

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT D.I.KHAN.

Appeal No. 360/2016

Date of Institution ... 04.04.2016

Date of Decision ... 24.10.2017

Qudratullah S/O Ghulam Rasool, Basti Kanjhkanwali, D.I.Khan City.
... (Appellant)

VERSUS

1. The Govt: of Khyber Pakhtunkhwa through Chief Secretary, Civil
Secretariat, Peshawar and 4 others. ... (Respondents)

MR. MUHAMMAD ASGHAR KHAN KUNDI,
Advocate

MR. MUHAMMAD ISMAIL ALIZAI,
Advocate

--- For appellant.

MR. FARHAJ SIKANDAR,
District Attorney

... For respondents

MR. AHMAD HASSAN,

MR. MUHAMMAD HAMID MUGHAL

...

...

MEMBER(Executive)

MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER.-

This judgment shall dispose of the instant service appeal as well as connected service appeals no. 393/2016 titled Abdul Jalil and no. 361/2016 titled Sher Jan as similar question of law and facts are involved therein.

2. Arguments of the learned counsel for the parties heard and record perused.

FACTS

3. The brief facts are that the appellant on the allegations of not pursuing Civil Suit against the government was subjected to inquiry and vide impugned order dated 23.12.2015 major penalty of dismissal from service was imposed on him against

which he preferred departmental appeal on 19.01.2016 but was rejected on 14.03.2016, hence, the instant service appeal.

ARGUMENTS

4. Learned counsel for the appellant argued that a civil suit was instituted in the court of Civil Judge D.I.Khan in 2007 regarding declaration of title of 16 Kanal of government land situated in Mauza Shorkot, Tehsil and District D.I.Khan. Respondent no.5 gave an authority letter dated 25.05.2007 to the appellant by authorizing him to represent the Provincial Government in the above court on 02.06.2007 and on subsequent dates. He further contended that the appellant attended the court on 02.06.2007 and there-after authority letter was given to DRA Ghulam Qasim on 20.06.2007, while next date of hearing i.e 21.06.2007 was also attended by him. However, he did not attend the court on 04.07.2007 and defendants were accordingly placed ex-parte. Afterwards the appellant was posted as Naib Tehsildar Nala Gomal and was required to look-after duties of flood control. He submitted an application on 15.06.2007 to the respondent no.5 to relieve him of attending the court in the said case. Finally vide judgment dated 05.01.2008 ex-parte decree was passed in favour of the plaintiff with the directions to allot the said land to the plaintiff. The respondents did not challenge the said order in appellate court. However, they preferred an application under Section 12(2) of CPC before Civil Judge D.I.Khan on 09.07.2013. Mr. Kiramatullah Khan, Tehsildar D.I.Khan was deputed to attend the court in this case. The above application was rejected on 10.11.2014. Similarly Addl: District & Session Judge D.I. Khan vide judgment dated 16.04.2015 dismissed the revision petition of the respondents against order dated 10.11.2014. The respondents have now filed Writ Petition no. 857-d/2015 before Peshawar High Court D.I.Khan Bench and the same is still subjudice. As such Mr. Abdul Jalil appellant in Service appeal no. 393/2016 was never directed/authorize to pursue/attend the court regarding application under 12(2)CPC and as such could not be held responsible for dismissal of application on 10.11.2014. The enquiry officer did not dilate upon this important aspect of the case. DRA Ghulam Qasim was exonerated by the enquiry officer on the sole ground of not receiving the authority letter

and his request to the District Officer Revenue D.I.Khan to attend the court proceedings. However, the record before the enquiry officer belies the above assertion. Authority letter dated 20.06.2007 issued in favour of DRA, Ghulam Qasim bears countersignatures of the presiding officer alongwith office stamp of the court and order issued dated 21.06.2007 refers to its presentation and attendance of court. Letter regarding exemption from attending court dated 05.02.2006 presented by Mr. Ghulam Qasim before the enquiry officer was much before the subject case instituted on 12.05.2007 and authority letter was issued on 20.06.2007. The enquiry officer was required to take into account these facts. Punishment awarded is very harsh. Casual, unprofessional and lethargic attitude of Government Pleader has not been highlighted by respondent no. 3 nor recommended action against him to the law department. The accused officials were never summoned in person for recording their statements as required under E&D Rules-2011. Opportunity of personal hearing was not afforded to the accused officials. No departmental representative was deputed by the respondents to assist the enquiry officer and present relevant record. Though final show cause notice was served on the appellant, but copy of inquiry report being a mandatory was not annexed with it and it tantamount to illegality and departure from rules. The enquiry officer failed to record statement of witnesses and opportunity of cross examination of witnesses was also not provided to the appellant. Speaking order was not passed on the departmental appeal submitted, hence, Section-24 (A) of General Clauses Act 1897 was violated. Reliance was placed on case as report in 2008 SCMR 1369. 2013 SCMR 817 and SCMR 1743.

5. On the other hand learned District Attorney argued that the appellant was authorized by the then Tehsildar D.I. Khan to attend/pursue the subject case in the court of the above mentioned Civil Judge D.I.Khan. Initially he attended the court once but did not appear later on and ex-parte decree was issued against the Provincial government due to negligence of the appellant. The provincial government was deprived of 16 Kanal of land because of dereliction showed by appellant toward official duty. All codal formalities were completed before imposition major penalty of dismissal on the appellant and others.

CONCLUSION.

6. Careful perusal of record would reveal that glaring discrepancies were noticed in the enquiry proceedings. The accused officials were never summoned in person for recording their statements. No departmental representative was deputed by the respondents to assist the enquiry officer and present relevant record. Though final show cause notice was served on the appellant, but copy of inquiry report being a mandatory requirement was not annexed with it and it tantamount to illegality and departure from rules. The enquiry officer failed to record statement of witnesses and opportunity to cross examine the witnesses to the appellant was also not provided to the appellant. Another lacuna noticed in the enquiry report is that unprofessional and lethargic attitude of Government Pleader has not been highlighted/ discussed nor any action was recommended against him to the law department. Normally it is the responsibility of the Government Pleader to represent/defend the case in the court of Civil Judge on behalf of the provincial government. Speaking order was not passed on his departmental appeal, hence, Section-24 (A) of General Clauses Act 1897 was violated.

7. Respondent no.5 gave an authority letter dated 25.05.2007 to the appellant by authorizing him to represent the Provincial Government in the above court on 02.06.2007 and on subsequent dates. He further contended that the appellant attended the court on 02.06.2007 and there-after authority letter was given to DRA Ghulam Qasim on 20.06.2007, while next date of hearing i.e 21.06.2007 was also attended by him. However, he did not attend the court on 04.07.2007 and defendants were accordingly placed ex-parte. Afterwards the appellant was posted as Naib Tehsildar Nala Gomal and was required to look-after duties of flood control. That no documentary evidence is available to substantiate that the appellant was deputed as departmental representative to pursue/attend the court of Civil Judge VII D.I.Khan. Learned District Attorney produced an office order of Tehsildar D.I.Khan whereby the appellant was deputed to attend the court of the above judge on behalf of Tehsildar D.I.Khan. However, when confronted on the point whether Tehsildar was competent to pass such order he stated that it was beyond the jurisdiction of Tehsildar to pass such orders. As such orders passed by the Tehsildar D.I.Khan were beyond his

competence, hence, illegal. Moreover, the appellant attended the court on 02.06.2007 and 21.06.2007 but could not attend the court on the next date of hearing and was later on transferred /posted out.

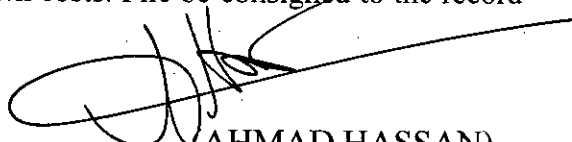
8. We have no hesitation in saying that without active connivance of the then District Collector Mr. Khan Bakhsh and others this should not have happened. In order to save the senior officers appellant and others were made scapegoat. The respondents owe an explanation for their meaningful silence on the dirty role of senior officers, especially the District Collector. It is not the only case decided against the government rather, D.I.Khan is a happy hunting ground for such dramas but were hushed up for one reason or the other. The appellant has also quoted a case of similar nature in his reply departmental appeal. The role of Civil Judge in the instant case has given rise to many questions and further credence to our observation is given by referring to the order passed by the Peshawar High Court dated 20.01.2016, which is reproduced below:-

"The learned AAG contends that decree has been obtained by the respondents by deploying fraudulent means and fraud has been committed on the Court as the suit land was never resumed for land reforms; moreso, in such like controversy, jurisdiction of Civil Court was barred under Section 26 of the land Reforms Regulation, 1972, but the Courts below had not adverted to this vital aspect of the case, therefore, judgment of both the courts below are not sustainable in the eye of law. Points raised, need consideration. Admit. Notice and record."

9. As a nutshell to the above discussion, the appeal is accepted. Impugned order dated 23.12.2015 is set aside and the appellant is reinstated into service with the direction to the respondents to conduct *de-novo* enquiry within a period of three months from the date of receipt of this Judgment. The issue of back benefits shall be subject to the final outcome of the *de-novo* inquiry. Parties are left to bear their own costs. File be consigned to the record room.



(MUHAMMAD HAMID MUGHAL)
MEMBER



(AHMAD HASSAN)
MEMBER
CAMP COURT D.I.KHAN

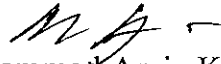
ANNOUNCED
24.10.2017

Service Appeal No. 360/2016

22.08.2017

Appellant in person present. Mr. Mukhtiar Ali, Assistant Secretary alongwith Mr. Farhaj Sikandar, District Attorney for the respondents present. Appellant requested for adjournment as his counsel is not available today. Adjourned. To come up for arguments on 24.10.2017 before D.B at Camp Court D.I.Khan.


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan


Order

24.10.2017

Counsel for the appellant and Mr. Farhaj Sikandar, District Attorney alongwith Mr. Mukhtiar Ali, Assistant Secretary for respondents present. Arguments heard and record perused..

Vide detailed judgment of today of this Tribunal placed on file, the appeal is accepted. Impugned order dated 23.12.2015 is set aside and the appellant is reinstated into service with the direction to the respondents to conduct *de-novo* enquiry within a period of three months from the date of receipt of this Judgment. The issue of back benefits shall be subject to the final outcome of the *de-novo* inquiry. Parties are left to bear their own costs. File be consigned to the record room.

Announced:
24.10.2017


(Ahmad Hassan)
Member
Camp Court D.I.Khan


(Muhammad Hamid Mughal)
Member

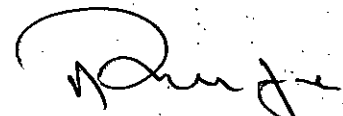
23.01.2017

Appellant in person and Mr. Muhammad Shafqat, Superintendent alongwith Mr. Farhaj Sikandar, Government Pleader for respondents present. Due to non-availability of D.B the appeal is adjourned to 21.02.2017 for same as before.


Reader

21.02.2017

Counsel for appellant and Mr. Muhammad Shafqat, Superintendent alongwith Mr. Farhaj Sikandar, Government Pleader for respondents present. Due to non-availability of D.B arguments could not be heard. To come up for arguments on 28.03.2017 before D.B at Camp Court D.I.Khan.


(ASHFAQUE TAJ)
MEMBER
Camp Court D.I.Khan

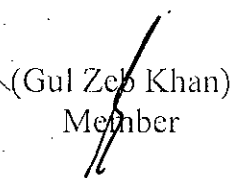
28.03.2017


Since tour is hereby cancelled, therefore, the case is adjourned for the same on 24.07.2017.

Reader

24.07.2017

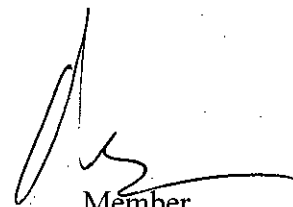
Counsel for the appellant Mr. Muhammad Ismail Alizai, Advocate present and submitted Wakalatnama on behalf of the appellant. The same is placed on record. Mr. Mukhtiar Ali, Assistant Secretary alongwith Mr. Farhaj Sikandar, District Attorney for the respondents also present. Learned counsel for the appellant requested for adjournment Adjourned. To come up arguments on 22.08.2017 before D.B at Camp Court D.I.Khan.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

30.08.2016

Appellant in person, M/S Mukhtiar Ali, Supdt and Muhammad Shafqat, Supdt alongwith Mr. Farhaj Sikandar, GP for respondents present. Written reply/comments submitted, copy of which is placed on file. Rejoinder in the mean time if any. To come up for arguments on 26.09.2016 before D.B at camp court D.I Khan.



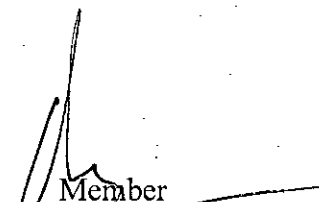
Member
Camp court D.I. Khan

26.09.2016

Counsel for the appellant and Mr. Mukhtiar Ali, Superintendent alongwith Mr. Farhaj Sikander, Government Pleader for the respondents present. Today case was fixed for arguments but learned Government Pleader requested for adjournment due to non-availability of further record. Request accepted. To come up for arguments on 24.10.2016 before D.B at Camp Court D.I.Khan.



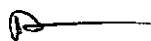
Member



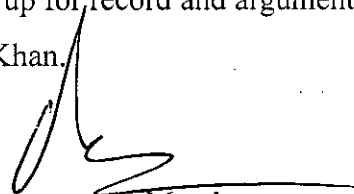
Member
Camp Court D.I.Khan

24.10.2016

Counsel for the appellant and Mr. Mukhtiar Ali, Superintendent alongwith Mr. Farhaj Sikandar, Government Pleader for the respondents present. Representative of the respondent-department produce incomplete record. He is directed to produce the complete record alongwith all annexure positively on the next date. To come up for record and arguments on 23.01.2017 before D.B at Camp Court D.I.Khan.



Member



Member
Camp Court D.I.Khan

14.4.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Naib Tehsildar when subjected to enquiry on the allegations of not perusing Civil Suit against the government in the Civil Court and dismissed from service vide impugned order dated 23.12.2015 where-against he preferred departmental appeal on 19.1.2016 which was rejected on 14.3.2016 and hence the instant service appeal on 04.04.2016.

That the impugned order is against facts and law and one Ghulam Qasam another Naib Tehsildar was deputed by the Collector for perusing the said Civil Suit and appellant was absolved from the said duty.

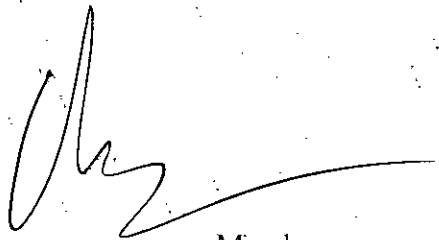
Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 24.05.2016 before S.B. at camp court, D.I.Khan.

Appellant Deposited
Security & Process Fee


Chairman

24.05.2016

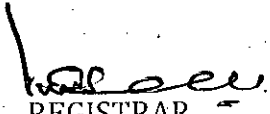

Appellant in person and Mr. Farkhaj Sikandar, GP for respondents present. Representative of the respondent are not present. Notices be issued to the respondents for submission of written reply. To come up for written reply on 30.08.2016 at camp court D.I. Khan.


Member
Camp Court D.I.Khan

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 360/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	04.04.2016	<p>The appeal of Mr. Qudratullah presented today by Mr. Muhammad Asghar Khan Kundi Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>14.4.16</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2	11-04-2016	

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

In re:
Service Appeal No. 360 /2016

QudratUllahAppellant

Versus

Govt. of Khyber Pakhtunkhwa
Through Chief Secretary & others.....Respondents

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6.	Copy of the Application dated <u> / / </u>	C	17
7.	Copy of Authority Letter dated 20.06.2007	D	18
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Through Appellant


Muhammad Asghar Khan Kundi
Advocate, Peshawar
Cell No.0333-9127288

Dated 26.03.2016

1

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

In re:
Service Appeal No. 360 /2016

E.W.F. Province
Service Tribunal
Diary No. 324
Dated 04-04-2016

QuadratUllah
S/o Ghulam Rasool
Basti Kanjhkanwali
D.I.Khan City.....**Appellant**

Versus

1. Govt. of Khyber Pakhtunkhwa
Through Chief Secretary,
Civil Secretariat, Peshawar
2. Board of Revenue,
Govt. of KPK, Peshawar
Through its Secretary
3. Senior Member Board of Revenue,
Civil Secretariat, Peshawar
4. Secretary Establishment
Govt. of KPK, Peshawar
Civil Secretariat, Peshawar
5. Deputy Commissioner/Collector
Dera Ismail Khan.....**Respondents**

**APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT
AGAINST THE ORDER DATED 23.12.2015
OF THE RESPONDENT NO.3 WHEREBY THE
APPELLANT HAS BEEN AWARDED MAJOR
PENALTY OF DISMISSAL FROM SERVICE**

Handwritten notes:
414/16

Respectfully Sheweth:-

1. That the appellant joined the Government Service as Patwari in 1978. On 19.03.2015, the appellant was promoted as Tehsildar. During the entire service period, spreading over 38 years, the appellant performed his duties to the best of his abilities and the superior officers have always appreciated the appellant's good performance.
2. That a Civil suit titled Nizam-ud-Din versus Provincial Government KPK was instituted in the Court of Civil Judge D.I. Khan in 2007. The prayer in the suit pertained to the declaration of title in respect of 16 Kanals Govt. land situated in Mouza Shorkot, Tehsil & District D.I.Khan. (Copy of the plaint is attached as annexure "A").
3. That the respondent No.5 issued an authority letter dated 25.05.2007 to the appellant wherein he was authorized to represent the provincial govt. and the collector D.I. Khan before the said court on 02.06.2007 and on subsequent dates of hearing. (Copy of the Authority letter dated 25.05.2007 is attached as annexure "B").
4. That accordingly the appellant attended the court of Civil Judge, D.I.khan on 02.06.2007.

5. That at the relevant time the appellant was posted as Naib Tehsildar Nala Gomal. The appellant's place of posting was at a distance of 40 KM away from D.I.Khan city and the nature of his job i.e. flood control, required full time attention. The appellant therefore, submitted an application dated 15.06.2007 to the respondent No.5 to relieve him of representation before the Court of Civil Judge in the subject case. (Copy of the application dated 15/06/2007 is attached as annexure "C").
6. That the respondent No.5, in furtherance of the appellant's application, nominated Naib Tehsildar/DRA D.I.Khan, Ghulam Qasim, vide authority letter dated 20.06.2007 to represent the Govt. of Khyber Pakhtunkhwa through Collector D.I.Khan and the Secretary Board of Revenue to before the court of Civil Judge-VII, on 21.06.2007. The appellant was, therefore relieved of his responsibility to respondent, the respondent before the court of Civil Judge D.I. Khan in the subject case.. (Copy of the Authority Letter dated 20.06.2007 is Annexure "D").

