR MOST PATWARIES FOR PROMOTION TO THE POST OF KANUNGO ON  
ACTING CHARGE BASIS**

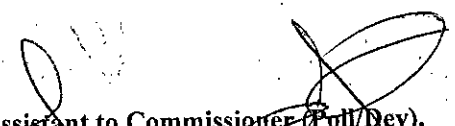
S.#	Name of Patwari	Recommendation.
1.	Abdul Rauf	His case was discussed in detail by the DPC and was deferred for promotion as Kanungo on acting charge basis for the time being due to registration of FIR against him bearing No. 02 dated 07/08/2019 u/s 161 PPC 5(2) PC Act PS ACE, Abbottabad, now the case is subjudice in the court.
2.	Ilyas Khan	<b>He was considered and found fit for promotion as Kanungo (BPS-11) on acting charge basis with immediate effect.</b>
3.	Syed Asad Ali Shah	His case was discussed in detail by the DPC and was deferred for promotion as Kanungo on acting charge basis as he has been promoted as Kanungo (BPS-11) in Settlement Operation Havelian. Now the official is posted as Naib Tehsildar Settlement (OPS) Havelian.

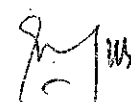
#	Name of Patwari	Recommendation.
4.	Adil Nawaz Khan	He was considered and found fit for promotion as Kanungo (BPS-11) on acting charge basis with immediate effect.
5.	Naheed Gul	His case was discussed in DPC and will be considered on occurrence of vacancy on his turn.

The DPC unanimously approved/recommended the case of promotion on acting charge basis in respect of Mr. Ilyas Khan Patwari mentioned at S.No.02 and Mr. Adil Nawaz Khan Patwari at S.No. 04 above to the post of Kanungo (BPS-11).

The meeting ended with a vote of thanks by the chair.

  
**Additional Deputy Commissioner**  
 Abbottabad  
 (Member)


  
**Assistant to Commissioner (Poll/Dev),**  
 Hazara Division, Abbottabad  
 (Member)  
 06/10/2021

  
**Deputy Commissioner**  
 Abbottabad  
 (Chairman)

**Endst No. & Date Even:**

Copy forwarded to the:-

1. Commissioner Hazara Division Abbottabad.
- ✓ 2. Additional Deputy Commissioner Abbottabad.
3. Assistant Commissioner Abbottabad.
4. Additional Assistant Commissioner (Rev) Abbottabad.

  
**Deputy Commissioner**  
 Abbottabad