

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Service Appeal No. 1347/2019

BEFORE: **MR. KALIM ARSHAD KHAN, ... CHAIRMAN**
MISS. FAREEHA PAUL, ... MEMBER(E)

Mr. Abdul Ghaffar, Tehsildar (BPS-16) Serai Norang, District Lakki Marwat.(Appellant)

Versus

1. **Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.**
2. **The Board of Revenue through Assistant Secretary Board of Revenue, Peshawar.**
3. **The Senior Member Board of Revenue, Peshawar.**

..... **(Respondents)**

Mr. Noor Muhammad Khattak, ... For appellant.
Advocate

Mr. Muhammad Riaz Khan Paindakhel, ... For respondents.
Asstt. Advocate General

Date of Institution.....15.10.2019
Date of Hearing.....10.05.2022
Date of Decision.....11.05.2022

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN. This appeal has been filed by appellant Abdul Ghaffar, under Section 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974, against the order dated 28.06.2019, whereby minor penalty of withholding one annual increment for a period of two years has been imposed upon him. It has been prayed that on acceptance of the appeal,

impugned order might be set aside and annual increment of the appellant might be restored with all back benefits.

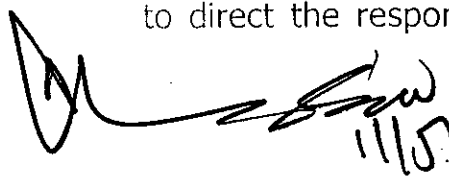
2. Brief facts of the case as enumerated in the memo. and grounds of appeal are that the appellant was serving in the respondent department as Tehsildar. He while posted as Tehsildar Serai Naurang, received charge sheet alongwith statement of allegations dated 24.11.2017 on the ground that he attested a bogus mutation No. 2255 in Khata No. 264, Moza Marmandi Ketat No. 48 for land measuring 07 Kanal 16 marlas in the name of Haji Latif-ur-Rehman from Ghulam Rasool Khan S/O Baitullah R/O Marmandi (Azim) without the thumb impression of the actual land owner(vendor); that in response to the charge sheet and statement of allegations, the appellant submitted his detailed reply, denied the allegations levelled against him and clarified his position; that respondent No. 3 vide order dated 06.06.2018 imposed upon the appellant major penalty of reversion to lower post of Naib Tehsildar for a period of 03 years; that after exhausting departmental remedy, the appellant filed service appeal No. 1359/2018 before this Tribunal and during pendency of the appeal, the respondents issued another order dated 28.06.2019, whereby minor penalty of withholding of one increment for period of two years was imposed upon the appellant with immediate effect; that feeling aggrieved from the order dated 28.06.2019, the appellant filed departmental appeal on 03.07.2019 before the appellate authority which remained un-responded, hence the present appeal on 15.10.2019, which is well within time.

11/5/22
3. On receipt of the appeal, notices were issued to the respondents to file their reply. The respondents submitted reply, wherein it has been alleged that as per provision of the rules, land cannot be transferred to another person

without consent of the original owner and affixation of his thumb impression which has not been followed in the instant case; that enquiry was entrusted to Mr. Muhammad Asif, the then Director, Land Records to proceed against the appellant under Government Servants (E&D) Rules, 2011. On receipt of enquiry report, major penalty of reversion from Tehsildar BS-16 to lower post of Tahsildar BPS-14 was imposed upon him; that on acceptance of his departmental appeal, the Appellate Authority set aside the reversion order of the appellant with the direction to initiate fresh enquiry under the rules; that another enquiry was conducted through Mr. Kamran Khan, Addl. Deputy Commissioner, Bannu and on receipt of enquiry report, the competent authority vide order dated 28.06.2019 imposed minor penalty of withholding of one increment for a period of two years upon the appellant.

4. We have heard arguments of learned counsel for the parties and perused the record with their assistance.

5. It is not disputed that impugned order of reversion of the appellant was passed on 06.06.2018 without specifying therein the period of reversion as per mandate of Rule-29 of the Fundamental Rules. Without specifying the said period of reversion the impugned order of reversion was defective under the law. Later on, on acceptance of departmental appeal of the appellant, denovo enquiry was conducted and vide order dated 28.06.2019, the punishment of reversion was converted into withholding of one increment for a period of two years but without any other effect. Such period of two years has already elapsed. Therefore, we in the circumstances of the case, deem it appropriate to direct the respondents to restore annual increment to the appellant after


11/07/22

two years of its withholding. The appeal is disposed in the above terms.

Consign.

06. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal this 11th day of May, 2022.*




(KALIM ARSHAD KHAN)
Chairman


(FAREEHA PAUL)
Member (E)

11th May, 2022

Mr. Noor Muhammad Khattak, Advocate for appellant present. Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment of today, containing 04 pages, this appeal is disposed of in the terms as spelled out in Para 5 of the judgment. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 11th of May, 2022.*



(KALIM ARSHAD KHAN)
Chairman

(FAREEHA PAUL)
Member (E)

10th May, 2022

Mr. Noor Muhammad Khattak, Advocate for the appellant
present. Mr. Riaz Khan Paindakheil, Assistant Advocate General for
the respondents present.

Arguments heard. To come up for order before the D.B on
11.05.2022.



(Fareeha Paul)
Member (E)



Chairman

02.06.2021

Junior to counsel for appellant present.

Muhammad Adeel Butt learned Additional Advocate General for respondents present.


Former made a request for adjournment as senior learned counsel is busy before Hon'ble Peshawar High Court, Peshawar; granted. To come up for arguments on 27.09.2021 before D.B.


(Rozina Rehman)
Member (J)


Chairman

27-9-21


DB is on Tour case to come up
For the same on Dated. 25-1-22

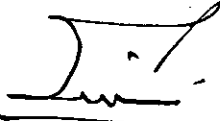

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25.01.2022

Clerk of the learned counsel for the appellant present.
Mr. Noor Zaman Khan Khattak District Attorney for respondents present.

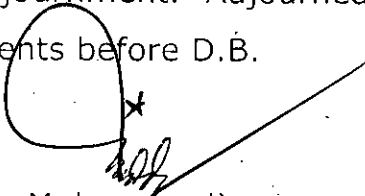
Clerk of the learned counsel for appellant stated that learned counsel for appellant is unable to attend the Tribunal today due to strike of lawyers. Adjourned. To come up for arguments before the D.B on 10.05.2022.

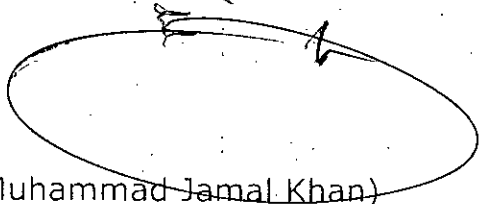

(Rozina Rehman)
Member (J)


(Salah-Ud-Din)
Member (J)

21.09.2020

Appellant himself alongwith Mr. Umer Farooq, junior to senior counsel Mr. Noor Muhammad Khattak, Advocate are present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General alongwith representative of the department Mr. Muhammad Arif, Superintendent are also present. Junior counsel submitted that his senior has proceeded to village due to having some issues there and requested for adjournment. Adjourned to 02.12.2020. File to come up for arguments before D.B.


(Mian Muhammad)
Member (Executive)


(Muhammad Jamal Khan)
Member (Judicial)


02.12.2020

Due to pandemic of Covid-19, the case is adjourned to 23.02.2021 for the same as before.


Reader

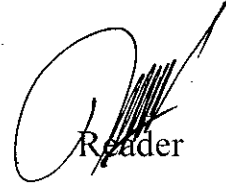
23.02.2021

Due to COVID, 19 the matter is adjourned to 2.06.2021 for the same.


Reader

20.04.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 27.07.2020 before D.B.



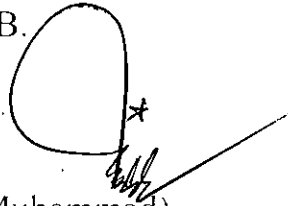
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27.07.2020

Counsel for appellant present.

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

This case is to be adjourned due to COVID-19 but it was brought into the notice of this Tribunal that connected appeal titled Abdullah Vs. SMBR is pending and fixed for submission of amended appeal, therefore, on the request of parties, this file to come up for arguments alongwith connected appeal on 21.09.2020 before D.B.



(Mian Muhammad)
Member (E)



(Rozina Rehman)
Member (J)

03.12.2019

Counsel for the appellant present.

Contends that in the second enquiry proceedings against the appellant, which resulted in passing of impugned order dated 28.06.2019, no statement of allegations or charge sheet was served upon him. Similarly, the appellant was not extended with any opportunity of defending his cause nor was allowed to cross examine witnesses, if any, appearing in proceedings.