7. That the then DRA, D.I.Khan, Ghulam Qasim, attended the court of Civil Judge D.I.Khan, on 21.06.2007 and presented his Authority letter and the same was placed on court file. (Copy of the court order sheets is attached as annexure "E").
8. That the DRA, D.I.Khan failed to attend the next date of hearing i.e. 04.07.2007 and accordingly the defendants were placed exparte. The learned court thereafter conducted exparte proceedings and finally vide judgment dated 5.01.2008 an exparte decree was passed in favour of the plaintiff as against the defendants (provincial Govt) with the direction to allot the subject land to the plaintiff. (Copy of the judgment dated 05.01.2008 is attached as annexure "F").
9. That the respondents did not challenge the said decree in the appellate court. However, the respondents preferred an application u/s 12 (2) CPC before the court of Civil Judge, D.I.Khan on 09.07.2013 for recall/cancellation of the decree dated 05.01.2008. (Copy of the application U/S 12 (2) CPC is annexure "G").

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10. That the application u/s 12 (2) CPC was rejected by the learned Civil Judge D.I.Khan vide order dated 10.11.2014 (Copy of the order dated 10.11.2014 is attached as annexure "H").
11. That the learned Additional District Judge D.I.Khan vide judgment dated 16.04.2015 dismissed the revision of the respondents as against the order dated 10.11.2014. (Copies of the judgment dated 16.04.2015 is annexure "H/1").
12. That the respondents have now preferred a writ petition No.857-D/2015 before the Hon'ble Peshawar High Court, D.I.Khan Bench. The said writ petition has been admitted to full hearing vide order dated 20.01.2016 and the same is subjudice. (Copy of the writ petition is annexure "I").
13. That the respondent No.3 initiated disciplinary proceedings as against the appellant vide letter dated 24.08.2015 on the allegation of willful absence before the court of Civil Judge D.I Khan in the subject case titled Nizam ud Din Versus Govt. of KPK & others. The respondent No.3

appointed Malik Mansoor Qaiser, Secretary Commissioner D.I Khan Division as Inquiry officer. (Copy of the letter dated 24.08.2015 is attached as annexure "J").

14. That the Inquiry Officer submitted his enquiry report wherein the appellant has been adjudged guilty and recommended for penalty as prescribed in Rule-4 of Efficiency and Discipline Rules-2011. The enquiry report exonerated the then DRA, Ghulam Qasim of charges levelled against him (Copy of the enquiry report is attached as annexure "K").
15. That the respondent No.3 imposed the major penalty of dismissal from service upon the appellant vide order dated 23.12.2015. (Copy of the order dated 23.12.2015 is attached as annexure "L").
16. That the appellant submitted Departmental Appeal/representation against the order of dismissal to the respondent No.1 i.e. Chief Secretary Govt. of KPK on 19.01.2016. (Copy of the Departmental appeal is attached as annexure "M").

on 20.06.2007 and the next date of hearing on 21.06.2007 was attended by the said Ghulam Qasim. The enquiry officer failed to give due consideration to this vital aspect of the case.

- D. That the enquiry officer exonerated the DRA, Ghulam Qasim on the twin grounds of not receiving the authority letter and his written request to the District Officer Revenue D.I Khan to exempt him from court attendance. However, the record before the enquiry officer belie both the two assertions. The Authority Letter dated 20.06.2007 issued by the respondent No.4 in favor of DRA, Ghulam Qasim bears counter signature of the Presiding Officer and the Official Stamp of the court and the order sheet dated 21.06.2007 finds mentioning of the presentation of the said authority letter and attendance of the DRA on the said date of hearing. Secondly, then written request to the DRO, D.I.Khan for exemption from court duty by DRA Ghulam Qasim was submitted to the enquiry officer in his written reply to the charge sheet. The said written request is dated 05.02.2006, whereas the subject suit was instituted on 12.05.2007, and the authority letter

was issued to him on 20.06.2007. The learned enquiry officer failed to notice this vital discrepancy in the reply to the DRA Ghulam Qaiser. (Copy of the reply to charge sheet is attached as annexure "O").

- E. That as a matter of fact, the entire proceedings and facts of the case reveal that the appellant, being a petty revenue official has been made a scape good for the misdeeds of others. It appears that the then high officials of revenue Department D.I.Khan and the presiding officer of the court were in collusion with the plaintiff/decree holder.
- F. That the quantum of punishment i.e. dismissal from service, is much harsher than the gravity of allegations levelled against the appellant. This by itself shows the malafide on the part of the respondent No.3.
- G. That the professional incompetency/lethargy of the govt. pleader has never been highlighted by the respondent No.3 nor any action recommended as against him to the law department. The appellant has been made a scape goat for no fault on his part.

H. That the Writ Petition No.857-D/2015 in the Peshawar High Court is subjudice and in case the same is allowed, the judgment/decreed dated 05.01.2008 will be recalled and resultantly the govt. land shall be reverted back. As such, the victimization of the appellant in haste speaks volume of the intention ~~of~~^{to} malafide on the part of the respondents.

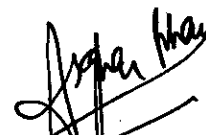
I. That the appellant seeks leave of this Honourable Tribunal to raise additional grounds at the time of arguments

It is, therefore, humbly prayed that on acceptance of this appeal, the impugned order of respondent No.3 dated 23.12.2015 imposing major penalty of dismissal from service may very graciously be set aside and the appellant be exonerated of the charges levelled against him, *and as a consequential relief he may be reinstated in service.*

Any other relief deemed appropriate but not specifically asked for may also be granted.


Appellant

Through


Muhammad Asghar Khan Kundi
Advocate, Peshawar

Dated 26.03.2016

(11)

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

In re:
Service Appeal No. _____/2016

QuadratUllah **Appellant**

Versus

Govt. of Khyber Pakhtunkhwa
Through Chief Secretary & others..... **Respondents**

AFFIDAVIT

I, Quadratullah S/o Ghulam Rasool R/o Basti Kanjhanwali D.I.Khan City, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

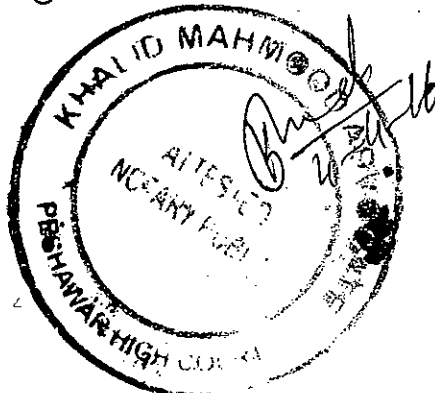
Identified by:

Asghar Khan

Muhammad Asghar Khan Kundi
Advocate High Court

Quadratullah
DEPONENT

CNIC No.



12

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR

In re:
Service Appeal No. _____/2016

QuadratUllah **Appellant**

Versus

Govt. of Khyber Pakhtunkhwa
Through Chief Secretary & others..... **Respondents**

ADDRESSES OF PARTIES

PETITIONER:

QuadratUllah S/o Ghulam Rasool
R/o Basti Kanjkanwali D.I.Khan City

RESPONDENTS:

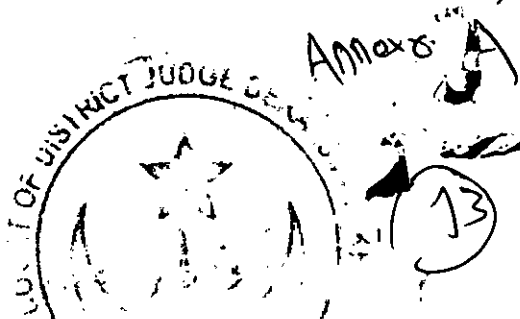
1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar
2. Board of Revenue, Govt. of KPK, Peshawar through its Secretary
3. Senior Member Board of Revenue, Civil Secretariat, Peshawar
4. Secretary Establishment Govt. of KPK, Peshawar Civil Secretariat, Peshawar
5. Deputy Commissioner/Collector Dera Ismail Khan

Through Appellant


Muhammad Asghar Khan Kundi
Advocate, Peshawar

Dated 26.03.2016

سپر ڈسٹریکٹ جج صاحبان کی جانب سے



INAMULLAH WAZIR
Senior Civil Judge/Jud. Magistrate
Dera Ismail Khan

سعد اکبر صاحب نیو آفسیس اور شہزاد شکیل صاحب کے درمیان
موجودہ ڈیرہ اسماعیل خان

دیوانی دعوئی نمبر

نفاذ الدین ولد محمد عثمان قوم محمد سرد گندہ

شور کوٹ منلو ڈیرہ اسماعیل خان

نفاذ

پیر ادیشنل گورنمنٹ سروس کمرنگ ریکرڈنگ سیکریٹری وزارت مال
ملوہ سرحدت و

ڈسٹرکٹ ریونیو آفسیئر / ایسٹ بلاک ڈیرہ اسماعیل خان

ریونیو آفسیئر تحصیل ڈیرہ اسماعیل خان

دیوانی حلقہ موہن شور کوٹ ڈیرہ اسماعیل خان

(مدظلہ العالی)

دعویٰ استوار حق بدین قرار داد کہ اراضی مندرجہ کفایت

نمبر 822 کھنڈوں نمبرات 1227 تا 1231 خندہ نمبرات 1211-1210

رقبہ دیوانی 0-16 واقع موہن شور کوٹ

ATTESTED
01-11-16
Committee

کوریٹریٹ مندرجہ اراضی کے متعلق
12-05-2016
D.I.K. 05/05/16

کا
مندرجہ
اس
مندرجہ

ضلع ڈیرہ اسماعیل خان مطابق جمعہ کی سال 05 - 2005ء تیرکار
 پیر مدنی آباد اجداد کاشتکار (غیر فلیکار) محنت نالغ
 زایدانہ 5 سال سے جد آرہا ہے اسلئے مدنی اراغی مذکورہ
 باکہ بطور عطیہ لوگہ بے زمین کاشتکار ہونے کے حقدار ہے لہذا
 مدعی اللہیم اراغی زیریت بحق مدنی قانوناً و بالیس منتقل
 کرنے کے پابند و مجاز ہیں اور کاغذات مال حق مدنی قابل
 درستگی ہیں وہ صدر حکم امتناعی دواغی و تائیدی بنام
 مدعی اللہیم کہ وہ مدنی سے حیدر اقصیہ کاشتکار لینے سے
 باز رہیں۔ اور اراغی مذکورہ بحق مدنی بطور عطیہ منتقل
 دیوں کی صورت کاغذات مال کی درستگی اراغی
 زیریت بحق مدنی منتقل را دیوں۔

خدایا! مدعی حسب ذیل اراغی رہا ہے۔

1- پیر مدنی اراغی مندرجہ عنوان بالا حضور مذاک
 1211 - 1210 رقبہ کھداسی 5 - کا موقع
 شہر پور ڈیرہ اسماعیل خان علیحدہ زایدانہ چالیس

ATTESTED
 05/11/16



(۶)

ANAM ULLAH WAZIR
Senior Civil Judge, District Magistrate
District Court, District of Lahore
12/5/16

سال سے آباء و اجداد سے مالکین کا منتہا مارچلے آ رہا ہے جو کہ ایونٹو

ریکارڈ نام دعویٰ میں ظاہر ہے مندرجہ بالا اراضی زیر بحث جو قبل

ازیں بنجر اور مینڈ آباد تھی پھر از سر نو خود سے زر کشتی فریڈرک

بنجر تھامی۔ جنٹل مین ٹیٹن کیونڈ بوش مارکی لہرائی و مینڈ

کر کے اسکو حاصل کا منتہا بنایا ہے جنہوں نے راجد پربا بنجہ لہ

جنہوں نے راجد کا منتہا ہے تہوت موجود ہے

یہ کہ اراضی حد طویہ کا حق مالکانہ بصورت آبادی معاہدگی

(۱۲)

جو کہ سرکار داخل عدالت کے حوالہ آ رہا ہے کہ پراونٹیشنل گورنمنٹ

پروٹکٹ ٹائون بے زمین کا منتہا کاران کو عطیہ دینے کی عجاز ہے

کہ وہ قبل ازیں حد طویہ نے سر بار و علیہم کو اسکا لٹری ریفیٹ

کہ وہ علیہم لہر حد طویہ کو لیتین دیہالی طور نا علی آ رہی ہے

سین حد طویہ نے اسٹک کا غذات کا طیہ مدتیہ و عملی جامعہ

تین بنایا گیا جبکہ مسلسل اراضی زیر بحث پر مدعی مالکین

کا منتہا مارچلے آ رہا ہے۔ جسکی بابت کیس نمبر 2726 لگایا ہے

ATTESTED
01/05/16

مذید تر ان قانون و ضابطہ کے مطابق عدلیہ اراکی عدلیہ
مطہر علیہ لیسے کا قیام داریے ۔

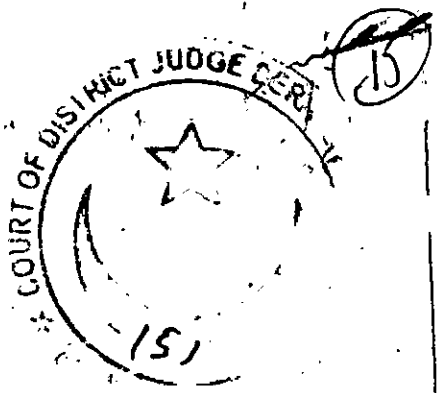
3 - یہ کہ مدعا علیہم سے اس سلسلہ میں جس بار زاہد علیہ لیسے
کہ وہ عدلیہ کرنے کو تیار ہو گیا ہو اور عدلیہ کے
حقوق کو مد نظر رکھتے ہوئے منتقلی اراکی عدلیہ مطہر علیہ
بنام عدلیہ کراچی میں لیکن وہ انکاری ہیں کہ اگر ایسا کیا گیا
یا کسی دیگر کے نام علیہ کے قیام سے ان عدلیہ عدلیہ کے
تو عدلیہ کو نام علیہ کے قیام سے عدلیہ کے عدلیہ کے
حقوق متاثر ہونگے اس لیے مدعا علیہم اراکی زبردستی کو
بنام دیگر ان منتقلی کے سے باز رہیں اور عدلیہ اراکی کو
منتقلی کے قائل و بنا میں قریب الصاف ہے نہیں وہ عدلیہ
بند و اگر ان کے امور سے مدعا ہوں گے ۔

4 - یہ کہ بنائے دعوے کے مطابق شور کوٹ تحصیل و قلعہ
چیرہ اسماعیل خان مدعا علیہم کے عدلیہ کے ماہ قبل پیدا ہوا ہو
دعوے اندر عدلیہ کے قائل و بنا میں قریب الصاف ہے نہیں وہ عدلیہ
بند و اگر ان کے امور سے مدعا ہوں گے ۔

ATTESTED
11/16

(8)

M. N. JELANI, JAZIR
Magistrate
Date: 5-12-1957



یہ کہ مالیت مقدمہ کفر میں اضیاء میں ہے و

کورٹ میں مبلغ 500 روپے مقرر ہے جس پر کورٹ فریض ہے

بذالہ اللہ مالیت کے درجی

استحقاق سے صدر حکم امتناعی و واپسی و تائیدی

تفصیلی احکامات مدعا علیہم حسب لہرہ طہران

مطوعی و موثری ڈگری فرمایا جاوے

نظام الدین

محمد زام زام

تصدیقاً لکھا گیا ہے

باقرار علیح بیان کیا ہے بقدر حق

دعویٰ درست ہے

بیان حلف

بجولفا بیان کیا کہ قبل از اس مدعا

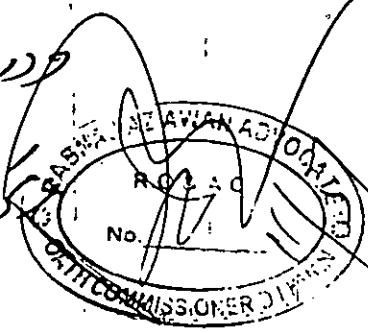
نے دعویٰ دائر نہیں کیا لفظ بہ لفظ صحیح

در دست ہے لہذا کوئی امر لوشہ نہیں

کالی ہے

نظام الدین

محمد زام زام



TESTED
Examinee
11/16

نظام الدین محمد زام زام



Ames B-1

AUTHORITY LETTER.

Mr. Saib Tamsidar s/o Gomal is hereby authorized to attend the Court of Civil Judge III D. I. Khan (16)

in connection with the case titled Nizam-ud-Din vs Govt. of N.W.F.P/Collector, Dikhan on 02-06-07 and on each subsequent dates of hearing.

7/6/12

NO. 188 /C.C: dated 25/05/07

DISTRICT COLLECTOR,
DERA ISMAIL KHAN.

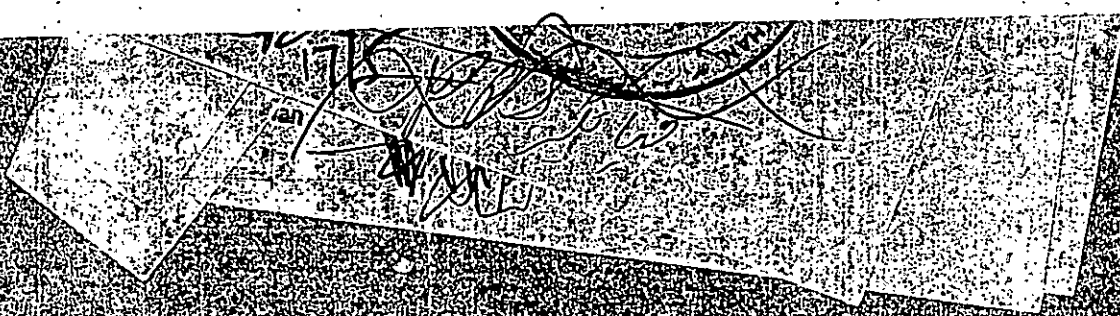
Forwarded to the Additional Registrar, Peshawar High Court Bench at Dikhan for favour of information please.

[Handwritten signature]

ATTESTED

Examiner 5/3/16

DISTRICT COLLECTOR,
DERA ISMAIL KHAN.



خدمت جناب ڈسٹرکٹ آفیسر رونیو اینڈ سٹیٹ ڈیپارٹمنٹ ضلع ڈیرہ اسماعیل خان

درخواست دربارہ انتخابی لکچر مقدمہ

نظام الدین بنام بیروانشل گورنمنٹ

سیکس بجائے کسی گھو اور گورنریا جاوے

جناب عالی :-

گزارش ہے کہ بندہ کو مقدمہ

نظام الدین بنام بیروانشل گورنمنٹ میں آج کی جانب سے

انتخابی لکچر دیا گیا ہے۔ جبکہ میں روڈ کو ہی آبپاشی میں

لکچر نائب قسملدار تعینات ہوں۔ اور میرا دفتر تفصل ضلعی

میں تمام تھا کہ میرے سپرد پورے موسم ہے، جسکی

وجہ سے روڈ سے دور دراز علاقوں میں ٹرکوں کی دینی پڑتی ہے۔

اور بوجہ سبب روڈ بھی بند ہو جاتی ہے جسکی وجہ سے بندہ مقدمہ

نظام الدین بنام بیروانشل گورنمنٹ لکچر ضلعی سول جج VII ڈیرہ اسماعیل خان

میں حاضر ہونا بہت ہی مشکل ہے جسکی تاریخ پیشی 21/06/2007 تقریر ہے۔

لہذا استدعا ہے کہ مقدمہ نظام الدین بنام

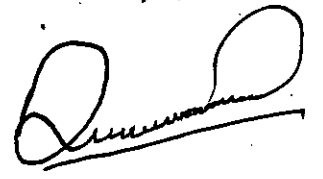
بیروانشل گورنمنٹ مذکور میں انتخابی لکچر کسی دوسرے ایس آر کے

نام جاری فرمایا جاوے۔

آئی کی سین مانت بیرونی سول جج

فقط پورہ 15-06-2007

قدرت اللہ نائب قسملدار روڈ کو ہی آبپاشی ناگہم ضلع ڈیرہ اسماعیل خان



Amend "D"

No. NT/DRA D. I. Khan

13

... hereby authorized to attend the Court of
Civil Judge VII D. I. Khan.

in connection with the case titled Muzam-ud-Din vs

Govt: of N.W.F.P/Collector, D.I. Khan, on behalf of Govt: of N.W.F.P/Collector, D.I. Khan, on

Secretary
Board of
Revenue
Peshawar

06-07 and on each subsequent dates of hearing.

