

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
<p style="text-align: right;">D awin</p>	<p style="text-align: center;">09.08.2017</p>	<p style="text-align: center;"><b><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></b></p> <p style="text-align: center;"><b>Service Appeal No. 1388/2015</b></p> <p style="text-align: center;">Date of Institution ... 15.12.2015 Date of Decision ... 09.08.2017</p> <p style="text-align: center;">Muhammad Iqbal Patwari Halqa Mardan resident at village Bakhshali Tehsil &amp; District Mardan.....<b>Appellant</b></p> <p style="text-align: center;"><b>Versus</b></p> <p style="text-align: center;">1. The Commissioner Mardan. 2. The Deputy Commissioner, Mardan.....<b>Respondents</b></p> <p style="text-align: center;"><b><u>JUDGMENT</u></b></p> <p style="text-align: center;"><b><u>MUHAMMAD HAMID MUGHAL, MEMBER: - Appellant</u></b></p> <p>with counsel present. Learned Deputy District Attorney on behalf of respondents present.</p> <p>2. Muhammad Iqbal Patwari Halqa Mardan has filed the present appeal u/s 4 of Khyber Pakhtunkhwa Service Tribunal Act 1974 against the respondents where the appellant challenged the order dated 26/10/2015 of (Respondent No. 1) to the extent of not allowing emolument, including pay, for the period of break in service of the appellant.</p>

3. Brief facts of the case are that the appellant was appointed as officiating settlement Patwari purely on temporary basis vide order dated 22.01.1986 of settlement officer Mardan. Due to partial winding up of settlement operation in Mardan Division and abolition of posts from Government of Khyber Pakhtunkhwa Finance Department services of junior most settlement Patwaris were terminated from 31.12.1996 (A.N).

4. Vide order dated 27.04.2015 the appellant secured his re-employment as Patwari (BPS-09) on regular basis on initial stage of the time scale in the office of Deputy Commissioner Mardan. Appellant then submitted representation/appeal for condonation of break in service w.e.f from 01.01.1997 to 26.06.2015 with pay protection and pensionery benefits.

5. The appellate authority partially accepted the appeal of the appellant as follows.

*“The instant appeal is hereby accepted to the extent that the qualifying service already rendered by the appellant in Settlement Operation Mardan be counted for pensionery benefits, grant pay protection, to the appellant and break in service of the appellant be condoned accordingly. However, the appellant shall not be entitled for any emolument, including pay for the mentioned period condoned. No order as to costs”.*

Lawyer

20  
D  
D

6. Feeling dissatisfied with the relief granted by the appellate authority, Muhammad Iqbal instituted the present appeal.

7. Learned counsel for the appellant contended that the appellate authority should have modified the appointment order dated 27.04.2015 as reinstatement order with all back benefits. Further argued that the appellate authority has condoned the break in service resultantly the appellant shall be deemed re-instated in service with all back benefits and as such shall also be entitled for the grant of pay of the period of break in service w.e.f from 01.01.1997 to 26.04.2015.

8. Learned Deputy District Attorney while controverting the arguments of learned counsel for the appellant and opposing the present appeal contended that settlement service is basically a project service and on winding up of settlement project the department has no alternative but to relieve its employees. Further contended that the appellant was appointed as settlement Patwari on temporary basis on the condition to be terminated any time and on the completion of project he was terminated. Further argued that the appellant was then appointed afresh as Patwari on revenue side as per laid procedure because on revenue side Patwaris are appointed from Register of Inderaj-E-Nam on the basis of seniority.

9. Arguments heard. Filed perused.

10. Perusal of appointed order dated 22.01.1986 of appellant as settlement Patwari shows that he was appointed as officiating settlement patwari purely on temporary basis with the condition that

his services can be terminated at any time.

11. Similarly a look at the appointment order dated 27.04.2015 of the appellant would divulge that the appellant was appointed afresh as patwari on regular basis on initial stage of time scale with immediate effect and that there was no age limit for those candidates who rendered service in settlement operation and waiting for their appointment.

12. Case of appellant is not of such a nature that upon termination of his services on 31.12.1996, he was entitled to re-instatement with all back benefits.

13. In view of above the appellate authority while partially accepting the appeal of the appellant correctly condoned the break in service for the purpose of pensionary benefits, grant pay protection, vis a vis qualifying service already rendered by the appellant in settlement operation Mardan and rightly refused to allow any emoluments including pay for the break in service period. Consequently the present appeal being devoid of any substance is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room after its completion.

*M. Amin*

(MUHAMMAD HAMID MUGHAL)  
MEMBER

*Muhammad Amin*  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

ANNOUNCED  
09.08.2017

09.08.2017

Appellant present. Learned Deputy District Attorney for respondent present. Vide separate judgment of today of this Tribunal placed on file, the present appeal is dismissed. Parties are left to bear their own costs. Filed be consigned to the record room.

**ANNOUNCED**

09.08.2017


*Muhammad Amin*  
(Muhammad Amin Khan Kundi)  
Member

*Hamid*  
(Muhammad Hamid Mughal)  
Member

1388/2015

11.04.2017

Counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional AG for respondents also present. Learned counsel for the appellant submitted rejoinder and requested for adjournment. Adjourned. To come up for arguments on 02.08.2017 before D.B.


  
(Ahmad Hassan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

2/8/2017

Counsel for the appellant and Mr. Ali Akbar ADK alongwith Mr. Zaiullah, Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournments. To come up for argument on 9/8/2017 before DB.

  
(GUL ZEB KHAN)  
MEMBER

  
(MUHAMMAD HAMID MUGHAL)  
MEMBER

29.09.2016

Clerk to counsel for the appellant and Addl: AG for respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 30.11.2016 before S.B.

  
Chairman

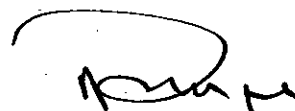
30.11.2016

Appellant with counsel and Mr. Ali Akbar, ADK alongwith Addl. AG for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 02.02.2017.