Instant appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 27.01.2020 before S.B.

Appellant Deposited
Security & Process Fee

13/12/19

Chairman



27.01.2020

Clerk to counsel for the appellant present. Written reply not submitted. Muhammad Arif Superintendent representative of the respondent department present and seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 03.03.2020 before S.B.

Member

03.03.2020

Junior to counsel for the appellant. Addl. AG alongwith Muhammad Arif, Superintendent for respondents present and submitted written reply which is placed on file. To come up for rejoinder, if any and arguments on 20.04.2020 before the D.B.

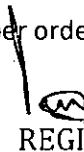

Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1347/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	15/10/2019	<p>The appeal of Mr. Abdul Ghaffar presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 15/10/19</p>
2-	16/10/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>02/12/19</u></p> <p> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

APPEAL No. 1347 /2019

ABDUL GHAFFAR

V/S

GOVT: OF KP & OTHERS

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APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK,
ADVOCATE

ROOM NO. 3, UPPER FLOOR,
NEW ISLAMIA CLUB BUILDING,
KHYBER BAZAR, PESHAWAR CITY
0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

APPEAL NO. 1347 /2019

Diary No. 1455

Mr. Abdul Ghaffar, Tehsildar (BPS-16),
Serai Norang, District Lakki Marwat.....

Dated 15/10/2019

APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Board of Revenue through Assistant Secretary Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
- 3- The Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.....**RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 28.06.2019 WHEREBY MINOR PENALTY OF WITHHOLDING OF ONE ANNUAL INCREMENT FOR THE PERIOD OF TWO YEARS HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned order dated 28.06.2019 may very kindly be set aside and annual increment of the appellant may be restored with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

1- That appellant is the employee of the respondent Department and is serving the respondent Department as Tehsildar (BPS-16) quite efficiently and up to the entire satisfaction of his superiors.

2- That appellant while posted as Tehsildar Serai Norang, District Lakki Marwat, received charge sheet along with statement of allegations issued vide dated 24.11.2017 wherein it was alleged that the appellant while posted as Tehsildar Serai Norang, District Lakki Marwat "attested a bogus mutation No.2255 in Khata No.264, Moza Marmandi, Ketat No.48 for land measuring 7 kanal 16 marla in the

Filed to-day
Registrar

15/10/19

name of Haji Latif-Ur-Rehman from Mr. Ghulam Rasool Khan S/O Baitullah r/o Mahmadi (Azim) without the thumb impression of the actual land owner (vendor)". Copies of the charge sheet and statement of allegation are attached as annexure..... **A & B.**

3- That in response to the said charge sheet and statement of allegations the appellant submitted his detailed reply and denied the allegations leveled against him. That in the said reply the appellant has clearly stated that the subject sale mutation was attested by the undersigned in Jalsa-e-Aam strictly in accordance with the prescribed rules/law relating to the disposal/decision of mutation. The statement of the complainant/vendor was taken in the presence of two reliable witnesses who have duly signed/thumb impressed the mutation in question. That later on the said mutation was cancelled on the directions of the Civil Judge and the share of the complainant in the landed property transferred vide impugned mutation was restored back to him vide Wapsi Bai Qatai mutation bearing No. 2904 dated 28.8.2017. Copies of the reply and mutation are attached as annexure..... **C & D.**

4- That astonishingly the respondent No.3 without adopting the legal procedure as mentioned in the Khyber Pakhtunkhwa Government Servants E&D Rules 2011 issued the impugned order dated 06.06.2018 whereby the appellant has been reverted to the lower post of Naib Tehsildar (BPS-14). Copy of the impugned order is attached as annexure **E.**

5- That feeling aggrieved from the impugned order dated 06.06.2018 the appellant filed departmental appeal followed by service appeal No. 1359/2018 before this august tribunal. Copy of the Departmental appeal and service appeal are attached as annexure..... **F & G.**

6- That during the pendency of the above mentioned appeal the respondents issued another order dated 28.6.2019 whereby the aforementioned punishment was converted into minor penalty of withholding of one increment for a period of two years. Copy of the impugned order is attached as annexure..... **H.**

7- That appellant feeling aggrieved from the impugned order dated 28.06.2019 filed Departmental appeal before the appellate authority since then no reply has been received. Copy of the Departmental appeal dated 03.07.2019 is attached as annexure..... **I.**

8- That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others.

GROUND:

- A- That the impugned order dated 28.06.2019 issued to the appellant is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That the appellant has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondents acted in arbitrary and malafide manner while issuing the impugned order dated 28.06.2019.
- D- That no show cause notice has been served on the appellant before issuance of the impugned order dated 28.06.2019.
- E- That no chance of personal hearing/defense has been provided to the appellant by the respondent department before issuing the impugned order dated 28.06.2019.
- F- That no loss has been caused to the Government Exchequer nor to the other parties, therefore, the impugned order dated 28.06.2019 is not tenable and liable to be set aside.
- G- That it is pertinent to mention that the issue on which the appellant was awarded with the punishment of reversion to lower post of Naib Tehsildar has been patched up and the said mutation has been restored which is subsequently converted into minor penalty of withholding one increment for the period of two year but despite that the respondents punished the appellant, hence the respondents violated the principle of natural justice.
- H- That neither the complainant nor the witnesses were cross examined by the appellant, therefore the impugned order dated 28.06.2019 is not tenable and liable to be set aside.
- I- That the appellant has been discriminated by the respondents on the subject noted above and as such the respondents violated the norms of justice, equity and equality.
- J- That appellant seeks permission to other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 07.10.2019

APPELLANT


ABDUL GHAFFAR

THROUGH:

NOOR MOHAMMAD KHATTAK


MIR ZAMAN SAEI
ADVOCATES

DISCIPLINARY ACTION.

I, Zafar Iqbal, Senior Member / Secretary to Government of Khyber Pakhtunkhwa, Revenue & Estate Department, as Competent Authority, am of the opinion that Mr. ^{Asad} Ghafar Khan, Political Tehsildar F.R. Bannu, has rendered himself liable to be proceeded against, as he committed the following acts/omissions, within the meaning of Rule 3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011:-

STATEMENT OF ALLEGATIONS.

1. That while posting as Tehsildar Sarai Naurang, he attested a bogus mutation No. 2255 in Khata No. 264, Moza Marmandi, Ketat No. 48 for land measuring 7 Kanal 16 Marla in the name of Haji Latif-ur-Rehman from Mr. Ghulam Rasool Khan S/O Baitullah r/o Marmandi (Azim) without the thumb impression of the actual land owner (vendor).
2. That during the fact finding / pre-liminary inquiry, he failed to remove the charges levelled against him before the Inquiry Officer during personal hearing.
2. For the purpose of inquiry against the said accused with reference to the above allegations, Mr. Mohammad Bakhtiar Khan, D.C. Larki Mirdan is appointed as Inquiry 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 department shall join the proceedings on the date, time and place fixed by the Inquiry Officer.

ATTESTED

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Secretary
Revenue and Estate Department.

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B-86

GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

CHARGE SHEET.


I, Zafar Iqbal, Senior Member Board of Revenue, Khyber Pakhtunkhwa, as Competent Authority, charge you ^{Hudu} Mr. Ghafar Khan, Ex: Tehsildar Naurang District Lakki Marwat, now Political Tehsildar F.R. Bannu, as follows:

That you while posted as Tehsildar Sarai Naurang District Lakki Marwat, committed the following irregularities:-

1. That while posting as Tehsildar Sarai Naurang, you attested a bogus mutation No. 2255 in Khata No. 264, Moza Marmandi, Ketat No. 48 for land measuring 7 Kanal 16 Marla in the name of Haji Latif-ur-Rehman from Mr. Ghulam Rasool Khan S/O Baitullah r/o Marmandi (Azim) without the thumb impression of the actual land owner (vendor).
2. That during the fact finding / pre-liminary inquiry, you failed to remove the charges levelled against you before the Inquiry Officer during personal hearing.
2. By reasons of the above, you appear to be guilty of misconduct under Rule 3 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 Rule 4 of the Rules ibid.
3. You are, therefore, required to submit your written defence within seven days on receipt of this Charge Sheet to the Inquiry Officer / Inquiry Committee.
4. Your written defence, if any, should reach to Inquiry Officer, within the specified period, failing which it shall be presumed that you have no defence and in that case ex-parte action will be taken against you.
5. Intimate as to whether you desire to be heard in person. *as applicable*
6. Statement of allegations is enclosed.