AA-101

~~Stamp: D. I. Khan, District Collector, NWFP~~
11/06/07

DISTRICT COLLECTOR,
D.I. KHAN.

20/06/07

Forwarded to the Additional Registrar, Peshawar
Branch at D.I. Khan for favour of information please.

DISTRICT COLLECTOR,
D.I. KHAN.

Handwritten scribbles and signatures at the bottom of the page.



Annex

E
19

تاریخ و ارضاء احکام
نظام اسیرین بنام
بعدالت جناب سینئر سول جج صاحب، ڈیرہ اسماعیل خان

نمبر شمار و تاریخ حکم
خلاصہ حکم

دعویٰ ہذا و کالتا دائر شد۔ سپرد عدالت جناب
سول جج صاحب II ڈیرہ اسماعیل خان کیا
جاتا ہے۔ مدعی اوکیل مدعی عدالت موصوف
میں 12-5-07 پیش ہو۔

OS --- 01
12-5-07

INAM ULLAH WAZIR
Senior Civil Judge/Judl. Magistrate
Dera Ismail Khan

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دعویٰ ہذا کے بعد عدالت جناب سینئر سول جج صاحب ڈیرہ میں
موصول شد۔ بعد از پیمائش میں

0
12/5/07

Adam Khan Solomon Khe
Civil Judge VII / Judicial Magistrate
Dera Ismail Khan

کتابہ عالیہ
پیمائش کے بعد۔ دعویٰ ہذا کے نتیجے میں عدالت نے
عدالت میں دعویٰ۔ فرد پندرہ، پندرہ سو درتارے، چار سو ستاون و تیرات
صد دستا و تیرات۔ کالتا کے نام بحق ملک جیٹا پٹنہ انوار
اور وکیل پٹنہ لکھ جیٹا۔
لینڈ ایجنٹ پٹنہ ہے۔

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A 12/5/07

ATTESTED
Examiner

15/02/16

3
0 —————
12/5/07
✓

وکیل مدعی سعید۔ اندراجوں دونوں کو درست تسلیم کرنا ہے۔
دونوں سٹیٹمنٹوں پر گواہی دینے پر مدعی کو صرف 18/5/07
تعلقہ 10/10/07

Adam Khan Suleman Khel
Civil Judge VII / Judicial Magistrate
Dera Ismail Khan

4-5
18/5/7
✓

وکیل مدعی سعید۔ مدعا علیہ سزا کی قتل اچھا ہے اور
انتظامی لٹریچر میں جو کچھ شامل ہے اس میں
مدعا علیہ سزا 4/1/07 سے پہلے جاری ہو گیا ہے۔
اس میں مدعا علیہ سزا اور مدعا علیہ سزا کی ورثہ
تعلقہ 10/10/07 ہے۔ اس لیے مدعی کو پیدائش کی جانب سے کہ وہ
اندراجوں پر مدعا علیہ سزا 10/10/07 سے واضح کرے۔
بعد ازاں مدعا علیہ سزا 10/10/07 سے مدعا علیہ سزا
مدعا علیہ سزا 10/10/07 سے مدعا علیہ سزا 10/10/07

Adam Khan Suleman Khel
Civil Judge VII / Judicial Magistrate
Dera Ismail Khan

5-5
2/6/7
✓

وکیل مدعی سعید۔ مدعا علیہ سزا کی جانب سے
انتظامی لٹریچر میں جو کچھ شامل ہے اس میں
مدعا علیہ سزا 10/10/07 سے پہلے جاری ہو گیا ہے۔
اس میں مدعا علیہ سزا اور مدعا علیہ سزا کی ورثہ
تعلقہ 10/10/07 ہے۔ اس لیے مدعی کو پیدائش کی جانب سے کہ وہ
اندراجوں پر مدعا علیہ سزا 10/10/07 سے واضح کرے۔
بعد ازاں مدعا علیہ سزا 10/10/07 سے مدعا علیہ سزا
مدعا علیہ سزا 10/10/07 سے مدعا علیہ سزا 10/10/07

Adam Khan Suleman Khel
Civil Judge VII / Judicial Magistrate
Dera Ismail Khan

ATTESTED
Examined
15/03/16

(3)

20

0-6
24/6/7

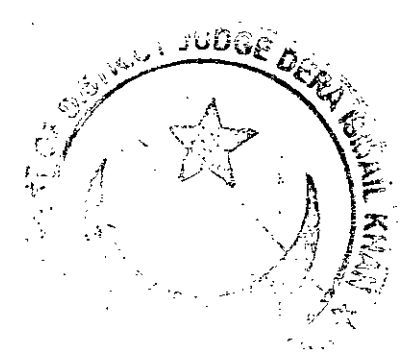
دری کار در عاقلہ غیر اکیبیت سے انتہائی
لکھنے میں جو کہ عمل میں نہ ہو حال میں عاقلہ
میں نہ

میں برائے جواب دہی تقرر ہو رہا ہے
4/7/7

Adam Khan Suleman Khej
Civil Judge VII / Judicial Magistrate
Dera Ismail Khan

دری کار میں جو کہ عمل میں نہ ہو
لکھنے میں جو کہ عمل میں نہ ہو
میں برائے جواب دہی تقرر ہو رہا ہے
4/7/7

0-7
04/7/07



Adam Khan Suleman Khej
Civil Judge VII / Judicial Magistrate
Dera Ismail Khan

دری کار میں جو کہ عمل میں نہ ہو
لکھنے میں جو کہ عمل میں نہ ہو
میں برائے جواب دہی تقرر ہو رہا ہے
4/7/7

0-8
21/7/07

Adam Khan Suleman Khej
Civil Judge VII / Judicial Magistrate
Dera Ismail Khan

ATTESTED
Examiner 15/6/16

فدہ صلتہ گواہ و شہورہ صلتہ و گواہ اور شہادت کیس
 صلتہ جو کہ پٹنہاں دکنہ صلتہ صلتہ صلتہ صلتہ صلتہ
 لہذا گواہان صلتہ کو P.P. دیگیا۔ مثل برائے شوخ مکلف
 منتظر 28/9/07 کو پیش ہو

9
 06/9/07

Adam Khan Suleman Khel
 Civil Judge VII / Judicial Magistrate
 Dera Ismail Khan

فدہ صلتہ و شہورہ صلتہ گواہ و شہورہ صلتہ صلتہ صلتہ
 ایذا دہی ملدو اور ایذا دہی ملدو اور ایذا دہی ملدو
 صلتہ صلتہ گواہ و شہورہ صلتہ صلتہ صلتہ صلتہ
 شوخ مکلف منتظر 10/9/07 کو پیش ہو

10
 28/9/07

Adam Khan Suleman Khel
 Civil Judge VII / Judicial Magistrate
 Dera Ismail Khan

فدہ صلتہ و شہورہ صلتہ گواہان صلتہ گواہ و شہورہ صلتہ گواہ
 بیان الجور 2 P.N. لہذا گواہان اور گواہان اور گواہان
 صلتہ گواہ اور صلتہ گواہ اور صلتہ گواہ اور صلتہ گواہ اور
 صلتہ گواہ اور صلتہ گواہ اور صلتہ گواہ اور صلتہ گواہ اور
 منتظر 10/9/07 کو پیش ہو

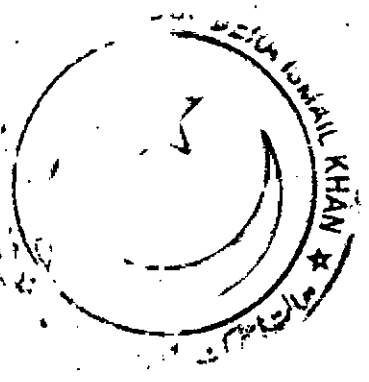
11
 10/9/07

Adam Khan Suleman Khel
 Civil Judge VII / Judicial Magistrate
 Dera Ismail Khan

ATTENDED
 Examiner
 15/03/16

در دادگاه مکمل ۵۵۵ گواہ پتواری علی محمد ۵۵۵۵ بیان الیوم
PW. ۱ مکمل قلمند شد. صید گواہ برایت صید صید
عده در قوسه و نیز در حق حواله شد. و نیز در حق پتواری علی محمد
منع دینار طلبیده گواہان کار پتواری علی محمد در حق پتواری علی محمد
مقرر ۰۲ ۱۱/۰۷ کویش مو

24/10/1



Adam Khan Sulaman Khel
C.M. Judge VII / Judicial Magistrate
Dera Ismail Khan

در دادگاه مکمل ۵۵۵ گواہ پتواری علی محمد ۵۵۵۵ بیان الیوم
PW. 3 مکمل قلمند شد. گواہ پتواری علی محمد
گواہ پتواری علی محمد در حق پتواری علی محمد
مقرر ۰۹ ۱۱/۰۷ کویش مو

13
02/11/07

Adam Khan Sulaman Khel
C.M. Judge VII / Judicial Magistrate
Dera Ismail Khan

صاحب دعوی صاحب سابق. امر حلیه در حق پتواری علی محمد
عام تقبل شد. گواہ پتواری علی محمد
مقرر ۰۹ ۱۱/۰۷ کویش مو

نور ایوب
09/11/07

Or
97-12-2007.

Plaintiff along with his
counsel present. Plaintiff himself recorded
his statement as PW-04. PW-05 Zahoor-Udin
present and recorded his statement. Patwari
Halqa Irrigation be summoned for plaintiff

(P-2-0)

TESTED
Examiner
13/03/16

Continue Order-----4 Dated: 07-12-2007.

ex-parte evidence on 10/12/07

Adam Khan Suleman Khel
Civil Judge VII / Judicial Magistrate
Dera Ismail Khan

مدعی غیر حاضر بنواری امیری گیشن کار . آ.ع. 08-15
10-12-07
دفعہ 135 کی مگر میں نے عدالت سے بدین
درجہ شہادت فلکیہ نہ نہ نوٹس مدعی جاری
ہو بنواری کو 11 دیا گیا مثل ہر شہادت
شہادت مدعی مورافہ 12/12 کو پیش ہو
نہ نہ عدالت کے ذریعہ

Adam Khan Suleman Khel
Civil Judge VII / Judicial Magistrate
Dera Ismail Khan

مدعی غیر حاضر بنواری امیری گیشن کار . آ.ع. 08-15
10-12-07

دفعہ 135 کی مگر میں نے عدالت سے بدین
درجہ شہادت فلکیہ نہ نہ نوٹس مدعی جاری
ہو بنواری کو 11 دیا گیا مثل ہر شہادت
شہادت مدعی مورافہ 12/12 کو پیش ہو
نہ نہ عدالت کے ذریعہ

Adam Khan Suleman Khel
Civil Judge VII / Judicial Magistrate
Dera Ismail Khan

مدعی غیر حاضر بنواری امیری گیشن کار . آ.ع. 08-15
10-12-07

Adam Khan Suleman Khel
Civil Judge VII / Judicial Magistrate
Dera Ismail Khan

ATTESTED
Examiner
15/12/16

Annex

F

IN THE COURT OF ADAM KHAN SULEMAN KHEL,
CIVIL JUDGE-VII/JM, DERA ISMAIL KHAN.

22

Suit No. 80/1 of 2007.

NIZAM_UDIN(Plaintiff)

V/S

Govt of NWFP Etc(Defendants)

Date of institution of the suit12/05/2007.

Date of Decision of the Suit05/01/2008.

SUIT FOR DECLARATION.

EX-PARTE JUDGMENT

The plaintiff has brought the present suit for declaration to the effect that land measuring 16-K situated in Moza Shorkote, DIKhan vide Khata No. 832 Khatooni No.s 1227, 1231, Khassra No.s 1211-1210 are being used in cultivation of plaintiff according to Jamabandi year as "Ghair Dakhal Kar" farmer for more than 40 years and according to the Policy of Board of Revenue/Land Commission Office plaintiff is entitled for the Award through Provincial Government according to letter No.2726.

That plaintiff has used to deposit the ownership share to Provincial Government and according to law he is entitled as Land Lord Cultivator for Award. Defendants were asked time and again to do the same but they refused. Hence the present suit.

Defendants were summoned amongst whom only defendant No.01 appeared and submitted his authority letter on 21/06/2007, thereafter, he remained also absent and all the defendants were placed ex-parte

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G-VII
05/01/08
2007, 80/1

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2
G-VII

Signature and Stamp:
Adam Khan
Civil Judge VII / Judicial Magistrate
Dera Ismail Khan



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EX-...
15/03/16

Plaintiff was directed to submit list of witnesses and also deposit diet money of OWS which he did. He produced (06) PWS in support of his version as EX-parte evidence.

23

PW-01 Sher Jan (Patwari Halca) Moza Shor Kote recorded his statement and produced Register Haqdarar Zamin of year 2004/05, Khata No. 832 Khasra Nos 1211, 1210 land measuring 16-k, the copy of which is EXPW1/1. The Khasra Girdawari Kharif of year 1999 to Rabee 1995, the copy of which is EXPW1/2. He brought Jama-Bandi of year 2004/05, the copy of Khasra Girdawari Kharif 1997 to Rabee 2007, the respective copies are EXPW1/3, EXPW1/4. In all these documents endorsed the name of plaintiff Nizam Din as cultivator while Govt of NWFP is entered as owner and Khasras Nos 1211, 1210 has not allotted to any person yet.

PW-02 Akhter Hussain Record Lifter District Judge, DIKhan produced original civil suit No. 272/1 titled "Muhammad Aslam Vs Govt of NWFP" the copies of concerned record are exhibited as EXPW2/1 to EXPW2/6.

PW-03 Hedayat Hussain Assistant Land Record DOR Branch, DIKhan brought original letter No. 2726/CC dated 24/11/2000 Issued by Secretary Board of Revenue/Land Commissioner, which bears land reforms allotment agrarian policy, the copy of which is EXPW3/1 consisted of 05 pages. According to this policy the plaintiff is entitled for allotment of impugned land.

Adar K...
Care...
District...
Date...

PW-04 plaintiff himself recorded his statement in support of his version as per heading of plaint. PW-05 Zahoor-udin fully corroborated the version of plaintiff.

PW-06 Sajjad Hussain Patwari Irrigation M za Shore Kote produced the payment of Govt share (Abiyana) of impugned land bearing Khasra Nos 1210, 1211, from Kharif 2002 to Rabee 2007, in which the plaintiff paid regularly (Abiyana) to the Govt. The copies of receipts are EXPW6/1 to EXPW6/2.

After close of ex-parte evidence of

ATTESTED
Ex-15/16


plaintiff, I heard the case at length and gone through the record.

24

The available record shows that plaintiff used the impugned land for cultivation and entry in the revenue record, the plaintiff has been entered as "Chair Dakhel Kar" while receipts of payment of Abiyana is also on the name of plaintiff not any other person, which fully corroborated the version of plaintiff as per caption of plaint. Further more plaintiff also produced the copies of another civil suit of same nature and an ex-parte decree has been awarded in favour of plaintiff of above suit.

As nothing in rebuttal and plaintiff is entitled for allotment of impugned land as per Govt Policy, fully corroborated the record produced by plaintiff on file, There is no other option only to accept the claim of plaintiff. Therefore, an ex-parte decree is awarded in favour of plaintiff and against the defendants. Defendants are directed to allot the impugned land in the name of plaintiff. No order as to cost.


Announced
05/01/2008.


Adam Khan Sulaiman Khel
Civil Judge VII / Judicial Magistrate
(Adam Khan Sulaiman Khel)
Civil Judge-VII/JM, DIKhan.

CERTIFICATE

It is certified that this judgment consists of 03 pages. Each page has been read-over, corrected and signed by me wherever necessary.

Dated:- 05/01/2008
Dera Ismail Khan.


Adam Khan Sulaiman Khel
Civil Judge VII / Judicial Magistrate
(Adam Khan Sulaiman Khel)
Dera Ismail Khan
Civil Judge-VII/JM, DIKhan.

RECORDED IN THE COURT

Examine
District And Sessions Judge
Dera Ismail Khan
15/03/16

شیخ عبدالرحمن
مقدمہ نمبر

29

ڈگری بینا نشانات و خلیانی وغیرہ

(آرڈر نمبر ۲۱ قائمہ نمبر ۱۱ ضابطہ دیوانی)

بعدالت جناب آدم خان سید خلیل سولہ صہابہ ۱۱۱ ڈگری ۱۵۱۱ عیال خان

مقدمہ نمبر 80/1

۱) بیرونی گورنمنٹ صورت میں لکھنؤ پبلسٹیٹی ڈپارٹمنٹ	بنام نظام الدین ولد محمد عثمان قوم لکھنؤ سکول ٹیچنگ کالج وضلع ڈیپن سہیل خان
۲) ڈیپن سہیل خان	
۳) ریونیو آفیسر ضلع ڈیپن	
۴) ریونیو آفیسر ضلع ڈیپن	

مدعی

دعویٰ استنادی میں گزارہ دار کم از کم ۸۳۲ گھنٹے کے برابر ۱۲۲۷ سے ۱۲۳۱ عرصہ گزارہ
 ۱۲۱۱-۱۲۱۵ رفتہ رفتہ گزارہ کا واقعہ جو ضلع ٹیچنگ کالج ڈیپن بمطابق محمدی سال ۱۲۰۴-۱۲۰۵
 کارپوریشن آف اجمداد کاشنکار (پندرہ نکار) مجتبیٰ قافلہ ڈانڈازہ ۱۲ سال سے جاری ہے
 مدعی از اسی مذکورہ نالہ بطور عطلہ بوجہ بے زمین کاشنکار ہونے کے گزارہ ہے اور مدعی علیہ اراہ
 ذہیریت بحق مدعی قانوناً و بالیس منتقل کرنے کے یا بند و مجاز ہیں۔ اور کاغذات مالہ جو
 قابل دستگی ہیں۔ جو بطور حکم امتناع دوائی و نا کینڈی بنا کر مدعی علیہ کے عہدہ سے
 منجھنے کاشنکار سے باز ہیں۔ اور از اسی مذکورہ بحق مدعی بطور عطلہ منتقل کرنے میں اور ملکیت
 کے حد تک کاغذات مالہ کے دستگی از اسی ذہیریت بحق مدعی منتقل کر دی ہیں۔

عربی دعویٰ بتاریخ 2007-5-12 پیش ہوا۔

یہ مقدمہ آج بتاریخ 2008-1-05 واسطہ تجویز اخیر کے روڈ نمبر ۱۱ سہارن

لوچہ صدق محمد ہانگیاں جوان (پروکیٹ) منجانب مدعی

(لوچہ پکھڑو) اور منجانب مدعی علیہ جماعت پبلسٹیٹی ڈیپن

P.T-5

حکم دیا جاتا ہے کہ

11/30/15
REGISTERED

(57)

21-18

05-1-2008

Vide my detailed judgment of today consisted of 03 pages separately placed on file. The suit of the Plaintiff is hereby decreed in his favour being ex-parte. Defendants are directed to allot the impugned land in the name of Plaintiff. No order as to cost.