  
Member

02.02.2017

Counsel for the appellant and Addl: AG for respondents present. Counsel for the appellant requested for time to file rejoinder. To come up for rejoinder and arguments on 11.04.2017 before D.B.



(ASHFAQUE TAJ)  
MEMBER

  
(MUHAMMAD AMIR NAZIR)  
MEMBER

1388/15

28.07.2016

Counsel for the appellant present. Learned counsel for appellant argued that the appellant was appointed as Patwari in the Settlement Department, Mardan vide order dated 22.1.1986. That his services were terminated vide order dated 10.03.1997 which was impugned by the appellant and similarly placed other employees and which appeal was accepted vide judgment dated 15.10.2002 directing reinstatement of the appellant and other similarly placed employees. That despite numerous applications/representations of the appellant, judgment of this Tribunal was not implemented and vide order dated 27.04.2015 fresh appointment order of the appellant was issued where-against appellant preferred departmental appeal which was partially allowed vide order dated 26.10.2015 received by the appellant on 20.11.2015 wherein qualifying service rendered by the appellant was counted towards pensionary benefits while break in service of the appellant i.e. intervening period was condoned depriving the appellant from emoluments for no fault on his behalf and hence the instant service appeal on 15.12.2015.

That the appellant is entitled to all service benefits in accordance with mandate of judgment of this Tribunal dated 15.10.2002 passed in service appeal No. 860/2001.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 29.09.2016 before S.B.

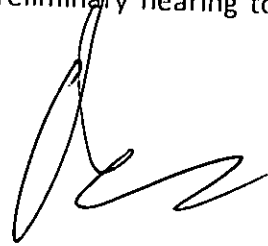
Appellant Deposited  
Security & Process Fee

  
Chairman



09.06.2016

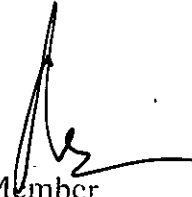
Appellant in person present. Due to strike of the Bar learned counsel for the appellant is not available today before the Court, therefore, case is adjourned for preliminary hearing to 21.06.2016 before S.B.



MEMBER

21.06.2016

Counsel for the appellant present. Requested for adjournment. Request accepted. To come up for preliminary hearing on 19.7.2016.



Member

19.07.2016

Counsel for the appellant present and requested for adjournment. Request accepted. To come up for preliminary hearing on 28.07.2016 before S.B.



MEMBER



Muhammad Iqbal 36/16


10.5.2016

Counsel for the petitioner and Addl. AG for the respondents present. Arguments on application heard and record perused.

Brief facts of the case of appellant are that the appeal was fixed for preliminary hearing on 23.12.2015 but none appeared on behalf of the appellant and the same was adjourned for preliminary hearing to 26.01.2016 on which date again none appeared on behalf of the appellant and notice to counsel for the appellant was issued for 10.02.2016 but despite notice none appeared on behalf of the appellant on the said date, and, consequently the appeal was dismissed in default.

Learned counsel for the appellant argued that he belongs to district court, Mardan and that he was not served with any notice and that the application is within time.




Since the appeal was dismissed in default at the stage of preliminary hearing as such the application for restoration of the appeal is accepted with the direction to appellant and his counsel to remain careful in future. To come up for preliminary hearing on 09.06.2016 before S.B.

  
Chairman

## FORM OF ORDER SHEET

Court of \_\_\_\_\_

Restoration Application No. 36/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	01/03/2016	<p>The application for restoration of appeal No. 1388/15 submitted by Mr. Muhammad Iqbal through Mr. Yaqub Khan Advocate, may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	3-3-2016	<p>This restoration application be put up before S. Bench at on <u>21-3-2016</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	21.03.2016	<p>None present for applicant. Notice be issued to the parties for 10.5.2016 before S.B. Record be also requisitioned.</p> <p style="text-align: right;"> Chairman</p>

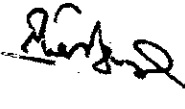
26.1.2016

None present for appellant. Notice to counsel for the appellant be issued for preliminary hearing for 10.2.2016 before S.B.

  
Chairman

10.02.2016

None present for appellant despite notice to counsel for the appellant. Dismissed for want of prosecution. File be consigned to the record room.

  
ANNOUNCED  
10.02.2016  
21-11-26

  
Chairman




10-02-16



Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 1388/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	15.12.2015	<p>The appeal of Mr. Muhammad Iqbal Patwari presented today by Mr. Yaqub Khan Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"><i>to</i>  REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>23-12-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	23.12.2015	<p>None present for the appellant. The appeal be relisted for preliminary hearing for 26.1.2016 before S.B.</p> <p style="text-align: right;"> Member</p>

Before the K.P.K service tribunal Peshawar

Service Appeal NO. 1388 /2015

Muhammad Iqbal .....appellant


VERSUS

Commissioner Mardan etc .....Respondents

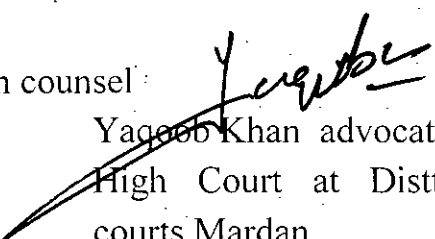
APPEAL

INDEX

S.No	Descriptions	Annex:	Pages	
			From	to
1	Grounds of appeal		1	3
2	Order of appointment	"A"	-	4
3	Copy of the relieved order	"B"	5	7
4	Copy of order/judgment	"C"	8	11
5	Copies of the applications <i>copy of appointment order dt 27/9/15</i>	"D"	12	25
6	Copy of appeal and order/ judgment	"E"	-	26
7	Wakalat Nama	"F"	27	30 31

Appellant, 

Muhammad Iqbal

Trough counsel: 

Yaqoob Khan advocate  
High Court at Distt:  
courts Mardan.

Dated 12/12/2015

Before The K.P.K Service Tribunal Peshawar

1.