Abdul
Mr. Ghafar Khan,
Political Tehsildar F.R. Bannu.

ATTESTED


Secretary
Revenue and Estate Department

To

The Assistant Secretary,
Stamps Board of Revenue KPK
Peshawar.

C-7

Subject:- STATEMENT OF ABDUL GHAFAR EX-TEHSILDAR SERAI NAURANG IN CONNECTION WITH SALE MUTATION BEARING NO. 2255 OF MOZA MARMANDI AZEEM DATED 14.11.2012

With reference to the complaint lodge by Ghalum Rasool S/O Baitullah R/O Marmandi Azeem District Lakki Marwat, the undersigned hereby submit the following statement:-

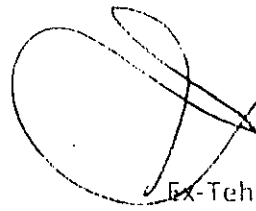
1. That the subject sale mutation was attested by the undersigned in Jalsa-e-Aam strictly in accordance with the prescribed rules/law relating to the disposal/decision of mutation. The statement of the complainant/vendor was taken in the presence of two reliable marginal witnesses who have duly signed/thumb impressed the mutation in question.
2. That afterwards the complainant got aggrieved by the proceedings conducted in connection with the disposal of the said mutation and thus challenged the same in the court of civil judge Serai Naurang. The Court, agreeing to the version of the petitioner/complainant, decreed the suit in his favour with the direction that the subject mutation be cancelled and the share of the petitioner in the landed property transferred vide impugned mutation be restored back to him.
3. That in compliance with the court order, the share of the petitioner measuring 07 Kanal 16 Marla was restored / reverted back to him vide Wapasi Bai Qatai mutation bearing No.2904 dated, 28/8/2017.
4. That it is a settled principle of law that once a matter is adjudicated upon finally by the civil court, the same cannot be reopened and agitated on another forum, for in the eyes of law that very matter becomes a closed and past transaction.

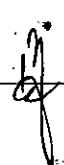
Keeping in view the aforementioned points, it is hereby requested that the instant complaint be filed without further proceedings as the same has now in fructuous and void of any merit.

Submitted please.

ATTESTED




Abdul Ghaffar
Ex-Tehsildar Serai Naurang
8/9/17





GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

Peshawar dated the 06/06/2018

E-9

ORDER.

No.Estt:I/PF/Abdul Ghaffar/_____ WHEREAS; Mr. Abdul Ghaffar the then Tehsildar Naurang was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules 2011 for the charges mentioned in the Charge Sheet.

AND WHEREAS; Mr. Muhammad Asif Director Land Records was appointed as Inquiry Officer to probe into the charges leveled against the said official and submit finding/ recommendations.

AND WHEREAS, The Inquiry Officer after having examine the charges, evidence produced before him and statement of accused official, submitted his reply whereby the charges against the accused official stand proved.

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

NOW THEREFORE, I as Competent Authority in exercise of powers conferred by Rule 4 (b) (i) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 impose major penalty of reversion to lower post of Naib Tehsildar upon Mr. Abdul Ghaffar the then Tehsildar Naurang with immediate effect for a period of three (03) years.

By order of
Senior Member.

No.Estt:I/PF /Abdul Ghaffar/ 24369-74

Copy forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa.
2. Commissioner, Bannu Division. The services of the accused Mr. Abdul Ghaffar are hereby placed at your disposal for further posting as Naib Tehsildar in the Division.
3. Deputy Commissioner, Lakki Marwat.
4. District Accounts Officer Lakki Marwat.
5. Official concerned.
6. Office order file.

ATTESTED

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Assistant Secretary (Estt-)

BEFORE THE HON'BLE CHIEF SECRETARY, KHYBER PAKHTUNKHWA
PESHAWAR

Through:- PROPER CHANNEL.

F-10/10

Subject:- REPRESENTAION OF ABDUL GHAFFAR KHAN
GANDAPUR, EX: TEHSILDAR, SERAI NAURANG
DISTRICT LAKKI MARWAT, NOW, NAIB TEHSILDAR
REVERSED TO LOWER POST BY THE SMBR,
COMPETENT AUTHORITY AFTER IMPOSING MAJOR
PENALTY AS RESULT OF INQUIRY CONDUCTED BY
DIRECTOR LAND RECORDS KHYBER PAKHTUNKHWA.

Respected sir,

1. I, Abdul Ghaffar Khan Gandapur, Ex: Tehsildar Serai Naurang, Now Naib Tehsildar, Commissioner Office, Bannu, submits following submissions in respect of major penalty imposed under Rule 4 (b) (i) of Khyber Pakhtunkhwa, Government Servants Efficiency & Disciplinary Rules, 2011 by reversion to lower post of Naib Tehsildar by Senior Member, Board of Revenue, Competent Authority vide order bearing No. Estt: /FF/Abdul Ghaffar/24369-74 dated 06/06/2018 (Copy enclosed as Annexure-"A").
2. Brief facts of the case are that I served as Tehsildar, Serai Naurang, District Lakki Marwat from December, 2011 to July, 2013. During this period the alleged Mutation No. 2255 attested on 14/11/2012 of Mauza Mar Mandi Tehsil Serai Naurang, District Lakki Marwat was presented in Common Assembly (Jalsa-e-Aam) on 14/11/2012. Both vendors along with other vendors of other mutations along with witnesses were also present. Mr. Ghulam Rasool and Mr. Muhammad Ismail, Vendors of alleged mutation No. 2255 dated 14/11/2014 duly identified by marginal witnesses of mutation declared the transaction carried out through alleged mutation No. 2255 dated 14/11/2012 to be correct.
3. Sir, As per provision of section 42 subsection 7 of West Pakistan land Revenue Act, 1967, the attestation of thumb impressions is not necessary, however, his identification by two respectable persons preferably Lumberdar or Member of Zila Council, Tehsil council or Union Council is must and thumb impression of Lumber or Member of any Local Council is on register of Mutation must be obtained. Moreover, as per provision of section 42, sub section 8, the mutation shall be attested in Common Assembly of Estate. These two provisions of law as State had been compiled with by the petitioner. The above provision of law is still intact and amendment had not been made by the competent forum, i.e Parliament.

ATTESTED

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(11)

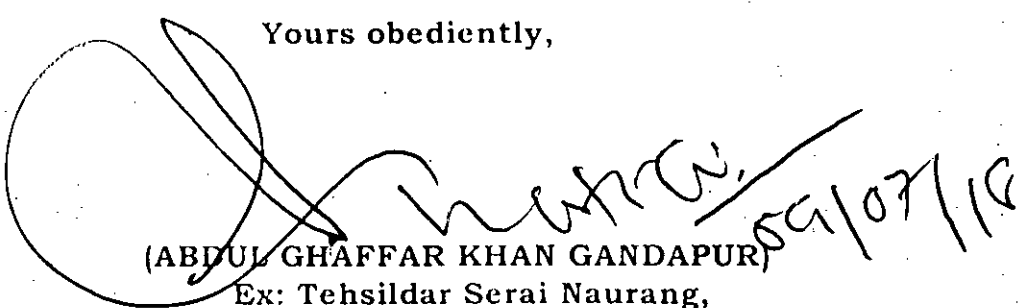
4. Moreover, it worth to be mentioned that attestation of mutation is summary proceeding and legally it does not create any entitlement as registration Deed or Court decree. Mistakes usually occur from revenue Officers during the disposal of Mutations in Common Assembly (Jalsa-e-Aam) but there is provision in West Pakistan Land Revenue Act, 1967 for correction of these mistakes under section 163 by competent authority i.e. District Collector. These mistakes also comes under the purview of section 163 of West Pakistan Land Revenue Act, 1967 and District Collector Lakki Marwat to correct it through review under section 163 of West Pakistan Land Revenue Act, 1967.

5. As human being, commission of errors is possible from every human being. It is also an error in which I did not commit it with intention. Moreover, I had also got protection under section 181 of West Pakistan Land Revenue Act, 1967 when anything is done by Revenue Officer in good faith. I had disposed off the alleged mutation No. 2255 dated 14/11/2012 in good faith and not with ant bad intention or any other ulterior motive.

Keeping in view above explanation by accepting my this representation, it is humbly prayed that Major Penalty imposed by competent Authority may kindly be reduced to any minor penalty under Rule 4 (a) (i) or (ii) of Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011.



With regards.

Yours obediently,


(ABDUL GHAFFAR KHAN GANDAPUR)

Ex: Tehsildar Serai Naurang,
Now Naib Tehsildar in Commissioner Office,
Bannu.