Announced

05/01/2008

Adam Khan Saleman Khel
Civil Judge VII / Judicial Magistrate
Dera Ismail Khan

خرچہ نامہ

پیسے روپے	مدعا علیہ	پیسے روپے	مدعی
NIL	۱۔ اسٹامپ وکالت نامہ	200/-	۱۔ اسٹامپ عرضی دعویٰ
	۲۔ اسٹامپ جرحہ ثبوت و سوال		۲۔ اسٹامپ وکالت نامہ
	۳۔ محتسب نامہ وکیل بابت روپیہ		۳۔ اسٹامپ و جرحہ ثبوت
	۴۔ خورداک گوانان		۴۔ محتسب نامہ وکیل بابت روپیہ
	۵۔ فیس اہل کیشین		۵۔ خورداک گوانان
	۶۔ اجرائے حکم نامہ		۶۔ فیس اہل کیشین
	۷۔ متفرق		۷۔ اجرائے حکم نامہ
	۸۔ متفرق		۸۔ متفرق
NIL	میزان	200/-	میزان

98 عہدہ برائیت و تنظیم کے اور مہر عدالت کے جاری ہوا۔

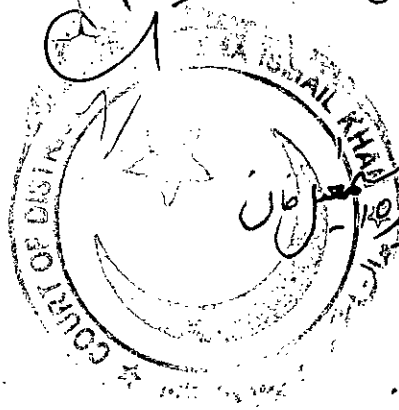
جنوری

Adam Khan Saleman Khel
Civil Judge VII / Judicial Magistrate
Dera Ismail Khan



ATTESTED

Examined
15/03/16



سول رولز (2012) 06/05

لوردالت خباب سول نچ صاحب VII تحصیل و ضلع ڈیرہ اسماعیل خان

- 1 ایڈیشنل ڈپٹی کمشنر با اختیار کلکٹر ڈیرہ اسماعیل خان
- 2 ایڈیشنل اسٹنٹ کمشنر رونیو اسٹنٹ کلکٹر گریڈ آ ڈیرہ اسماعیل خان
- 3 رونیو آفسیسر تحصیل ڈیرہ اسماعیل خان

..... اٹلن

نہام

- 1 نظام الدین ولد محمد عثمان قوم محمود سکنہ شورکوٹ ڈیرہ اسماعیل خان
..... اصل سول ایب
- 2 پیراڈیشنل گورنمنٹ چیئر مین خٹوخواہ بندر لوی سکرٹری وزارت مال
چیئر مین خٹوخواہ شپار
- 3 پٹواری حلقہ موضع شورکوٹ ڈیرہ اسماعیل خان
..... ترتیبی سول ایب

درخواست زیر دفعہ 12 (2) ضابطہ دیوانی ضوخ و بلانس

فرمانے جانے ڈگری معتمد شمیری 80% رجوعہ 12/5/07 منفعہ 05/08

مصدره سول نچ صاحب VII ڈیرہ اسماعیل خان لغیوان نظام الدین نہام صوبہ سرحد

15/03/16

05/09/13

بوجہ صادر ہو *without jurisdiction* و حال کرت

بذریعہ فراڈ و *Misrepresentation*

خواب عالی اسٹڈن حسب ذیل میں رساں ہیں

(۱) کہ اراچی مندرجہ عرفی دعویٰ مقدمہ ۸۰٪ کے اصل مالکان صوبائی حکومت
بذریعہ اسٹڈن تھی۔

(۲) کہ مدعی / رسول الیہ نے بذریعہ فراڈ و *Misrepresentation*
ایک مقدمہ دائر کر کے ڈگری حاصل کی لیکن مقدمہ مذکور میں نہ تو کلر ڈیوٹ سے ملے مال
کو اور نہ ہی لینڈ ٹیکسشن کو فریق مقدمہ گردانا گیا حالانکہ از روئے قانون دونوں
ہی ضروری فریق مقدمہ تھے جنکے بغیر ڈگری صادر نہیں ہو سکتی تھی

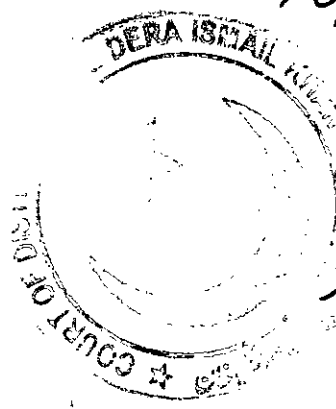
(۳) کہ عدالت حقور کو مقدمہ نمبری ۸۰٪ مندرجہ عنوان درخواست ہذا کی حمایت کا
زیر دفعہ ۶ لینڈ ریگولیشنز اختیار سماعت ہی نہ تھا اور نہ ہی مدعی نے قبل از ڈگری
دعویٰ لینڈ ٹیکسشن کو رجوع کیا تھا بدین وجہ حکم و فیصلہ ڈگری بوجہ ہونے بلا اختیار
قابل فتویٰ ہیں۔

(۴) کہ لینڈ ریگولیشنز لاء میں بغیر زمین صحاریوں کو گورنمنٹ کی ملکی اراچی عطیہ کے طور
پر الٹ کی جا سکتی ہے لیکن مدعی / رسول الیہ نے تو بے زمین ہاری / کسان تھا
اور نہ ہی لینڈ ٹیکسشن فریق مقدمہ تھا جبکہ مدعی اسٹڈن کو روڑ پی شخص ہے جس نے

لینڈ ٹیکسشن کو فریق مقدمہ بنائے بغیر ڈگری بذریعہ فراڈ و *Misrepresentation* قابل

15/03/16

(5) ہر کہ فاضل عدالت دیوانی برصالت میں مقدم میں Correct law کے استعمال کی پابندی ملکی و غیر ملکی اعلیٰ عدالتیں قرار دے چکی ہیں کہ



Judge must wear all the laws of Country on the sleeve of his robe.

لیکن فاضل عدالت نے نہ تو اختیار سماعت کا سوال اٹھایا اور نہ ہی لینڈ

کمیشن کے فریق مقدم نہ ہونے کی طرف توجیہ دی اور بلا اختیار طور پر ڈگری صادر کر دی جو کہ قابل منوخی ہے۔ عدالت نے اس سہرے اصول کو نظر انداز کر دیا کہ

Justice According to law is the duty of Court, which can neither be abdicated in favour of whims or ignorance of litigants or their lawyers nor it be avoided or evaded on the pretext that a question of law going to the roots of the case was not raised promptly.

(6) ہر کہ فاضل عدالت نے یکطرفہ کاروائی ہونے کی بنا پر مقدمہ کی طرف توجیہ نہ دی اور صوبہ گنتہ بالاد بلا اختیار طور پر ڈگری صادر کر دی جو کہ فاضل عدالت سے نذر لوٹاؤ اور Misrepresentation حاصل کی گئی۔

(7) ہر کہ رسول اللہ علیہ السلام کو برہنہ کیا اور گھلوا یا گیا کہ وہ نذر لوٹے فراڈ حاصل شدہ اراچی و ڈگری کو منسوخ کر دے لیکن وہ نہیں مانتا اسلئے ضرورت ڈگری درخواست ہذا لائق ہوئی

(8) ہر کہ ڈگری مقدمہ کی نسبت سائلان کو برہنہ بھیجی گئی Rev: IV/DIKhan/LT 8520 جو رقم 18-4-2013 علم ہوا جو کہ درخواست ہذا از علم ڈگری مقدمہ اندر صادر ہے

01/07/16
09-7-16
D. Khan

01/03/16

(۱۹) سیکرٹری نے درخواست تمام ڈگریہ اسمبلی خان از علم حوزہ ۱۹-۴ سے و حوزہ ۵۱/۵۸

از اجراء ڈگری متدعویہ و حریاً الکوارسول الیہ لے ایک ہفتہ قبل سے پیدا ہوا
چونکہ درخواست ہذا اندر عیاد و اندر حدود اختیار سماعت عدالت حضور الوریہ ہے۔

(۱۰) سیکرٹری نے بلا اختیار طور پر جاری حکم و بند لیا فریڈ حاصل کی گئی ڈگری کی نسبت قانون عیاد
کا اطلاق نہ ہے کیونکہ حکم مذکور void or void کی کٹیف میں آتا ہے۔

(۱۱) سیکرٹری نے درخواست بفرض اختیار سماعت و بمبراد ادائیگی کورٹ میں مبلغ ۵۵۰ روپے
حق رہے جس پر پونہ درخواست ہونے بند رہے روپے کی ٹکٹ چسپاں ہے جبکہ از روٹے
قانون پانچ صد روپے کے اسٹامپ جوڈیشل بھی لگے۔

سزا سزا ہے کہ منظوری درخواست ہذا ڈگری مقدم ۸۰٪ جو ۱۲/۵

منفرد ۵۱/۵۸ بعنوان نظام الدین بیام ہو بہر حد منسوخ و مہتمم زبرد
۱۲ (۲) ضابطہ دیوانی فرمائی جاوے قسط المرقوم ۲۶/۱۳

ایڈیشنل سیکرٹری کلکتہ

ایڈیشنل ڈپٹی سیکرٹری کلکتہ

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Addr: Assistant Commissioner
Revenue, D. I. Khan

لقدون تمام ڈگریہ اسمبلی خان بتاریخ ۲۶/۱۳
علفان بیان کیا کہ مندرجات بالا ماحکم علم و لیتین
میرے در دست و عیم ہیں اور کوئی امر لوشیہ
سین رکھا گیا

بزرگ نعل اندر امرا
Gajid Nawa?

رہنوی آفسر سائل

TEHSILDAR
Dera Ismail Khan

Amir Ullah Khan
Advocate High Court
OATH COMMISSIONER

ایڈیشنل سیکرٹری کلکتہ
Addr: Assistant Commissioner
Revenue, D. I. Khan

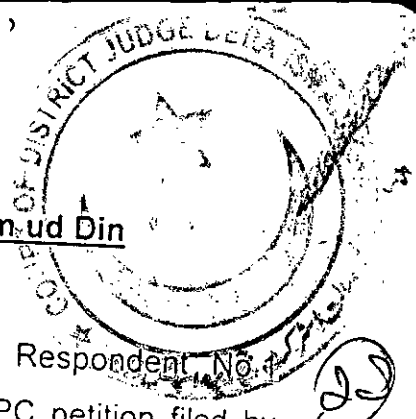
ایڈیشنل سیکرٹری کلکتہ

ایڈیشنل ڈپٹی سیکرٹری کلکتہ

Addr: Assistant Commissioner
Revenue, D. I. Khan

ایڈیشنل سیکرٹری کلکتہ
TEHSILDAR
Dera Ismail Khan
Examiner
15/03/16

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Additional Deputy Commissioner Vs Nizam ud Din

Order.....17.
10.11.2014

None present on behalf of petitioners. Respondent No. 1 present. Through this order the fate of 12(2) CPC petition filed by petitioners Additional Deputy Commissioner/Collector DIKhan and 2 others, seeking cancellation/setting aside the ex-parte decree dated 05.01.2008 passed in favour of respondent No.1 Nizam ud Din in the suit No.80/1 of 2007 titled as "Nizam ud Din Vs Provincial Govt etc", will be decided.

Brief facts are that respondent No.1/plaintiff filed a suit against Provincial Government and 3 others seeking declaration to the effect that land measuring 16 Kanals situated in Moza Shorekot, DIKhan Khasra No.1211, 1210 are in his possession/cultivation as "Ghair Dakhilkar" for more than 40 years and according to the government policy plaintiff is entitled to its ownership as per letter of the provincial government No.2726 dated 24.11.2000.

That suit of plaintiff/present respondent No.1 was decreed ex-parte vide judgment and decree of the court dated 05.01.2008. Petitioners who were defendants in the suit of plaintiff/respondent No.1 filed the present application under Section 12(2) CPC challenging the ex-parte decree on the grounds of fraud, misrepresentation and want of jurisdiction. The 12(2) application of petitioners was resisted by respondent No.1 by filing his replication. Arguments of learned counsel for both the parties heard.

Learned counsel for the petitioners argued that respondent/plaintiff obtained the ex-parte decree dated 05.01.2008 on the basis of fraud and misrepresentation because neither the collector DIKhan nor land commissioner who were necessary parties were made parties to the suit. Similarly, the decree was passed by the court without having jurisdiction in the matter as per Section 26 of the Land Reforms Act because respondent/plaintiff did not contact the Land Commissioner prior to filing of the suit. Learned counsel further argued that the court did not give its proper attention to the case and passed an ex-parte decree dated 05.01.2008 without having jurisdiction and application of proper law. That petitioners were not in the knowledge of the decree they got the knowledge of the same vide letter No Rev: IV/DIKhan/LT 8520 dated 18.04.2013

7255
75-2014-10-11-14
DLC No. 10/11/14
19
10-11-14
Civil Judge VII
D.I.Khan

10/11/14
Examined

and thus filed the present petition which is well within time from the date of knowledge. He prayed that application may kindly be accepted and the ex-parte decree in favour of respondent No.1 dated 05.01.2008 be set aside.

On the other hand, learned counsel for the respondent No.1 argued that the court correctly passed the decree in favour of respondent. Neither any fraud was committed nor any misrepresentation was made by the respondent No.1 because the present petitioners were made parties to the suit who were properly served with summons of the court, appeared through their representative but later on remained absent. The court correctly exercised its powers having jurisdiction in the matter, and in the light of policy of the provincial government passed the decree in favour of respondent No.1. Counsel for the respondent further argued that the present application is badly time barred and the story of the date of knowledge presented by petitioners is false and fictitious because they were fully aware since the filing of the suit in which they appeared through their representatives. Moreover, previously 2 petitions under Section 12(2) CPC were filed against the decree, in which the present petitioners were parties as respondents. In those petitions too present petitioners appeared before the court and did not object the decree. He prayed that the application be dismissed with cost.

Perusal of record shows that in his suit respondent No.1 impleaded the collector and the provincial government through secretary as parties to his suit, so the contention of petitioners that collector and land commissioner were not impleaded or that decree was obtained on misrepresentation seems baseless. So far as the question of fraud is concerned, record shows that respondent No.1 put all the relevant facts before the court and claimed his right of ownership over the suit property on the basis of possession under the land Reforms Act of 1977 and in the right of the letter No.2726/LC dated 24.11.2000 issued by the secretary Board of Revenue to the Deputy Land Commissioner DIKhan. The suit of the respondent No.1 was for declaration of his right over which the civil court had the jurisdiction to decide. Similarly Section 26 of the land Reforms Act as contended in the petition do not oust the jurisdiction of the civil court.

Ganesh
10-11-14
Civil Judge VI
D.I. Khan

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Examined
01/11/16

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Additional Deputy Commissioner etc Vs Nizam ud Din etc.

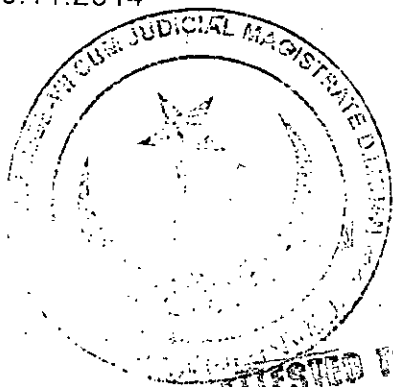
Contd: Or; # 17 Dated 10.11.2014.

Perusal of the petition further shows that it is clearly time barred as the same is filed after almost five and a half years from the date of the decree. The stance of the petitioners that the 12(2) petition is within time as they got the knowledge of the decree vide letter No: Rev: IV/DIKhan/LT 8520 dated 18.04.2013. This stance of the petitioners is baseless and have no force in it because the record clearly shows that petitioners were fully aware of the suit of respondent/plaintiff since the first day. They were served with summons and they also attended the court through their representatives who filed authority letter which are placed on file. But later on due to their absence were proceeded ex-parte.

In the light of what has been discussed above this court is of the view that present 12(2) petition is not maintainable and time barred also. Hence, dismissed.

File be consigned to the record room of the Hon'ble District & Sessions Judge. DIKhan after its necessary completion and compilation.

Announced.
10.11.2014

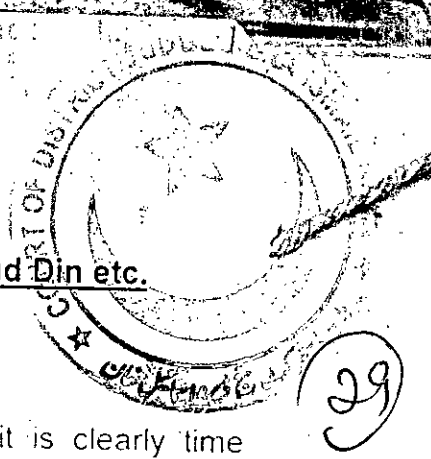


(Signature)
10.11.14
(Mohammad Aaqib)
Civil Judge-VII, DIKhan
Civil Judge VII
D.I.Khan

ATTACHED IS BE TRUE COPY

(Signature)
District And Sessions Judge
D.I.Khan

01/11/16



15283

Application Received On	31-12-15
Date of Copying	
Date of Delivery	01-01-16
No of Words	2450
Copy No	121
Urgent	
Total Characters	121
Name of Copyist	S. S. S.
Copying Delivery Date	01-01-16
Name of Examiner	

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In the Court of
KASHIF NADEEM, ADDITIONAL DISTRICT JUDGE-IV,
DERA ISMAIL KHAN,
C.R No. 03 of 2015.

Preferred on 11.02.2015
 Decided on 16.04.2015

Additional Deputy Commissioner/Collector, D.I.Khan
and two others. (Petitioners)

VERSUS

Nizam-Ud-Din and two others (Respondents)

JUDGMENT

This is a Civil Revision filed against order Dated 10.11.2014 of the learned Civil Judge-VII, D.I.Khan, whereby the application of the petitioner under Section 12(2) CPC was dismissed being not maintainable.

2. As per brief facts of the case an application under Section 12(2) CPC was filed by the present petitioners against the respondents to the effect that a decree obtained in suit No: 80/1 instituted 12.05.2007 decided 05.06.2008 titled "Nizam-Ud-Din Vs NWFP" has been obtained on fraud and misrepresentation. The said application was dismissed by the learned Trial Court vide orders Dated 10.11.2014 being not maintainable and also being time barred.

3. Against the said impugned order the instant revision petition has been filed on 11.10.2015. Representative for the petitioner appeared whereas the Government Pleader had partially argued the instant revision petition but later requested for adjournment and did not appear today.