1

Service Appeal No 1388 /2015

A.W.F. Province  
Service Tribunal  
Diary No. 1456  
Dated 15-12-2015

Muhammad Iqbal Patwari Halqa Mardan resident of village  
Bakhshali Tehsil & District Mardan .....(Appellant)

VERSUS

1. Commissioner Mardan
2. D.C Mardan ..... )Respondents)

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*Appeal U/S-4 of Service Tribunal Act 1974 against the order of respondent No.2 dated 27/04/2015 and order/ judgment of respondent No.1 dated 26/10/2015, whereby appeal of appellant is partially dismissed to the extent of that the appellant shall not be entitled for any emolument, including pay for the condoned period, which is illegal, against law and facts.*

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Sir,

Appellant humbly submits as under

1. That the appellant was appointed as settlement patwari on 22/01/1986 vide order dated 28/01/1986. (Copy of the appointment order is attached as Annex: "A").
2. That due to winding up settlement operation Mardan, the appellant was relieved from service on the condition that he will be adjusted/ appointed as revenue patwari in revenue side at Mardan, as and when vacancy fall vacant in revenue side Mardan vide order dated 10/03/1997. (Copy of the relieved order is hereby attached as Annex: "B").
3. That feeling aggrieved, appellant filed an appeal before the Service Tribunal Peshawar, which was accepted vide order. Judgment dated 01/01/2003 with the direction that appellant

Filed to-day

  
Registrar



be re-instated in service with all back benefit. (Copy of order/judgment is attached as Annex: "C").

4. That appellant filed various applications for re-instatement in Revenue side Mardan before the respondent No.2 but in vain. (Copies of the applications are attached as Annex: "D").
5. That finally appellant as appointed as a revenue patwari in revenue side Mardan vide order dated 27/04/2015 as a fresh appointment instead of re-instatement in service, which is illegal, against law and facts. (Copy of the order is attached as Annex: "E").
6. That feeling aggrieved from the said order of respondent No.2, appellant filed an appeal before the appellate authority ie Commissioner Mardan which is partially accepted to the extent of that break in service of appellant is condoned and granted pay protection, while partially dismissed to the extent of that the appellant shall not be entitled for any emolument including his pay for the mentioned condoned period ie w.e.f 01/01/1997 to 26/04/2015, vide order/ judgment dated 26/10/2015, which is illegal, against law and facts. (Copy of appeal and order/ judgment is Annex: "F").
7. That appellant is entitled for pay and back benefit for the period condoned on the following grounds:-


#### GROUND

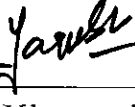
- A. That the impugned order dated 27/04/2015, needs to modify to the extent of that appellant may please be re-instated in service with all back benefits instead of fresh appointment on the basis of the judgment of this Hon'able Tribunal dated 01/01/2003.
- B. That the appellant has not been treated by the respondents in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the constitution of Pakistan 1973.
- C. That the break in service has already been condoned and previous service already counted for pensionary benefits and kept continued the service of appellant from 1<sup>st</sup> appointed till update, thus appellant is entitled for pay protection and back benefits on

the basis of previous service already rendered in settlement operation Mardan.

- D. That as per law, appellant is a regular civil servant and it was due to respondents that posts were abolished by respondents due to winding up settlement operation Mardan.
- E. That identical appeal has been accepted by respondent i.e commission Mardan.
- F. That other similarly placed patwaries were granted to the same benefits in appeal titled as "Hilal Sad versus DOR Mardan" "Imtiaz Ali versus DOR Mardan" and as per reported judgment of Apex Superior courts of Pakistan SCMR 1996 page 1185, appellant is also entitled for the same benefits/ relief.
- G. That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, humbly prayed that on acceptance of this appeal, the impugned order dated 27/04/2015 may please be modified to the extent of that appellant may please be in-instated in service with all back benefit instead of fresh appointment on the basis of the judgment of this Hon'able Tribunal dated 01/01/2003. In alternative appellant may please be granted pay for the period condoned w.e.f 01/01/1997 to 26/04/2015 with all back benefit. Any other relief deemed fit may also be graciously awarded.


Appellant,   
Muhammad Iqbal


Trough counsel   
Yaqoob Khan advocate  
High Court at Distt:  
courts Mardan.

Dated 12/12/2015

AFFIDAVITE

I, do hereby solemnly and affirm that the contents of appeal are true and correct to the best of my knowledge and nothing has been concealed from this Hon'able court.

M. AKBAR KHAN ADVOCATE  
High Court  
Oath Commissioner  
No.  Dated 12/12/15  
Distt Courts Mardan

Deponent. 

OFFICE ORDER.

Ann A

The following Patwari candidates of Mardan Tehsil are hereby appointed as officiating Settlement Patwaris in B.P.S No. 5(520-18-880) with immediate effect in the interest of Public and Govt; work subject to production of medical fitness certificate from the competent authority. (4)

Their appointment is purely on temporary basis and can be terminated at any time without assigning any reason or notice.

<u>S.No.</u>	<u>Name</u>	<u>Son of</u>	<u>Address</u>
1.	Sher Bahader	Gul Karim	Dang Dang Mardan. 12-1-88
2.	Darwesh Khan	Bahader Khan	Shero Mardan. 26-1-88
3.	Mohd Iqbal	Abdul Malik	Chargulli Mardan. 26-1-88
4.	Jamshed	Bacha Khan	Takht Bhai Mardan. 26-1-88
5.	Aftab Gul	Sheikh Ahmed	Shankar Mardan. 17-12-1985
6.	Farhad Ali	Ziarat Khan	Naseer Kali Mardan.

27-1-88

Settlement Officer,  
Mardan.

OFFICE OF THE SETTLEMENT OFFICER, MARDAN.

No. 168-73 /SOM/E-33 Dated Mardan the 22-1-86.

Copy forwarded to the :-

1. Director, Land Records, NWFP., Peshawar.
2. Extra Asstt; Settlement Officer, Mardan.
3. District Accounts Officer, Mardan.
4. Settlement Tehsildar, Mardan.
5. Settlement Tehsildar, Swabi. He is requested to put up proposal for their posting in Swabi Tehsil at an early date.
6. Settlement Bill Clerk, Mardan.