ATTESTED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1359 /2018

G-12

Mr. Abdul Ghaffar, Tehsildar (BPS-16) now Naib Tehsildar,
Serai Norang, District Lakki Marwal.....**APPELLANT**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Board of Revenue through Assistant Secretary Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
- 3- The Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar.....**RESPONDENTS**

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 06.06.2018 COMMUNICATED TO THE APPELLANT 12.6.2018 WHEREBY MAJOR PENALTY OF REVERSION TO THE POST OF NAIB TEHSILDAR (BPS-14) HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned order dated 06.06.2018 communicated to the appellant on 12.6.2018 may very kindly be set aside and the appellant may be restored on the post of Tehsildar (BPS-16) with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That appellant is the employee of the respondent Department and is serving the respondent Department quite efficiently and up to the entire satisfaction of his superiors.
- 2- That appellant while posted as Tehsildar Serai Norang, District Lakki Marwal, received charge sheet along with statement of allegations issued vide dated 24.11.2017 wherein it was alleged that the appellant while posted as Tehsildar Serai Norang, District Lakki Marwal "attested a bogus mutation No.2255 in Khata No.264, Moza Marmandi, Ketat No.48 for land measuring 7 kanal 16 marla in the name of Haji Latif-Ur-Rehman from Mr. Ghulam Rasool Khan S/O Baitullah r/o Mahmadi (Azim) without the thumb impression of the



actual land owner (vendor)". Copies of the charge sheet and statement of allegation are attached as annexure..... **A & B.** (13)

3- That in response to the said charge sheet and statement of allegations the appellant submitted his detailed reply and denied the allegations leveled against him. That in the said reply the appellant has clearly stated that the subject sale mutation was attested by the undersigned in Jalsa-e-Aam strictly in accordance with the prescribed rules/law relating to the disposal/decision of mutation. The statement of the complainant/vendor was taken in the presence of two reliable witnesses who have duly signed/thumb impressed the mutation in question. That later on the said mutation was cancelled on the directions of the Civil Judge and the share of the complainant in the landed property transferred vide impugned mutation was restored back to him vide Wapsi Bai Qatai mutation bearing No. 2904 dated 28.8.2017. Copies of the reply and mutation are attached as annexure..... **C & D.**

4- That astonishingly the respondent No.3 without adopting the legal procedure as mentioned in the Khyber Pakhtunkhwa Government Servants E&D Rules 2011 issued the impugned order dated 06.06.2018 whereby the appellant has been reverted to the lower post of Naib Tehsildar (BPS-14). Copy of the impugned order is attached as annexure **E.**

5- That the said impugned order dated 6.6.2018 was communicated to the appellant on 12.6.2018. That appellant feeling aggrieved from the impugned order dated 06.06.2018 filed Departmental appeal before respondent No.1 but no reply has been received so far. Copy of the Departmental appeal is attached as annexure..... **F.**

6- That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others.

GROUND:

A- That the impugned order dated 06.06.2018 communicated to the appellant 12.6.2018 issued by the respondent No.3 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.

B- That the appellant has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

C- That the respondents acted in arbitrary and malafide manner while issuing the impugned order dated 06.06.2018.

D- That no show cause notice has been served on the appellant before issuance of the impugned order dated 6.6.2018.

14

E- That no chance of personal hearing/defense has been provided to the appellant by the respondent No.3 before issuing the impugned order dated 06.06.2018.

F- That no regular Departmental inquiry has been conducted by the respondents against the appellant before issuing the impugned order dated 06.06.2018 which is as per Supreme Court Judgments is necessary in punitive actions against the civil servant.

G- That no loss has been caused to the Government Exchequer nor to the other parties, therefore, the impugned order dated 6.6.2018 is not tenable and liable to be set aside.

H- That it is pertinent to mention that the issue on which the appellant was awarded with the punishment of reversion to lower post of Naib Tehsildar has been patched up and the said mutation has been restored but inspite of that the respondents punished the appellant, hence the respondents violated the principle of natural justice.

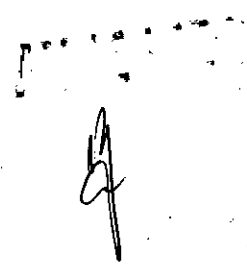
I- That neither the complainant nor the witnesses were cross examined by the appellant, therefore the impugned order dated 06.06.2018 is not tenable and liable to be set aside.

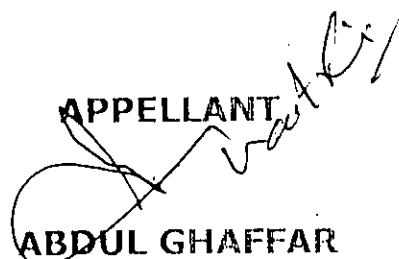
J- That the appellant has been discriminated by the respondents on the subject noted above and as such the respondents violated the norms of justice, equity and equality.


K- That appellant seeks permission to other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 29.10.2018



APPELLANT

ABDUL GHAFFAR

THROUGH:
NOOR MOHAMMAD KHATTAK

MOHAMMAD MAAZ MADNI
&

SHAHZULLAH YOUSAFZAI
ADVOCATES

Assistant Secretary (I)

Senior Member
SD/-

- 1. Commissioner, Bannu Division, Bannu
- 2. Deputy Commissioners, Lakki Marwat
- 3. District Account Officer, Lakki Marwat
- 4. Officer concerned
- 5. Office order file.

Copy forwarded to the:-

No:Jst:1/PT/Abdul Ghattar/ 224/6-7

Revenue being Competent Authority under Rule-14 of Khyber Pakhtunkhwa, Government Servant (Efficiency & Discipline) Rules, 2011, having examined the charges, evidence produced, statement of accused official before the Inquiry Officer and after hearing the accused concerned with the findings of Inquiry Officer minor penalty of withholding of one increment for period of two years under Rule 4 (1)(a)(ii) of the rules ibid is imposed upon Mr. Abdul Ghattar Tehsildar with immediate effect.

NOW THEREFORE, I, Dr. Fakhr Alam Senior Member Board of Revenue hereby the charges against the accused official have partially been proved.

AND WHEREAS the Inquiry Officer after having examined the charges, evidence produced before him and statement of accused official, submitted his report whereby the charges against the accused official have partially been proved.

AND WHEREAS; Mr. Kamran Khan Additional Deputy Commissioner, Bannu was appointed as Inquiry Officer to probe into the charges leveled against the said officer and submit findings.

WHEREAS; Mr. Abdul Ghattar the then Tehsildar Naurang Lakki Marwat was proceeded against under the Khyber Pakhtunkhwa (Government Servants (Efficiency & Discipline) Rules, 2011, for the charges mentioned in the Charge Sheet & Statement of Allegations.



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

Peshawar dated the 28/06/2019.

15 - H

To,

The Worthy Chief Sectary,
Khyber Pakhtunkhwa, Peshawar.

I - (16)

Subject: **DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED 28.06.2019 WHEREBY MINOR PENALTY OF WITHHOLDING OF ONE INCREMENT FOR THE PERIOD OF TWO YEARS HAS BEEN IMPOSED ON ME**

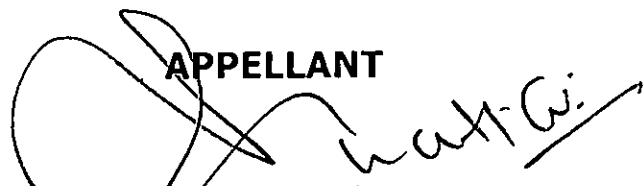
Respected Sir,

With due respect it is stated that I Mr. ABDUL GHAFAR was serving before your good self Department as Tehsildar at Serai Nurang Lakki Marwat quiet efficiently and up to the entire satisfaction of my superior. During service the competent authority imposed major penalty of reversion to lower post of Naib Tehsildar for the period of three years vide order dated 06.06.2018 on the basis of some baseless allegations. I was feeling aggrieved from the order dated 06.06.2018 filed Departmental appeal before the appellate authority followed by service appeal No. 1359/2018 before the august Khyber Pakhtunkhwa Service Tribunal, Peshawar and during the pendency of the aforementioned service appeal the concerned authority converted the major punishment of reversion to lower post into the minor penalty of stoppage of one annual increment for two years vide Order Dated 28.06.2019. I am feeling aggrieved from the impugned order dated 28.06.2019 preferred this Departmental appeal before your good self.

It is therefore, most humbly prayed that on acceptance of this Departmental appeal the impugned order dated 28.06.2019 may very kindly be set aside and restore my annual increment. Any other remedy which your good self deems fit that may also be awarded in my favor.