ADDL. DISTRICT JUDGE-IV
 Dera Ismail Khan

17.04.15

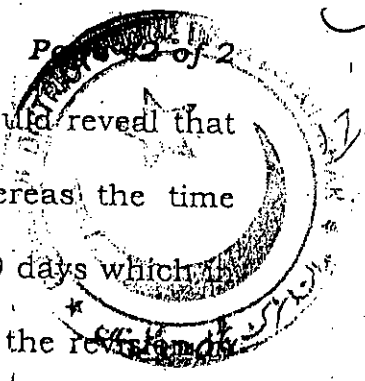
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Handwritten signature: "ADDL. DISTRICT JUDGE-IV"

ATTESTED

TESTED

Examiner 28/10/15



4. A bare perusal of the petition would reveal that the impugned order is of 10.11.2014 whereas the time period provided for the revision petition is 90 days which in the instant case expired on 08.02.2015 but the revision petition has been filed, on 11.02.2015 making it time barred per-se. In the instant case an application for condonation of delay has been attached with the revision petition but the same shows discrepancies as to non-mentioning of dates. No plausible reason has been given in the application for condonation of delay although the petitioner's were the applicants in the proceedings under Section 12(2) CPC before the learned Trial Court. Besides, the above, only copy of application and impugned order have been annexed with the petition and no copies of pleadings, other documents etc are available on the file.

5. For all the reasons mentioned above the instant civil revision petition is not maintainable, therefore, the same is dismissed *In Limine*. File be consigned to the record room after its completion and compilation.

ANNOUNCED.
16.04.2015

[Signature]
KASHIF NADEEM
Additional District Judge-IV,
Dera Ismail Khan
Dera Ismail Khan

CERTIFICATE

Certified that this judgment of mine consisting of 02 pages, each of which has been read, signed and corrected by me wherever necessary.

ATTESTED TO BE TRUE COPY

[Signature]
ATTESTED
District and Sessions Judge

[Signature]
KASHIF NADEEM
Additional District Judge-IV,
Dera Ismail Khan
Dera Ismail Khan

30
Annexure I
32
BEFORE THE HONOURABLE PESHAWAR HIGH COURT BENCH

DERA ISMAIL KHAN,

Writ Petition No. 857/2015
24/11/15

1. The Government of Khyber Pakhtun and Other
Versus

1. Nizam Uddin and others

S No.	INDEX. Particular	Annexure	PP
1.	Memo of Writ Petation alongwith affidavit		
2.	Memo of Addresses		
3.	Copy of impugned Judgement/ Order dated 16/04/2015 of the ADJ-IV- DIKhan.	I	
4.	Copy of revision petition No.03/15 dated 11/02/2015	II	
5.	Copy of impugned Judgement/ order dated 10/11/2014 Of Civil Judge-VII DIKhar:	III	
6.	Copy of misc application 06/1427 dated 09/07/2013	IV	
7.	Copy of Judgement order dated 05/01/2008 of CJ-vii DIKhan		
8.	Copy of plaintiff dated 12/05/2007 of case 80/1 of 2007	VI	
9.	Copy of Scheme of 1973-74	VII	
10.	Copy of fars of 2004-05, 2008-09 of Govt: land.	VIII	
11.	Copy of fars of land of Nizamuddin	IX	
12.	Copy of Aks Shajra of Govt: land	X	
13.	Stamp of Rs.500/-		
14.	Vakalat Nama		

~~ATTESTED~~

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04 (3)
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BEFORE THE HONOURABLE PESHAWAR HIGH COURT BENCH
DERA ISMAIL KHAN.

Writ Petition No. _____/2015

1. The Government of Khyber Pakhtun Khwa through the Collector/D.ORE, Dera Ismail Khan & -
2. The Deputy Commissioner/District Officer Revenue & Estate Cum Deputy Land Commissioner, Dera Ismail Khan.....(Petitioners)

Versus

1. Nizam Uddin S/o Mohammad Usman Caste Mahsood R/o Shorkot, Tehsil & Distt Dera Ismail Khan.
2. The Additional District Judge IV, Dera Ismail Khan.
3. The Civil Judge VII Dera Ismail Khan..... (Respondents)

(Note. The other Land Reforms or Revenue Authorities are not even proper parties.)

Writ Petition under Article 199 (I) of the Constitution of Pakistan, 1973... for

-1. Declaring the order dated 16/04/2015 of the Respondent No 2 (Revising Court) passed as misconceived under Section 115 CPC and of no binding effects upon the rights of the Petitioners for pursuing their cause of grievance against the order dated 10/11/2014 of the Respondent No3 as trier Judge of the Misc; Application No 06/12(2) CPC dated 09/07/2013. And for
-2. Declaring the order dated 10/11/2014 of the Respondent No 3 as without lawful authority and of no binding effect upon the rights of the Defendants (Petitioners) in CS No 80/01 dated 12/05/2007 decided on 05/01/2008 on the Sworn Averments of Plaintiff to pursue their legitimate cause of grievance against Ex-Parte Decree dated 05/01/2008 passed in fraudulent proceeding of the said suit No.80/1 of 2007 of the respondent No.1 and as consequent thereto, for: - - -
-3. Declaring the decree and judgement dated 05/01/2008 of Civil Judge-VII, ^{D.I. Khan} (then Adam Khan Sulemankhel) as null and void, founded on fraud, misrepresentation and legal want of jurisdiction against claim over public property of the Petitioner No. 1 (then as defended No. 1) when it was "road" since 1904-05 and for any other appropriate action against any public functionary for doling out public precious property to Waziristan based non Tight holder Respondent No. 1 (Plaintiff of CS No. 80 /1) decided unjustly on 05-01-2008.

The Petitioners severally and jointly ; amongst other grounds ; respectfully submit as follows:-

1. The khasra Nos 1210(11K-16M) and 1211 (4K-4M) as per long standing entries before the 3rd regular settlement of 1973-74 of village Shorkot are owned by the Petitioners (copy of the ^{Scheme} ~~Misc. No~~ ⁷³⁻⁷⁴ ~~1965-66~~ is enclosed alongwith copies of periodical records of ~~1973-74~~, 2004-05 and 2008-09)

Senior Member

ATTESTED

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- and the Respondent No. 1 (Plaintiff) was not the recognised Tenant until even before the 2008 or before Kharifs of the years 1971 or 1976.
2. The Respondent No.1 instituted CS No. 80/1 on 12-05-2007 and non-official government agent avoided vigorous pursuit of the defence of the Petitioners and the said agent avoided reference to the fact that the public property is not of the status of resumed land under MLR No. 115 or land reforms Act II of 1977 and the plaintiff (Nizam Ud Din) had no priority-qualification under any Regulation, Rule or subordinate enactments. Copy of plaint dated 12-05-2007 is enclosed alongwith copy of order sheets from 12-05-2007 till 05-01-2008 are enclosed.
 3. The Plaintiff (Nizam Ud Din) is unrecognised tenant since there was no will of the Petitioners, is not permitted to urge adverse possession after 31-08-1991 or 18-10-1995 (the assented date of Act II of 1995) and no proper issue was framed qua the status of public property and the anomalous and lopsided suit was unilaterally decreed as prayed for, when the government is not bound for dubious acts of omission of its private agent.
 4. The subordinate revenue staff in compliance of the said impugned decree attested mutation and the latest impugned periodical record of 2012-13 depicted the Plaintiff (Respondent No. 1) as impugned owner copy of the said fard is enclosed though Plaintiff was not a landless owner or small land owner when he owns garden, bungalow and filling station along side the Banjara Dera Ismail Khan Road copy of Khata No of the Plaintiffs property for 2004-05 with aks Shajra are enclosed.
 5. The impugned decree dated 05-01-2008 being absolute nullity in law is void ab-initio and the Jamabandi of 2012-2013 provides fresh cause of action for legitimate grievances after June, 2013 and having obtained believable information of the fraudulent decree instituted misc, civil application No. 06/12(2) CPC on 09-07-2013 before the trier-Judge, Dera Ismail Khan which was dismissed on 10-11-2014 by Learned Civil Judge-VII (M. Aqib), Dera Ismail Khan copies of the application

ATTESTED Senior Member

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dated 09-07-2013 by Mr. Sajid Nawaz Saddozai Advocate, Dera Ismail Khan and impugned decision dated 10-11-2014 are enclosed.

6. The said application of 09-07-2013 was dismissed on 10-11-2014 against the Revision Petition No. 03 was instituted which was dismissed on hyper-technical ground when the prestigious judgement of full Bench of Seven Judges of the Supreme Court Namely "Mrs. Binori Versus Gulam Jillani" of 2010/2011 is in field and forceful. Copy of Revision Petition of the Petitioners along impugned judgment/order dated 16-04-2015 are enclosed. The impugned decisions/ orders dated 16-04-2015 and 10-11-2014 have caused genuine grievance to the Petitioner No. 1 and its recognised assignee agent petitions No. 2 hence the instant Writ Petition which is competent on all fours.

GROUNDS

- a) The plaintiff (respondent No. 1) and his predecessor ^{in occupation} namely M. Raheem S/o Ramzan had never remained tenant since there is no proof of Batai (Sharah Malkana) and the plaint was thus misconceived and fraud-annexed (copy is enclosed).
- b) There was no justification for adverse possession and no express claim in this regard was brought forth.
- c) The public property of previous Khasra Nos 753, 755, 761 of "ROAD" cannot be converted to surrendered area resumed land and the legal want of jurisdiction and the want of priority-qualification of Grant under Terms and Conditions of Grant Rule 1979 (though such claim is not admitted) or other repealed Act goes to the roots of the dispute and impugned decree is thus non-sustainable ab-initio.
- d) The non-framing of issue qua the status of the public property in miscellaneous application dated 09-07-2013 is serious irregularity in the exercise of jurisdiction and proceeding are thus tainted with malice-in-

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Senior Member

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fact and malice-in-law when the "Road" abandoned did not lose its proprietary status i.e Govt property since 1904-1905.

e) That non relevant oral evidence of the Plaintiff has been unduly endorsed and the relevant long standing recorded evidence has been excluded from consideration which speaks of the lack of the understanding of the real matter in-issue and the illegalities inhering fraud, misrepresentation and want of Jurisdiction of the trier judge (Adam Khan Sulemankhel) float on the surface of the record and objection petition under section 12(2)CPC is maintainable after revisional revenue record of 2012-13 (last date june 30, 2013).

f) The revision petition under the command of case law of Mst Binori Versus Ghulam Jillani (PLJ) 2011-SC has been made unenforceable which is an illegality in the exercise of the jurisdiction.

PRAYER

It is, therefore, most humbly prayed that on acceptance of the Writ Petition, the decree of the Civil Judge-VII dated 05/01/2008 in Civil Suit No 80/1 dated 15-05-2007 may be set-aside devoid of legal footings and due to its demerits and exiguous evidence.

Your Humble Petitioner

Dated: ___/08/2015



DEPUTY COMMISSIONER/COLLECTOR/
DEPUTY LAND COMMISSIONER,
DERA ISMAIL KHAN.

ATTESTED

IN THE PESHAWAR HIGH COURT, DILKHAAN BENCH

FORM OF ORDER SHEET

37

Date of order or proceedings (1)

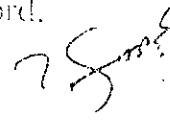
Order or other proceedings with signature of Judge(s):

20.01.2016

W.P. No.857-D/2015.

Present:- Advt: A.C. for the petitioner.

The learned A.C. contends that decree has been obtained by the respondents by deploying fraudulent means and fraud has been committed on the Court as the suit land was never resumed for land reforms; moreover, in such like controversy, jurisdiction of Civil Court was barred under Section 26 of the Land Reforms Regulation, 1972, but the Courts below had not adverted to this vital aspect of the case, therefore, judgments of both the Courts below are not sustainable in the eye of law. Points raised, need consideration. Admit. Notice and record.


JUDGE


JUDGE

ATTESTED

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GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE

REVENUE & ESTATE DEPARTMENT

No. Estt./PF/Ghulam Qasim/19184
Peshawar dated the 24/08/2015.

AMP J
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To

Mr. Malik Mansoor Qaiser,
Secretary to Commissioner,
D.I Khan Division.

SUBJECT: DISCIPLINARY ACTION AGAINST REVENUE OFFICIALS OF DISTRICT DI KHAN.

I am directed to refer to the captioned subject and to state that the Competent Authority has been pleased to approve initiation of disciplinary proceedings against the following officials, under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011:-

1. Mr. Kiramat Ullah, Tehsildar.
2. Mr. Qudrat Ullah Naib Tehsildar now Tehsildar.
3. Mr. Ghulam Qasim DRA now Tehsildar Irrigation.

Consequently, the Competent Authority has further been pleased to appoint you as Inquiry Officer to investigate the charges / conduct inquiry under the provision of the said rules against the aforesaid Officials in light of the attached charge sheets / statement of allegations with the request to submit your findings / recommendations / report within a period of 20 days positively.

Secretary - I

No Estt./PF/Ghulam Qasim/

Copy forwarded to Deputy Commissioner, D.I Khan with the request to direct the officials to submit their written statements before the Enquiry Officer within 7 days positively.

Secretary - I

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Background

Brief facts of the case are that one Mr. Nizam-ud-Din S/O Muhammad Usman R/O Moza Shorkot DIKhan filed an application in the court of learned Civil Judge-VII DIKhan claiming the ownership rights of state land measuring 16 Kanals in Khasra 1210 & 1211 of Moza Shorkot on the plea that he was in possession of the said land since long being a "Kashtkar" and land may be allotted to him under Land Reforms Rules. The court issued summons to the Respondents namely the Secretary Board of Revenue, District Officer Revenue / Collector DIKhan, Revenue Officer / Tehsildar DIKhan and Patwari Halqa. The Respondents 1, 2 and 3 authorized District Revenue Accountant, Naib Tehsildar Irrigation Nullah Gomal and Girdawar Circle DIKhan respectively to defend the case on their behalf. The authorized officials appeared before the court on 02.06.2007 except Patwari Halqa, who was proceeded against ex-parte by the court. On next hearing i.e. 21.06.2007 the authorized officials appeared before the court however they failed to attend the court on next date of hearing on 04.07.2007, hence the court ordered ex-parte proceedings against all the respondents. No one approached the court for cancellation of ex-parte decree and proceedings continued with ultimate decree in favour of the Plaintiff on 05.01.2008.

In the meanwhile the Board of Revenue placed the land in question (i.e. 16 Kanals in Moza Shorkot) on the schedule of Pak Navy which was subsequently allotted to certain Navy officials however it could not be incorporated in revenue record in the presence of court decree. The issue was brought into the notice of the then Senior Member Board of Revenue through a report by Patwari Halqa, Girdawar Circle, Revenue Officer concerned and District Officer Revenue / Collector DIKhan. (Flag-A) The then Senior Member Board of Revenue passed the remarks "DOR DIKhan for withdrawal from Schedule". The District Officer Revenue / Collector DIKhan forwarded the same to Revenue staff with the remarks "for compliance of SMBR orders please". Consequently the Revenue Officer / Tehsildar DIKhan attested the mutation in favour of Plaintiff Nizam-ud-Din on the basis of court decree.

Pakistan Navy approached the Board of Revenue and agitated against the attestation of mutation in favour of the Plaintiff. The Board of Revenue issued directions that disciplinary proceedings may be initiated against the officials responsible for ex-parte decree and application u/s 12(2) CPC may be moved against the decree. The Commissioner DIKhan Division appointed Assistant Commissioner Kulachi as Inquiry Officer to conduct a Fact Finding Inquiry.

Assistant Commissioner Kulachi furnished his findings which were forwarded to the Board of Revenue. The Competent Authority ordered an Inquiry under Efficiency & Disciplinary Rules-2011 and appointed the undersigned as Inquiry Officer.

Proceedings

The Competent Authority served Charge Sheets and Statements of Allegations upon the following officials and directed them to submit written replies to the Inquiry Officer.

1. Mr. Ghulam Qasim the then DRA now Special Tehsildar Irrigation DIKhan as authorized representative of Secretary Board of Revenue.
2. Mr. Qudratullah the then Naib Tehsildar Irrigation Nullah Gomal now Tehsildar Hangu as authorized representative of District Officer Revenue / Collector DIKhan
3. Mr. Karamatullah Tehsildar DIKhan
4. Mr. Abdul Jalil, the then Girdawar Circle DIKhan now Naib Tehsildar Dargan DIKhan
5. Mr. Sher Jan the then Patwari Halqa Shor Kot now Patwari Halqa Kirri Khaisr Kacha.

The accused submitted their written replies to the undersigned as per following detail:-

The accused Mr. Ghulam Qasim, stated that he was posted as DRA in the year 2007, however due to heavy load of work, he requested the then District Officer Revenue DIKhan to authorize any other officer to attend the court cases where authorities were issued in favour of DRA. He submitted his written request to District Officer Revenue DIKhan which is placed on file **(Flag-B)**. He further stated that he did never receive any Authority Letter from Board of Revenue nor did he appear before the court. (Statement at **Flag-C**)

Mr. Qudratullah, the accused, stated that he was posted as Naib Tehsildar Irrigation Nullah Gomal DIKhan in 2007 and received Authority Letter **(Flag-D)** from District Officer Revenue DIKhan to represent him in the subject case. He appeared before the court on 02.06.2007 and later on he was directed to represent the Board of Revenue as well (instead of DRA) which he did and appeared before the court on 21.06.2007 as representative of both the District Officer Revenue and Board of Revenue. He stated that he obtained the copies of plaint and submitted it to Government Pleader to prepare reply for submission before the court on next date of hearing on 04.07.2007. In the meanwhile he was directed by the officers to move to Hathala Tehsil Kulachi to monitor flood situation. According to him, he remained stationed at Hathala for two months and was unaware of the happenings regarding the subject case whether the Government Pleader prepared reply and submitted to the court or not. He was unable to present any record regarding flood duty or handing over the case to Government Pleader. (Statement at **Flag-E**)

Mr. Karamatullah stated that in compliance with the directions of high-ups, an application under 12/2 CPC was submitted before the court of learned Civil Judge-VII

Page 2/4

ATTESTED

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DIKhan and he being authorized officer on behalf of Additional Deputy Commissioner and Additional Assistant Commissioner (Revenue) DIKhan (**Flag-F**) attended the court proceedings on 09.07.2013, 31.07.2013 and 20.09.2013 however later on he was transferred and handed over the charge to his successor. According to him his two successors namely Mr. Shah Nawaz and Abdur Rehman Shah also attended the court proceedings. In favour of his claim he submitted copies of order sheets of the court and charge report which are placed on file at **Flag-G** and **H** respectively. Statement at **Flag-I**

Mr. Abdul Jalil, Naib Tehsildar Daraban DIKhan stated that he was posted as Girdawar Circle DIKhan in 2007 and was authorized by Tehsildar DIKhan (**Flag-I**) to attend the court of Civil Judge VII DIKhan on his behalf in the subject case. According to him he attended the court on 02.06.2007 and 21.06.2007, however could not attend on next date of hearing and later on he was transferred and posted as Kanungo Rod Kohi. He stated that he has always performed his duties during entire service with great responsibility therefore he didn't remain absent from the court deliberately but was assigned other duties by the then District Officer Revenue (DOR) and Tehsildar DIKhan. He requested that he may be exonerated from the charges. He was unable to furnish any documentary proof in support of his contention. (Statement at **Flag-K**)

Mr. Sher Jan Patwari Halqa Kirri Khaisor Kacha, the then Patwari Shor Kot stated that he attended the court of Civil Judge VII on first hearing but could not attend the court later on due to other official engagements and court cases, hence was proceeded against ex-parte. He further stated that he was not authorized by any officer to defend the case on his behalf and Patwari Halqa was a proforma defendant who was supposed to present revenue record in the court which he did. The responsibility of defending the case was on the shoulders of defendants 1, 2 and 3 i.e. Secretary Board of Revenue, District Officer Revenue and Revenue Officer Circle. He requested for exoneration from the charges. (Statement at **Flag-L**)

Findings:

The perusal of statements of the accused and available record has led to the following:-

1. As per available record, the Authority Letter was issued in favour of DRA by District Officer Revenue (**Flag-M**) to attend the court on behalf of Board of Revenue in the case titled Nizam-ud-Din Versus Government of Khyber Pakhtunkhwa however no record of its receipt on behalf of DRA was available. The request of Mr. Ghulam Qasim, the then DRA is placed on file **Flag-B** according to which he asked DOR to absolve him from pursuing court cases due to heavy load of work which was accepted as per marking on the said letter. On the other hand Mr. Qudratullah the then Naib Tehsildar Irrigation Nullah Gomal DIKhan has himself accepted that he was directed by the officers to represent the Board of Revenue as well in place of DRA which

Page 3/4

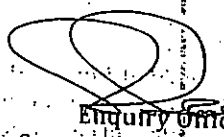
ATTESTED

177
he did & appeared before the court on 21.06.2007 but later on could not attend due to emergency flood duty. On the face of statement of Mr. Quadratullah, Mr. Ghulam Qasim does not seem to be guilty of negligence.