Jashan  
Settlement Officer,  
Mardan.

①-②-③-④-⑤

Attested

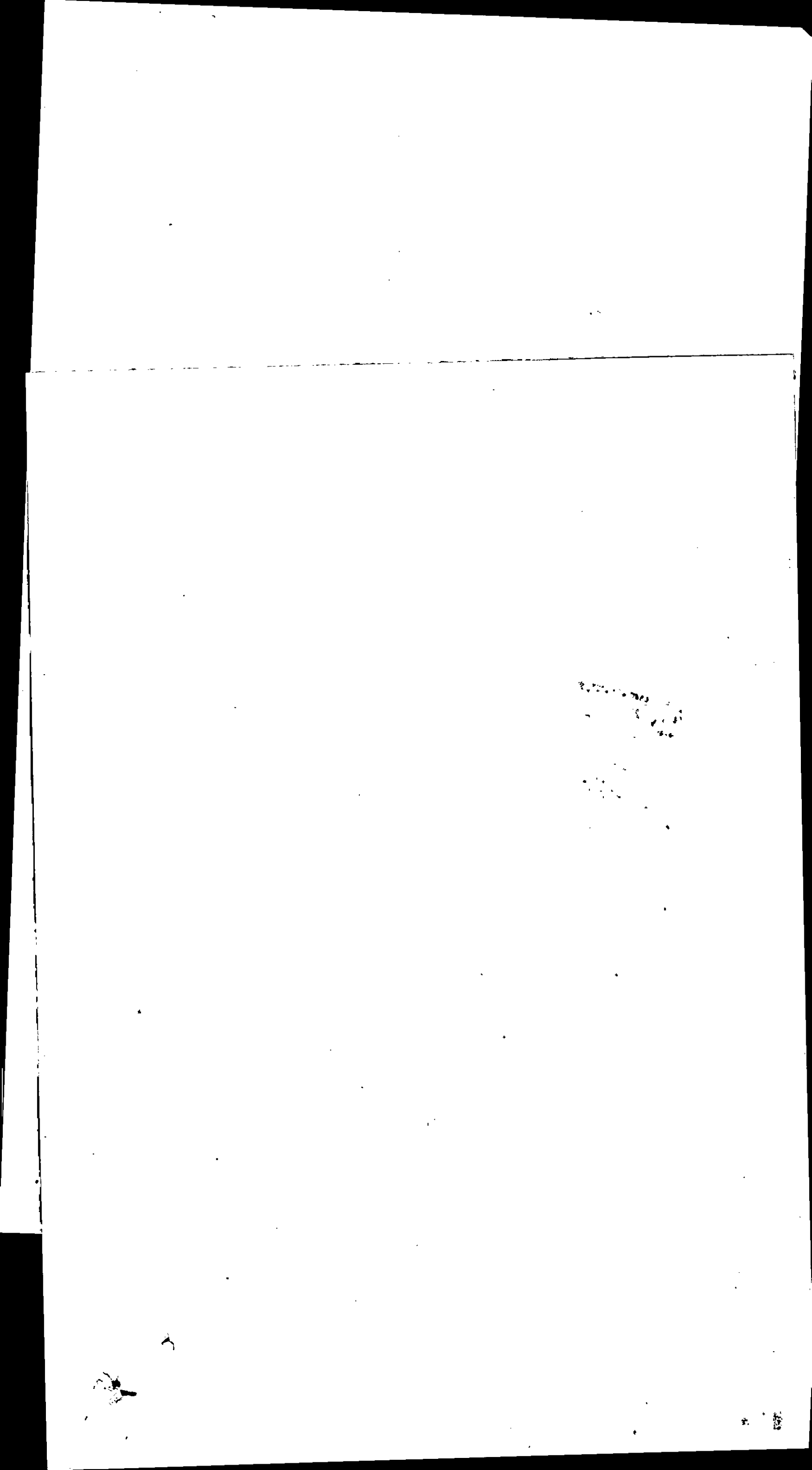
Yaqub Khan  
Advocate,  
Distt Courts Mardan

OFFICE ORDER.

Consequent upon rejection of stay application by the Service Tribunal NWFP and <sup>partially</sup> winding up Settlement Operation in Mardan Division and abolition of posts from the Govt. of NWFP, Finance Department, the services of the under mentioned Junior most Patwaris of this office are hereby terminated with effect from 31.12.1995 (AM):-