Dated: 03.07.2019



APPELLANT

ABDUL GHAFAR GANDAPUR
Tehsildar (BPS-16)
Presently Tehsildar Datta Khel,
Tribal District North Waziristan

VAKALATNAMA

Before the KP Service Tribunal, Peshawar

OF 2019

Abdul Ghaffar

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Govt. of KP & others

(RESPONDENT)
(DEFENDANT)

I/we Abdul Ghaffar

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ___/___/2019


CLIENT


ACCEPTED
NOOR MOHAMMAD KHATTAK

SHAHZULLAH YOUSAFZAI

&


MIR ZAMAN SAFI
ADVOCATES

OFFICE:
Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.
Mobile No.0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1347/2019.

Abdul Ghaffar Tehsildar Appellant.

VERSUS

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

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1, 2 & 3 ARE AS UNDER:-

RESPECTFULL SHEWETH.

PRELIMINARY OBJECTIONS.

1. That the appellant has got no cause of action or locus standi.
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 attestation of mutation No. 2255 by the appellant which was found without thumb impression of the actual land owner (Annexure-A).
3. Incorrect. As per provision of the rules, land cannot be transferred to another person without consent of the original owner and affixation of thumb impression which has not been followed in the instant case and complainant has lost a valuable piece of land of 7 kanal 16 maria.
4. Incorrect. Enquiry was entrusted to Mr. Muhammad Asif the then Director Land Records to proceed against the appellant under Government Servants (Efficiency & Discipline) Rules, 2011 (Annexure-B). On receipt of enquiry report (Annexure-C) major penalty of reversion from Tehsildar BS-16 to lower post of Naib Tehsildar BS-14 under Rule 4(b)(i) of the rules ibid was imposed upon the appellant (Annexure-D).
5. Pertains to record.
6. Incorrect. The appellant filed Departmental Appeal (Annexure-E) before the Chief Secretary being appellate authority under Rule 17(2)(b) of Government Servants (Efficiency & Discipline) Rules, 2011 (Annexure-F) whereby the order of reversion of the appellant was set aside with the direction to initiate fresh enquiry under the rule. Therefore another enquiry was conducted through Mr. Kamran Khan Additional Deputy Commissioner Bannu (Annexure-G). On receipt of enquiry report the Competent Authority imposed minor penalty of withholding of one increment for a period of two years upon the appellant (Annexure-H).

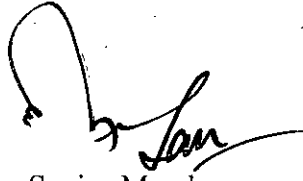
7. Incorrect. The appellant neither filed any Departmental Appeal before the appellate authority nor received to this Department.
8. Incorrect. Appeal of the appellant is not maintainable.

GROUNDS

- A. Incorrect. The appellant was proceeded under Government Servants (Efficiency & Discipline) Rules, 2011 and on the recommendation of Inquiry Officer minor penalty was imposed upon him on 28.06.2019.
- B. Incorrect. The appellant has been treated in accordance with law/rules and no violation of Article 4 & 25 of the constitution of Islamic Republic of Pakistan 1973 has been committed.
- C. Incorrect. As in Paras A & B above.
- D. Incorrect. On receipt of enquiry report the appellant was asked through Deputy Commissioner Lakki Marwat to appear before the Senior Member, Board of Revenue for personal hearing on 18.06.2019 vide letter dated 12.06.2019.(Annexure-J).
- E. Incorrect. As in Para D above.
- F. As in Para-3 of the facts.
- G. Incorrect. All the proceedings have been carried out according to law/rules.
- H. As in Para "G" above.
- I. Incorrect. No discrimination / violation of justice were committed with the appellant.
- J. The respondent will also submit additional grounds at the time of arguments.

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


Assistant Secretary (Estt.)
Board of Revenue
Respondent No. 2


Senior Member,
Board of Revenue
Respondent No. 1, & 3

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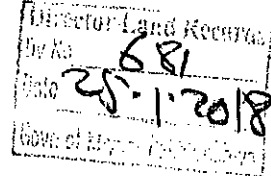
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GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT
No. Ad:IV/Ghulam Rasool/L.Marwat/ 3193
Dated, 23 /01/2018

✓ The Director Land Records
Khyber Pakhtunkhwa.



SUBJECT.


INQUIRY AGAINST 1) MR. ABDUL GHAFAR KHAN
EX: TEHSILDAR SARAI NAURANG NOW POLITICAL
TEHSILDAR FR BANNU, 2) GHULAM JAN GIRDAWAR
CIRCLE MAMA KHEL TEHSIL SARAI NAURANG, 3)
ABDULLAH JAN EX: PATWARI MOUZA MARMUNDI
NOW HALQA PATWARI NAWAR KHEL DISTRICT
LAKKI MARWAT.

I am directed to refer to the subject and to say that this Department ~~was~~ nominated Deputy Commissioner Lakki Marwat as an Inquiry Officer (**Annex-A**), thereafter, Deputy Commissioner Lakki Marwat has conducted inquiry against the revenue staff and forwarded to this Department (**Annex-B**) for further necessary action but the Competent Authority was not satisfied from the same inquiry. Due to which the Competent Authority has nominated you as an Inquiry Officer for the same inquiry as per charge sheet.

You are requested to complete the subject inquiry and furnish inquiry report alongwith recommendations within 15 days to this Department for placing before the Competent Authority, please.

Encl: As Above

DCR


(Khanzada Wazir)
Assistant Secretary (Admn)

INQUIRY REPORT:

Accused Officials:

1. Mr. Abdul Ghaffar Khan (Ex-Tehsildar)
2. Mr. Ghulam Jan, Kannungo
3. Mr. Abdullah Khan, Patwari

HISTORY

A Mutation No. 2255 Mouza Marmandi involving transfer of land measuring 10 kanals and 02 marlas in Khata No. 264 from vendors Ismail Khan S/O Abdur Rahim and Mr. Ghulam Rasool S/O Bait Ullah Khan R/O Marmāndi (Azim) in favour of Haji Latif-ur-Rehman S/O Abdur Rehman in lieu of consideration money of Rs. One Lakh and Ten Thousands, was entered by the accused Patwari Abdullah Khan on 27/08/2012, mutation entries with revenue record compared and certified as correct by the accused Girdawar Circle Ghulam Jan under his signature on 14/11/2012 and attested by the accused Tehsildar Abdul Ghaffar Khan Gandapur on 14/11/2012 in Jalsa-e-Aam. Through instant mutation total 10 Kanals and 02 Marlas land was transferred. From the total land (10 Kanals and 02 Marlas) so transferred 07 Kanals and 16 Marlas was owned by Mr. Ghulam Rasool; the thumb impression of one vendor Mr. Ismail and witnesses had been affixed on the mutation No. 2255 but neither the thumb impression nor the signature of other vendor, Mr. Ghulam Rasool was affixed on the impugned mutation.

To get their transferred share back, Mr. Ghulam Rasool agitated civil court in 2015 and got his share transferred back on his name through court decree vide mutation No. 2904.

BACKGROUND OF THIS INQUIRY

A fact finding/ preliminary inquiry was conducted in the above matter and on the failure of the accused officials to remove the charges, the accused officials were served upon with the charge sheets by the competent authority and Deputy Commissioner Lakki Marwat Mr. Muhammad Bakhtiar Khan was appointed as inquiry officer. (Charge Sheet is annexed as **(Annexure-A)**). The inquiry officer submitted his inquiry report to the competent authority but the competent authority was not satisfied with the inquiry report and thus appointed the undersigned to conduct the inquiry afresh vide letter No. Ad:IV/GhulamRasool/LakkiMarwat/3193 dated 23/01/2018 (**Annexure-B**).

PROCEEDINGS

The accused officials were summoned for 01/02/2018 at 1200 hours through Deputy Commissioner Bannu and Deputy Commissioner Lakki-Marwat vide this office letters (**Annexure-C & D**). The accused officials attended the office of the undersigned on the given date (their attendance are annexed as **Annexure-E**) and recorded their statements. Their written statements / replies are annexed as:--

Statement of Abdul Ghaffar Ex-Tehsildar (Annexure-F)

Statement of Ghulam Jan Girdawar (Annexure-G)

Statement of Abdullah Khan Patwari (Annexure-H)

All the three officials relied upon the written statements they had earlier submitted to Deputy Commissioner Lakki-Marwat during proceedings of the enquiry conducted by him, the gist of their written replies is produced as under:

Statement of Abdul Ghaffar Ex-Tehsildar:

The Ex-Tehsildar stated:-

- That he attested the impugned mutation [No. 2255] in Jalsa-e-Aam (Assembly of villagers).
- That he took thumb impressions of 02 witnesses and one vendor namely Ismail on mutation.
- That he did not take thumb impression of the co-owner (2nd Seller) Mr. Ghulam Rasool on register mutation, which was not his intentional act rather that was a human error.
- That the share of Ghulam Rasool, transferred by the mutation No. 2255 was reversed in his name vide mutation no. 2904 dated 28/08/2017, on the Court directions.
- That his omission may be considered as human error and he may be exonerated.