- 42
2. Mr. Quadratullah, the then Naib Tehsildar Irrigation Nullah Gomal now Tehsildar Hangu has confessed the charges that he was authorized by District Officer Revenue DIKhan to defend the case. He has also accepted that he represented the Board of Revenue before the court instead of DRA on 21.06.2007 but later on could not attend the proceedings on 04.07.2007 due to flood duty, however, he was unable to prove his contention through record, hence he has been found guilty of negligence and misconduct.
 3. Mr. Karamatullah submitted the copies of order sheets of the court **Flag-G** and final order of the court on application U/S 12(2) CPC. **Flag-N** The perusal of the order sheets and final order reveals that application U/S 12(2) CPC was pursued by him and his successors however the court dismissed the application on merit, hence Mr. Karamatullah does not seem to be guilty of negligence.
 4. Mr. Abdul Jalil, Naib Tehsildar Daraban the then Girdawar Circle DIKhan accepted that he was authorized by Tehsildar DIKhan to defend the case but he failed to attend the court after two hearings therefore charges against him stand proved.
 5. Mr. Sher Jan Patwari admitted that he failed to attend the court after one hearing due to which he was proceeded against ex-parte, therefore charges against him stand proved.

Recommendations

1. The charges against Mr. Ghulam Qasim the then DRA now Special Tehsildar Irrigation DIKhan have not been proved because Mr. Quadratullah the then Naib Tehsildar Nullah Gomal has confessed in his statement that he represented Board of Revenue before the court on 21.06.2007, hence charges against Mr. Ghulam Qasim may be dropped.
2. The charges against Mr. Quadratullah stand proved, therefore it is recommended that one of the penalties as prescribed in Rule 4 of Efficiency and Disciplinary Rules 2011 may be imposed upon him.
3. Mr. Karamatullah was not found guilty of the charges, therefore he may be exonerated.
4. Mr. Abdul Jalil, Naib Tehsildar Daraban the then Girdawar Circle DIKhan has been found guilty of negligence and misconduct therefore imposition of one of the penalties as prescribed in Rule 4 of Efficiency and Disciplinary Rules 2011 is recommended.
5. Mr. Sher Jan, Patwari has been found guilty of negligence and misconduct therefore it is recommended that one of the penalties as prescribed in Rule 4 of the Efficiency and Disciplinary rules 2011 may be imposed upon him.

25/11/2015

Enquiry Officer,
Secretary to Commissioner
DIKhan Division DIKhan


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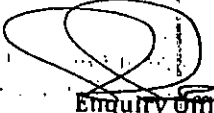
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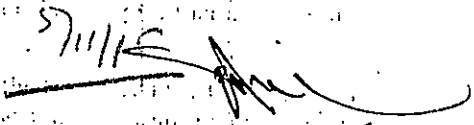
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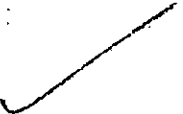
2. Mr. Qudratullah, the then Naib Tehsildar Irrigation Nullah Gomal now Tehsildar Hangu has confessed the charges that he was authorized by District Officer Revenue DIKhan to defend the case. He has also accepted that he represented the Board of Revenue before the court instead of Board on 21.06.2007 but later on could not attend the proceedings on 04.07.2007 due to flood duty, however, he was unable to prove his contention through record, hence he has been found guilty of negligence and misconduct.
3. Mr. Karamatullah submitted the copies of order sheets of the court **Flag-G** and final order of the court on application U/S 12(2) CPC. **Flag-N** The perusal of the order sheets and final order reveals that application U/S 12(2) CPC was pursued by him and his successors however the court dismissed the application on merit, hence Mr. Karamatullah does not seem to be guilty of negligence.
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5. Mr. Sher Jan Patwari admitted that he failed to attend the court after one hearing due to which he was proceeded against ex-parte, therefore charges against him stand proved.

Recommendations

1. The charges against Mr. Ghulam Qasim the then DRA now Special Tehsildar Irrigation, DIKhan have not been proved because Mr. Qudratullah the then Naib Tehsildar Nullah Gomal has confessed in his statement that he represented Board of Revenue before the court on 21.06.2007, hence charges against Mr. Ghulam Qasim may be dropped.
2. The charges against Mr. Qudratullah stand proved, therefore it is recommended that one of the penalties as prescribed in Rule 4 of Efficiency and Disciplinary Rules 2011 may be imposed upon him.
3. Mr. Karamatullah was not found guilty of the charges, therefore he may be exonerated.
4. Mr. Abdul Jalil, Naib Tehsildar Daraban the then Girdawar Circle DIKhan has been found guilty of negligence and misconduct therefore imposition of one of the penalties as prescribed in Rule 4 of Efficiency and Disciplinary Rules 2011 is recommended.
5. Mr. Sher Jan, Patwari has been found guilty of negligence and misconduct therefore it is recommended that one of the penalties as prescribed in Rule-4 of the Efficiency and Disciplinary rules 2011 may be imposed upon him.


 Enquiry Officer,
 Secretary to Commissioner
 DIKhan Division DIKhan


ATTST


 ...
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Amir M
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To,

The secretary-I Board of Revenue,
& Estate department, Govt: of KPK,
Peshawar.

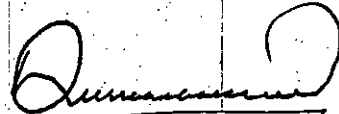
Subject: **DEPARTMENTAL APPEAL AGAINST IMPUGNED ORDER**
DATED: 23-12-2015 WARRANTING DISMISSAL FROM
SERVICES.

Please find enclosed herewith memo: of departmental Appeal dated 19-01-2016 (which is under Appeal Rules, 1986) for further necessary action at your and at your earliest convenience and for its onward submission to the Competent Appellate Authority under Appeal Rules & the E & D Rules, 2011 & oblige.

Ecnls:

Dated: 19-01-2016

Yours Truly,



Qudratullah S/o Ghulam Rasool
Ex-Tehsildar
R/o Basti Kanjkanwali, D.I.Khan
Mobile #: 0336-1711275

ATTESTED

(46)

BEFORE THE WORTHY CHIEF SECRETARY,
GOVT: OF KPK PESHAWAR

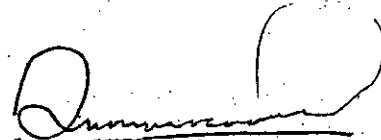
Serial Appeal No. _____/2016

Appellant: **QUDRATULLAH Ex-Tehsildar Hangu**

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Appellant,



Qudratullah S/o Ghulam Rasool
Ex-Tehsildar

R/o Basti Kanjhkanwali, D.I.Khan
Mobile #: 0336-1711275

ATTESTED

1

(47)

BEFORE THE GOVERNMENT OF KHYBER PAKHTOONKHAWA

Through:-

The Worthy Chief Secretary, Government of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.

Departmental Service Representation under S. 22 of the Civil Servants Act (XVIII) 1973- read with Civil Servants Appeal Rules, 1986 against order of Senior Member Board of Revenue dated 23-12-2015 communicated at Hangu on 04-01-2016.

Appellant: **QUDRATULLAH EX-TEHSILDAR HANGU**

The Appellant, amongst other grounds, respectfully submits as follows:-

Part - A.:

1. The Appellant during June, 2007 till December 2008 remained incumbent of BPS-09 in the capacity of Acting Naib Tehsildar, Gomal Nala under the domain of DC, D.I.Khan which fact is not denied by the District Revenue Hierarchy & the Inquiry Officer, too, and the Appellant was not a Gazetted Official for legal representation in the Courts or Tribunals in those days under the dictates of Law Manual (Instruction for Management of Legal Affairs.), and the Appellant by Designation was nominated through "Letter of Authority for appearance in the Court for Government and the Collector, D.I.Khan".
2. The Appellant later on in 1st week of July, 2007 was asked to shift to Hathala for affairs of control of Floods and was stationed at Hathala for almost two months and the Appellant had not appearance as witness and the charge is misconstrued/misconceived.
3. The usage of "Letter of Authority" signed by the Government Public Officer as Suitors or Defendants is meant for limited purpose just to enter appearance at the call of the **Pukara** of the court, and is not a recognized agent for Pleading and Acting in the legal proceedings (Reference to Chapter-XIII to XX of the Law Manual). The Collector of the District is the sole plenipotentiary agent of the Government and the entire spectrum of the Suit was flawed and faulted and the Trier Civil Judge-VII (then was, Adam Khan Suleman khel of South Waziristan Agency when the Plaintiff, too is bonafide resident of

ATTESTED

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South Waziristan Agency. Such Reference is Noteworthy). acted with material irregularities in the adjudication of the Civil Suit and the Judge apparently not withstanding the ordinary course of business of his court acted with undue haste since he did not give adjournment for written statement.

4. The Collector and the Tehsildar of those times (namely Khan Bakhsh and Ghazie Nawaz) were under obligation to involve the sitting Government pleaders (as defined in S.2 (7) CPC) or the special Government Pleader under the aegis of the Government Pleaders, but the said officer was by-passed or relegated by the two official defendants and the real fault, indifference or irresponsibility float on the surface of the order sheets of the Court, though the impropriety of the then Civil Judge is not "omission worthy" or ignorable when the decision/ decree dated 05-01-2008 is slipshod on the pedestals of the Lack of jurisdiction under Tenancy Act (25) 1950 and Land Reform Regulation 115/1972 or LR Act II of 1977.
5. Even in case of non-submission of written statement or avoidance of examination of the Plaintiffs witnesses and the event did not absolve the Trier-Judge Adam Khan Suleman Khel to remain passive or inactive against the Plaintiff and Judge is required to wear all the laws on the sleeves of his robes (As is consistent pronouncements of the Supreme Court) and fault and wrongs in the exercise of the jurisdiction which was wanting in the case had been vicariously shifted to the low paid official Appellant when the Plaintiff was bereft of the Disclosure of the Cause of Action and Barred by Law of Land Reform & Tenancies.
6. These objection are thus pre-ambulatory to the following submission qua the proceedings which had begun since framing of charge sheet dated 05-10-2015. (Copy is enclosed for favour of ready reference).
 - i. The Appellants thus was disengaged from the act of Appearance in the Court on 04-07-2007 and no other person was nominated and has been proceeded against for acts of omission on 04-07-2007 and has been charged-sheeted (Copy of the charge sheet dated 05-10-2015 is enclosed).
 - ii. The Appellant submitted his reply on time and the Inquiry Officer did not consider it appropriate to examine the Appellant and

ATTESTED

other co-accused or the Representative of the Prosecuting Authority and more clearly.

- iii. The inquiry officer did not offer opportunity of cross-examination of the representative of the Prosecuting Authority/Accusing Authority nor the Appellant was examined on Oath and not cross-examined and the dictates of Rules 5 to 14 of the E & D Rules, 2011 were not followed although the checklist of 1985 under E7D Rules 1973 is quite elaborate on this count.
- iv. The Appellant was not properly heard in person by the Inquiry Officer before submission of his report dated 05-11-2015.
- v. The Patwari Halqa as Defendant NO. 4 in Civil Suit No. 80/1 dated 12-05-2007 did not pursue his defense and the Court on 02-06-2007 and 21-06-2007 did not ask for written statement and in his hasty justice, wasted justice and his illegally in such situation when Govt: Defendant No-I in Civil Suit No. 80-1 of 12-05-2007 was not duly and properly served though Govt: Pleader Mr. Mustafa Kamal Mehsud. The reply submitted by the Appellant before Mr. Qaisar Mansoor at D.I.Khan was not found satisfactory by him and he submitted his inquiry report dated: 05-11-2015.
- vi. In pursuance of the Inquiry Report, the Show Cause Notice dated 14-12-2015 was issued against the Appellant on account of acts of omission in proceedings of Civil Suit NO. 80/1 of 12-05-2007 decided on 05-01-2008 by Mr. Adam Khan Sulemn Khel, Civil Judge, VII, D.I.Khan who is domiciled in South Waziristan Agency and who was the "Principal facilitator" for such impugned proceedings and the subsequent decree dated: 05-01-2008.
- vii. The proceedings by the Inquiry officer were thus conducted in utter violation of the Rules-5-10-11 & 14 of the E & D Rules 2011 and are not apt to bear the thrust of quasi judicial scrutiny by the Appellate Authority and are hit by the Rule of Ignorantia elenchi (Lati i.e ignoring the points in question and are conceived with the fallacy of asserting the wrong points).
- viii. The decree dated 05-01-2008 was later on challenged in various Applications under S.12(2) CPC. The resume of which is as under:-

~~ATTESTED~~

Resume of Application under S 12(2) CPC

S. No	Name of Applicants	Date of Instruction	Date of Decision
1	M. Alam V/s Nizamuddin	13-10-2010	09-06-2012
2	ADC, DIKhan V/s Nizamuddin and Civil Provision to dismissed by ADJ IV DIK on 16-04-2015	09-07-2013	10-11-2014

And two others by Officers of Pakistan Navy will be referred during personal hearing of the Appellant and the Government or the Collector did not pursue the said cases seriously.

- ix. The Appellant had thus no Vicarious liability for the acts of omissions of Tehsildar Ghazi Nawaz and the Collector Khan Bakhsh Marwat and senior member Board of Revenue who were in definite knowledge of the non-maintainable suit and patwari Halqa is not the Authorized Agent of the Government and those officers have unduly been absolved of their obligations.
- x. The entire proceedings had been conducted in haste and the Appellant has been punished in a harsh manner, against the "Rule of Proportionality" of the guilt as alleged when Patwari Halqa is a non-entity under 0.27 CPC read with instructions of Law Manual and the Principal Facilitator i.e Trier Judge Mr. Adam Khan Sulemna Khel had gone unpunished when his award of decree is fraudulent and without jurisdiction and a complaint against him is the warrant of the Law since Provincial Govt. is the Competent Authority for all Provincial Government servants. The inquiry Officer adopted the Rule of "hit & run" in the case. The Mutation No. 6353 was entered on 21-06-2010 in pursuance of decree and the Verifying Girdawar Circle did not take heed of the fact to make mention in his report that the land is not the surrendered land under land reforms and clerk of Land Reforms too erred in his statement terming the land as surrendered land under Land Reforms too erred in his statement terming the land as surrendered and such omission was also made by Ikramullah Tehsildar, D.I.Khan while attesting Mutation in favour of

ATTESTED

Nizamuddin and the Board of Revenue under s.177 LRA has peremptory power to correct any error in the mutation and the Board of Revenue too had not discharged its obligation.


- xi. Another case of similar nature vide Civil suit NO. 272/1 dated: 11-10-2005 of Civil Judge-I, D.I.Khan title M.ASLAM etc V/s Govt: of KPK & others was also fraudulently decreed for Khasra No. 1270, 1275 (15 Kanals 10 Marlas) proceeded and decreed and had been executed in Govt: record but the conscience of any official/officer. Had not vibrated and the property had been expropriated in favour of Muhammad Aslam, etc Decree Holder and the Collector of 2005-2006 and Tehsildar of early 2006 had remained unfaithful too and that case had been buried without further proceedings.

Copy of the Decree sheet of the civil Suit No. 272/1 dated: 11-10-2005 decreed on 06-01-2016 within 85 days expertee and Ahmad Bakhsh Patwari was on 23-12-2005 in that case Statements of PW-1 and PW-2 dated: 23-12-2005 for the said Civil Suit are enclosed.

- xii. The Appellant also wishes to be heard in person to explain further qua the proceeding of Writ petition No. 857 dated 22-12-2015 from the Additional Deputy Commissioner D.I.Khan in respect of the same Land.

It is therefore, prayed that the impugned order dated 23-12-2015 of dismissal from service of the Appellant may kindly be set aside and the Appellant may be re-instated in his incumbency of Tehsildar BPS-16 with all back benefits.

Your Humble Appellant,



Qudratullah S/o Ghulam Rasool

Ex-Tehsildar

R/o Basti Kanchkanwali, D.I.Khan

Mobile #: 0336-1711275

ATTESTED

Amexo N
GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT


No. Estt: I/ Qudratullah/ 8524
Peshawar dated the 14 /03/2016

To

Mr. Qudratullah,
Ex- Tehsildar Hangu
R/O Basti Kanjhkanwali, DIKhan.

SUBJECT: DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED
23.12.2015.

I am directed to refer to your Departmental appeal dated 19.01.2016 on the subject and to say that your Departmental appeal has been examined by the Appellate Authority and filed.


Assistant Secretary (Estt)

~~ACCEPTED~~

Annexes

53

To

Mr. Malik Mansoor Qaiser,
Secretary to Commissioner,
D.I.Khan Division, D.I.Khan/
Inquiry Officer.

Subject:-

REPLY TO THE CHARGE SHEET.

Respected Sir,


Reference Charge Sheet issued by the Senior Member, Board of Revenue, KPK in case titled "Additional Deputy Commissioner, D.I.Khan etc. versus Nizam-ud-Din etc: (Copy enclosed herewith for ready reference).

In this regard it is submitted that during the year 2007 I was posted as District Revenue Accountant, D.I.Khan. In the Charge Sheet received from the Board of Revenue, KPK, a charge has been leveled upon me that I being a representative of Board of Revenue, KPK failed to defend the rights of Government in case Nizam-ud-Din versus Government of KPK and others pending before the court of learned Civil Judge-VII, D.I.Khan.

It is also added that during my posting as District Revenue Accountant the main office often authorized me to defend / pursue the various cases on behalf of the Government but I had never received any authority letter and were returned back by endorsing the remarks that due to rush of work, preparation of recovery statements, reconciliation of Government receipts of the financial year 2006-07 and to assess fresh demands of the Government dues for the next year 2007-08 I am not able to attend court cases and requested the then D!D.O. Revenue to authorize any other Revenue Officer to attend / defend the Government cases on behalf of the District Revenue Accountant. On my request Naib Tehsildar Irrigation Nallah Gomal was directed to attend the court cases on behalf of District Revenue Accountant, D.I.Khan till further orders vide order dated 05/12/2006 (Copy enclosed herewith). Therefore, Naib Tehsildar Irrigation Nallah Gomal was attending all the cases on behalf of District Revenue Accountant.