S.NO.	NAME OF CANDIDATE.	REMARKS.
1-	Amir Afzal s/o Adam Khan.	Mardan.
2-	Fazli Karim s/o Gul Rahim.	Mardan.
3-	Muhammad Zahid s/o Mohd Quresh.	Swabi.
4-	Fazal Iqbal s/o Ghulam Rehmani.	Swabi.
5-	Shaukat Axi s/o Akbar Khan.	Mardan.
6-	Jamal Shah s/o Muhammad Ishaq.	Mardan.
7-	Zulfiqar Ali s/o Shaukat Ali.	Swabi.
8-	Kifayat ullah s/o Abdul Mustavi.	Swabi.
9-	S.Aurang Zeb s/o Abdul Ghaffar.	Swabi.
10-	Sher Bahadar s/o Amir Gul.	Mardan.
11-	Inayat Ali Shah s/o Sher Mohd.	Mardan.
12-	Mehar Dil Khan s/o Khaista Khan.	Mardan.
13-	Mohd Afsar s/o Muhammad Aslam.	Swabi.
14-	Muddasir Ali s/o Umer Khitab.	Mardan.
15-	Rahamdad s/o Qasam Dad.	Swabi.
16-	Taj Ali Khan s/o Mohd Hazrat.	Mardan.
17-	Ghulam Mohd s/o Gul Muhammad.	Mardan.
18-	Jehan Zeb s/o Gul Said.	Mardan.
19-	Bashir Muhammad s/o Gul Faqir.	Mardan.
20-	Hazrat Ghulam s/o Said Ghulam.	Mardan.
21-	Shah Jehan s/o Muhammad.	Mardan.
22-	Aurang Khan s/o Munjra Khan.	Mardan.
23-	Faiz Muhammad s/o Ghani Akbar.	Swabi.
24-	Javed Ali s/o Muhibullah Khan.	Mardan.
25-	Sher Nawaz s/o Zahir Gul.	Mardan.
26-	Murtaza Khan s/o Abdullah.	Mardan.
27-	Abdul Khaliq s/o Nian Jamiluddin.	Swabi.
28-	Jehan Iqbal s/o Bwshah Gul.	Mardan.
29-	Jehan Zeb s/o Bakht Jamal.	Swabi.
30-	Ali Azam s/o Amir Ehsan.	Mardan.
31-	Muhammad Ijaz s/o Abdul Salam.	Mardan.
32-	Mushtaq Ali s/o Dilsoz.	Mardan.
33-	Mohd Riaz s/o Muhammad Umer.	Mardan.
34-	Raham Islam s/o Inzar Gul.	Swabi.
35-	Alam Zeb s/o Sardar Khan.	Mardan.
36-	Riaz Mohammad s/o Sultan Mohd.	Mardan.
37-	Qasam Ali s/o Qasi Asarul haq.	Swabi.
38-	Sar Syed s/o Awal Khan.	Swabi.
39-	Sabz Ali Khan s/o Mohd Ehsan.	Mardan.
40-	Jehan Zeb s/o Moor Alam.	Mardan.





7 (Handwritten)

(Handwritten Signature)

Settlement Officer,  
Mardan.

OFFICE OF THE SETTLEMENT OFFICER, MARDAN.

NO. 402-09 /SO-Mardan/E-

Dated Mardan the 10 /3/1997.

Copy forwarded to the:-

- 1- Commissioner, Mardan Division, Mardan,
- 2- Secretary, Board of Revenue, NWFP., Peshawar.
- 3- Deputy Commissioner, Mardan,
- 4- Deputy Commissioner, Swabi.
- 5- District Accounts Officer, Mardan.
- 6- District Accounts Officer, Swabi.
- 7- Extra Assistant Settlement Officer, Mardan.
- 8- Settlement Tehsildar, Swabi.

Settlement Officer,  
Mardan.

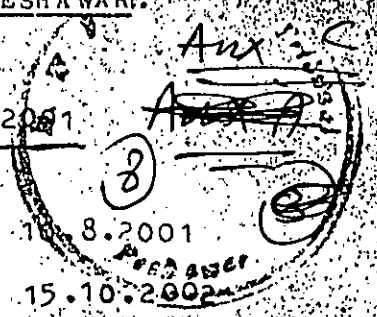
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District Accounts Officer,  
Mardan.

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SERVICE APPEAL NO. 860/2001



Date of institution ... 10.8.2001

Date of decision ... 15.10.2002

Mohammad Iqbal S/Abdul Malik,  
Ex-Settlement Patwari Mardan,  
R/O Vill: Charguli Tehsil & Distt: Mardan. ... Appellant

VERSUS

1. Commissioner Mardan.
2. Deputy Commissioner, Mardan.
3. Settlement Officer, Mardan. .. Respondents

Mr. Anjad Ali,  
Advocate. For appellant

Mr. Nubratullah Jan,  
Govt. Pleader. For respondents.

Mr. Muhammad Fareed Khan, .. Member  
Mr. Muhammad Shaukat. Member

JUDGMENT

MUHAMMAD FAREED KHAN, MEMBER

This is a service

appeal filed by Mohammad Iqbal appellant against the order of respondent No.1 dated 12.7.2001 and termination order dated 10.3.97 of respondent No.3 which was earlier set-aside by the NWFP Service Tribunal in appeal No. 1958/97 in case titled "Iftikhar Hussain-Vs-Commr.Mardan and Shamsul Arifeen-Vs-Commr.Mardan, decided on 14.9.98 and 30.8.99.

2. Brief facts of the are that the appellant was

EXAMINED  
 N.W.F.P. SERVICE TRIBUNAL  
 PESHAWAR



appointed as a Settlement Patwari in Settlement Operation Mardan on 26.1.1986. Due to partially winding up of the said Operation, the services of the appellant were terminated on 10.3.97 (Annexure-A). The appellant preferred a departmental appeal before respondent No.1 which was dismissed vide order dated 12.7.2001 (Annexures B & C). Hence this appeal.

3. The grounds of appeal mentioned <sup>therein</sup> /are that the appellant is entitled to the same relief/judgment/order as given by the Service Tribunal in case of other similarly placed civil servant/patwaris as per judgment of the supreme Court of Pakistan (Copies of judgment of Service Tribunal dated 14.6.2001 and 30.8.99 are attached as Annexure-D); that the reason given by the respondents in the impugned termination order dated 10.3.97 has been finished and new/fresh cause of action has arisen to the appellant in view of the new circumstances i.e. that the settlement work in Gadoon area and consolidated village at Swabi District has taken start and the respondent organization is in dire need of settlement patwaris, and there is no order for abolition of posts prior to July, 2001; that the impugned orders are without any cogent reasons or solid footings; that the appellant is senior most as per seniority list as well as Indiraj-e-Nam and remained jobless from 10.3.97 till today; that the appellant has served in the Settlement Operation for 11 years which has been vanished with one stroke of pen; that as per termination order the respondents promised with appellant that they will be reinstated if vacancies arise and settlement operation at Chitral/Malakand is about to be started and that the appellant is entitled to pension as he has served for more than 10 years and other clerical as well as patwaris have been given/ granted pension. The appellant's prayer is that on

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EXAMINER  
NWFP SERVICE TRIBUNAL  
Peshawar.

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acceptance of the appeal, the order of respondent No.1 dated 12.7.2001 and order of respondent No.3 dated 10.3.97 may be set aside and he may be reinstated in service with all back benefits.