Statement of Ghulam Jan, Girdawar Circle:

The Girdawar Circle in his statement claimed that as per rules it is the duty of girdawar to check and authenticate the entries of the mutation made by Patwari, both in foil and counterfoil. So he performed his duty by ascertaining the entries in impugned mutations. He examined khasras No, Khata No, Shares of vendors, which were found correct and thus certified by him. He further stated that during attestation of mutations the shares of the vendor(s) is/are transferred to extent of share intended to be so transferred and rest of the share(s) is kept reserved at the time of passing final order of attestation of the revenue officer. He stated that his responsibility is just to examine and authenticate entries of mutations, which he rightly did and had no role in attestation of mutation.

The Girdawar prayed that the instant complaint might be filed.

Statement of Ex-Patwari:

The gist of the statement of Patwari is that as per rules a Patwari is required to enter mutation both in foil and counterfoil, whenever any person having certain right in the landed property comes to him and ask for entering mutation. He further said that on the request of co-owner (Mr. Ismail) he entered the mutation with due care and diligence. He reiterated that all the entries made by him were correct and he had nothing to do with the process of the attestation of mutation.

ATTESTATION OF THE MUTATION

From the statements of the accused officials and complaint/charge sheet, the following questions emanated to be answered.

1. What is rules/ regulation and procedure of attestation of mutation?
2. What is practice in vogue regarding mutations?
3. What is responsibility, as per law, of Patwari, Girdawar and Tehsildar during the process of mutation from entry to attestation?

The answers to the above queries are given as below:--

Q1. Procedure of mutation as per law?

Section 42 of Land Revenue Act 1967, and Para 7.4 of Land Record Manual deals with the attestation of mutation.

As per procedure given in law, a Patwari is bound to enter mutation (foil and counterfoil) on the request of any right holder in the land intended to be transferred. The Patwari requires to fill all the columns carefully and correctly.

The Girdawar Circle then examine the entries made by Patwari and tally them with record and certify with his signature all the entries.

The mutation is then submitted to revenue circle office (Tehsildar) for attestation. The tehsildar is required to attest the mutation in Jalsa-e-Aam. He is required to satisfy himself in all respects. He is required to ascertain in Jalse-e-Aam (crowd) of mouza, the vendor(s), vendee(s), their respective share to be transferred, value of mutation, tax to be levied, affixing thumb impression of the parties and witnesses.

He is further required to enquire about transfer of possession/right from vendor to vendee as the purpose of mutation is transfer of rights/possession. The reader of the tehsildar is key person to assist tehsildar in all the above steps. After being satisfied in all aspects in Jalsa-e-Aam, the tehsildar then passes order of attestation. Patwari halqa is present and he assists the tehsildar in discharge of his duty.

Q2. What is practise in vogue regarding mutations?

It is common practice across the province that a Patwari enters a mutation on the application of any interested party. Girdawar does his partal. To save time or whatever purpose, the Patwari usually get thumb impressions of the parties and witnesses in his Patwar khana before putting the same for order of the revenue circle officer. The reader of tehsildar than writes order on the mutation and tehsildar attests the same usually without or sometime going into the jalsa-e-Aam. Patwari concerned is always present with record while a mutation is being attested by the tehsildar.

Q3. What is responsibility as per law, of Patwari, Girdawar and Tehsildar during the process of mutation from entry to attestation?

The role and responsibility of the Patwari, Girdawar and tehsildar has been elaborated above while answering the Question No. 1 and 2.

CROSS EXAMINATION

To dig out the facts the accused officials were cross examined. The tehsildar and Patwari were asked whether the impugned land measuring 7 kanals & 16 marlas owned by the applicant Ghulam Rasool was transferred with his approval and whether he came to Patwari or tehsildar in connection with his property to be transferred.

(4)

The Patwari told that only the co-sharer Mr. Ismail, came to him for entering impugned mutation and Ghulam Rasool did not come.

The tehsildar replied that Ghulam Rasool was present in Jalsa-e-Aam but due to mistake his thumb impression could not be taken but he failed to bring proof in support of his claim.

Vide impugned mutation the share transferred of Mr. Ismail was 2 Kanal 16 Marla and that of Ghulam Rasool was 7 Kanal 16 marla, almost three times of the share of the Ismail.

The accused officials were asked that why care was not taken in transferring the share of major vendor (Mr. Ghulam Rasool). Despite of possessing lion share, the thumb impression of the major vendor (share-holder) was not taken?

Other than having said of human error/mistake the accused officials (Tehsildar & Patwari) failed to give a satisfactory reply.

The impugned mutation was attested in 2012 and the share of Ghulam Rasool was reversed in 2017 vide mutation no. 2904. The accused officials were asked that if thumb impression of the applicant Ghulam Rasool was not taken mistakenly and if his property share was rightly transferred then why the mistake was not tried to be rectified by having taken the thumb impression of Ghulam Rasool at any time from 2012 to 2017.

The accused official could not give any satisfactory explanation. They only said that they were ignorant of the mistake and came to know it when the court issued decree.

During cross examination the accused officials stated that as there were large number of mutations the tehsildar had to attest in Jalsa-e-Aam, so not obtaining thumb impression of the applicant Ghulam Rasool was just a mistake/human error.

To ascertain this point the applicant (Ghulam Rasool) and tehsil office Kannungo with relevant record of relevant time were summoned for 08/02/2018. The charge of office kannungo is with Girdawar Ghulam Jan (one of accused official) he and son of applicant namely Mr. Ajmal R/O Lakki Marwat attended the office on 08/02/2018.

Mr. Ajmal recorded his statement wherein he claimed that his father owns immovable/ landed property in Mouza Marmandi Lakki Marwat and his uncle's son Ismail with connivance of his (Ismail) brother Munnawar, who is a property dealer and revenue officials fraudulently transferred 7 kanal 16 marla of their land in 2012, without their knowledge. He further said that they planned wedding of their brother in 2015 for which expenditure they wanted to sell their land and came to know from Patwari that their land had already been sold in 2012. He stated that on knowing this, they requested Patwari and Tehsildar for reversal of their land fraudulently transferred but in vain, thus they filed suit in civil court, and in 2017 by the order of the civil court they got their land transferred in their name which was fraudulently transferred by Ismail/Munnawar and revenue officials. Statement of Ajmal is annexed as (Annexure-I)

(5) 17

The Office Kannungo also Girdawar accused Mr. Ghulam Jan and the incumbent Patwari mauza Marmandi Mr. Ashfaq Ahmad also attended this office on 08/02/2018 with relevant record.

From the perusal of record and queries from the office kannungo and Patwar halqa it was known that mauza Marmandi is part of the Patwar circle Zafar Mamakhel which has total 13 mouzas with Marmandi as major mouza. In this Patwar circle every month the Tehsildar schedules one tour (Jalsa-e-aam) and sometimes one special tour is also paid. Every month about 50 to 60 mutations are attested which was confirmed by girdawar/office kannungo.

From all this it is evident that attesting 50 to 60 mutations a month is not a big task or burdened work as was claimed by tehsildar in cross examination.

FINDINGS

From the written replies of accused officials, Ajmal (Son of applicant) and perusal of record the undersigned infers that the share of Ghulam Rasool measuring 7 kanals 12 marlas in Khatta No. 264 Khatat No. 48 was fraudulently transferred vide mutation No.2255 dated 14.11.2012.

It is very astonishing that the major co-owner/ co-sharer in the impugned property was Mr. Ghulam Rasool and still the Patwari and tehsildar forgotten to take his thumb impression. As per law/rules and procedure in vogue a Tehsildar, his reader and Patwari concerned are present at the time of attestation of mutation in Jalsa-e-Aam, to check and satisfy themselves of each and every entry of mutation register. Hence it is inferred that Tehsildar, his reader and Patwari are involved in corruption and corrupt practices in respect of impugned mutation.

The Girdawar is rarely present at time of attestation of mutation hence his chances of involvement in the impugned mutation are apparently narrow.