In this regard it is submitted that I have neither received any Authority Letter from the Board of Revenue, KPK nor I had attended the court of learned Civil Judge-VII, D.I.Khan. Therefore, charges leveled against me are not correct. I have performed my duties during the entire service with great responsibility and to the entire satisfaction of my superior officers. I am ready to record my statement on oath that my above statement is true, correct and based on facts.

In view of the above facts it is humbly requested that I may be exonerated from the charges leveled against me.


(GULAM CASIM)
Special Tehsilda Irrigation,
D.I.Khan

ATTESTED

No. 5206 /DRA

Dated D.I.Khan

the 5/12/2006

(54)

From:-

The D.R.A D.I.Khan.

To:-

The Collector, D.I.K.

Subject:-

ENTRUSTED THE FUNCTION OF ATTENDING THE COURTS IN THE CASES TO NAIB TEHSILDAR IRRIGATION *Nal Koma*

AR

Sir,

Most humbly I request for entrusting the job of attending the Courts in the cases related to the Row to N T Irrigation as the volume of work on the undersigned is very high therefore unable to attend the courts in each every case.

of the

c.c

DRA
D.I.Khan

05/12/06
Please accept

NT Irrigation Nal Koma
Road Kohli
For cases to attend
at on the

D.I.Khan
5/12/06

Issue go.

5/12/06

ASST

تعمیرات
10 روپے



45777

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

ایڈووکیٹ/دستخط
بار کونسل ابار ایسوسی ایشن
رابطہ نمبر:

بعدالت جناب: *[Handwritten Signature]*

<i>Relitiation</i>	دعوی:
<i>صورت</i>	علت نمبر: موردہ: جرم: تھانہ:
بابت تحریر آنکہ	

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پہر دی وجوہات دی کاروائی متعلقہ

آن مقام *[Handwritten Signature]* کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل صاحب کو راضی نامہ کرنے و تقرر حالت و فیصلہ برطاعت دینے جواب دعوی اقبال دعوی اور درخواست ازہر قسم کی تصدیق زریں ہند دستخط کرنے کا اختیار ہوگا، نیز یہ صورت عدم پہر دی جائے گی یا اہل کی برآمدگی اور منسوخی، نیز دائر کرنے اہل نگرانی و نظربانی و پہر دی کرنے کا مختار ہوگا اور یہ صورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہو گا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا مانتہ ہند داخلہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ اتوائے مقدمہ کے سبب سے ہوگا وہ وکیل موصوف وکیل کرنے کا مختار ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ یہ پہر دی ہند کو نہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المرقوم: *[Handwritten Signature]*

الع بد _____ واہ شد _____ الع بد

مقام _____ کے لئے منظور ہے۔

[Handwritten Signatures]



OFFICE OF THE
DEPUTY COMMISSIONER
DERA ISMAIL KHAN

Phone #: 0966-9280116 / Fax #: 0966-9280110

AUTHORITY LETTER.

Superintendent, Deputy Commissioner's Office, D.I.Khan is hereby authorized to attend the learned KPK Services tribunal on behalf of the undersigned in the following cases on 30/08/2016 and onward each dates of hearing and submit Para-wise comments on behalf of undersigned (Respondent No.5).

1. Service Appeal No.360/2016 Qudaratullah versus Government of KPK through Chief Secretary, KPK and others.
2. Service Appeal No. 393/2016 Abdul Jalil versus Government of KPK through Chief Secretary, KPK and others.
3. Service Appeal No. 361/2016 Sher Jan versus Government of KPK through Chief Secretary, KPK and others.


Deputy Commissioner,
Dera Ismail Khan

No. 510 /SK Dated D.I.Khan the 23/08/2016

Copy to the:-

1. Superintendent, Deputy Commissioner's Office, D.I.Khan for compliance.
2. Reader, court of learned KPK Services tribunal camp at D.I.Khan.


Deputy Commissioner,
Dera Ismail Khan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL.

Service Appeal No. 360 of 2016

Qudratullah s/o Ghulam Rasool r/o Basti Kanjhkian Wali, City D.I.Khan. (Appellant).

Versus

Government of Khyber Pakhtunkhwa through Chief Secretary and others. (Respondents).

Parawise comments on behalf of Respondent No. 5.

Respectfully sheweth.

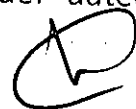
ON FACTS.

1. Pertains to record.
2. Correct.
3. The Appellant was while posted as Naib Tehsildar, Rod Kohi Nallah Gomal, D.I.Khan, directed / authorized by the then District Officer, Revenue & Estates/Collector, D.I.Khan to attend and pursue the case title "Nizam-ud-Din versus Government of Khyber Pakhtunkhwa, pending before the court of learned Civil Judge-VII/Judicial Magistrate, D.I.Khan. The Appellant appeared before the court on one adjournment but he did not appear before the court on the next adjournment, hence ex-Parte proceedings were ordered by the learned Court.
4. The Appellant neither attended the court of learned Civil Judge-VII/Judicial Magistrate, D.I.Khan on other adjournments nor did he approach the learned court for the cancellation of ex-parte orders. When the matter was come into the notice, the Additional Deputy Commissioner, D.I.Khan and other moved an application u/s 12 (2) CPC before the court of learned Civil Judge-VII/Judicial Magistrate, D.I.Khan which was rejected by the learned court. Later-on, an appeal

(1)

was submitted before the court of Learned District & Sessions Judge, D.I.Khan against the orders of learned Civil Judge-VII/Judicial Magistrate, D.I.Khan but the same was also rejected by the learned Additional District & Sessions Judge-IV, D.I.Khan vide order dated 16/04/2015.

5. The application mentioned by the Appellant as Annexure-"C" is not available on the record.
6. Correct to the extent that the Authority Letter (at Annexure-C) was issued by this office.
7. According to the order sheet of the case, the representative of the Respondent No. 1 (Provincial Government through Secretary, Revenue Department, (KPK) had attended the court on 21/06/2007.
8. According to order sheet of the trial court, on 04/07/2007, no one from the respondents has appeared before the trial court hence ex-parte order was passed the learned trial court (Civil Judge-VII, D.I.Khan). Later-on, after completion of ex-parte proceedings, the trial court awarded ex-parte decree to the Appellant (Nizam-ud-Din) on 05/01/2008.
9. When the matter was come into the notice, the Additional Deputy Commissioner, D.I.Khan and other moved an application u/s 12 (2) CPC before the court of learned Civil Judge-VII/Judicial Magistrate, D.I.Khan which was rejected by the learned court. Later-on, an appeal was submitted before the court of Learned District & Sessions Judge, D.I.Khan against the orders of learned Civil Judge-VII/Judicial Magistrate, D.I.Khan but the same was also rejected by the learned Additional District & Sessions Judge-IV, D.I.Khan vide order dated 16/04/2015.



10. Correct. As stated above in Para 9.
11. Correct. As stated above in Para 9.
12. Correct. After dismissal of Appeals by the lower Courts, the respondent submitted a Writ Petition before the Hon'ble Peshawar High Court Bench D.I.Khan for the cancellation of ex-Parte decree which is pending before the Hon'ble Peshawar High Court Bench D.I.Khan.
13. Does not relate to Respondent No. 5.
14. Does not relate to Respondent No. 5.
15. Does not relate to Respondent No. 5.
16. Does not relate to Respondent No. 5.
17. Does not relate to Respondent No. 5.
18. Due to negligence in performance of their duties, a piece of Government land was decreed in favour of one Nizam-ud-Din, therefore, it is requested that the instant Appeal may please be filed.

ON GROPUNDS.

- A. Does not relate to Respondent No. 5.
- B. Does not relate to Respondent No. 5.
- C. Does not relate to Respondent No. 5.
- D. Does not relate to Respondent No. 5.



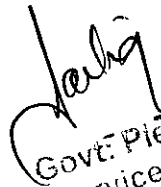
- E. The Appellant failed to fulfill his duties assigned to him by his superiors and due to his negligence state's property was decreed to one Nizam Ud-Din.
- F. Does not relate to Respondent No. 5.
- G. Due to negligence in performance of their duties, a piece of Government land was decreed in favour of one Nizam-ud-Din.
- H. Correct to the extent that the Writ Petition is pending before the Hon'ble Peshawar High Court Bench D.I.Khan.
- I. Due to negligence in performance of their duties, a piece of Government land was decreed in favour of one Nizam-ud-Din.

It is requested that the instant Appeal may please be dismissed.



DEPUTY COMMISSIONER,
DERA ISMAIL KHAN
(Respondent No.5)

Vetted


Govt. Pleader
RPK Services Tribunal
Camp Court D.I.Khan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL.

Service Appeal No. 360 of 2016

Qudratullah s/o Ghulam Rasool r/o Basti Kanjhkian Wali, City D.I.Khan. (Appellant).

Versus

Government of Khyber Pakhtunkhwa through Chief Secretary and others. (Respondents).

Parawise comments on behalf of Respondent No. 5.

Respectfully sheweth.

ON FACTS.

1. Pertains to record.
2. Correct.
3. The Appellant was while posted as Naib Tehsildar, Rod Kohi Nallah Gomal, D.I.Khan, directed / authorized by the then District Officer, Revenue & Estates/Collector, D.I.Khan to attend and pursue the case title "Nizam-ud-Din versus Government of Khyber Pakhtunkhwa, pending before the court of learned Civil Judge-VII/Judicial Magistrate, D.I.Khan. The Appellant appeared before the court on one adjournment but he did not appear before the court on the next adjournment, hence ex-Parte proceedings were ordered by the learned Court.
4. The Appellant neither attended the court of learned Civil Judge-VII/Judicial Magistrate, D.I.Khan on other adjournments nor did he approach the learned court for the cancellation of ex-parte orders. When the matter was come into the notice, the Additional Deputy Commissioner, D.I.Khan and other moved an application u/s 12 (2) CPC before the court of learned Civil Judge-VII/Judicial Magistrate, D.I.Khan which was rejected by the learned court. Later-on, an appeal

(1)

was submitted before the court of Learned District & Sessions Judge, D.I.Khan against the orders of learned Civil Judge-VII/Judicial Magistrate, D.I.Khan but the same was also rejected by the learned Additional District & Sessions Judge-IV, D.I.Khan vide order dated 16/04/2015.

5. The application mentioned by the Appellant as Annexure-"C" is not available on the record.
6. Correct to the extent that the Authority Letter (at Annexure-C) was issued by this office.
7. According to the order sheet of the case, the representative of the Respondent No. 1 (Provincial Government through Secretary, Revenue Department, (KPK) had attended the court on 21/06/2007.
8. According to order sheet of the trial court, on 04/07/2007, no one from the respondents has appeared before the trial court hence ex-parte order was passed the learned trial court (Civil Judge-VII, D.I.Khan). Later-on, after completion of ex-parte proceedings, the trial court awarded ex-parte decree to the Appellant (Nizam-ud-Din) on 05/01/2008.
9. When the matter was come into the notice, the Additional Deputy Commissioner, D.I.Khan and other moved an application u/s 12 (2) CPC before the court of learned Civil Judge-VII/Judicial Magistrate, D.I.Khan which was rejected by the learned court. Later-on, an appeal was submitted before the court of Learned District & Sessions Judge, D.I.Khan against the orders of learned Civil Judge-VII/Judicial Magistrate, D.I.Khan but the same was also rejected by the learned Additional District & Sessions Judge-IV, D.I.Khan vide order dated 16/04/2015.



10. Correct. As stated above in Para 9.
11. Correct. As stated above in Para 9.
12. Correct. After dismissal of Appeals by the lower Courts, the respondent submitted a Writ Petition before the Hon'ble Peshawar High Court Bench D.I.Khan for the cancellation of ex-Parte decree which is pending before the Hon'ble Peshawar High Court Bench D.I.Khan.
13. Does not relate to Respondent No. 5.
14. Does not relate to Respondent No. 5.
15. Does not relate to Respondent No. 5.
16. Does not relate to Respondent No. 5.
17. Does not relate to Respondent No. 5.
18. Due to negligence in performance of their duties, a piece of Government land was decreed in favour of one Nizam-ud-Din, therefore, it is requested that the instant Appeal may please be filed.

ON GROPUNDS.

- A. Does not relate to Respondent No. 5.
- B. Does not relate to Respondent No. 5.
- C. Does not relate to Respondent No. 5.
- D. Does not relate to Respondent No. 5.



- E. The Appellant failed to fulfill his duties assigned to him by his superiors and due to his negligence state's property was decreed to one Nizam Ud-Din.
- F. Does not relate to Respondent No. 5.
- G. Due to negligence in performance of their duties, a piece of Government land was decreed in favour of one Nizam-ud-Din.
- H. Correct to the extent that the Writ Petition is pending before the Hon'ble Peshawar High Court Bench D.I.Khan.
- I. Due to negligence in performance of their duties, a piece of Government land was decreed in favour of one Nizam-ud-Din.

It is requested that the instant Appeal may please be dismissed.



DEPUTY COMMISSIONER,
DERA ISMAIL KHAN
(Respondent No.5)

Vetted



Deputy Commissioner
Services Tribunal
Dera Ismail Khan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 360/2016.

Qudratullah Ex-Tehsildar Hangu.

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary and others

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.

PRELIMINARY OBJECTIONS.

1. The Appellant has got no cause of action.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the Appellant has been estopped by his own conduct to file the appeal.
4. That appeal is time barred.
5. That the appeal is not maintainable in its present form.

ON FACTS.

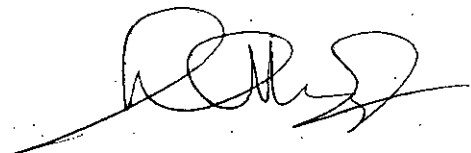
1. Pertain to record.
2. Incorrect. The appellant was authorized to properly pursue the case in Civil Court, but he failed to do so, resultantly the Civil Court passed an ex-parte decree against the government and a valuable 16 kanal state land was transferred to a Private individual.
3. Incorrect. The appellant was authorized to defend the interest of the Government, but due to his dis-interest, a chunk of 16 kanal valuable state land has gone to the Private individual.
4. As in Para-3 above.
5. Incorrect. Due to negligence on the part of the appellant, the Government has lost a valuable piece of 16 kanal state land.
6. As in proceeding Paras.
7. Pertains to record.
8. As in Para-5 above.
9. The appellant was duty bound to pursue application Under Section 12(2) but the same was also dismissed due to negligence on the part of appellant.
10. As in Para-9 above.
11. As in Para-9 above.
12. No comments.

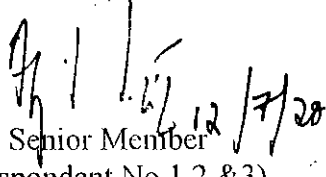
13. Correct to the extent that enquiry was conducted through Secretary to Commissioner D. I Khan.
(Copy of the Charge Sheet, Statement of Allegations and Inquiry Report, Final Show Cause Notice Annexure A, B, C & D)
14. Correct to the extent that the appellant was found guilty by the Inquiry Officer and recommended for penalty under Rule-4 of the Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011.
15. Correct to the extent that major penalty was imposed upon the appellant on the basis of recommendation of the Inquiry Officer.
16. Departmental appeal of the appellant has been rejected by the appellate authority (Annexure-A).
17. As in Para-16 above.
18. The appeal of the appellant is not maintainable.

GROUND.

- A. Incorrect. Dismissal order was issued in accordance with law/rules and based on the recommendation of Inquiry Officer.
- B. Incorrect. The proceedings were carried out according to law/rules.
- C. As in Para-A above.
- D. Incorrect. The appellant being a Government Servant was duty bound to pursue the case in Civil Court.
- E. As in Para-D above.
- F. Incorrect. Penalty was imposed upon the appellant in accordance with (Efficiency and Discipline) Rules, 2011.
- G. Incorrect. There was no need to refer the matter to Law Department.
- H. Incorrect. No discrimination has been done with the appellant.
- I. The respondent will also seek permission to advance additional grounds at the time of argument.

It is therefore requested that the appeal having no weight may be dismissed with cost.


Secretary Establishment
(Respondent No.4)


Senior Member
(Respondent No.1,2 &3)

CHARGE SHEET

I, Waqar Ayub, Senior Member, Board of Revenue Khyber Pakhtunkhwa
as Competent Authority, hereby charge you Mr. Qudrat Ullah Naib Tehsildar Irrigation
Nulla Gomal now Tehsildar Hangu as follow: -

That you, while posted as Naib Tehsildar Irrigation Nulla Gomal committed the
following irregularities: -

- a) That you were ordered by the Competent Authority to represent Board of Revenue Khyber Pakhtunkhwa in Civil Suit titled Nizam-ud-din Vs Govt. of Khyber Pakhtunkhwa etc, which was pending adjudication in court of learned Civil Judge-VII, DIKhan and to defend him through legal means but the record shows that you did not appear before the learned trial court and willfully absented yourself resultantly an ex parte order and decree was passed in favour of decree holder Nizam-ud-Din by the learned trial court. Due to which valuable Govt. land measuring 16 Kanals situated in Mauza Shor Kot Tehsil and District DIKhan has fraudulently been grabbed by the decree holder due to your negligence.
- b) Your this act tantamounts to misconduct and make you liable to be proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

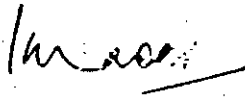
2. By reason of the above, you appear to be guilty of mis-conduct under Rule 3 of the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 2011.

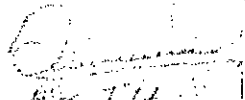
3. You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Inquiry Officer.

4. Your written defence, if any should reach the Inquiry Officer within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

5. Intimate as to whether you desire to be heard in person or otherwise.

6. Statement of allegations is enclosed.


Senior Member

Attested

B. T. H.

DISCIPLINARY ACTION

I, Waqar Ayub, Senior Member, Board of Revenue Khyber Pakhtunkhwa as Competent Authority, am of the opinion that Mr. Qudrat Ullah Naib Tehsildar Irrigation Nulla Gomal now Tehsildar Hangu has rendered himself liable to be proceeded against as he committed the following acts / omission within the meaning of Rules-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

STATEMENT OF ALLEGATIONS

- a) That you were ordered by the Competent Authority to represent Board of Revenue Khyber Pakhtunkhwa in Civil Suit titled Nizam-ud-din Vs Govt. of Khyber Pakhtunkhwa etc, which was pending adjudication in court of learned Civil Judge-VII, DIKhan and to defend him through legal means but the record shows that you did not appear before the learned trial court and willfully absented yourself resultantly an ex parte order and decree was passed in favour of decree holder Nizam-ud-Din by the learned trial court. Due to which valuable Govt. land measuring 16 Kanals situated in Mauza Shor Kot Tehsil and District DIKhan has fraudulently been grabbed by the decree holder due to your negligence.
- b) Your this act tantamounts to misconduct and make you liable to be proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

2. For the purpose of inquiry against the said accused with reference to the above allegations Malik Mansoor Qaiser Secretary to Commissioner DIKhan Division DIKhan is appointed as Enquiry 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 office of the Commissioner Office DIKhan shall join the proceedings on the date, time and place specified by the Inquiry Officer.

Attested
[Signature]
Sd/- T. H.