4. Respondents have filed their reply and denied the claim of the appellant on the ground that being temporary employe of the Settlement Operation/Organization, the services of the appellant were terminated on winding up of the said operation and appeal against the termination order was rejected being badly time barred by the appellate authority. He is also junior most. As such his appeal being badly timebarred may be dismissed. In rebuttal, the appellant has also submitted his replication.

5. Arguments heard and record perused.

6. The perusal of record would show that the appellant belonged to District Mardan. His appointment was made as Patwari in the Settlement Operation Mardan on 26.1.1986. He continued to serve as Settlement Patwari in the settlement Operation Mardan till 31.12.1996. Consequent upon the winding up of Settlement Operation in some parts of the Mardan Division, the services of Eighty eight Patwaries including appellant were terminated vide settlement Officer Mardan order dated 10.3.1997. Later-on the settlement work in some area of the Mardan Division was re-started therefore, a number of Patwaries whose services were earlier terminated were re-employed/reinstated. On this the appellant also requested through departmental appeal for his re-employment/reinstatement which was rejected by the Settlement Officer and Commissioner Mardan vide orders dated 10.3.2001 and 12.7.2001 respectively on the plea that the appellant has made appeal against his termination

ATTESTED  
EXAMINER  
NWFP Service Tribunal  
Peshawar.

(11) (11)

order dated 10.3.1997 after a period of more than 4 years and the appeal is time barred, hence this appeal before Service Tribunal.

7. The Tribunal observes that the appointment of the appellant was made by the Govt. Department for the Govt. work in public interest and he was paid by the Government. The appellant served the Government for more than 10 years and when the settlement work was partially wound up in Mardan Division and services of 88 Patwaries were no longer required, the services of 88 junior most Patwaries including appellant were terminate by the department in accordance with the rules. However, when the settlement work was re-started/extended in Mardan Division after the termination of the services of 88 Patwaries and the services of a Patwari/Patwaries were required it was incumbent upon the respondent department to re-employee/make appointment against the post of Patwaries from the 88 Patwaries whose services were terminated on 10.3.1997 and of those who were senior most amongst them. The appointment of a Patwari other than 88 Patwaries or the re-employments of a junior Patwari ignoring the senior patwari from the list of 88 Patwaries for the settlement work restarted or extended in Mardan Div. after 10.3.1997 would be against the law and rules.

8. In view of the above reasons appeal of the appellant is accepted and the respondent department is directed to reinstate/adjust the appellant against the post of Patwari in the Settlement work in Mardan from the due date.

This order will also dispose of the other connected appeal Nos. 852/2001, Shafiqur Rehman, 861/2001, Gohar Ali, 862/2001, Nushtaq Ali and 863/2001, Sher Mohammad in the same manner because in all these appeals the common questions of law and facts are involved. No order as to costs. File be consigned to the record.

ANNOUNCED.  
1.1.2003.

*(Signature)*  
(MOHAMMAD PAREED KHAN)  
MEMBER

*(Signature)*  
(MOHAMMAD SHAUKAT)  
MEMBER

*(Signature)*  
Advocate,  
Distt. Courts Mardan

APPEAL NO. 852/2001  
PATWARIE  
11/1/03

11/1/03  
S. W. Ahmad  
15.1.2003

(12) نئی قضاوت ڈسٹرکٹ انجینئر (ادارہ نئی دہلی) ضلع سرحد

درج ذیل عہدہ تفصیلات پیواری پوسٹ

ضلع سرحد " ندرائش کی حالت سے کہ عدوی نے سال 1985ء میں پیواری پوسٹ

پاس کیا ہے اور عہدہ 26/01/1986 سے سیکرٹری عہدہ 10/03/1997

" پیواری پوسٹ اور سرحدی پوسٹ میں کثرت پیواری

ڈیوٹی سرانجام دی ہے عدولت قلم پوسٹ پر عدوی کو خارج کر کے

ڈسٹرکٹ پوسٹ پرنسپل کے اندر درج نام کی نوٹو کالی بفر ہے اور سرحدی

ڈسٹرکٹ پوسٹ کے حوالے سے عہدہ 01/01/2003 کو عہدہ دیا ہے لیکن عہدہ عہدہ

کو نہ لکھتے ہیں عدوی کو کثرت پیواری تفصیلات فرما کر

دعاویہ  
عین ڈسٹرکٹ پوسٹ

تقریب  
04/02/2003

(نوٹو عہدہ کو کثرت پیواری تفصیلات فرما کر)

محمد رفیق صاحب ولد عبدالرحمن صاحب (نئی دہلی) ضلع سرحد

Attested  
Shahid Ali  
Advocate,  
Old Courts Market

State Council  
Adm. No. 100  
Shang Hai

28/6  
[Signature]

Shanghai

28/05  
2003

Shanghai

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کفر، ضابط (ڈی. او. او) صہد قہد سردان

دہرورہ (ڈی. او. او)

— " —

ضابط

ندروہ کفر اور ایج کہ قہوی نے قہو 26/01

1986

یہ قہو 10/03/87 کد بہرہ سال کجستہ کڈاوی نہرولیت صری

1987

کڈوئی رجا کڈو سے نہرولیت قہم کڈوئے (قہوی و قہو) (ک و کڈو)

کڈوئے رجا کڈو اور قہوی کڈوئے کڈوئے کڈوئے کڈوئے (Re-entrant)

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عہد کڈوئے کڈوئے

21/01/2004 (مقہو)

عہد

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Yusuf  
Ghous Khan  
Advocate,  
Dhaka Court, Madan

مختصہ دستخط آفیسر ایجوکیشن ضلع مردان

درخواست تفریق پبلیک سیکولر اسکول

ضلع مردان تفریق پبلیک سیکولر اسکول

مردان ایجوکیشن میں حوزہ 26/10 سے 10/03 1967 نمبر 103 میں

ڈیوٹی سربراہی کے لیے پبلک سیکولر اسکول تفریق پبلیک سیکولر اسکول

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15/12/2004

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محمد اقبال پبلیک سیکولر اسکول تفریق پبلیک سیکولر اسکول