INFERENCE

Foregoing above:

1. The charges levelled against ex-tehsildar Mr. Abdul Ghaffar Khan and ex-Patwari halqa Mr. Abdullah Khan stand proved.
2. Though not charge sheeted, yet reader to tehsildar is also equally responsible.
3. In the prevailing practice the role of girdawar is usually limited to the partial/examination of entries of Patwari with record before submitting it to tehsildar for attestation, hence his involvement chances are narrow and may be exonerated.

Submitted please.


(MURAMMAD ASIF) 21.2.18
INQUIRY OFFICER
DIRECTOR LAND RECORDS



GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

Peshawar dated the 06/06/2018

ORDER.

No.Estt:I/PF/Abdul Ghaffar/_____ WHEREAS; Mr. Abdul Ghaffar the then Tehsildar Naurang was proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules 2011 for the charges mentioned in the Charge Sheet.

AND WHEREAS; Mr. Muhammad Asif Director Land Records was appointed as Inquiry Officer to probe into the charges leveled against the said official and submit finding/recommendations.

AND WHEREAS, The Inquiry Officer after having examine the charges, evidence produced before him and statement of accused official, submitted his reply whereby the charges against the accused official stand proved.

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

NOW THEREFORE, I as Competent Authority in exercise of powers conferred by Rule 4 (b) (i) of Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 impose major penalty of reversion to lower post of Naib Tehsildar upon Mr. Abdul Ghaffar the then Tehsildar Naurang with immediate effect for a period of three (03) years.

By order of
Senior Member

No.Estt:I/PF /Abdul Ghaffar/ 24369-74

Copy forwarded to the:-

1. Accountant General Khyber Pakhtunkhwa.
2. Commissioner, Bannu Division. The services of the accused Mr. Abdur Ghaffar are hereby placed at your disposal for further posting as Naib Tehsildar in the Division.
3. Deputy Commissioner, Lakki Marwat.
4. District Accounts Officer Lakki Marwat.
5. Official concerned.
6. Office order file.

Assistant Secretary (Estt.)

BY TCS

7283 (WIE)

Date: 11/7/18 (Advance copy)

BEFORE THE HON'BLE CHIEF SECRETARY, KHYBER PAKHTUNKHWA
PESHAWAR

Subject:-

PS/SMBR
No. 571
Date: 11/7/18
Govt. of Khyber Pakhtunkhwa

REPRESENTAION OF ABDUL GHAFFAR KHAN GANDAPUR,
EX: TEHSILDAR, SERAI NAURANG DISTRICT LAKKI
MARWAT, NOW, NAIB TEHSILDAR REVERSED TO LOWER
POST BY THE SMBR, COMPETENT AUTHORITY AFTER
IMPOSING MAJOR PENALTY AS RESULT OF INQUIRY
CONDUCTED BY DIRECTOR LAND RECORDS KHYBER
PAKHTUNKHWA.

Respected sir,

1. I, Abdul Ghaffar Khan Gandapur, Ex: Tehsildar Serai Naurang, Now Naib Tehsildar, Commissioner Office, Bannu, submits following submissions in respect of major penalty imposed under Rule 4 (b) (i) of Khyber Pakhtunkhwa, Government Servants Efficiency & Disciplinary Rules, 2011 by reversion to lower post of Naib Tehsildar by Senior Member, Board of Revenue, Competent Authority vide order bearing No. Estt: /PF/Abdul Ghaffar/24369-74 dated 06/06/2018 (Copy enclosed as Annexure-"A").

2. Brief facts of the case are that I served as Tehsildar, Serai Naurang, District Lakki Marwat from December, 2011 to July, 2013. During this period the alleged Mutation No. 2255 attested on 14/11/2012 of Mauza Mar Mandi Tehsil Serai Naurang, District Lakki Marwat was presented in Common Assembly (Jalsa-e-Aam) on 14/11/2012. Both vendors along with other vendors of other mutations along with witnesses were also present. Mr. Ghulam Rasool and Mr. Muhammad Ismail, Vendors of alleged mutation No. 2255 dated 14/11/2014 duly identified by marginal witnesses of mutation declared the transaction carried out through alleged mutation No. 2255 dated 14/11/2012 to be correct.

3. Sir, As per provision of section 42 subsection 7 of West Pakistan Land Revenue Act, 1967, the affixation of thumb impressions is not necessary, however, his identification by two respectable person preferably Lumberdar or Member of Zila Council, Tehsil Council or Union Council is must and thumb impression of Lumberdar or Member of any Local Council is on register of Mutation must be obtained. Moreover, as per provision of section 42, sub section 8, the mutatio

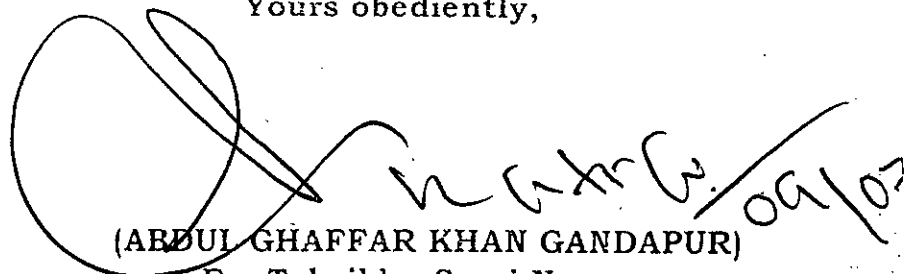
shall be attested in Common Assembly of Estate. These two provisions of law of State had been complied with by the petitioner. The above provision of law is still intact and amendment had not been made by the competent forum, i.e Parliament.

4. Moreover, it worth to be mentioned that attestation of mutation is summary proceeding and legally it does not create any entitlement as registration Deed or Court decree. Mistakes usually occur from revenue Officers during the disposal of Mutations in Common Assembly (Jalsa-e-Aam) but there is provision in West Pakistan Land Revenue Act, 1967 for correction of these mistakes under section 163 by competent authority i.e. District Collector. These mistakes also comes under the purview of section 163 of West Pakistan Land Revenue Act, 1967 and District Collector Lakki Marwat to correct it through review under section 163 of West Pakistan Land Revenue Act, 1967.
5. As human being, commission of errors is possible from every human being. It is also an error in which I did not commit it with intention. Moreover, I had also got protection under section 181 of West Pakistan Land Revenue Act, 1967 when anything is done by Revenue Officer in good faith. I had disposed off the alleged mutation No. 2255 dated 14/11/2012 in good faith and not with ant bad intention or any other ulterior motive.

Keeping in view above explanation by accepting my this representation, it is humbly prayed that Major Penalty imposed by competent Authority may kindly be reduced to any minor penalty under Rule 4 (a) (i) or (ii) of Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011.

With regards.

Yours obediently,



(ABDUL GHAFFAR KHAN GANDAPUR)

Ex: Tehsildar Serai Naurang,
Now Naib Tehsildar in Commissioner Office,
Bannu.

17. **Departmental appeal and review.**—(1) An accused who has been awarded any penalty under these rules may, within thirty days from the date of communication of the order, prefer departmental appeal to the appellate authority:

Provided that where the order has been passed by the Chief Minister, the accused may, within the aforesaid period, submit a review petition directly to the Chief Minister.

(2) The authority empowered under sub-rule (1) shall call for the record of the case and comments on the points raised in the appeal from the concerned department or office, and on consideration of the appeal or the review petition, as the case may be, by an order in writing—

- (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.

(3) An appeal or review petition preferred under these rules shall be made in the form of a petition, in writing, and shall set forth concisely the grounds of objection in impugned order in a proper and temperate language.

18. **Appearance of counsel.**—No party to any proceedings under these rules at any stage of the proceedings, except proceedings under rule 19, shall be represented by an advocate.

19. **Appeal before Khyber Pakhtunkhwa Province Service Tribunal.**—(1) Notwithstanding anything contained in any other law or rules for the time being in force, any Government servant aggrieved by any final order passed under rule 17 may, within thirty days from the date of communication of the order, prefer an appeal to the Khyber Pakhtunkhwa Province Service Tribunal established under the Khyber Pakhtunkhwa Province Service Tribunals Act, 1974 (Khyber Pakhtunkhwa Act No. 1 of 1974).

(2) If a decision on a departmental appeal or review petition, as the case may be, filed under rule 17 is not communicated within period of sixty days of filing thereof, the affected Government servant may file an appeal in the Khyber Pakhtunkhwa Province Service Tribunal within a period of ⁴[ninety] days of the expiry of the aforesaid period, whereafter, the authority with whom the departmental appeal or review petition is pending, shall not take any further action.