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ENQUIRY REPORT

Background

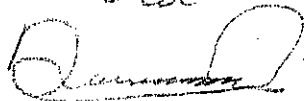
Brief facts of the case are that one Mr. Nizam-ud-Din S/O Muhammad Usman R/O Moza Shorkot DIKhan filed an application in the court of learned Civil Judge-VII DIKhan claiming the ownership rights of state land measuring 16 Kanals in Khasra 1210 & 1211 of Moza Shorkot on the plea that he was in possession of the said land since long being a "Kashtkar" and land may be allotted to him under Land Reforms Rules. The court issued summons to the Respondents namely the Secretary Board of Revenue, District Officer Revenue / Collector DIKhan, Revenue Officer / Tehsildar DIKhan and Patwari Halqa. The Respondents 1, 2 and 3 authorized District Revenue Accountant, Naib Tehsildar Irrigation Nullah Gomal and Girdawar Circle DIKhan respectively to defend the case on their behalf. The authorized officials appeared before the court on 02.06.2007 except Patwari Halqa, who was proceeded against ex-parte by the court. On next hearing i.e. 21.06.2007 the authorized officials appeared before the court however they failed to attend the court on next date of hearing on 04.07.2007, hence the court ordered ex-parte proceedings against all the respondents. No one approached the court for cancellation of ex-parte decree and proceedings continued with ultimate decree in favour of the Plaintiff on 05.01.2008.

In the meanwhile the Board of Revenue placed the land in question (i.e. 16 Kanals in Moza Shorkot) on the schedule of Pak Navy which was subsequently allotted to certain Navy officials however it could not be incorporated in revenue record in the presence of court decree. The issue was brought into the notice of the then Senior Member Board of Revenue through a report by Patwari Halqa, Girdawar Circle, Revenue Officer concerned and District Officer Revenue / Collector DIKhan. **(Flag-A)** The then Senior Member Board of Revenue passed the remarks "DOR DIKhan for withdrawal from Schedule". The District Officer Revenue / Collector DIKhan forwarded the same to Revenue staff with the remarks "for compliance of SMBR orders please". Consequently the Revenue Officer / Tehsildar DIKhan attested the mutation in favour of Plaintiff Nizam-ud-Din on the basis of court decree.

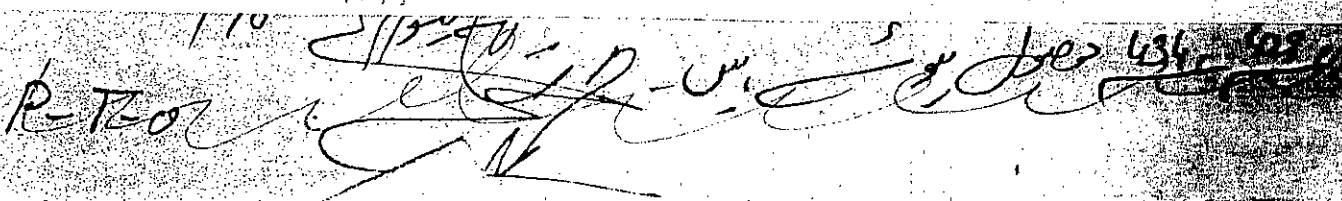
Pakistan Navy approached the Board of Revenue and agitated against the attestation of mutation in favour of the Plaintiff. The Board of Revenue issued directions that disciplinary proceedings may be initiated against the officials responsible for ex-parte decree and application u/s 12(2) CPC may be moved against the decree. The Commissioner DIKhan Division appointed Assistant Commissioner Kulachi as Inquiry Officer to conduct a Fact Finding Inquiry.

Assistant Commissioner Kulachi furnished his findings which were forwarded to the Board of Revenue. The Competent Authority, ordered an Inquiry under Efficiency & Disciplinary Rules-2011 and appointed the undersigned as Inquiry Officer.

Attested



P. T. H.

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R-TR-02


Proceedings

The Competent Authority served Charge Sheets and Statements of Allegations upon the following officials and directed them to submit written replies to the Inquiry Officer.

1. Mr. Ghulam Qasim the then DRA now Special Tehsildar Irrigation DIKhan as authorized representative of Secretary Board of Revenue.
2. Mr. Quadratullah the then Naib Tehsildar Irrigation Nullah Gomal now Tehsildar Hangu as authorized representative of District Officer Revenue / Collector DIKhan
3. Mr. Karamatullah Tehsildar DIKhan
4. Mr. Abdul Jalil, the then Girdawar Circle DIKhan now Naib Tehsildar Daraban DIKhan
5. Mr. Sher Jan the then Patwari Halqa Shor Kot now Patwari Halqa Kirri Khaisor Kacha.


The accused submitted their written replies to the undersigned as per following detail:-

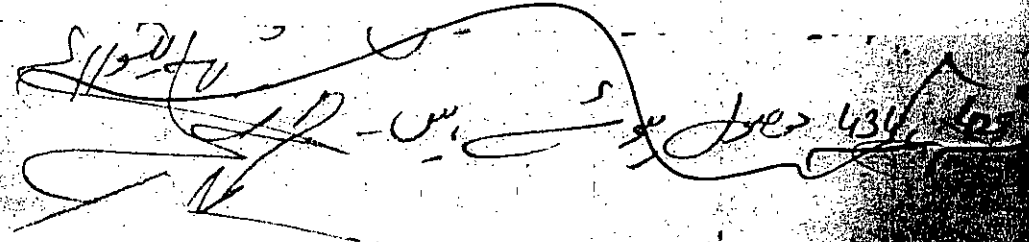
The accused Mr. Ghulam Qasim, stated that he was posted as DRA in the year 2007, however due to heavy load of work, he requested the then District Officer Revenue DIKhan to authorize any other officer to attend the court cases where authorities were issued in favour of DRA. He submitted his written request to District Officer Revenue DIKhan which is placed on file **(Flag-B)**. He further stated that he did never receive any Authority Letter from Board of Revenue nor did he appear before the court. (Statement at **Flag-C**)

Mr. Quadratullah, the accused, stated that he was posted as Naib Tehsildar Irrigation Nullah Gomal DIKhan in 2007 and received Authority Letter **(Flag-D)** from District Officer Revenue DIKhan to represent him in the subject case. He appeared before the court on 02.06.2007 and later on he was directed to represent the Board of Revenue as well (instead of DRA) which he did and appeared before the court on 21.06.2007 as representative of both the District Officer Revenue and Board of Revenue. He stated that he obtained the copies of plaint and submitted it to Government Pleader to prepare reply for submission before the court on next date of hearing on 04.07.2007. In the meanwhile he was directed by the officers to move to Hathala Tehsil Kulachi to monitor flood situation. According to him, he remained stationed at Hathala for two months and was unaware of the happenings regarding the subject case whether the Government Pleader prepared reply and submitted to the court or not. He was unable to present any record regarding flood duty or handing over the case to Government Pleader. (Statement at **Flag-E**)

Mr. Karamatullah stated that in compliance with the directions of high-ups, an application under 12/2 CPC was submitted before the court of learned Civil Judge-VII

Attested


Ex. T. H.

P-T-0 110


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DIKhan and he being authorized officer on behalf of Additional Deputy Commissioner and Additional Assistant Commissioner (Revenue) DIKhan (**Flag-F**) attended the court proceedings on 09.07.2013, 31.07.2013 and 20.09.2013 however later on he was transferred and handed over the charge to his successor. According to him his two successors namely Mr. Shah Nawaz and Abdur Rehman Shah also attended the court proceedings. In favour of his claim he submitted copies of order sheets of the court and charge report which are placed on file at **Flag-G** and **H** respectively. (Statement at **Flag-I**)

Mr. Abdul Jalil, Naib Tehsildar Daraban DIKhan stated that he was posted as Girdawar Circle DIKhan in 2007 and was authorized by Tehsildar DIKhan (**Flag-I**) to attend the court of Civil Judge VII DIKhan on his behalf in the subject case. According to him he attended the court on 02.06.2007 and 21.06.2007, however could not attend on next date of hearing and later on he was transferred and posted as Kanungo Rod Kohi. He stated that he has always performed his duties during entire service with great responsibility therefore he didn't remain absent from the court deliberately but was assigned other duties by the then District Officer Revenue (DOR) and Tehsildar DIKhan. He requested that he may be exonerated from the charges. He was unable to furnish any documentary proof in support of his contention. (Statement at **Flag-K**)

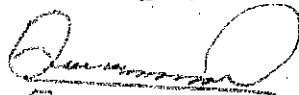
Mr. Sher Jan Patwari Halqa Kirri Khaisor Kacha, the then Patwari Shor Kot stated that he attended the court of Civil Judge VII on first hearing but could not attend the court later on due to other official engagements and court cases, hence was proceeded against ex-parte. He further stated that he was not authorized by any officer to defend the case on his behalf and Patwari Halqa was a proforma defendant who was supposed to present revenue record in the court which he did. The responsibility of defending the case was on the shoulders of defendants 1,2 and 3 i.e. Secretary Board of Revenue, District Officer Revenue and Revenue Officer Circle. He requested for exoneration from the charges. (Statement at **Flag-L**)

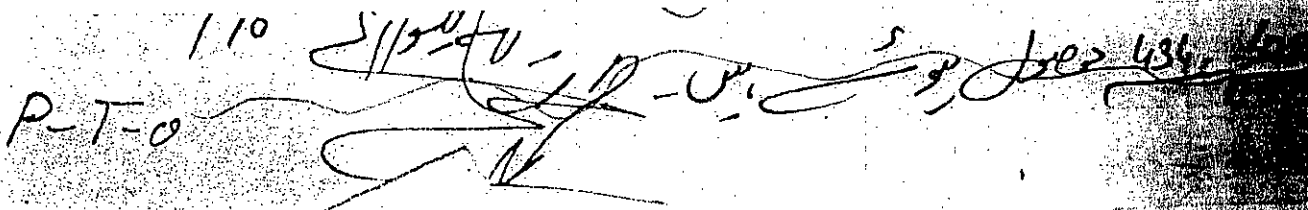
Findings

The perusal of statements of the accused and available record has led to the following:-

1. As per available record, the Authority Letter was issued in favour of DRA by District Officer Revenue (**Flag-M**) to attend the court on behalf of Board of Revenue in the case titled Nizam-ud-Din Versus Government of Khyber Pakhtunkhwa however no record of its receipt on behalf of DRA was available. The request of Mr. Ghulam Qasim, the then DRA is placed on file **Flag-B** according to which he asked DOR to absolve him from pursuing court cases due to heavy load of work which was accepted as per marking on the said letter. On the other hand Mr. Quadratullah the then Naib Tehsildar Irrigation Nullah Gomal DIKhan has himself accepted that he was directed by the officers to represent the Board of Revenue as well in place of DRA which

Attested


EX. T. H.


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P-T-0


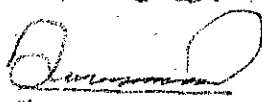
he did & appeared before the court on 21.06.2007 but later on could not attend due to emergency flood duty. On the face of statement of Mr. Qudratullah, Mr. Ghulam Qasim does not seem to be guilty of negligence.

2. Mr. Qudratullah, the then Naib Tehsildar Irrigation Nullah Gomal now Tehsildar Hangu has confessed the charges that he was authorized by District Officer Revenue DIKhan to defend the case. He has also accepted that he represented the Board of Revenue before the court instead of DRA on 21.06.2007 but later on could not attend the proceedings on 04.07.2007 due to flood duty, however, he was unable to prove his contention through record, hence he has been found guilty of negligence and misconduct.
3. Mr. Karamatullah submitted the copies of order sheets of the court **Flag-G** and final order of the court on application U/S 12(2) CPC. **Flag-N** The perusal of the order sheets and final order reveals that application U/S 12(2) CPC was pursued by him and his successors however the court dismissed the application on merit, hence Mr. Karamatullah does not seem to be guilty of negligence.
4. Mr. Abdul Jalil, Naib Tehsildar Daraban the then Girdawar Circle DIKhan accepted that he was authorized by Tehsildar DIKhan to defend the case but he failed to attend the court after two hearings therefore charges against him stand proved.
5. Mr. Sher Jan Patwari admitted that he failed to attend the court after one hearing due to which he was proceeded against ex-parte, therefore charges against him stand proved.

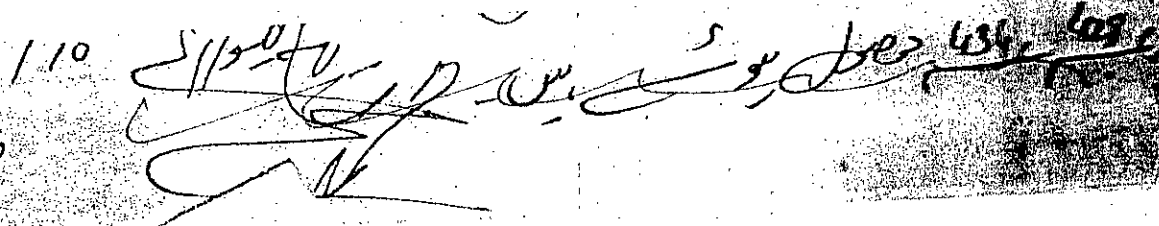
Recommendations

1. The charges against Mr. Ghulam Qasim the then DRA now Special Tehsildar Irrigation DIKhan have not been proved because Mr. Qudratullah the then Naib Tehsildar Nullah Gomal has confessed in his statement that he represented Board of Revenue before the court on 21.06.2007, hence charges against Mr. Ghulam Qasim may be dropped.
2. The charges against Mr. Qudratullah stand proved, therefore it is recommended that one of the penalties as prescribed in Rule 4 of Efficiency and Disciplinary Rules 2011 may be imposed upon him.
3. Mr. Karamatullah was not found guilty of the charges, therefore he may be exonerated.
4. Mr. Abdul Jalil, Naib Tehsildar Daraban the then Girdawar Circle DIKhan has been found guilty of negligence and misconduct therefore imposition of one of the penalties as prescribed in Rule 4 of Efficiency and Disciplinary Rules 2011 is recommended.
5. Mr. Sher Jan, Patwari has been found guilty of negligence and misconduct therefore it is recommended that one of the penalties as prescribed in Rule-4 of the Efficiency and Disciplinary rules 2011 may be imposed upon him.


Enquiry Officer /
Secretary to Commissioner
DIKhan Division DIKhan

Attested

E. K. T. H.

P-T-0

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GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

SHOW CAUSE NOTICE

1. I, Muhammad Humayun Khan, Senior Member, Board of Revenue, as Competent Authority, under the Khyber Pakhtunkhwa Government Servant (Efficiency and Discipline) Rules, 2011, serve you Mr. Quadratullah, the then Naib Tehsildar Irrigation Nullah Gomal now Tehsildar Hangu, show cause notice that an enquiry was conducted against you, wherein an opportunity was given to you to be heard in person and furnish written defense. The Enquiry Officer has submitted his report on 05.11.2015.

2. After going through the findings of the Enquiry Officer, material on record and your written defense before the Enquiry Officer, I am satisfied that you have committed misconduct on the following account:

- a) That you were ordered by the Competent Authority to represent Board of Revenue Khyber Pakhtunkhwa in Civil Suit titled Nizam-ud-din Vs Govt. of Khyber Pakhtunkhwa etc, which was pending adjudication in court of learned Civil Judge-VII, DIKhan and to defend him through legal means but the record shows that you did not appear before the learned trial court and willfully absented yourself resultantly an ex parte order and decree was passed in favour of decree holder Nizam-ud-Din by the learned trial court. Due to which valuable Govt. land measuring 16 Kanals situated in Mauza Shor Kot Tehsil and District DIKhan has fraudulently been grabbed by the decree holder due to your negligence.
- b) Your this act tantamounts to misconduct and make you liable to be proceeded against under Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011.

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

4. You are therefore required to show cause as to why the aforesaid penalty should not be imposed upon you. Furthermore, you are directed to appear on 12.12.2015 at 10:00 A.M before the undersigned for personal hearing.

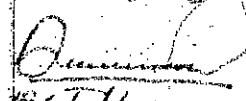
5. If no reply to this Notice is received within 07 days of its delivery, it shall be presumed that you have no defence to put in and in that case ex parte action shall be taken against you.


Senior Member

No. PF/Ghulam Qasim/ 28009

Peshawar, dated 14/12/2015

Mr. Quadratullah Tehsildar Hangu.

Attested

M.H.

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,

PESHAWAR

In Re:

Service Appeal No. _____/2016

Qudratullah.....**Appellant**

Versus

Govt. of Khyber Pakhtunkhwa & others.....**Respondents**

REJOINDER ON BEHALF OF THE

APPELLANT

Respectfully Sheweth:

The appellant submits as follow:

1. That the appellant never absented himself from the court proceedings during the period he was responsible/authorized to represent the respondent before the court.
2. That the appellant was replaced by Naib Tehsildar Ghulam Qasim to represent the respondents before court and the appellant was relieved of his responsibility of court attendance. The appellant cannot be held responsible for any lapse on the part of the other officials.

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA

PESHAWAR

In Re: Service Appeal No. _____/2016

Quadrilateral Appellant
Versus
Govt. of Khyber Pakhtunkhwa & others Respondents

REJOINDER ON BEHALF OF THE
APPELLANT

Respectfully Sheweth:

The appellant submits as follow:

1. That the appellant never absented himself from the court proceedings during the period he was responsible/authorized to represent the respondent before the court.
2. That the appellant was replaced by Naib Tehsildar Gulam Qasim to represent the respondents before court and the appellant was relieved of his responsibility of court attendance. The appellant cannot be held responsible for any lapse on the part of the other officials.

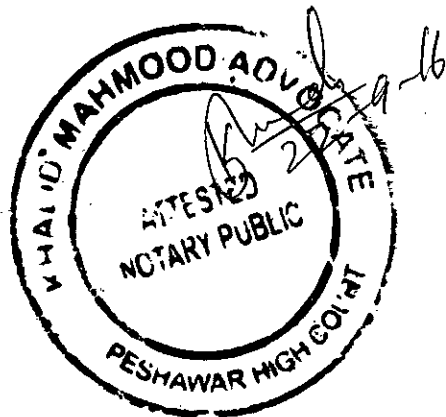
It is, therefore humbly prayed that keeping in view the contents of appeal and rejoinder the instant appeal may kindly be allowed with back benefits.

Appellant
Through


Muhammad Asghar Khan Kundi
Advocate, Peshawar

AFFIDAVIT

As per instruction of my client, do hereby solemnly affirm and declare on oath that the contents of the **Rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.




DEPONENT

It is therefore humbly prayed that keeping in view the contents of appeal and rejoinder the instant appeal may kindly be allowed with back benefits.

Appellant

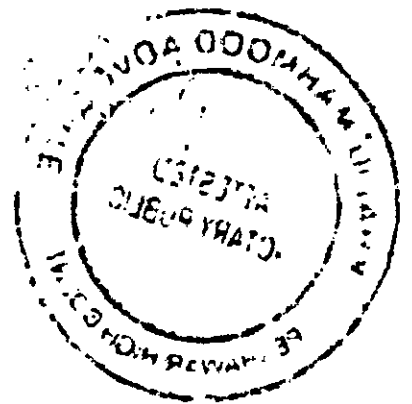
Through

Muhammad Asghar Khan Kundi
Advocate, Peshawar

AFFIDAVIT

As per instruction of my client, do hereby solemnly affirm and declare on oath that the contents of the rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

DEPONENT



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 2484 /ST

Dated 30 /11/2017


To

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

Subject: **JUDGEMENT IN APPEAL NO. 360//16 MR.QADRATULLAH AND OTHERS.**

I am directed to forward herewith a certified copy of Order dated 24/10/2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.