12/12

Attested  
Jaquar Khan  
Advocate,  
Distt. Courts Mardan

مختور صاحب ڈی۔ آر۔ او کے لئے صحت معرودہ

ڈی۔ آر۔ او کے لئے صحت معرودہ

صحت معرودہ

مختور صاحب نے 1986ء سے 1997ء تک  
11 برسوں کے لئے مختور صاحب کے لئے صحت معرودہ  
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1986ء سے 1997ء تک مختور صاحب کے لئے صحت معرودہ  
11 برسوں کے لئے مختور صاحب کے لئے صحت معرودہ

23/05/05

مختور صاحب کے لئے صحت معرودہ

Attested  
Yaqub Khan  
Advocate  
@ Abu Courts Mardan



DR. C. S. RAO  
Advocate,  
Madurai

Attended

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Mumbai  
S. B. Kulkarni  
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Special Agent

Attested

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ADVOCATE

AGENT: *[Signature]*

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SHAH MOHAMMAD  
ATTORNEY AT LAW  
SUITE 1000  
1000 P STREET NW  
WASHINGTON, DC 20004

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Attested

16/4

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Office of the  
Admiral  
United States Navy

Attested

Mr.

Mr.

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Muzil Khan

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# بجٹ بجٹ ڈپٹی کمشنر صاحب صلح صدر

درخواست برائے تفصیلی پتوں کی کاپی

صبر علی صاحب

یہ کہندوں نے پتوں کی کاپی 1985ء میں پاس کی ہے

یہ کہندوں نے 1986ء سے 1997ء تک مختلف پتوں کی کاپی دے دی ہے

دیوٹی سربراہ دے چکے ہیں اور پتوں کی کاپی دے دی ہے

یہ کہندوں نے پاس کروا کر پتوں کی کاپی دے دی ہے

یہ کہندوں نے پتوں کی کاپی دے دی ہے

یہ کہندوں نے پتوں کی کاپی دے دی ہے

عین توثیق ہوئی

18/03/2015

صبر علی صاحب

03469321607

Attested  
General Advocate  
Distt. Courts Mardan

OFFICE OF THE DEPUTY COMMISSIONER, MARDAN

OFFICE ORDER

On the recommendation of departmental selection Committee, dated 17.04.2015, Mr. Muhammad Iqbal s/o Abdul Malik r/o Charguli Sub Tehsil Rustam District Mardan is hereby appointed as Patwari (BPS-9) plus usual allowances on regular basis on initial stage of the time scale in the office of the Deputy Commissioner, Mardan with immediate effect subject to the following terms and conditions:-

1. He shall be for all intents and purposes be civil servant.
2. He shall be governed by the Khyber Pakhtunkhwa civil servant Act 1973, all the laws applicable to the civil servants and Rules made there under.
3. He shall be on probation for a period of one year which may be extended.
4. His services will be liable to termination at any time without assigning any reason before the expiry of the period of his probation/extended period of probation. In case he wishes to resign at any time a month's notice shall be necessary or in lieu thereof a month's pay shall be forfeited.
5. He shall produce Medical fitness certificate from the medical Board to be constituted for the purpose.
6. The concerned Universities / Board etc will verify his academic degree/certificate, which, if found fake/ bogus may render his service terminated.
7. He shall produce the old service book if service rendered in Settlement operation as per judgment of Peshawar High court as there is no age limit for those candidates who rendered service in settlement operation and waiting for their appointment.
8. If the above terms and conditions of appointment are acceptable to him, he shall report his arrival to this office within fifteen days after issuance of this office order i.e. on or before 12<sup>th</sup> May 2015, failing which his appointment shall be deemed cancelled.

Deputy Commissioner,  
Mardan

No.224-27/DK/HVC

Dated Mardan the 27/04/2015

Copy forwarded for information and necessary action to the:

1. The Secretary-I, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
2. District Comptroller of Accounts, Mardan.
3. Medical Superintendent, D.H.Q, Hospital, Mardan. He is requested to make necessary arrangements for Medical Board in order to medically examine the above named official and intimate the date fixed for the purpose.
4. Mr. Muhammad Iqbal s/o Abdul Malik r/o Charguli Sub Tehsil Rustam District Mardan

Attested  
Advocate,  
Distt. Courts Mardan

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26 <sup>10</sup>/<sub>015</sub>

15 <sup>06</sup>/<sub>015</sub>



*Aux E*

27

**IN THE COURT OF COMMISSIONER MARDAN DIVISION, MARDAN.**

Muhammad iqbal Patwari

Appellant

Versus

Deputy Commissioner/District Collector Mardan

Respondent

Case No.....  
Dated of institution: 15/06/2015  
Dated of Decision: 26/10/2015

**APPEAL/REPRESENTATION FOR CONDONATION OF BREAK IN SERVICE W.E.F 01/01/1997 TO 26/06/2015 WITH PAY PROTECTION AND PENSIONARY BENEFITS.**

**ORDER:-**

Through this petition the appellant has prayed for condonation of break in service w.e.f 01/01/1997 to 26/06/2015 with pay protection and pensionary benefits.

Brief facts of the case are that the appellant was appointed as Settlement Patwari. Due to winding up of Settlement Operation Mardan, the appellant was relieved from service. On 27/04/2015, the appellant was appointed/adjusted as patwari halqa in revenue side Mardan on regular basis. Now the present appellant filed an appeal/representation before this court for condonation of break in service w.e.f. 01/01/1997 to 26/06/2015 and counting his previous service rendered in Settlement Operation Mardan towards pension benefits/pay protection.

Appellant alongwith his counsel present. Representative of Deputy Commissioner/District Collector Mardan also present and submitted parawise comments. Placed on file. Arguments of the learned counsel for the appellant heard and case file as well as parawise comments of the Deputy Commissioner /District Collector, Mardan thoroughly perused.

During the course of arguments, the learned counsel for the appellant argued that this Hon'ble court has accepted similar nature appeals. He further stated that as per judgment of service Tribunal Khyber Pakhtunkhwa Peshawar dated 30/08/2007 in the case title Abid Khan Vs Commissioner Mardan Division Mardan etc, service of the appellant had been ordered to be counted for pension and pay protection. Further contended that the Hon'ble Service Tribunal Khyber Pakhtunkhwa has accepted appeal in

Contd....P/2

*See Page No*

*Attested*

*Yousaf Khan  
Advocate,  
Old Court Mardan*

*32*

*20/11/015*

28

Case

titled Moman Khan vs Chief Secretary Khyber Pakhtunkhwa etc whereby it was directed that the appellants are entitled for protection of pay and pensionary benefits for the services already rendered in other departments. He added that another same nature order dated 28/02/2013 passed by the Worthy S.M.B.R, KPK, Peshawar in case titled Farman Ali Naib Tehsildar Versus Board of Revenue KPK, Peshawar has been implemented vide letter dated 06/07/2013 by the respondent therein as well as by the pay fixation party.

In view of the above, the instant appeal is hereby accepted to the extent that the qualifying service already rendered by the appellant in Settlement Operation Mardan be counted for pensionary benefits, grant pay protection, to the appellant and break in service of the appellant be condoned accordingly. However, the appellant shall not be entitled for any emolument, including pay for the mentioned period condoned. No order as to costs.

File be consigned to record room after necessary completion.

Announced.  
26/10/2015

*[Signature]*  
Commissioner  
Mardan Division, Mardan  


No. 660  
Date of Application 06/11/2015  
Name of Applicant Moman Khan  
Wards 800 Fee 80  
Urgent Fee  
Sign of Copyist *[Signature]*  
Date of Preparation 20/11/2015

ATTESTED  
*[Signature]*  
20/11/2015  
Examiner/Reader to  
Commissioner Court  
Mardan Division Mardan

Attested  
*[Signature]*  
Yaqub Khan  
Advocate,  
Distt. Courts Mardan

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26 <sup>10</sup>/<sub>015</sub>

15 <sup>06</sup>/<sub>015</sub>



29

**Before The Commissioner Mardan Division Mardan**

Muhamamd Iqbal Patwari Halqa, Mardan

.....petitioner/Applicant

VERSUS

D.C Mardan..... Respondent

**Appeal/ Representation for condonation of break in service of appellant with effect from 1/1/97 to 26/4/2015 and previous service of appellant already rendered in settlement operation Mardan with effect from 26/1/86 to 31/12/96 be counted for pay protection and pensionery benefits.**

Respectfully sheweth;

1. That appellant was appointed as settlement patwari on 22/1/86 vide order dated 22/1/86 (Copy attached).

*(copy of appointment order is attached as Annex A)*

2. That due to winding up settlement operation Mardan, the appellant was relieved from service on the condition that he will be will be adjusted /appointed as revenue patwari in revenue side at Mardan, as and when vacancy fall vacant in revenue side mardan vide order dated 10/03/1997. (Copy of the relieved order is hereby attached) *(as Annex B)*

3. That appellant was appointed/adjusted as patwari Halqa in revenue side Mardan on regular basis vide order dated 27/4/2015 (Copy of the order is attached).

*See Page No 22 (as Annex C)*

*20/11/015*

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- That as per judgment of Apex Supreme court of Pakistan, if an official is resigned the Government service and appointed in other departments, he is entitled for pay protection and pensionary benefits for the service already rendered in other department.
- That other similarly placed officials were granted the same benefits in appeal titled as " Arshad Versus D.L.R" , Sadiq ur rehman and Muhamamd Riaz Versus Board of Revenue Peshawar and as per reported judgments of Apex Supreme Court of Pakistan, SCMR 1996 page 1185 and 2003SCMR page 1074, appellant is also entitled for the same benefits/relief too.

It is, therefore, humbly prayed that on acceptance of the instant appeal, the break in service of appellant with effect from 1/1/97 to 26/4/2015 may please be condoned and service of the appellant already rendered in settlement operation, Mardan may please be counted for pay protection and pensionary benefits. Any other relief deemed fit may also be graciously awarded to the appellant.

Dated 8/6/2015

Petitioner J. W. 153


Through

Yaqub Khan  
 Yaqub Khan advocate  
 High Court at Distt:  
 Courts Mardan.

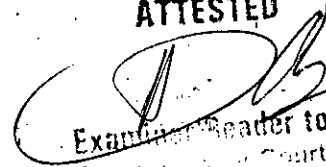
**AFFIDAVIT**

That the contents of the application are true and correct to the best of my knowledge and belief.

Deponent J. W. 153

Attested  


No. 660  
 Date of Application 06/11/015  
 Name of Applicant 1122/015  
 Wards 800 Fee 80  
 Urgent Fee \_\_\_\_\_  
 Sign of Applicant [Signature]  
 Date of Preparation 20/11/015

ATTESTED  
  
 Examiner Reader to 20/11/015  
 Court  
 Mardan Division Mardan  
 Attested  
Yaqub Khan  
 Yaqub Khan  
 Advocate,  
 Distt. Courts Mardan

# بعد الت سپروکٹر ٹرسٹولین

کورٹ فیس

مورخہ: 14/12/20

20ء منجانب

اللہ

مقدمہ: محمد اقبال سواری بنام: ~~محمد اقبال سواری~~  
کشنز مردن

دعویٰ: راجل

جرم:

## باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام (نہ) کے لئے لغویاً راجل کے مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرانے اجراء اور وصولی چیک روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زراس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمد ہوگی اور منسوخی دائر کرنے کی اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مذکور کے عمل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برداختہ منظور و قبول ہوگا اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا تاکہ سدر ہے۔

المرقوم 14 ماہ دسمبر 20ء

الع بد گواہ شد

ور کے لئے منظور ہے۔

بمقام:

Attested & Accepted

Yaqub