20. **Exception.**—Notwithstanding anything to the contrary contained in these rules, in cases where Government servants collectively strike work, wilfully absent themselves from duty or abandon their official work, the competent authority in respect of senior most accused may serve upon them through newspapers or any other mean, such notice as may be deemed appropriate to resume duty and in the event of failure or refusal to comply with the directive contained in the notice, impose upon the defaulting Government servants any of the major penalties prescribed in these rules.

21. **Indemnity.**—No suit, prosecution or other legal proceedings shall lie against the competent authority or any other authority for anything done or intended to be done in good faith under these rules or the instructions or directions made or issued there-under.

⁵[.....]

23. **Repeal.**—(1) The Khyber Pakhtunkhwa government servants (Efficiency & Discipline) Rules, 1973 are hereby repealed.

(2) Notwithstanding the repeal of the aforesaid rules, all proceedings pending immediately before the commencement of these rules against any Government servant under repealed rules shall continue under these rules.

(3) Notwithstanding the repeal of the aforesaid rules, all proceedings pending immediately before the commencement of these rules against any employee under the said repealed rules or under the Khyber Pakhtunkhwa Civil Servants Act, 1973 and rules made thereunder, or any other law and rules shall continue under that law and rules, in the manner provided thereunder.

⁴ Subs. by Notification No. SO(REG-VI)E&AD/2-6/2010. Dated 18th July, 2012.

⁵ Deleted by Notification No. SO(REG-VI)E&AD/2-6/2010. Dated 18th July, 2012.



GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE AND ESTATE DEPARTMENT

No. Estt: I/PF/Abdul Ghaffar/ U0022-23
Peshawar dated the 20 /12/2018.

To

Mr. Kamran Khan,
Additional Deputy Commissioner
Bannu.

SUBJECT: DISCIPLINARY ACTION AGAINST MR. ABDUL GHAFFAR KHAN
TEHSILDAR SARAI NAURANG DISTRICT LAKKI MARWAT.

I am directed to refer to the captioned subject and to state that Senior Member Board of Revenue Khyber Pakhtunkhwa (appointing authority) has approved to initiate an inquiry against Mr. Abdul Ghaffar Khan Tehsildar Sarai Naurang District Lakki Marwat, under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011.

2. Consequently, the Competent Authority has further been pleased to appoint you as Inquiry Officer to investigate the charges and conduct an inquiry under the provision of the said rules against the said officer in light of attached charge sheets and statement of allegation.

3. I am further directed to request that findings / report alongwith recommendations may be submitted within a period of 30 days positively please.

Assistant Secretary (Estt.)

No and Date even.

Copy forwarded to the Deputy Commissioner Lakki Marawat. Copy of charge sheets and statement of allegation is enclosed with the request to serve the same upon Mr. Abdul Ghaffar Khan Ex: Tehsildar Sarai Naurang and his signed copy may be sent to this office as acknowledgment of its receipt and direct him to appear before the Inquiry Officer, on the date, time and venue fixed by the Inquiry Officer. A well conversant Departmental representative with the facts of the case alongwith relevant record may also be deputed to assist the Inquiry Officer during the enquiry proceedings please.

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](tel:091.9213989)

CHARGE SHEET

I, Dr. Fakhre Alam Senior Member, Board of Revenue as Competent Authority, hereby charge you Mr. Abdul Ghaffar Khan ex-Tehsildar Naurang District Lakki Marwat now Naib Tehsildar in Commissioner Office Bannu as follows:

That you while posted as Tehsildar Sarai Naurang District Lakki Marwat committed the following irregularities:-

- a. That while posting as Tehsildar Sarai Naurang, you attested a bogus mutation No. 2255 in Khata No. 264, Mouza Marmandi, Ketat No. 48 for land measuring 07 Kanals 16 Marlas in the name of Haji Latif-Ur-Rehman from Ghulam Rasool Khan son of Baitullah resident of Marmandi (Azim) without the thumb impression of the actual land owner (vendor).
- b. Your this act tantamount to misconduct and liable you to be proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011.
2. By reason of the above, you appear to be guilty of misconduct under Rules 3 of the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011 and have rendered yourself liable to all or any of the penalties specified in Rule 4 of the rules ibid.
3. You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the Inquiry Officer / Inquiry Committee, as the case may be.
4. Your written defend, 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 case ex-parte action shall be taken against you.
5. Intimate whether you desire to be heard in person.
6. A statement of allegations is enclosed.

Senior Member

DISCIPLINARY ACTION

I, Dr. Fakhre Alam, Senior Member, Board of Revenue as Competent Authority, am of the opinion that Mr. Abdul Ghaffar Khan ex-Tehsildar Naurang District Lakki Marwat now Naib Tehsildar in Commissioner Office Bannu, has rendered himself liable to be proceeded against, as he committed the following acts / omissions, within the meaning of Rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

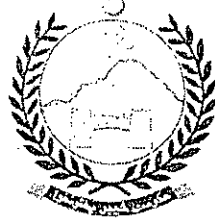
STATEMENT OF ALLEGATIONS

- a. That while posting as Tehsildar Sarai Naurang, he attested a bogus mutation No. 2255 in Khata No. 264, Mouza Marmandi, Ketat No. 48 for land measuring 07 Kanals 16 Marlas in the name of Haji Latif-Ur-Rehman from Ghulam Rasool Khan son of Baitullah resident of Marmandi (Azeem) without the thumb impression of the actual land owner (vendor).
- b. His this act tantamount to misconduct and liable him to be proceeded against under the Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011.

2. For the purpose of inquiry against the said accused with reference to the above allegations, Mr Kamran Khan ADC Bannu is appointed as Inquiry 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 findings and make, within thirty (30) 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 Lakki Marwat shall join the proceedings on the date, time and place fixed by the Inquiry Officer.



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](tel:091.9213989)

Peshawar dated the 28/06/2019.

NOTIFICATION.

No.Estt:1/PF/Abdul Ghaffar/ 22465 WHEREAS; Mr. Abdul Ghaffar the then Tehsildar Naurang Lakki Marwat was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, for the charges mentioned in the Charge Sheet & Statement of Allegations.

AND WHEREAS; Mr. Kamran Khan Additional Deputy Commissioner, Bannu was appointed as Inquiry Officer to probe into the charges leveled against the said officer and submit findings.

AND WHEREAS the Inquiry Officer after having examined the charges, evidence produced before him and statement of accused official, submitted his report whereby the charges against the accused official have partially been proved.

NOW THEREFORE, I, Dr. Fakhre Alam Senior Member Board of Revenue being Competent Authority under Rule-14 of Khyber Pakhtunkhwa, Government Servant (Efficiency & Discipline) Rules, 2011, having examined the charges, evidence produced, statement of accused official before the Inquiry Officer and after hearing the accused concurred with the findings of Inquiry Officer minor penalty of withholding of one increment for period of two years under Rule 4 (1)(a)(ii) of the rules ibid is imposed upon Mr. Abdul Ghaffar Tehsildar with immediate effect.

Sd/-
Senior Member

No.Estt:1/PF/Abdul Ghaffar/ 22466-70

Copy forwarded to the:-

1. Commissioner, Bannu Division, Bannu.
2. Deputy Commissioners, Lakki Marwat.
3. District Account Officer Lakki Marwat.
4. Officer concerned.
5. Office order file.

Assistant Secretary (Estt)



GOVERNMENT OF KHYBER PAKHTUNKHWA,

BOARD OF REVENUE,

REVENUE & ESTATE DEPARTMENT.

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

Fax No: 091.9213989

No. Estt:I/PF/Abdul Ghaffar/ 21011
Peshawar dated the 12/06/2019.

To

The Deputy Commissioner,
Lakki Marwat.

**SUBJECT: DISCIPLINARY ACTION AGAINST MR. ABDUL GHAFFAR KHAN
TEHSILDAR SARAI NAURANG DISTRICT LAKKI MARWAT.**

Dear Sir

I am directed to refer to the subject and to request you to direct Mr. Abdul Ghaffar Tehsildar Sarai Naurang to appear before the Senior Member, Board of Revenue for personal hearing on 18.06.2019 at 11:00 am alongwith his written reply if any please.


Assistant Secretary (Estt)



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

No: 1129 /ST Dated: 24/5 /2022

Ph:- 091-9212281
Fax:- 091-9213262

To

Senior Member Board of Revenue,
Khyber paktunkhwa, Peshawar

Subject: JUDGMENT IN APPEAL NO.1347 Mr. Abdul Ghaffar

I am directed to forward herewith a certified copy of judgment dated 11.05.2022 passed by this Tribunal on the above subject for compliance please.

Encl:As above


REGISTRAR

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR